UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

NESHANNOCK TOWNSHIP SCHOOL DISTRICT, individually and on behalf of all others similarly situated, Plaintiff, v. **FIELDTURF USA, INC**., a Florida corporation; **FIELDTURF, INC**., a Canadian corporation; and **FIELDTURF TARKETT SAS**, a French corporation, Defendants.	**Case No.** **DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

Plaintiff Neshannock Township School District, on behalf of themselves and all others similarly situated, based upon personal knowledge and all other facts based upon investigation of counsel, files this class action complaint against FieldTurf USA, Inc., FieldTurf Inc., and FieldTurf Tarkett SAS.

INTRODUCTION

1. This action involves the deceptive and unfair business practices of FieldTurf in connection with its manufacturing, marketing, sale, and installation of defective artificial turf sports fields installed in October of 2008 at Neshannock Junior/Senior High School, located at 3834 Mitchell Road, New Castle, PA (hereinafter "NJSHS"). Between 2005 and 2012, FieldTurf sold and installed approximately 1,700 artificial turf fields throughout the United States, which generated reported revenues of $570,000,000. Unfortunately for its customers, the fibers that FieldTurf used to make its artificial turf was defective – and FieldTurf knew it. Despite this

knowledge, FieldTurf continued to aggressively market and advertise the benefits of its defective product, and even replaced and repaired fields which had prematurely deteriorated with the same defective product.

2. In 2011, FieldTurf sued its supplier of the artificial fibers, TenCate Thiolon Middle East, LLC ("TenCate") for fraudulent inducement of contract, breach of contract and breach of warranty alleging that the turf fibers supplied to FieldTurf were defectively manufactured without "an adequate amount of ultraviolet (UV) stabilizers required to prevent loss of tensile strength, increasing its premature disintegration during the warranty period." In that lawsuit, FieldTurf admitted that it had "built more than 100 fields using defective fibers that are degrading prematurely." FieldTurf sought relief because it faced "pending and future claims of tens of millions of dollars as a result of failures of [the] supplied fiber." FieldTurf settled its $30 million lawsuit against TenCate in 2014 for a confidential amount, but failed to inform its customers, including Plaintiff herein, of its knowledge that it had installed defective fibers in Plaintiff's artificial turf sports field. Instead, FieldTurf pocketed the settlement and kept Plaintiff and the rest of its customers in the dark and on their own to deal with the cost of replacing their deteriorating fields.

THE PARTIES

3. Plaintiff is now, and at all times mentioned herein was, a public school district duly organized under 24 Pa. Stat. Ann. § 2-201. The District is the legal owner of the real property where FieldTurf installed its artificial turf sports field at NJSHS. As such, the District is the current owner of the defective field installed by FieldTurf and is responsible for its maintenance and repair.

4. Defendant, FieldTurf USA, Inc. ("FieldTurf"), is a Florida corporation with its principal place of business in Calhoun, Georgia, doing business in Pennsylvania and elsewhere in the United States. FieldTurf sold and installed the artificial turf field at NJSHS which is the subject matter of this action. Plaintiff is further informed and believes, and thereon alleges, that FieldTurf manufactured the artificial turf field installed at NJSHS at its Calhoun, Georgia plant.

5. Defendant, FieldTurf, Inc. ("FTI"), is a Canadian corporation, and sister corporation of FieldTurf. Plaintiff is further informed and believes, and thereon alleges, that Defendant, FTI may be the manufacturer of the artificial turf fields installed at NJSHS.

6. Defendant, FieldTurf Tarkett SAS ("FTS"), is a French corporation, and the parent corporation of both FieldTurf and FTI, and thus, liable for the actions of both FieldTurf and FTI. Plaintiff is further informed and believes, and thereon alleges, that Defendant, FTS may be the manufacturer of the artificial turf fields installed at NJSHS.

7. Defendants, FieldTurf, FTI and FTS are collectively referred to herein as "FieldTurf." FieldTurf manufactures and installs artificial turf sports fields, and claims that it has completed more the 2,500 such installations throughout the world.

JURISDICTION AND VENUE

8. This Court has original and/or supplemental subject matter jurisdiction over all claims in this action pursuant to 28 U.S.C. §§ 1332 and 1367. Diversity jurisdiction exists because this is a dispute between citizens of different states and in which citizens of foreign states are additional parties. The amount in controversy, exclusive of interest and costs, well exceeds $75,000.

9. This Court has personal jurisdiction over the parties in this action by the fact that Defendants are corporations that are authorized to conduct business in Pennsylvania and have

intentionally availed themselves of the laws and markets of Pennsylvania through the promotion, marketing, distribution and sale of its artificial turf products to high schools, colleges, universities and municipalities in Pennsylvania, including Plaintiff herein. Defendants sold and installed the defective artificial turf field at NJSHS in the County of Lawrence, State of Pennsylvania.

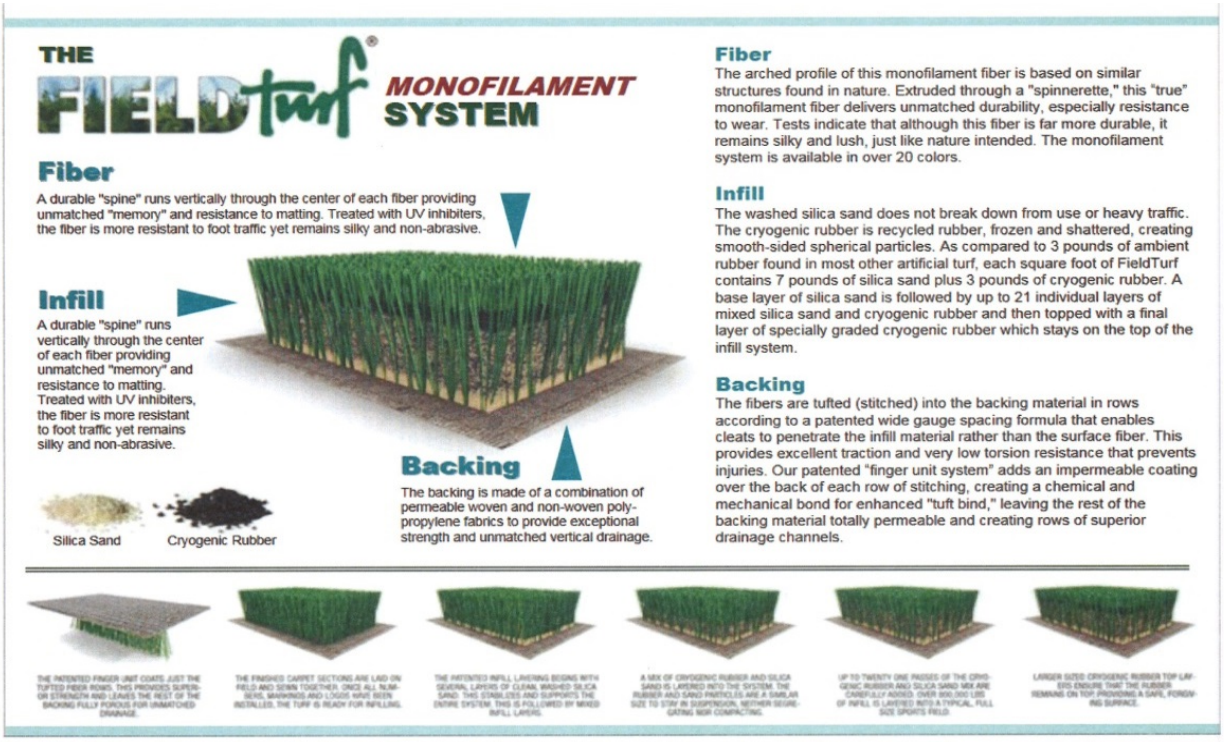
10. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b), because a substantial part of the events or omissions giving rise to the Plaintiff's claims occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because Defendants transacted a substantial amount of its business in this District.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

A. FieldTurf And Its Artificial Turf Product:

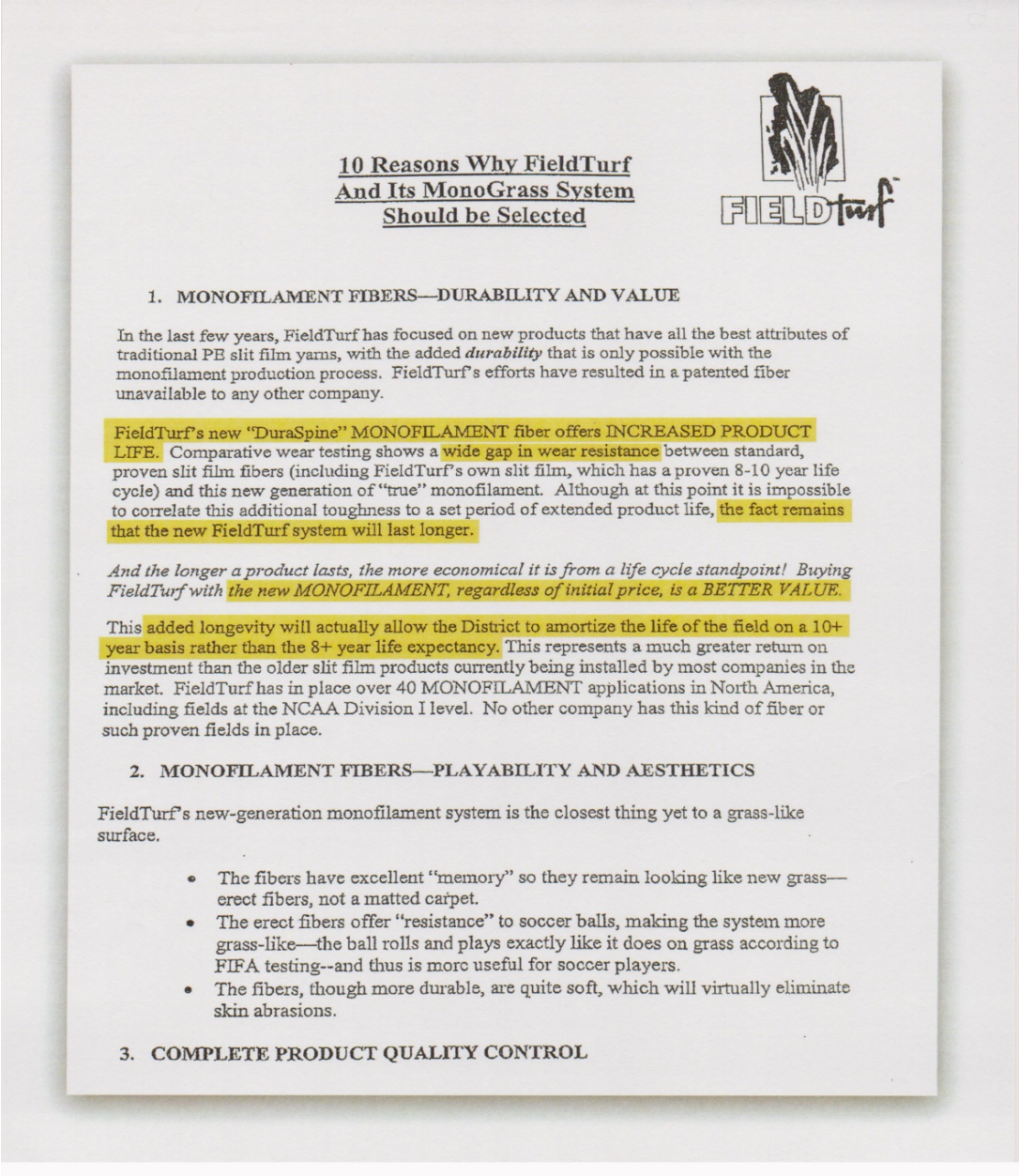
11. According to its website (www.fieldturf.com) FieldTurf is recognized as the market leader globally in synthetic sports fields. FieldTurf boasts that 21 out of the 32 National Football League teams have selected FieldTurf installations for their stadiums and/or practice fields.

12. The main components of each FieldTurf field are artificial monofilament grass fibers, a permeable fabric backing into which the fibers are stitched or "tufted", and a mixture of sand and rubber granules that serve as the "infill" between the fibers.



13. FieldTurf obtained the artificial fibers for the turf field it installed at NJSHS from TenCate. These fibers were marketed by TenCate under the brand name "Evolution" and manufactured at TenCate's facility in Dubai, United Arab Emirates. At all relevant times, FieldTurf marketed the turf which used the artificial Evolution grass fibers under the brand name "Duraspine" (the "Defective Product").

14. Commencing in 2005, FieldTurf embarked upon an aggressive marketing campaign to promote its new Duraspine monofilament artificial grass turf, which was more expensive than traditional slit film fiber fields sold by its competitors. As part of its marketing campaign, FieldTurf made the following representations in a marketing brochure:



10 Reasons Why FieldTurf And Its MonoGrass System Should be Selected

FIELDturf

1. MONOFILAMENT FIBERS—DURABILITY AND VALUE

In the last few years, FieldTurf has focused on new products that have all the best attributes of traditional PE slit film yarns, with the added ***durability*** that is only possible with the monofilament production process. FieldTurf's efforts have resulted in a patented fiber unavailable to any other company.

FieldTurf's new "DuraSpine" MONOFILAMENT fiber offers INCREASED PRODUCT LIFE. Comparative wear testing shows a wide gap in wear resistance between standard, proven slit film fibers (including FieldTurf's own slit film, which has a proven 8-10 year life cycle) and this new generation of "true" monofilament. Although at this point it is impossible to correlate this additional toughness to a set period of extended product life, the fact remains that the new FieldTurf system will last longer.

And the longer a product lasts, the more economical it is from a life cycle standpoint! Buying FieldTurf with the new MONOFILAMENT, regardless of initial price, is a BETTER VALUE.

This added longevity will actually allow the District to amortize the life of the field on a 10+ year basis rather than the 8+ year life expectancy. This represents a much greater return on investment than the older slit film products currently being installed by most companies in the market. FieldTurf has in place over 40 MONOFILAMENT applications in North America, including fields at the NCAA Division I level. No other company has this kind of fiber or such proven fields in place.

2. MONOFILAMENT FIBERS—PLAYABILITY AND AESTHETICS

FieldTurf's new-generation monofilament system is the closest thing yet to a grass-like surface.

- The fibers have excellent "memory" so they remain looking like new grass—erect fibers, not a matted carpet.
- The erect fibers offer "resistance" to soccer balls, making the system more grass-like—the ball rolls and plays exactly like it does on grass according to FIFA testing--and thus is more useful for soccer players.
- The fibers, though more durable, are quite soft, which will virtually eliminate skin abrasions.

3. COMPLETE PRODUCT QUALITY CONTROL

15. In another marketing handout, FieldTurf claimed that "DuraSpine fiber is far more resistant to UV and foot traffic", "this spine gives each fiber unmatched 'memory' and thus resistance to matting" and "Tests indicate the DuraSpine fiber is far more resistant to UV and foot traffic, the two main enemies of any turf system."

16. FieldTurf aggressively marketed the financial advantages of its product based upon its represented longevity.

17. FieldTurf's salespersons routinely told prospective customers, including Plaintiff herein, that its Duraspine artificial turf fields had an expected useful life of more than 10 years. To back up this claim, FieldTurf supplied its salespersons with a marketing brochure entitled, "10 Year Cost Analysis FieldTurf v. Natural Grass" and instructed its salespersons to provide this brochure to prospective customers, including Plaintiff herein.

18. In another marketing brochure entitled "TurfTalk Cost Comparison, Vol.4", which upon information and belief was given to all FieldTurf customers, FieldTurf claimed it

had 101 artificial turf fields still in daily use more than 9 years after installation, 50 fields more than 10 years after installation, and 11 fields more than 11 years after installation.

B. FieldTurf Knew Evolution Fibers Were Defective:

19. FieldTurf knew that its representations about the durability and longevity of its Defective Product were false and likely to deceive its customers, including Plaintiff herein, based upon its knowledge of the Evolution fibers' failures beginning as early as 2006.

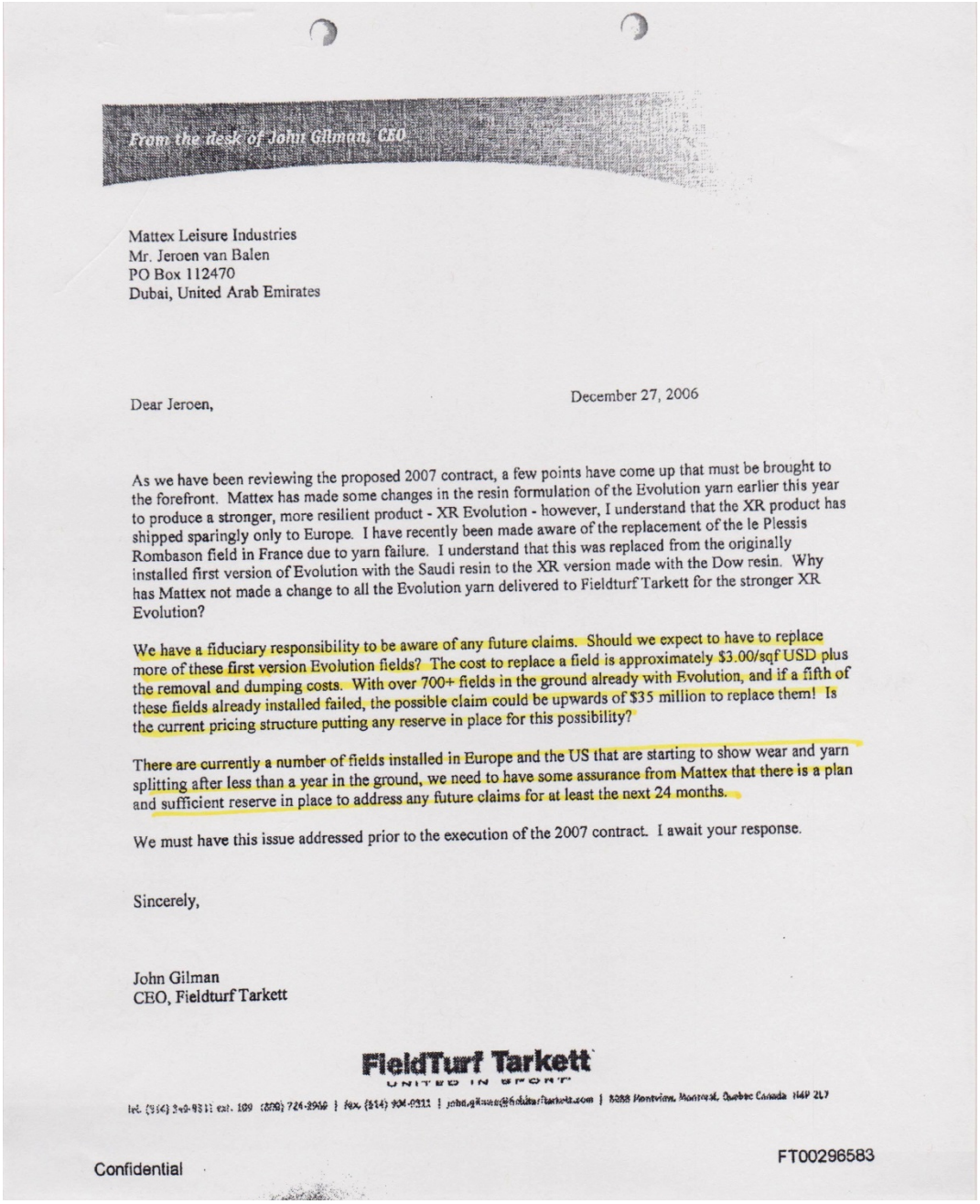
20. In an angry email to FieldTurf's founder, John Gilman, dated May 12, 2006, the president of Sportexe, Inc., a licensed FieldTurf distributor which installed FieldTurf's Duraspine at high schools and colleges throughout Southern California, said, "…it does not look good to prospects and clients, spinning it, that its normal for the fiber to fall out of the field….Right now, on our [name of field redacted] in So Cal. before we take prospects there we have to get FieldTurf Builders there to sweep the fiber that is how bad it is. Donny has a new field north of Seattle and before he shows prospects he has to arrive early and pick up the fiber everywhere…I would rather lose this selling advantage than have to try to explain why our fiber is so easily pulled out of our fields."

21. In response to these alarming reports, John Gilman emailed Jeroen van Balen, then the Managing Director of Mattex Leisure Industries (the original manufacturer of the Evolution fibers and predecessor of TenCate) on December 28, 2006, "We are seeing fields showing splitting after under a year of play and have already had to replace one full-sized field due to yarn failure after only a few months of installation!" In response, van Balen wrote an email back to Gilman reiterating that the monofilament fiber sold to FieldTurf was "excellent". However, John Gilman responded on December 30, 2006, "Telling me the technology is excellent means nothing. Now we know with heavy use, the fiber is coming apart. What do we

do? If I write an official letter, it will have a material effect on the deal. The deal with explode in many directions. We'd better talk." On New Year's Eve of 2006, John Gilman followed up with the ominous warning, "It's all about that old story of waiting for the next shoe to drop. We have had a few failures as you know. The question is…will many others fail? Who knows?"

22. On or about December 27, 2006, John Gilman prepared the following letter to Jeroen van Balen.[1]

[1] Obtained from public domain from article published by NJ Advance Media, The 100-Yard Deception at wbur.org



From the desk of John Gilman, CEO

Mattex Leisure Industries
Mr. Jeroen van Balen
PO Box 112470
Dubai, United Arab Emirates

Dear Jeroen,

December 27, 2006

As we have been reviewing the proposed 2007 contract, a few points have come up that must be brought to the forefront. Mattex has made some changes in the resin formulation of the Evolution yarn earlier this year to produce a stronger, more resilient product - XR Evolution - however, I understand that the XR product has shipped sparingly only to Europe. I have recently been made aware of the replacement of the le Plessis Rombason field in France due to yarn failure. I understand that this was replaced from the originally installed first version of Evolution with the Saudi resin to the XR version made with the Dow resin. Why has Mattex not made a change to all the Evolution yarn delivered to Fieldturf Tarkett for the stronger XR Evolution?

We have a fiduciary responsibility to be aware of any future claims. Should we expect to have to replace more of these first version Evolution fields? The cost to replace a field is approximately $3.00/sqf USD plus the removal and dumping costs. With over 700+ fields in the ground already with Evolution, and if a fifth of these fields already installed failed, the possible claim could be upwards of $35 million to replace them! Is the current pricing structure putting any reserve in place for this possibility?

There are currently a number of fields installed in Europe and the US that are starting to show wear and yarn splitting after less than a year in the ground, we need to have some assurance from Mattex that there is a plan and sufficient reserve in place to address any future claims for at least the next 24 months.

We must have this issue addressed prior to the execution of the 2007 contract. I await your response.

Sincerely,

John Gilman
CEO, Fieldturf Tarkett

FieldTurf Tarkett
UNITED IN SPORT

tel. (514) 340-9811 ext. 109 (800) 724-2940 | fax. (514) 904-0311 | john.gilman@fieldturftarkett.com | 8268 Montview, Montreal, Quebec Canada H4P 2L7

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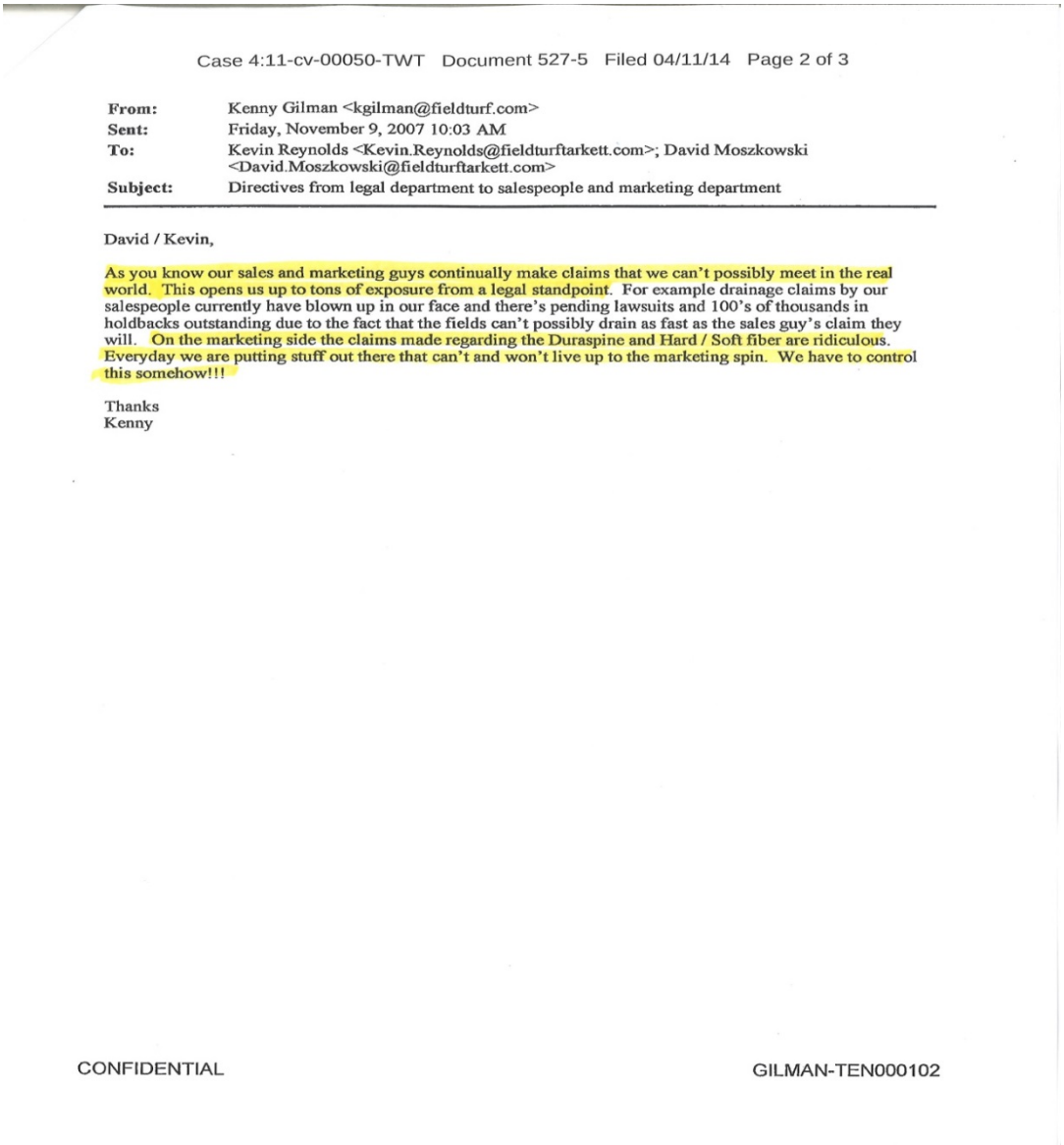
23. In summary, nearly two years before NJSHS purchased its artificial turf field, FieldTurf knew that at least one-fifth of its over 700 fields (at least 175) failed.

24. Before FieldTurf sold the Defective Product to NJSHS, Kenny Gilman, the Executive Director of FieldTurf, sent the following warning to Kevin Reynolds, Vice President of FieldTurf's Operations, and David Moszkowski, Chief Financial Officer and Interim CEO after John Gilman's death.



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From: Kenny Gilman <kgilman@fieldturf.com>
Sent: Friday, November 9, 2007 10:03 AM
To: Kevin Reynolds <Kevin.Reynolds@fieldturftarkett.com>; David Moszkowski <David.Moszkowski@fieldturftarkett.com>
Subject: Directives from legal department to salespeople and marketing department

David / Kevin,

As you know our sales and marketing guys continually make claims that we can't possibly meet in the real world. This opens us up to tons of exposure from a legal standpoint. For example drainage claims by our salespeople currently have blown up in our face and there's pending lawsuits and 100's of thousands in holdbacks outstanding due to the fact that the fields can't possibly drain as fast as the sales guy's claim they will. On the marketing side the claims made regarding the Duraspine and Hard / Soft fiber are ridiculous. Everyday we are putting stuff out there that can't and won't live up to the marketing spin. We have to control this somehow!!!

Thanks
Kenny

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25. In his deposition in the TenCate Action, discussed below, Kenny Gilman testified that he knew and objected to "many marketing and selling tactics" made by FieldTurf's sales force, including the ads and representations that FieldTurf used ten pounds per square foot of infill on every field, which Mr. Gilman admitted was a false representation.

26. In July 2007 after his father's death, Kenny Gilman arranged a trip to New Jersey to educate FieldTurf's interim CEO, David Moszkowski, about the problems with the Defective Product. Gilman summarized the results of this fact-finding trip saying fields installed in 2005 and 2006 and subjected to only one or two years of play were becoming matted. "This yarn is nowhere near as robust or resilient as we initially thought and probably will not last that must longer than a high quality slit-film yarn. In all likelihood in years 5 and 6 these Duraspine fields will be matted down and fibrillating pretty heavily. Our marketing claims and sales pitches need to reflect this reality."

27. Notwithstanding the knowledge that its product was defective, FieldTurf failed to change its marketing and advertising claims for the Defective Product.

28. As further evidence of FieldTurf's knowledge that it had sold defective artificial turf to thousands of customers, including Plaintiff and class members, on March 1, 2011, FieldTurf sued TenCate in United States District Court, *FieldTurf USA, Inc. v. Tencate Thiolon Middle East, LLC*, Case No. 4:11-cv-50 TWT (N.D. Georgia) ("TenCate Action"). In its lawsuit, FieldTurf accused TenCate, and its predecessor Mattex, of a "bait-and-switch" scheme in which Mattex and later TenCate changed its formula to make the Evolution fibers and also changed the manufacturing process which resulted in a much less expensive, less durable fiber that also lacked an adequate amount of ultraviolet ("UV") stabilizers required to prevent loss of tensile

strength, increasing the fiber's premature disintegration during the warranty period. In the TenCate Action, FieldTurf's own expert concluded that the Evolution fibers did not live up to its supplier's warranty that the fibers would retain more than 50% of their tensile strength during their expected 10 year life and that those fields which had not already failed would likely fail in the future.

29. Further, internal emails between Denise Mireault, FieldTurf's Director of Customer Service, and FieldTurf executives in November and December of 2009, reveal discussions about the list of "bad" Duraspine fields which were failing at that time, including Baker University in Kansas, Bishop Verot High School in Florida, and Midlothian High School in Texas. Thus, as of December 2009, FieldTurf executives knew that the Duraspine turf installed at dozens of schools across the country had failed prematurely, including Plaintiff's.

From: Bearden, Derek <Derek.Bearden@fieldturftarkett.com>
Sent: Monday, December 7, 2009 8:31 AM
To: Slaughter, Janice <Janice.Slaughter@fieldturftarkett.com>
Subject: FW: Fabric/Yarn Info OnSummer Green

Janice,

Below are some fields (you may already have some of these) that have the same dye lots of yarns we've see issues with. We should try to find at least one of each color/dye lot and put it in the QUV to see what happens.

Derek

From: Bennett, Jennifer
Sent: Saturday, December 05, 2009 3:41 PM
To: Bearden, Derek; Mireault, Denise
Cc: Waters, Brian
Subject: RE: Fabric/Yarn Info OnSummer Green
Importance: High

Hi Derek,

Here are a handful of fields that used the same lots of Summer Green DL 205WR1A1 (same as Baker U):

- Central College SO# 56491 – 5/2006
- James Madison University SO# 56385 - 6/2006
- West Chester University SO# 56706 - 07/2006
- New Fairfield HS SO# 56710 - 7/2006
- Bishop Sullivan SO# 56877 – 8/2006
- Riverside Brookefield HS SO# 56805 – 8/2006

Summer Green DL 205WR2A1 (same as Midlothian and Bishop Verot):

- City of Fontana SO# 56270 – 4/2006
- Pittsburg HS SO# 56360 – 4/2006
- Dwight Englewood School SO#56347 – 4/2006
- Ygnacio Valley HS SO 55780 – 5/2006
- Raritan HS SO# 56442 – 5/2006
- Wagner College SO# 56812 – 7/2006
- Santa Ynez HS SO#56805 – 8/2006
- Riverside Brookefield HS SO# 56805 – 8/2006
- Mahwah HS SO# 56791 – 8/2006
- War Memorial HS (New Jersey) SO# 57003 - 9/2006
- Monterey Peninsula College SO# 56834 – 9/2006

Here are a handful of fields that used Fieldgreen DL 206WR5A14 (same as Midlothian):

- Goose Creek ISD SO# unknown (job # GCREEK) 4/2006
- Missouri State University SO# 56276 – 4/2006
- Pittsburg HS SO # 56360 – 4/2006
- City of Fontana #5 SO# 56270 – 5/2006
- Corsicana ISD SO# 56460 – 5/2006 **(Denise – isn't this the one on our current list to?)**
- Raritan HS SO# 56442 – 5/2006
- Catholic University of America – SO# 00076 – 5/2006

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- Townsite Park SO# 56474 – 6/2006 **(Pretty sure we've replaced this one now)**
- James Madison U SO# 56385 – 6/2006
- Johnson HS SO#56655 – 7/2006

Regarding War Memorial in AK, I am showing this was an XM60 field **NOT** an XT field. SO# 56759 – and it was actually 2colour Duraspine used here. Lot # 206WR5A13 (FG/OG). This lot was only used for this field and then used for some landscape material.

Please let me know if you need any further info on this.

Thanks,

Jen

From: Bearden, Derek
Sent: Tuesday, November 24, 2009 1:38 PM
To: Mireault, Denise; Bennett, Jennifer
Cc: Waters, Brian
Subject: RE: Fabric/Yarn Info OnSummer Green

I'll see what we can dig up. Jen, if you can help me on other fields which would have the same yarn/dye lot that would be great.

Derek

From: Mireault, Denise
Sent: Tuesday, November 24, 2009 1:12 PM
To: Bearden, Derek; Bennett, Jennifer
Cc: Waters, Brian
Subject: RE: Fabric/Yarn Info OnSummer Green

Guys
I've also got more problems at War Memorial. If you remember we replaced the gridiron lines because of the white failing but from all accounts something is happening with the fiber at War Memorial on the green XT fiber in that the fibers are shedding.

Ross Whitting has sent me these but I had Jeaner go over today as he was going to Texas so I had him pop over to AK to talk to the owner about their maintenance and equipment etc to see if something could be the cause that we don't know about etc..He confirmed that they have very minor grooming done at this field and with our equipment. Also confirmed that field traffic is minimum. I'll have a full report when he gets back with more pics.

At the time we did the lines RSG said they notice some issue but wasn't a big deal so I don't know if that's a poor eval or if the yarn is just breaking down faster. Lines were done in August.

The s/o on this file is 56759 – installed in August of 2006.

Do you think you can try to test some remnants of this as well?

From: Bearden, Derek
Sent: Monday, November 23, 2009 1:27 PM
To: Bennett, Jennifer
Cc: Mireault, Denise
Subject: RE: Fabric/Yarn Info OnSummer Green

Jen,

Thanks!!

I'm going to see what we have of this, if we can find it, and try to get something in the QUV.

Derek

From: Bennett, Jennifer
Sent: Monday, November 23, 2009 11:24 AM
To: Bearden, Derek
Cc: Mireault, Denise
Subject: RE: Fabric/Yarn Info OnSummer Green

Hey Derek,

Here is a bit of info in regards to the Baker University project:

Baker University – produced May 2006 – SO# 56465

Dye lots used:
Fieldgreen: 206WR3A05
Summer green: 205WR1A1
White: 205WR6A04
Orange: 205WR3A279

Also on our radar from the 2-tone Duraspine issues are the following:

Midlothian ISD – produced April 2006 – SO# 56359

Dye lots used:
Fieldgreen: 206WR5A14
Summer Green: 205WR2A1
White: 206WR5A09
Bright Gold: 205WR3A2

Notes from Customer Service list for Midlothian:

Denise Mireault (10/1/2009 8:54 AM): Request to have TCT visit site
Denise Mireault (8/28/2009 9:34 AM): Note from Jjr. report that they were using a Greensgroomer. As per George Keen: The colored lines are the biggest issue but we are starting to see some shredding of the green fiber also. The practice field has more laying down of the green fiber than shredding but the stadium field has the alternating panels which is starting to show shredding in the lighter green fibers.

Bishop Verot – produced March 2006 – SO# 56260

Dye lots used:
Fieldgreen: 206WR4A07
Summer green: 205WR2A1
White: 204WR1A1
Black: 205WR1A26

Denise, Guilford HS (CT) is showing on your list as a diluted green + , however, it wasn't a two tone field – that one is a bit strange….

Derek, this is just a few of them to get started on. Please let me know if you need anything further.

Thanks,

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Jen

From: Bearden, Derek
Sent: Friday, November 20, 2009 4:18 PM
To: Bennett, Jennifer
Subject: Fabric/Yarn Info OnSummer Green

Jen,

Before I forget, here is a reminder to get me the info on the "bad" summer green field(s).

Derek

30. Despite FieldTurf's knowledge that the Evolution fibers installed at NJSHS were defective, FieldTurf concealed this material information from Plaintiff.

31. FieldTurf's massive scheme to defraud consumers such as Plaintiff herein was finally exposed in December 2016 by two investigative reporters at NJ Advance Media[2] after a six month long investigation, which included forty public records requests, examining 5,000 pages of company records, emails, court filings in the TenCate Action and interviewing dozens of coaches, officials and current and former FieldTurf employees.

C. NJSHS Turf Fields:

32. On or about June 3, 2008, Plaintiff entered into a written contract with FieldTurf whereby FieldTurf agreed to furnish and install approximately 87,763 square feet of Duraspine artificial turf field for a football field at NJSHS in exchange for payment of $930,613 (the "Football PO"). A copy of the Football PO is attached hereto as Exhibit A.

[2] The 100-Yard Deception, https://readymag.com/njdotcom/fieldturf (last visited February 21, 2017).

33. FieldTurf warranted its products to Plaintiff for a standard term of eight years.[3] Upon information and belief, FieldTurf warranted that the goods and services furnished to Plaintiff would be merchantable, fit for their intended purpose, free from all defects in materials and workmanship and free from defects in design.

34. FieldTurf also represented in its marketing materials given to Plaintiff that the expected useful life of the Duraspine field was 10+ years and that the Duraspine turf product had durability and longevity which was superior to its competitors' turf products. Plaintiff relied upon these representations, which became part of the basis of the bargain between FieldTurf and Plaintiff.

35. Upon information and belief, FieldTurf issued Plaintiff a written "Manufacturer's Limited Warranty", which warranted that "if FieldTurf FTOM 1F for football/soccer synthetic turf proves to be defective in material or workmanship, resulting in premature wear, during the normal and ordinary use of the Product for the sporting activities set out below or for any other sues for which FieldTurf gives its written authorization, within 8 years from the date of completion of installation, FieldTurf will, at FieldTurf's option, either repair or replace the affected area without charge, to the extent required to meet the warranty period (but no cash refunds will be made)." Upon information and belief, Plaintiff read the Manufacturer's Limited Warranty prior to purchase.

36. At all relevant times, Plaintiff maintained and cared for its FieldTurf fields in accordance with all methods required and recommended by FieldTurf.

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[3] *See* Transcript of *Committee Meeting of Senate Commerce Committee*, New Jersey State Senate (January 30, 2017) at 15 (Exhibit B attached hereto) ("At this point, you probably are all well aware that FieldTurf and the standard industry warranty is eight years.").

37. In or around July 2015, Plaintiff noticed that parts of its FieldTurf fields were breaking, splitting and thinning of the individual fibers characterized by fibrillation, fiber breakage and pile layover. In or around August 2015, FieldTurf sent a technician to inspect Plaintiff's fields. At that time, Plaintiff informed FieldTurf that it was concerned about the problem conditions it noticed on its fields, as stated above. In response, the FieldTurf technician informed Plaintiff that the complained of conditions would be remedied by grooming the fields, which according to FieldTurf, would rejuvenate the fibers and lift them back up. A FieldTurf technician groomed Plaintiff's fields in or around August 2015. But the very same problems returned four weeks later (in or around September 2015).

38. These failures that Plaintiff noticed, included breaking, splitting and thinning of the individual fibers characterized by fibrillation, fiber breakage and pile layover, were the same as those FieldTurf described the Defective Product in its internal emails and in its Complaint in the TenCate Action.

39. Post-installation, Plaintiff spent approximately $3,500 out of pocket to repair fibers that were lying down and sink holes that had formed on the fields.

CLASS ALLEGATIONS

40. Plaintiff brings this action against FieldTurf and on behalf of themselves, and as a class action, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of the following class and, in the alternative, the following subclass:

National Class:

All persons in the United States and its territories who purchased the Defective Product from FieldTurf or its affiliates, entities, or subsidiaries. Excluded from the Class are FieldTurf, or their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

Pennsylvania Subclass:

> All persons in Pennsylvania who purchased the Defective Product from FieldTurf or its affiliates, entities, or subsidiaries. Excluded from the Class are FieldTurf, or their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees.

41. Plaintiff reserves the right to modify or amend the definition of the proposed classes before the Court determines whether certification is appropriate.

42. Ascertainable Class: While Plaintiff does not know the exact number and identity of all class members, Plaintiff is informed and believe that there are hundreds of class members. The precise number of members can be ascertained through discovery, which will include FieldTurf's sales, service and other business records.

43. Common Questions of Law and Fact Predominate: There is a well-defined community of interest among the Class. The questions of law and fact common to the Class predominate over questions that may affect individual Class Members. These questions of law and fact include, but are not limited to, the following:

a. Whether the Defective Product is defective under normal use within expected useful lifespan, as advertised by FieldTurf;

b. Whether and when FieldTurf had knowledge of the defects in the Defective Product;

c. Whether FieldTurf concealed defects in the Defective Product;

d. Whether FieldTurf's omissions regarding in the Defective Product were likely to deceive Plaintiff and the class;

e. Whether FieldTurf's alleged conduct constitutes the "using deceptive representations or designations" within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law and other applicable state consumer fraud statutes;

f. Whether FieldTurf has been unjustly enriched under Pennsylvania or other applicable state laws;

g. Whether FieldTurf has violated its express warranties with Plaintiff and the class;

h. Whether FieldTurf has violated the implied warranty of merchantability under Pennsylvania or otherwise applicable state law;

i. Whether FieldTurf actively concealed the Defective Product in order to maximize profits to the detriment of Plaintiff and the class;

j. Whether Plaintiff and the Class members are entitled to damages, restitution, disgorgement, equitable relief, or other relief;

k. The amount and nature of such relief to be awarded to Plaintiff and the class; and

l. Whether FieldTurf's concealment of defects in the Defective Product tolls applicable statute of limitations, if any.

These and other questions are common to the class and predominate over any questions affecting only individual class members.

44. Numerosity: The proposed class is so numerous that the individual joinder of all members of the class is impractical under the circumstances of this case. While the exact number of members of the class is unknown to Plaintiff at this time, Plaintiff is informed and believes that the class consists of hundreds of entities.

45. Typicality: Plaintiff's claims are typical of the claims of the members of the proposed class. Plaintiff and all class members have been injured by the same wrongful practices of FieldTurf. FieldTurf made uniform representations and omissions, and provided uniform warranty documents to Plaintiff and class members. Plaintiff's claims arise from the same

practices and conduct that gives rise to the claims of all class members and are based on the same legal theory.

46. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the class in that it has no disabling conflicts of interest that would be antagonistic to those of the other members of the class. Plaintiff seeks no relief that is antagonistic or adverse to the members of the class and the infringement of the rights and the damages they have suffered are typical of all other class members. Plaintiff has retained attorneys experienced in class actions and complex litigation.

47. Superiority: The disposition of Plaintiff's and class members' claims in a class action will provide substantial benefits to both the parties and the Court. The nature of this action and the nature of laws available to Plaintiff and the Class make the use of the class action device a particularly efficient and appropriate procedure to afford relief to Plaintiff and the Class for the wrongs alleged because:

a. The individual amounts of damages involved, while not insubstantial, are such that individual actions or other individual remedies are impracticable and litigating individual actions would potentially be too costly;

b. If each class member was required to file an individual lawsuit, the Defendant would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with vastly superior financial and legal resources;

c. The costs of individual suits could unreasonably consume the amounts that would be recovered;

d. Given the size of individual class members' claims and the expense of litigating those claims, few, if any, proposed class members could afford to or would seek legal redress individually for the wrongs FieldTurf committed against them and absent proposed class members have no substantial interest in individually controlling the prosecution of individual actions;

e. This action will promote an orderly and expeditious administration and adjudication of the proposed class claims, economies of time, effort and resources will be fostered and uniformity of decisions will be insured;

f. Without a class action, proposed class members will continue to suffer damages, and Defendant's violations of law will proceed without remedy while FieldTurf continues to reap and retain the substantial proceeds of its wrongful conduct;

g. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action;

h. Proof of a common business practice or factual pattern which Plaintiff experienced is representative of that experienced by the class and will establish the right of each member of the class to recover on the causes of action alleged; and

i. Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

ESTOPPEL FROM PLEADING STATUTES OF LIMITATIONS OR REPOSE

48. All conditions precedent for Plaintiff and Class Members' claims are satisfied and Plaintiff's and Class Members' claims are within the applicable statute of limitations for the claims presented hereunder because Plaintiff and Class Members did not discover the defect, and

could not reasonably have discovered the defect due to FieldTurf's concealment of material facts.

49. FieldTurf are estopped from relying on any statutes of limitation or repose by virtue of their acts of concealment.

50. FieldTurf had a duty to disclose that the Defective Product was defective, not durable, and inherently flawed in manufacture.

51. Plaintiff and Class Members had no knowledge of, and no reasonable way of discovering, the defects found in FieldTurf's Defective Product at the time they purchased the product or before its replacement.

52. FieldTurf did not notify, inform, or disclose to Plaintiff and Class Members that there were defects in the Defective Product prior to marketing, selling, or installing the Defective Product at NJSHS. Because FieldTurf failed in their duty to notify Plaintiff and Class Members that their product was defective, the statute of limitations and/or repose should be tolled on Plaintiff and Class Members' claims.

53. Pursuant to the doctrine of Equitable Tolling and/or Equitable Estoppel, the period for bringing claims shall not be barred due to the statute of limitations or statute of repose. The interest of justice requires equitable tolling in this case. In applying this doctrine the relevant factors include the claimant's diligence, the claimant's knowledge of the relevant facts and whether these statements misled the claimant. Accordingly, with respect to each and every cause of action and/or Count asserted herein, Plaintiff and Class Members expressly plead Equitable Tolling and/or Equitable Estoppel and their application thereto.

COUNT I
(Breach of Contract by Plaintiff Against Defendant FieldTurf USA, Inc.)

54. Plaintiff repeats and re-alleges each and every allegation contained in preceding paragraphs as if fully set forth herein.

55. Plaintiff has performed all of its obligations under the Football Contract, except those waived, excused or prevented by the actions or inactions of FieldTurf.

56. Defendant, FieldTurf USA, Inc. breached the Football Contract by failing to furnish and install an artificial turf sports field that was (1) free from defects in workmanship and materials; (2) was merchantable; (3) was fit for its intended use; and (4) free from defects in design.

57. Plaintiff did not discover that the Duraspine turf was defective until September 2015, after the FieldTurf technicians grooming technique failed to remedy the defects. Plaintiff could not have reasonably discovered these breaches prior to this time due to FieldTurf's fraudulent concealment of the defects alleged herein.

58. Plaintiff has not yet completed its investigation of all of the problems that may exist with respect to FieldTurf's product and will amend this Complaint at such time as the exact sum becomes certain, or will conform to proof at the time of trial if additional damages are discovered. Such breaches have proximately caused damage to the artificial turf football field at NJSHS.

59. As a direct and proximate result of the breaches by Defendant, Plaintiff has suffered damage to its real property, loss of use of its football fields, costs to investigate these damages, costs to replace the defective field, attorneys' fees and other economic and special damages all in an amount of at least $500,000. Because Plaintiff's damages are continuous and

progressive over time, Plaintiff will seek leave to amend its Complaint at such time as the exact amount of its damages become certain, or will conform to proof at the time of trial.

COUNT II
(Breach of Implied Warranties By Plaintiff Against All Defendants)

60. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

61. Pursuant to 13 Pa. Cons. Stat. Ann. § 2314, by placing their product into the stream of commerce, Defendants impliedly warranted that their Defective Product was merchantable, fit for its intended purpose and suitable for use as an artificial turf sports field.

62. Further, at the time of installing the turf field at NJSHS, FieldTurf had reason to know that its Duraspine product would be used as a soccer field at NJSHS and that the Plaintiff was relying upon FieldTurf's skill and judgment to furnish suitable products for this particular purpose. Pursuant to 13 Pa. Cons. Stat. Ann. § 2314, FieldTurf impliedly warranted that its Defective Product was fit for this particular purpose.

63. FieldTurf's Defective Product is not merchantable. In breach of the implied warranties of merchantability and fitness for a particular purpose, the artificial turf field is defective because it physically and chemically degraded prematurely during its 10+ year useful life.

64. The artificial turf field was defective when it was sold and installed by Defendants.

65. The defects in the artificial turf were not open and/or obvious to Plaintiff at the time the field was installed by FieldTurf.

66. Any purported disclaimer or limitation of the duration and scope of the implied warranty of merchantability given by Defendants is ineffective, not conspicuous, unreasonable,

unconscionable and void, because Defendants knew or recklessly disregarded that the defects in its artificial turf fields existed and might not be discovered, if at all, until the field had been used for a period of time, and Defendants willfully withheld information about the defects from Plaintiff.

67. The purported warranty's limitations are both procedurally and substantively unconscionable. FieldTurf knew or should have known that the field it installed at NJSHS were defective in that it was susceptible to premature failure. Additionally, FieldTurf had unequal bargaining power, misrepresented the field's quality and durability, and the limited remedies in the warranty unreasonably favor FieldTurf and fail Plaintiff's and class members' reasonable expectations for the field's useful life.

68. Defendants knew that its product was defective based upon the internal emails and correspondence to its supplier alleged at paragraphs 19 through 26 above, and its own product testing as alleged in the TenCate Action.

69. As a direct and proximate result of Defendants' breach of its implied warranties, Plaintiff has been damaged in, inter alia, the amount it paid to purchase and replace Defendants' un-merchantable artificial turf field.

COUNT III

(Violation of Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. § 201 *et seq.* Against All Defendants)

70. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

71. The acts, omissions, and practices of FieldTurf as alleged herein constituted, and continue to constitute, unlawful and unfair business acts and practices within the meaning of Section 201 et seq. of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

Plaintiff has standing to bring this action under Unfair Trade Practices and Consumer Protection Law § 201 because it has suffered an injury-in-fact and lost money because of Defendants' conduct.

72. FieldTurf has engaged in "unlawful" business acts and practices by their violation of the statutes and regulations referenced above, including, but not limited to: Pennsylvania Unfair Trade Practices and Consumer Protection Law § 201; and Pennsylvania common law that prohibits fraudulent concealment and breaches of implied warranty.

73. FieldTurf has also engaged in "unfair" business acts or practices in that the harm caused by Defendants' manufacture, supply, installation, and or control of its product outweighs the utility of such conduct, and the conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and offensive, caused substantial injury to Plaintiff and similar consumers, and provides Defendants with an unfair competitive advantage over those companies that abide by the law.

74. FieldTurf's actions described herein constitute fraud within the meaning of Pennsylvania Unfair Trade Practices and Consumer Protection Law § 201, et seq., in that Defendants have failed to disclose that their products contain the defects set forth in the internal emails and correspondence alleged herein at paragraphs 18 through 26, and as admitted in the TenCate Action. FieldTurf's failure to disclose these defects was likely to mislead Plaintiff and similar consumers into believing that the products were free from defects and safe to use. Plaintiff relied on FieldTurf's claims and warranties that expected useful life of the Duraspine field was 10+ years and that the Duraspine turf product had durability and longevity which was superior to its competitors' turf products.

75. As a result of the conduct described above, FieldTurf has been and will be unjustly enriched at the expense of Plaintiff and similar entities.

76. The aforementioned unlawful or unfair business acts or practices conducted by FieldTurf has been committed in the past and continue to this day. FieldTurf has failed to acknowledge the wrongful nature of their actions. FieldTurf has not corrected or publicly issued individual and comprehensive notices to Plaintiff and other users of their products or provided full restitution and disgorgement of all ill-gotten monies either acquired or retained by FieldTurf as a result thereof, thereby depriving Plaintiff and other users of FieldTurf's products of artificial turf that is not merchantable or fit for its intended use.

77. Pursuant to Pennsylvania Unfair Trade Practices and Consumer Protection Law § 201-4.1, Plaintiff seeks an order of this Court requiring FieldTurf to disgorge all ill-gotten gains and awarding Plaintiff full restitution of all monies wrongfully acquired by Defendants by means of such "unlawful" and "unfair" conduct, so as to restore any and all monies to Plaintiff which were acquired and obtained by means of such "unlawful" and "unfair" conduct, and which ill-gotten gains are still retained by FieldTurf. Plaintiff additionally requests that such funds be impounded by the Court or that an asset freeze or constructive trust be imposed upon such monies by FieldTurf. Plaintiff and other users of FieldTurf 's products may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

COUNT IV
(Fraudulent Concealment By Plaintiff Against All Defendants)

78. Plaintiff repeats and re-alleges each and every allegation contained in preceding paragraphs as if fully set forth herein.

79. In order to induce Plaintiff to select the Duraspine product, FieldTurf represented to Plaintiff that its Duraspine turf had an expected life of 10+ years, which was consistent with

FieldTurf's advertisements of "offers INCREASED PRODUCT LIFE", "the fact remains that the new FieldTurf system will last longer", "This added longevity will actually allow the District to amortize the life of the field on a 10+ year basis rather than the 8+ year life expectancy." Plaintiff is informed and believes that FieldTurf instructed its salespersons to tell customers that the Duraspine turf product had an expected useful life of 10+ years.

80. Plaintiff is informed and believes that FieldTurf knew, or recklessly disregarded the fact that the Duraspine artificial turf installed in 2008 was defective based upon the internal emails, correspondence and product testing alleged in paragraphs 19 through 26 above.

81. FieldTurf concealed and suppressed material facts from Plaintiff concerning the durability of its Duraspine artificial turf product. FieldTurf failed to disclose its knowledge that the Duraspine monofilament fibers would prematurely fade, split, break, and eventually disintegrate within a few years of use. These omitted and concealed facts were material because they directly impacted the useful life and durability of the product.

82. Alternatively, FieldTurf intentionally failed to disclose the fact that the monofilament fibers used in the Duraspine product were defective in that they were not fit for their intended use, a fact known only to FieldTurf. Plaintiff could not have discovered this fact through the exercise of reasonable diligence. Plaintiff is informed and believes that FieldTurf knew of the durability problems with the artificial turf based upon internal emails, correspondence and testing as alleged in paragraphs 19 through 26 above prior to placing the Defective Product into the stream of commerce.

83. Plaintiff reasonably relied upon FieldTurf to sell artificial turf sports fields which are merchantable. FieldTurf knew or ought to have known that Plaintiff relied and/or would have reasonably relied upon FieldTurf to sell artificial turf fields in which the entire lifetime of the

product could be fully used without prematurely becoming damaged or failing. Defendants' knowledge that its product was not fit for its intended use, combined with the Defendants' knowledge that Plaintiff relied upon Defendants to communicate the true durability, or lack thereof, of its product creates a legal obligation on Defendants' part to disclose to Plaintiff these facts. Defendants are in a superior position to know the truth about, and the nature of, the durability and useful life of its artificial turf fields.

84. Defendants intended to deceive Plaintiff by failing to disclose that its artificial turf fields are not fit for their intended purpose, will fail prematurely long before the end of the eight year warranty period, will deteriorate before the end of the 10+ year useful life and are not durable.

85. Defendants' failure to disclose these facts was material. Plaintiff would not have purchased the Defective Product had it known that the Duraspine turf was not fit for its intended use; would prematurely fail long before the end of its ten year expected life, and was not durable.

86. Plaintiff was harmed. As a proximate result of Defendants' conduct as alleged herein, Plaintiff will now be required to remove and replace the defective artificial turf field.

87. Defendants' concealment was a substantial factor in causing Plaintiff's harm.

88. The wrongful conduct of Defendants, as alleged herein, was willful, oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious, and/or in conscious disregard for the wellbeing of Plaintiff. Defendants intended to cause injury to the Plaintiff by placing profits over proving a higher quality product which was represented to the Plaintiff. Defendants engaged and continue to engage in despicable conduct with a willful and conscious disregard of the rights of others. Defendants subjected, and continue to subject, Plaintiff to cruel

and unjust hardship. Accordingly, Plaintiff is entitled to an award of punitive damages against Defendants in an amount to deter them from similar conduct in the future.

COUNT V
(Declaratory Relief Against All Defendants)

89. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

90. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties with regard to Defendants' artificial turf supplied and installed at NJSHS.

91. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the parties may ascertain their rights and duties herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as to each Cause of Action as follows:

1. For general and compensatory damages in an amount to be proven at trial;
2. For punitive damages;
3. For costs of suit;
4. For pre-judgment and post-judgment interest;
5. For a judicial declaration of the rights and obligations of the parties;
6. For such further relief as the court may deem proper.

PLAINTIFF DEMANDS A JURY TRIAL FOR ALL ISSUES SO TRIABLE.

Dated: March 23, 2017

Respectfully submitted,

/s/ D. Aaron Rihn

D. Aaron Rihn
Pa. ID (85752)
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(412) 281-7229
(412) 281-4229 (fax)

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(724) 653-7855
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Gary E. Mason (*pro hac vice pending*)
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(919) 600-5000
(919) 600-5001 (fax)

Attorneys for Plaintiff, Neshannock Township School District

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Neshannock Township School District

(b) County of Residence of First Listed Plaintiff Lawrence County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Robert Peirce & Assoc., PC, 707 Grant St., Ste: 2500, Pittsburgh, PA, 15219. Tel: (412) 281-7229

DEFENDANTS

FieldTurf USA, Inc., a Florida Corp.; FieldTurf, Inc., a Canadian Corp.; FieldTurf Tarkett SAS, a French Corp.

County of Residence of First Listed Defendant Broward County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

Unknown

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☒ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☒ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332

Brief description of cause:
Breach of Contract; Breach of Warranties; Violation of Unfair Trade Practices and Consumer Protection Law; Fraud

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ 5,000,000.01

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 03/23/2017

SIGNATURE OF ATTORNEY OF RECORD /s/ D. Aaron Rihn (Pa. ID 85752)

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44AREVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (○ Erie ○ Johnstown ◉ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean. Venang or Warren, OR any plaintiff or defendant resides in one of said counties.

2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.

3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in_____ County and that the _____resides in_____County.

4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____County and that the_____resides in _____County.

PART B (You are to check ONE of the following)

1. ○ This case is related to Number_____ . Short Caption_____
2. ◉ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related. HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PARTC

I. CIVIL CATEGORY (Select the applicable category).

1. ○ Antitrust and Securities Act Cases
2. ○ Labor-Management Relations
3. ○ Habeas corpus
4. ○ Civil Rights
5. ○ Patent, Copyright, and Trademark
6. ○ Eminent Domain
7. ○ All other federal question cases
8. ○ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ◉ Insurance indemnity, contract and other diversity cases.
10. ○ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

D. Aaron Rihn (Pa. ID 85752)

Date: March 23, 2017

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

Exhibit A

NESHANNOCK TOWNSHIP SCHOOL DISTRICT

District Office
3834 Mitchell Road
New Castle, PA 16105
(724) 658-4793

PURCHASE ORDER: C00002

PAGE: 2 of 2

DATE: 06/06/08

Proposal

#3541

CONDITIONS
The Neshannock Township SD District Office is exempt from PA sales and Federal Excise taxes. We require in each box or package a memorandum of contents and the shipper's name. We reserve the right to cancel this order if material is not shipped within the time specified. goods are subject to our inspection. Pennsylvania Tax Exemption Number 76-37520-3.

NOTE:
TO INSURE PROMPT PAYMENT, MAIL INVOICES IN DUPLICATE WITH ORIGINAL BILL OF LADING ON DAY OF SHIPMENT TO: Neshannock Township SD, District Office, 3834 Mitchell Road, New Castle, PA 16105

000660

TO: ATLAS TRACKS INC
19495 SW TETON AVE
TUALATIN OR 97062-8846

SHIP TO:
BUSINESS OFFICE
NESHANNOCK TOWNSHIP SCHOOL DIST.
3834 MITCHELL ROAD
NEW CASTLE PA 16105-1089
ATTENTION: CAROL ROBINSON - CONSTRUCTION

PO DATE	EXPECTED DATE	SUBMITTED BY
06/06/08	/ /	CAROL ROBINSON - CONSTRUCTION FUND

CATALOG #	QTY	UNIT	ITEM AND DESCRIPTION	UNIT COST	AMOUNT
			TRACK LINES AND MARKINGS ARE INSTALLED TO PIAA RULES AND REGULATIONS.		
			THIS PURCHASE ORDER IS VOID IF ATLAS REQUESTS ADDITIONAL COMPENSATION FOR UNSUITABLE SOILS AND ROCK EXCAVATION!		
			Purchase Order TOTAL:		930613.00

COMMENTS:
THIS PURCHASE ORDER IS VOID IF ATLAS REQUESTS ADDITIONAL COMPENSATION FOR UNSUITABLE SOILS AND ROCK EXCAVATION!

ACCOUNT NUMBER	ENC. AMOUNT

SUPERINTENDENT APPROVAL

AUTHORIZED BOARD SIGNATURE

ATLAS
TRACK & TENNIS

NIKE GR

Corporate Office

Post-it® Fax Note 7671	Date 6/7/08	# of pages ▶ 4
To DR TADORA	From GREEK HAYDEN	
Co./Dept. DID YOU ATTAC	Co. THESE PLCES	
Phone # TO YOUR PURCHASE ORDER ?	Phone #	
Fax # IF NO, PLEASE	Fax # DO. THANKS.	

Date: June 3, 2008

To: Dr. Mary Todora, Superintendent
Neshannock Township

Email: mtodora@neshannock.k12.pa.us

From: Brenda Thompson, Co-op Contract Administrator
Atlas Tracks, Inc.
800-423-5875, ext. 227

Fax: 503-692-0491

Subject: Modified Proposal for Neshannock High School Synthetic Turf Project

Atlas Tracks, Inc. is pleased to present the following proposal for the installation of synthetic turf at Neshannock High School. Prices are based off of the Pennsylvania Education Joint Purchasing Council (PAEJPC) program. PAEJPC is a buying co-op that provides predetermined preferential pricing by approved vendors. Since the product has already been bid at the national level, individual schools do not have to go through the formal bid process.

BASE PROPOSAL	COST	DISCOUNT TO MEMBER	ADDITIONAL DONATION	TOTAL
Mobilization	$ 15,202.50	$ 1,500.00		$ 13,702.50
Survey / Layout	$ 2,943.20	$ 290.40		$ 2,652.80
Track Protection	$ 3,625.49	$ 357.72		$ 3,267.77
Remove Goal Posts	$ 2,001.38	$ 197.47		$ 1,803.91
Prep for Curb & ACO	$ 6,704.30	$ 661.50		$ 6,042.80
Excavation	$ 45,670.13	$ 4,508.40	$ 1,500.00	~~$ 40,295.34~~ 39,661
Geotextile Fabric	$ 14,685.62	$ 1,449.00		~~$ 13,466.82~~ 13,236
Advanedge Drain	$ 19,714.68	$ 1,945.80	$ 400.00	~~$ 18,863.00~~ 17,369
12" Collector Pipe	$ 32,822.40	$ 3,240.00	$ 1,000.00	~~$ 31,147.51~~ 28,582
Bore Under Track for Outlet	$ 12,176.62	$ 1,201.44		~~$ 11,503.52~~ 10,975
Spread 6" Stone OGS	$ 87,904.85	$ 9,433.79	$ 3,500.00	~~$ 82,625.23~~ 74,771
Fine Grade Field	$ 11,553.90	$ 1,140.00		~~$ 11,168.51~~ 10,413
Install Wood Nailer	$ 4,743.18	$ 468.00		~~$ 4,617.19~~ 4,275
Concrete Curb	$ 33,552.12	$ 3,312.00	$ 1,000.00	~~$ 31,186.97~~ 29,240
Track Surface in D Zone	$ 16,190.66	$ 1,597.50		~~$ 15,374.21~~ 14,593
Plexitrac Surfacer Acrylic Coating with EPDM Granules on Track Oval	$ 30,347.84	$ 2,994.36		$ 27,353.48
Install ACO Drain Radius (1" wide slot)	$ 32,822.40	$ 3,240.00	$ 1,000.00	~~$ 30,818.65~~ 28,582
Excavate D-Zones	$ 11,280.26	$ 1,113.00		~~$ 10,736.62~~ 10,167
Spread 6" Stone 2A	$ 24,056.45	$ 2,374.29	$ 465.00	~~$ 30,168.98~~ 21,217
Fine Grade D-Zones	$ 3,228.16	$ 318.52		$ 2,909.64
Asphalt Paving D-Zone	$ 46,606.61	$ 4,600.80	$ 1,500.00	~~$ 46,091.05~~ 40,505
Athletic Equipment: Long Jump Pit, Take-off Board, Install Existing Goal Posts & Concrete Pole Vault Standards	$ 13,378.20	$ 1,320.00		$ ~~40,015.82~~ 12,058

Neshannock High School
June 3, 2008
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Grade & Seed Disturbed Areas	$ 6,993.15	$ 690.00		$ ~~6,632.01~~ 6303.15
Construction Management	$ 6,070.80	$ 600.00		$ ~~5,481.00~~ 5,470.80
FieldTurf 2.5" Monofilament Series Synthetic Turf – 87,763 SF (includes 1 D-zone)	$423,964.71			$423,964.71
Inlaid Football Numbers / Arrows (White)	$ 7,612.50			$ 7,612.50
Inlaid Football Hash Marks (White)	$ 7,612.50			$ 7,612.50
Inlaid Soccer Markings (Metallic Gold)	$ 6,090.00			$ 6,090.00
Center Field Logo – Lancer	$ 21,924.00			$ 21,924.00
End Zone Letters "LANCERS" @ both ends with Border	$ 26,089.56			$ 26,089.56
Media Lines	N/C			N/C
4' RT Groomer	$ 1,015.00			$ 1,015.00
15' Drag Brush	$ 3,552.50			$ 3,552.50
Performance/Payment Bonds	$ 10,064.06			$ 10,064.06
TOTAL PROPOSAL	**$992,228.00**	**$48,553.99**	**$10,365.00**	**$933,309.01**

ALTERNATE #1	**COST**	**DISCOUNT TO MEMBER**	**ADDITIONAL DONATION**	**TOTAL**
DEDUCT - Pole Vault Box & Standards for D-Zone Installation	($ 2,433.50)	$239.40		($ 2,672.90)
Performance/Payment Bonds	($ 23.26)			($ 23.26)
TOTAL ALTERNATE #1	**($ 2,456.76)**	**$ 239.40**		**($ 2,696.16)**

TOTAL Proposal $930,613.

ALTERNATE #2	**COST**	**DISCOUNT TO MEMBER**	**ADDITIONAL DONATION**	**TOTAL**
ADD – 5' x 150' Asphalt Runway w/two 20' x 20' Landing Area, PV Boxes and Concrete Pads	$ 16,497.75	$ 1,627.80		$ 14,869.95
Track Surface	$ 5,323.19	$ 525.23		$ 4,797.96
Performance/Payment Bonds	$ 171.16			$ 171.16
TOTAL ALTERNATE #2	**$ 21,992.10**	**$ 2,153.03**		**$ 19,839.07** *

ALTERNATE #3	**COST**	**DISCOUNT TO MEMBER**	**ADDITIONAL DONATION**	**TOTAL**
ADD – Install 15' x 120' Asphalt Javelin Runway	$ 11,943.08	$ 1,178.40		$ 10,764.68
Track Surface	$ 4,923.18	$ 485.76		$ 4,437.42
Performance/Payment Bonds	$ 132.30			$ 132.30
TOTAL ALTERNATE #3	**$ 16,998.56**	**$ 1,664.16**		**$ 15,334.40** *

Neshannock High School
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ALTERNATE #4	COST	DISCOUNT TO MEMBER	ADDITIONAL DONATION	TOTAL
ADD – Discus Throw Form with Concrete Pad and Discus Cage	$ 13,086.31	$ 1,291.20		$ 11,795.11
Performance/Payment Bonds	$ 102.65			$ 102.65
TOTAL ALTERNATE #4	**$ 13,188.96**	**$ 1,291.20**		**$ 11,897.76** *

ALTERNATE #5	COST	DISCOUNT TO MEMBER	ADDITIONAL DONATION	TOTAL
ADD – Shot Put Throw with Concrete Pad and Gravel Landing Area with 4" x 4" Wood Border	$ 11,681.60	$ 1,152.60		$ 10,529.00
Performance/Payment Bonds	$ 91.63			$ 91.63
TOTAL ALTERNATE #5	**$ 11,773.23**	**$ 1,152.60**		**$ 10,620.63** *

ALTERNATE #6	COST	DISCOUNT TO MEMBER	ADDITIONAL DONATION	TOTAL
ADD – Eight (8) Com Boxes for Electrical Conduits	$ 9,097.18	$ 897.60		$ 8,199.58
Performance/Payment Bonds	$ 71.35			$ 71.35
TOTAL ALTERNATE #6	**$ 9,168.53**	**$ 897.60**		**$ 8,270.93** *

ALTERNATE #7	COST	DISCOUNT TO MEMBER	ADDITIONAL DONATION	TOTAL
ADD – Soils Boring	$ 6,932.34	$ 684.00		$ 6,248.34
Performance/Payment Bonds	$ 54.37			$ 54.37
TOTAL ALTERNATE #7	**$ 6,986.71**	**$ 684.00**		**$ 6,302.71** *

* TO BE AUTHORIZED UNDER A SEPARATE PURCHASE ORDER.

EXCLUSIONS:

1. Sales Tax – Owner to provide tax exempt certificate
2. The implementation of a Storm Water Pollution Prevention Plan
3. All excavated materials will be left on-site and dozed into place. It is the owner's responsibility to fine grade and seed spoils.
4. ~~Staging Area – A suitable staging area shall be provided by the Owner. Staging area must be square footage of field x 0.12 and not more than 300 feet from the site.~~
5. ~~Rock excavation, haul spoils off-site~~
6. ~~Supply and installation of any athletic equipment~~
7. ~~Unsuitable soils – once subgrade has been established, a proof roll will be required to ensure structure stability of the soils. In the event that unsuitable soils are encountered, a price to remedy the areas will be negotiated between owner and contractor~~.
8. Installation of manholes, junction boxes, gabions, concrete or rock rip rap, storm drainage not related to the field construction, grate inlets, RCP

9. Relocation, removal of existing utilities not limited to electrical conduits, power poles, water, sewer, gas cable, telephone, storm drainage, irrigation heads, lines, valve boxes or wiring of same
10. Permits and fees are responsibility of owner
11. Construction signs, if necessary, are responsibility of owner
12. ~~Geotechnical investigation of site~~ ALL
13. This proposal includes ~~20 SF~~ 4 of patching for the track in base bid. ~~Additional patching will be at $36.18 per SF.~~
14. Installation for the FieldTurf 2.0 Duo Monofilament synthetic turf only for the Baseball and Softball fields @ $4.74/SF plus additional bonding. A proposal for total cost will be submitted once total square footage is submitted to Atlas.

Please contact me if you have any questions or require additional information, 800-423-5875, ext. 227 or via e-mail at brenda.thompson@atlastrack.com. Be sure to visit our website at www.atlastrack-tennis.com.

Exhibit B

Committee Meeting

of

SENATE COMMERCE COMMITTEE

"The Committee will hear testimony from invited guests regarding product durability and other problems associated with artificial turf playing surfaces in use in New Jersey"

LOCATION: Committee Room 6
State House Annex
Trenton, New Jersey

DATE: January 30, 2017
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Nellie Pou, Chair
Senator Raymond J. Lesniak, Vice-Chair
Senator Stephen M. Sweeney
Senator Gerald Cardinale
Senator Thomas H. Kean Jr.

ALSO PRESENT:

Philip R. Gennace
Office of Legislative Services
Committee Aide

Julius Bailey
Senate Majority
Committee Aide

Laurine Purola
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

PHILIP R. GENNACE
Office of Legislative Services
Committee Aide
(609) 847-3845
(609) 777-2998 fax

New Jersey State Legislature

SENATE COMMERCE COMMITTEE

STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE COMMERCE COMMITTEE

FROM: SENATOR NELLIE POU, CHAIR

SUBJECT: **COMMITTEE MEETING - JANUARY 30, 2017**

The public may address comments and questions to Philip R. Gennace, Committee Aide, or make bill status and scheduling inquiries to Joanne W. Gillespie, Secretary, at (609)847-3845, fax (609)777-2998, or e-mail: OLSAideSCM@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Commerce Committee will meet on Monday, January 30, 2017 at 1:00 PM in Committee Room 6, First Floor, State House Annex, Trenton, New Jersey.

The committee will hear testimony from invited guests regarding product durability and other problems associated with artificial turf playing surfaces in use in New Jersey. Those wishing to submit testimony should provide 10 copies to the committee.

The following bill(s) will be considered:

S-2703 Lesniak/Pou	Restricts medical expense coverage for opioid drugs unless prescribing health care professional follows certain guidelines.

Issued 1/23/17

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website http://www.njleg.state.nj.us or call 800-792-8630 (toll-free in NJ) or 609-847-3905.

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SENATOR NELLIE POU (Chair): Good afternoon, ladies and gentlemen, and members of the Senate Commerce Committee.

We are about to begin our hearing.

At this time, I'm going to have OLS-- Phil, if you would please take the roll call.

MR. GENNACE (Committee Aide): Senator Cardinale.

SENATOR CARDINALE: Here.

MR. GENNACE: Senator Kean.

SENATOR KEAN: Here.

MR. GENNACE: Senator Sweeney has substituted for Senator Beach, and has logged his attendance earlier.

Senator Lesniak is present.

Senator Pou.

SENATOR POU: Here.

MR. GENNACE: You have a quorum.

SENATOR POU: Thank you; we have a quorum.

At this time, ladies and gentlemen, good afternoon.

First, let me just make mention of the fact that if anyone wishes to testify, please feel free to fill out your slip so that we know that you're interested in testifying on behalf of today's discussion -- or the issue in today's hearing.

From the onset, let me just say that it was very important for us to be able to have this opportunity to have a hearing on a matter of this importance.

Today we have-- I know for certain that we have two groups that have -- or two individuals who have, in fact, signed up for the hearing.

We have a representative from the School Boards -- we're going to hear from a representative from the School Boards Association, the New Jersey School Boards Association; as well as from the CEO of FieldTurf.

I see that we may have some other slips that have been provided and, at which point, we will then make them known.

At this time, what I'd like to do is-- Obviously, in light of the fact that there has been a number of different articles, all throughout the last couple of months -- let me just say, there's been a real clear indication for some of the individuals who may be interested in testifying today, but felt the need not to do that in light of the fact of the ongoing, pending lawsuit that has been filed.

So in light of that, while we may not hear from everyone who may wish to testify, I do think that it's important for us to be able to have this opportunity for further discussion.

With that being said, I'd like to ask if we can begin with calling upon Jonathan Pushman from the New Jersey School Boards Association.

And Jonathan, before you actually provide us with your testimony, I'd like to make mention of the fact that if anyone is here for Bill No. 2703 -- S-2703 -- that one is being held; that Bill is being held. So I don't know if anyone is here for that particular Bill; but if so, just please take note of that.

Thank you very much.

Jonathan, if you can please begin with your testimony.

Thank you, again.

J O N A T H A N P U S H M A N: Thank you.

Good afternoon, Chairwoman Pou, and members of the Senate Commerce Committee.

My name is Jonathan Pushman, and I am here today to speak on behalf Dr. Larry Feinsod, the Executive Director of the New Jersey School Boards Association, which is a federation of all the State's local school districts. Dr. Feinsod regrets that he could not attend today's hearing; he expresses his sincere appreciation to you for engaging in this fact-finding endeavor, and for asking our Association to provide its thoughts on this important issue.

Upon reading the news articles published this past December -- which alleged deceptive practices in the sale of turf fields to schools -- the New Jersey School Boards Association was justifiably disturbed. These news accounts should anger anyone concerned about corporate responsibility, student health and safety, and limited financial resources for public education.

The news articles allege that a company, FieldTurf, sold artificial turf fields to schools across the state with full knowledge that the product was defective. One hundred-sixty-four such fields have been installed in New Jersey, even though, since 2006, the company knew the turf was "cracking, splitting, and breaking apart long before it should."

The news reports go on to allege fraud and deception that bilked taxpayers out of millions of dollars.

Not only is this a financial issue for the affected school districts and their taxpayers, but it could also be a safety issue that affects our students. The company contends that the problem with the artificial turf does not affect player safety; however, the reality is that school districts

have a responsibility to maintain playing fields in a safe condition for their student athletes and physical education programs. That's why a number of districts have "had to replace expensive turf fields far sooner than expected," and had to do so sooner than they were led to believe by the company.

So where do we go from here? For affected school boards, legal action is a possibility. At least one legislator has called for a class action suit to be filed, and we are aware of two that have been filed, to date, on behalf of school districts and municipalities. To the best of our knowledge, certification of the class (*sic*) will be resolved sometime over the next few months. Other lawmakers are demanding an investigation by the State Attorney General; we agree, and have expressed public support for State lawmakers' calls for the Attorney General to look more closely into this matter.

And shortly after these allegations came to light, the Association announced that it would make itself available to local boards of education, and their respective attorneys, and provide them with information and assistance in identifying and coordinating legal action. NJSBA strongly urged local school boards of education affected by this issue to consult with their own board attorneys to discuss how they might proceed, and several of them have done just that.

At this juncture, unfortunately, the NJSBA cannot offer a whole lot of information about the alleged overreaching sales practices of FieldTurf, as we do not have firsthand knowledge of the allegations in the recent news reports. However, we are encouraged by the scheduling of this hearing, and hope it will set us on a path to rectifying this unfortunate

situation; and, just as important, that it will help ensure that a similar situation does not occur in the future.

Thank you again, Chair, for holding this hearing and for allowing NJSBA to testify before you today. I would be happy to try and answer any questions as best as I can.

Thank you.

SENATOR POU: Thank you so very much.

Are there any questions for our -- for Mr. Pushman?

Yes, Senator Cardinale.

SENATOR CARDINALE: Prior to the news articles appearing, were you hearing from school boards that they were experiencing any kind of problem that warranted the Association's attention?

MR. PUSHMAN: To my knowledge, Senator, no; I'm not aware of any that had directly contacted us prior to that hearing. Whether or not they contacted anybody from our Legal Department, I was not aware of that. So I don't believe so.

SENATOR CARDINALE: I understand that if a field is defective and it creates a safety problem, it's an important issue. I'm having trouble understanding what a legislative body can do about it except, perhaps, call attention and that, with the Chair holding this hearing, calls some attention to the problem.

But it would seem to me that if there is a legal issue, it belongs in court. I think deceptive practices are already illegal. I don't think we need to pass another law to make them illegal again. I don't think that that's needed. So I am a little puzzled what your purpose really is here today. What would you like to see us do?

MR. PUSHMAN: As you mentioned, legal options are available to school districts. We've assisted them, to the extent that we can, in pursuing those legal options. We don't directly represent them before the courts. We can try to point them in the right direction.

But as I think I referenced in my testimony, one thing that the Legislature can do is, as you said, put -- bring attention to this matter and try to bring as many facts to light as you possibly can; and should, through the course of that process, develop legislation. I don't know whether or not that's appropriate at this point; certainly I can't say at this point, as we're still trying to identify those facts of the matter.

So what can the Legislature do? I'm not really equipped to say, at this point. But it is something that -- I can say, it is something that a number of our members have been impacted by, have contacted our Association with questions; and to try and gather more information on that. So I'm sure they do appreciate the Legislature trying to gather more information and shed light on the issue.

SENATOR CARDINALE: Have you been in touch -- your Association been in touch with the Attorney General on the matter?

MR. PUSHMAN: I don't believe we've been in touch with the Attorney General directly, other than through our public statements encouraging -- or expressing our support for an investigation brought by the Attorney General, should he decide to pursue one.

SENATOR CARDINALE: The only thing that I see -- and I'd just like your comment on it -- that we might be able to do is to pass some sort of resolution calling the Attorney General's attention to the issue, and have the Attorney General -- who has the investigative ability-- I

understand there are more than 150 of these fields in New Jersey; I don't know how many of them have experienced the problem. I read a lot of articles, and their all over the place; you know, you could try to figure it out -- who is satisfied and who is dissatisfied with the product.

But it would seem to me that that's where it belongs; and it would seem to me that's the only thing that could possibly come out of this hearing. And I'd just like to know if you think there's anything else that could come out of this hearing that I'm missing.

MR. PUSHMAN: You know, I think you're right. It's not to say a whole lot can come out of the hearing, knowing that a number of our members are already involved in litigation. I'm sure those, if they had not been, maybe would have been able to speak directly and, maybe, lead to an investigation such as that. So maybe that is where we go from here; and maybe information that comes to light at this hearing could persuade the Legislature to maybe pass such a resolution which could lead to persuading the Attorney General to pursue that investigation. I believe I read in reports that the Attorney General did make some statements that he was alarmed -- not to put a word in his mouth -- about what these news reports have alleged. So maybe information that comes to light during this hearing could persuade him to move in that direction; or maybe persuade the Legislature to adopt some formal resolution to encourage him to pursue that route.

SENATOR CARDINALE: Yes. We have a letter from one of the school boards, that is engaged in litigation, where they expressed concern about coming to this hearing and testifying because of the impact it might have on ongoing litigation.

And so I would think a little bit of caution--

But Madam Chair--

SENATOR POU: Yes, sir.

SENATOR CARDINALE: --if you would want to have such a resolution come out, I would join you in a resolution, if you so decide to have the Attorney General pursue this matter--

SENATOR POU: Okay.

SENATOR CARDINALE: --which is, I think, (indiscernible).

But once again, urging caution that -- not being a lawyer -- we don't do something inadvertently that risks the interest of our municipalities or school boards on ongoing--

SENATOR POU: Right.

SENATOR CARDINALE: --remedies that they might have.

SENATOR POU: I certainly appreciate that, and I totally and completely agree with you, Senator.

Let me just say that I didn't want to begin my discussion with outlining some of the information that is already there in the article -- in the press, pardon me. But I think in fairness to the conversation that we're having-- And we really look forward to hearing from the CEO of FieldTurf who can help shed some additional -- shed some light, in regards to some of these particular areas. But I would point out that there are 10 states, based on some of the preliminary information that we've received -- there are 10 states throughout the country, it's my understanding, in one way or the other, that have had problems with their particular fields as a result of utilizing this particular product.

Based on that-- And I want to just kind of reference, right now, what's happening in New Jersey. But it's happened -- I have it -- it's in California, Georgia, Kansas; we have-- You have places like Oklahoma, New Jersey, New York, Pennsylvania -- what other states do we have out there today -- Washington state, Texas, Tennessee; as well as today -- my understanding was that there was an article that just came out today about, again, Minnesota -- is my understanding.

So obviously, there's something that is worth looking into, in light of what we not only read, but also see what's happening all throughout the country.

But let me just refer to what's happening, right now, in New Jersey. In New Jersey, it's my understanding -- and you have all read about it; I certainly, as you know-- This was brought to our attention, and made possible from what appeared to be a very exhaustive investigative report that was published last month in the *Star-Ledger,* that alleges that FieldTurf knowingly sold what -- the term that they used was *defective turf,* to school districts and municipalities. And it dates back, in terms of, as early as 1990; and takes current affect up until this year, in terms of what's happening.

Again, no accusations; just simply reading from the information that's been made available and that's been publicly printed.

But in New Jersey, as you know, it was also recorded and reported that both Senators, Senator Cory Booker, as well as Senator Bob Menendez, filed a joint letter to -- submitted a joint letter to the Federal Trade Commission. And they're asking that they open a full, nationwide investigation as to whether or not FieldTurf indeed defrauded taxpayers

across the country -- from across the country by engaging in, again, these unfair and deceptive trade practices in violation of the Federal law; mostly because of the marketing and the sale of -- what appears to now be -- the discontinued Duraspine turf product.

In Newark -- and I have a letter from the Newark officials that was sent to me, as the Chair of the Commerce Committee. It said, "Thank you for extending an invitation to the Newark Public Schools to testify before the Senate Commerce Committee regarding the artificial turf playing surface. However, on behalf of the School District, I must decline the invitation due to pending litigation against FieldTurf. If you or Senators have questions regarding the Newark Public School experience with FieldTurf, please contact our outside counsel on this issue."

It referenced the name of the attorney, Lance J. Kalik, Esq., of the firm of Riker Danzig; and provides a number, and is signed by a member of the firm.

So it's clear -- based on the communication that's been made available to members of this Committee -- that there may be reasons why several school districts that may want to be here, are unable to be here due to their ongoing situation.

I would point out that the reports, again -- what's been reported in the paper talks about how, in December, a Newark Public School -- that the Newark Public School filed a first class action lawsuit accusing the company of defrauding the public by failing to disclose a pattern of problems with the turf, failing to change sales pitches; and there is "information" with regards one of the coaches who specifically speaks to the

quality of the turf -- "was so bad that he gave serious consideration of canceling games."

When you look in terms of what's happening in another school district throughout the State of New Jersey -- that being Carteret, New Jersey, named as one of the top plaintiffs in the nationwide class action lawsuit against FieldTurf -- it talks about how -- FieldTurf sold the Borough fields that "failed to meet the exaggerated promises" -- these are their words, not mine -- "and then stonewalled officials complaining until warranties expired."

We would like to hear about the warranty; we would like to hear about what are some of those specific areas that would talk to the quality of those particular statements.

It also talks about how Carteret purchased six FieldTurfs between 2006 through 2010, for about $3.9 million. And again, we're talking about many of these particular entities that were impacted are municipalities and/or school districts, and some private areas as well. But in particular, we're talking about, as lawmakers, our job is to try to find out as much information as we can, so that we can, in fact, make sure that we're protecting the taxpayers -- with these types of products that are out in the market and are advertised to be providing a particular product, and ending up, questionably, being something else.

So $3.9 million that, again, they feel was due to some misleading marketing campaigns.

I can continue on -- and it talks about a number of-- For example, the New Jersey Stallion Soccer Club in Clifton, New Jersey, which is only two towns removed from Paterson, when you look at it -- a city that

I represent -- they were the third to file a class action lawsuit after Carteret and the Newark Public Schools -- accuses FieldTurf of repeatedly brushing off complaints about the field's failing. When they spoke to one of the spokespersons from FieldTurf, the company strongly disputed the allegations, and indicated that in the records it shows that Duraspine was not installed in that facility; but rather another product known as *slit-film* was used. A company directory, however, shows -- it does, in fact, list the facility as having received the Duraspine, which is the product that's in question, that we're talking about.

Jonathan, I know that I still have you here at the dais. Let me just say, if there no further questions for Mr. Pushman, I'm going to ask -- I'm going to just release you from that.

Thank you so very much for your testimony; I really appreciate your comments. And thank you for coming forward on behalf of your organization.

MR. PUSHMAN: Thank you, Madam Chair,

SENATOR POU: So just to continue with regards to what has been reported, it looks as though-- And again, if you look in terms of what occurred with the Clifton report, I want to make mention of the fact that in recent -- in court testimony, as recent as 2014, a former executive director said that failures of the indoor Duraspine field were common, and became such a big problem that the sale of the product to indoor facilities was banned. This refers to another particular product that the company was referring to.

So at this point, I'd like to ask if Eric Daliere--

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) (Indiscernible).

SENATOR POU: Daliere? (indicating pronunciation) Okay.

Mr. Florio, did you wish to come up as well?

Okay; and Mr. Florio -- both here. Mr. Eric Daliere is the CEO of FieldTurf; and Dale Florio, from Princeton Public Affairs.

If you would please come forward.

Gentlemen, thank you so very much for coming forward to testify.

Mr. Daliere, let me just, once again, thank you. I know I had the opportunity to meet with you. I thank you for being here. I'm sure listening and hearing these comments are ones that -- no doubt, you would want to be able to have the opportunity to speak on behalf of your company and on behalf of your product.

I will say that I've had -- without-- Today's hearing is really to hear from all of you, rather than hear from me. I have a whole slew of information that dates back to a number of different years. So rather than itemizing -- which I can, but I don't know that that's the best way for us to really get information that will allow us to learn more about what's happening here -- I think it would be really important if we can hear from you. But certainly it is clear that there have been a number of articles all throughout the country and, most especially -- and, as well as, recently in the State of New Jersey, with regards to this issue.

So what can you share with us that would shed some light in regards to this issue?

Again, thank you for being here today.

ERIC DALIERE: Sure.

Good afternoon.

SENATOR POU: Good afternoon.

MR. DALIERE: Thank you, Chairwoman Pou, for having me here.

I'm pleased to have the opportunity to address you and answer your questions. And I'll be as open and transparent as I can be.

So let me introduce myself. I'm Eric Deliere; I'm the President and CEO of FieldTurf. And if you give me a minute, I'll introduce the company as well and, sort of, how we got to where we are today. And then I'll address more specifically the issues that have been raised by the comments you made earlier.

So FieldTurf is a company of about 20 years of age now; when it was-- It was founded by two inventors; they were tennis partners, and they were working on a product for artificial turf tennis courts. And they came to recognize that there was an opportunity to make fields safer and perform better. And from that, they revolutionized the industry.

FieldTurf is now the market leader, not only in North America, but around the world. And it's based on a unique product that delivers performance characteristics, safety, and value. And it's because of that -- that unique product -- that FieldTurf was able to revolutionize the artificial turf industry.

What goes beyond the product are the people. We are a passionate group of people, committed to building great fields. And we're also committed, and our success depends on, making sure we have happy customers. Not only because, as you mentioned, Senator Pou -- or

Chairwoman Pou -- that customers tend to buy multiple fields from us -- not always in the year, but over years; as well as municipalities, school districts, and the like talk to each other. So if they're not happy with us, we don't get to stay in business.

So I want you to understand today that FieldTurf is a unique company, with a unique set of people, and we are very focused on our customers.

Now, that's all nice. We're here for a different reason. There are some serious allegations that have been made in the *Star-Ledger* about the company and how it's behaved. They are disturbing allegations, for certain; and I understand very well if I were sitting in your seats, reading what I read, I would be alarmed as well.

But I have said it publicly, and I will say it here today -- and I will answer all the questions I can answer for you -- I find those allegations inaccurate and misleading.

Let me, first, start with the question of whether FieldTurf and the fields in New Jersey are defective. So over the history of FieldTurf -- and I'll separate the total number of FieldTurf fields from the Duraspine fields -- we've sold just under 600 fields in New Jersey; 592 fields. At this point, you probably are all well aware that FieldTurf and the standard industry warranty is eight years. Of those 592 fields, 255 fields are now eight years or older. Now, of these 255 fields that are eight years and older, 92 percent of them are still in use. Those are fields that are 14, 13, 12, 10, 11 years old. We have only 30 of the 592 fields -- or 30 of the 255 fields that have been installed in the State of New Jersey, have been replaced; and those fields have been replaced under normal wear-and-tear. And of those

30 fields -- FieldTurf fields that have been replaced, 28 of them came back to FieldTurf to buy their next field.

Now, within the Duraspine fields, there are 168 fields in New Jersey; 114 are now past the warranty period. What's interesting is, those fields that were installed in 2006 -- which are now going onto their 11th year -- 70 percent of those fields are still in use. Those that were installed in 2007, 89 percent -- so now they're going into their 10th year -- are still in use.

So this notion that the fields are failing, or defective, or not living up to their warranty periods -- which is, again, eight years-- And I believe the marketing materials talked about going beyond eight years, which the vast majority of fields have -- is supported by the experience of the customers in New Jersey.

The next topic I want to talk about is, one of the key elements of the defect -- which was discussed in the *Star-Ledger* article -- is this notion that splitting of fibers in itself is evidence of a defect. Like with carpet fibers, or like with most fibers, as fibers wear they fray and they split. If you look at our industry -- whether it be third-party labs; or things like Labosport; or the FIFA, which is an industry body regulating football -- soccer worldwide; or the Penn State Surface institute -- when they look at how fibers wear, what they look at is hairing (*sic*), fraying, splitting, and breaking. That's-- We don't pretend or assert that fields will last forever; they won't. They have a life. And when they wear, what happens to them is that the fibers start to degrade, and fray, and split.

What's different about your carpet -- that you might have in your home or here today in the chamber -- is that the fibers themselves are

quite a bit smaller here -- and what we call *denure* in our industry. When the denure is much larger, it's much easier to see the fiber breakage.

What's also interesting-- I'll give you a little story. So this *Star-Ledger* article has, obviously, caused a lot of consternation in our company; it's brought a lot of attention, and a bit of a fight within the organization, in terms of -- they don't feel like this is a proper or fair characterization of our company.

So during the playoffs, the Ravens were playing in Cincinnati. Now, the Bengals play on artificial turf; it's not our turf field; it's a competitor's turf field. It's in its fourth year. And what came up on the picture -- Steve Smith, Sr., who happens to be wide receiver, well regarded, is sitting on the bench. And when you look at the back of his jersey, you can see there are some fibers on the back of his jersey. So one of our salespeople -- who's quite animated by the nature of this characterization of our company --- took, maybe, four or five pictures of the image on the TV and preceded to send them to me on a Sunday afternoon, saying, "Look, look. This is more evidence of how fields wear in our industry."

So this notion that fibers are showing up on shoes, or fibers are showing up on the backs of the jerseys in years 7, 8, 9, or 10 -- that's not, in itself, a sign of a defect.

One thing that was talked about earlier-- which is a matter of a really quite sensitive subject for me as the CEO -- which is this question of safety. And there was this notion, somehow, that our fields are -- and this alleged defect that's there is making fields unsafe.

As I've described many times, the field is made up of three components: backing, fiber, and infill. The fiber itself -- which is what

wears over time -- is there for the aesthetic. It's there to make the field look like a natural grass field. And if the defect that is alleged here was present, our fields would remain safe. And the *Star-Ledger* never alleged that there was a safety issue, because they know that's not the case. And our fields remain safe when properly maintained, meaning the infill levels are maintained properly, and the infill levels are kept level.

There was also one other point I want to address -- is the evidence of a defect, which was alleged in the *Star-Ledger* article -- which is, there was this third-party testing that suggested that the fibers were degrading prematurely. Now, there are two different ways I would like to address that. First of all, there is no standard measure in our industry to measure the amount of tensile strength that's lost for a fiber that's in the actual outside environment. What we look at in the industry is, we look at tensile strength when exposed in a UV chamber and how that degrades over time. So this notion that you look at the -- that they tested the fibers that have actually been in place in these fields for eight, nine years, and looked at the loss of tensile strength -- which is a combination both of UV, the impacts of the sun's rays; as well as mechanical strength -- is a test that doesn't really exist, and there is no standard in our industry.

Now, when you look at even the underlying data -- and we asked a third party to take a look at the methodologies and actually the testing results, which is a lab called CTT Group -- and we simply asked them to take a look at the methodology and visit a field and do their own testing.

Now, the CTT Group -- this is what they do. They are a specialized textile testing laboratory that works on these topics. First of all,

the methodologies that were used by the entity -- which is not clear exactly what the entity is in the *Star-Ledger* article -- were flawed. And they looked quite -- honestly, they looked quite biased, to derive a result. And the interpretation of that data itself was misleading, as-- If you looked at the numbers themselves in the underlying data, it suggested it even passed the standard. There really isn't a standard in our industry.

SENATOR POU: I'm sorry, what entities are you referring to that is referenced in the *Star-Ledger* report that was flawed?

MR. DALIERE: So it was alleged that it was a University of Michigan study, or analysis, that was done. And it may have been done by the lab, but it was not done by the University of Michigan. And it was--

SENATOR POU: Is the lab separated from the University?

MR. DALIERE: It's not even-- It's not clear in--

SENATOR POU: What's not clear? It's not clear from the article, or not clear from your statement?

MR. DALIERE: No, what I would tell you is, is there-- In the report that is provided, it's not clear what entity is actually doing the testing; it's not clear who the person is, whether they're certified by the University of Michigan; it's not clear whether the laboratory itself followed standard protocols of ASTM standards. And just the whole chain of trying to follow through on this is very difficult to assert.

SENATOR POU: So is it your position that the University of Michigan's laboratory may not be fully capable of providing this type of report -- or findings, pardon me?

MR. DALIERE: Well, first of all, I don't think the University of Michigan was engaged. I think it was an individual at the University of

Michigan, who did it under his own guise, okay? So that's the first thing. Now, he may have used University assets, but I'm not sure that he was actually -- that it was done by the University of Michigan.

SENATOR POU: So you're not questioning their assets; you're questioning whether it was an official test that was performed, and you're questioning the findings because it was done independently from the University?

MR. DALIERE: No. So what I would say to you is, is the article alleged -- not alleged, the article portrayed it as a test performed by the University of Michigan. I think that's not, in fact, the case.

The second thing is, is the lab itself was related to aerospace, I believe, if I recall correctly. It wasn't a lab that was well-versed in textile testing; maybe fiber testing, but not our standard testing. And I would say that the way that they went about testing it was flawed, and we'd be happy to provide the CTT Group's assessment of what was flawed in the way that they tested. They split the fiber into three pieces, and then tested the tensile strengths across those three. But depending on how they cut that fiber would have an impact on the results themselves.

And then, ultimately, when you look at the results, the conclusion is drawn that it doesn't pass the standard, which was 1.8, which is the tensile strength. But in fact when you look at the underlying data, it certainly appears that it did pass the standard.

I don't know if that's clear, in terms of--

SENATOR POU: Okay.

MR. DALIERE: But I would be happy to provide you what the CTT Group came back to us with.

SENATOR POU: That's fine.

Please continue; thank you.

MR. DALIERE: Sure.

Another element that was in the *Star-Ledger* article is this notion that we covered it up; that we were hiding information from our customers, and that we were hiding what we thought may have been issues with the Duraspine fiber. When I joined the company in 2009 -- in late 2009 -- and then in early 2010 as I began to receive concerns from our sales organization about the field performance at certain higher-UV environments, I basically engaged a team -- because we lack the technical expertise internally -- to investigate issues related to Duraspine performance.

Ultimately, that investigation led us to file a lawsuit against our fiber supplier. We were very public about that lawsuit, which was filed in 2011; and we were very clear as to what we thought the defect was with Duraspine, and in what environment, which customers, roughly in what states, and also how many fields we thought were affected.

So this notion that somehow we've hidden from the issues with Duraspine, and which customers are affected, doesn't seem to me to be a fair characterization of how we behaved.

And on top of that -- as many of you will know if you've been though litigation of any form -- there is a very rigorous discovery process you go through. And all of your information gets, basically, into the public domain. And the reality is, is that information that came out of the discovery process, as well as the litigation, served as the basis for the article -- much of it did.

So if we were trying to hide the issues related to Duraspine, it would have been very difficult for us to go forward with pubic litigation, which was widely covered in our industry.

SENATOR POU: So to that point, if I may, once again, interrupt you.

MR. DALIERE: Sure.

SENATOR POU: The information that you're referring to -- just so that our members are aware of -- you're talking about the report that came out during the *Star-Ledger*'s six-month investigation. According to what I understand, they filed 40 public record requests, obtained more than 5,000 pages of your inside company records, e-mails, court filings, and testimony; and interviewed dozens of coaches, officials, and current and former FieldTurf employees.

So the records that you're referring to -- the public records, as a result of that -- those were records that were actually provided for, or made available through, not only the court proceeding, but records from the company itself.

MR. DALIERE: No.

SENATOR POU: Is that correct?

MR. DALIERE: We wouldn't have sent-- Chairwoman Pou, we would not have had an obligation to produce those records for the--

SENATOR POU: Did they not provide for public -- request for public records to the company for--

MR. DALIERE: We don't have-- As a private entity, we wouldn't have--

SENATOR POU: I'm sorry.

MR. DALIERE: I'm sorry.

SENATOR POU: I'm actually referring to the court proceedings. They made those particular requests from those public entities, which they received. And based on those particular reports and information, it is my understanding that it was clear testimony, provided by members of the company, that specifically referred to these items, or references, or statements that were quoted in their report. Is that correct?

MR. DALIERE: That's correct. So what was provided in the trial process -- either in public testimony in the courts, or through exhibits that would have been used during the trial itself -- those would have been in the public domain, and those would have been the ones that the *Star-Ledger* accessed.

But obviously, by going forward with the litigation, we knew we were making all that information public.

SENATOR POU: Right. But the same kind of public information is available for all of those other states, that I referred to earlier in my opening remarks, when I referenced some of the potential problems and lawsuits that took place in some of the other states -- where there were specific agreements -- let me just say it -- or concessions made by both the company and that particular school district, that have agreed upon whatever the terms are that came out of those particular proceedings. All of that information was also made available; and it's public, based on those records.

So there's a record to show whenever there was a problem or concern about -- whether it was a marketing issue, or whether it was the

product itself, the records are -- they're actually quoting the information that came from those particular court proceedings.

MR. DALIERE: So any complaints would have been-- We haven't had any of those cases go to trial. So those would only--

SENATOR POU: That's because there's been an agreement between the company and the school district to remedy the problem.

MR. DALIERE: That's right.

SENATOR POU: Okay.

MR. DALIERE: So the only -- the company documents would have all come through the discovery process in our own litigation that we filed, right?

SENATOR POU: Yes.

MR. DALIERE: The rest of it -- the allegations or the complaints of the school districts against us -- would have just come from the documents provided by the school itself.

But we opened up-- I mean, we opened-- By pursuing the litigation ourselves, we're the ones who made all those company documents available.

SENATOR POU: So before you continue -- and before I lose sight of (indiscernible) -- you talked earlier about the fibers, and the product, and what makes -- the importance of that. And you also talked about the warranty; the amount of--

And before he leaves, I just want to recognize my Assemblyman, Assemblyman Benjie Wimberly from the 35th Legislative District, who has a great deal of experience working and coaching on fields of all types, but certainly this one as well.

Thank you.

I just wanted to recognize you before you head out.

I'm so sorry, Mr. Daliere.

Let me just ask you -- according to FieldTurf, of the 114 Duraspine fields that were installed in New Jersey, that have passed their eight years -- because I think you talked about eight year-warranty period -- only 14 of them have had to be replaced. The company, however -- the company claims that those replacements were due to normal wear, as part of your testimony.

Can you tell me what is the difference between normal wear-and-tear and a defect?

MR. DALIERE: What I would tell you is, when I have been to the fields, and inspected personally, and had our own site inspectors who go around the country and take a look at fields and see normal -- what's normal wear, based on usage and maintenance practices; and then also the environmental conditions that they're in.

For those 200-some-odd fields that we've replaced in high-UV environments, the level of fiber loss, and what you see, is dramatically different than what is normal wear-and-tear. You would -- what I would show you, if I had the opportunity, is the picture difference between some things that are in Phoenix, Arizona, versus what you would see in New Jersey. It's a very different level of fiber loss, and what remains from the fiber itself.

SENATOR POU: So I understand that that can -- I understand that that's been part of your comments, or the company's position. And I can see that, especially where the UV sun rays would certainly be much

more powerful if you were in California, or Arizona, and Texas, and what have you. But how do you measure that same kind of effect in New Jersey, in Massachusetts, in some of the other -- in New York, Pennsylvania, and some of the -- where, obviously, that situation is very different?

And please don't tell me you can get a sunburn anywhere in the country. Because I read that statement that you made; and I get it, I understand that. But from a product point of view, how do you differ the two?

MR. DALIERE: So if I understand your question correctly, it's, again, going to what is the -- how do we distinguish what is a *failed field* versus what is *not* a failed field?

SENATOR POU: That's correct.

MR. DALIERE: Okay. So again, what I would say to you is the level of fiber loss that has occurred at a certain age of the field tells us, basically, if the fiber-- And what occurred in the fields in the high-UV environments, is the level of fiber loss was very extensive and was, basically, take the fiber down to the rubber.

SENATOR POU: So would that be -- would that be a normal wear-and-tear, or would that be a defect in your product?

MR. DALIERE: So when-- If that is occurring under normal usage conditions in year six, year seven, that's a defect.

SENATOR POU: So if it happens in year two and year three?

MR. DALIERE: I haven't seen it go down in year two--

SENATOR POU: According to some of the states -- certainly not in New Jersey, but in some of the other states -- that has, indeed, occurred in the very early start of the product, of the laying out of the

field. As I'm-- I'll come back to that particular state and where that occurred, because I know that that was a situation that happened almost instantly. It might have been just a fluke-type of a situation--

MR. DALIERE: Yes, that's-- I mean, I--

SENATOR POU: --but I know that in one of those -- some of my readings that I've done, that was certainly the case.

I'm sorry; please continue.

MR. DALIERE: So the other allegation that is, perhaps, the most serious is the company knew that the product was defective and continued to sell the product. And again, I would say that's not the case.

When the product was first introduced -- back in the 2005, 2006 timeframe -- we were supplied from TenCate, which is the largest fiber supplier; and at the time, the leading fiber supplier in our industry. And based on the evidence and the testing they provided to us, the company believed that this was going to be a quantum leap in terms of technology in our industry.

SENATOR POU: I'm sorry; please--

MR. DALIERE: It's okay.

And what happened, over time, was that the company began to understand that it wasn't the quantum leap in technology; but the management team continued to believe that the monophonic product was out-performing the incumbent product; or, at least, was equivalent in terms of its durability, and had unique attributes with regard to resilience and aesthetics.

And the e-mails -- that were highlighted in the article by the *Star-Ledger* -- described some of those conversations among the management

team about what the fiber was and what it wasn't. But those same executives, under depositions and in testifying, have stated quite clearly on the record that they didn't feel the product was defective, and they didn't feel that the company was being deceitful.

Now, you need to keep in mind that I joined the company after those executives left. And so--

SENATOR POU: I'm very much aware of that; and I'm aware that the company has undergone four different CEOs; of which my understanding was that the earlier CEOs -- at some point in time there was some conversations with the company that referred to whether or not the product would really be able to live up to the marketing campaign that the company was promoting out there.

So I think that that really comes to the question here. We understand the extensive work that has been conducted by the company; but the question is, the marketing of this particular -- of these particular fields all throughout the country, as well through New Jersey -- continue even beyond the period of when some of the earlier CEOs talked about how the product itself may not live up to the actual standards that were being campaigned or championed out there.

MR. DALIERE: Yes, and I think what the record will show -- when it's laid out, and I've seen the record -- is that there was a dialogue among the management team about -- and there were people with different positions as to whether that-- Now, again, I wasn't there, so I'm relying on the record that was there; and also their individual testimonies, as it relates to some of the litigation that's gone on.

But the point of view is that, based on that dialogue within the company -- is there is a comparison to what they expected the product to be, and then a comparison to what the product was relative to competitive products in the marketplace -- so, with regard to resilience, and with regard to appearance, and with regard to the durability.

SENATOR POU: Is it your position, though, as the current CEO, to-- Do you stand by your product? Do you still believe that the marketing campaign that was put out there during your period -- that it fulfilled its obligation and met the requirement that it was *revolutionar*y, that it was -- it had the durability that your marketing brochure, or information, or campaign, led to believe? Is it your positon that that's still the case?

MR. DALIERE: Well, I can speak to what I did when I came onboard.

SENATOR POU: Yes.

MR. DALIERE: So when I came onboard in November of 2009, one of the first things I did was switch the product that we moved to -- what we called, later, *Duraspine Pro* -- which was a different product in terms of polymer and UV stabilization package. And we did that in February of 2010. And then by 2011, we had introduced our own product, and we had introduced -- and we had gone into fiber manufacturing ourselves.

So what I would say to you is, with the marketing messages that we did while I have been the CEO -- am I comfortable with those, and have those been representative of our products? Yes, I'm comfortable with those.

The other thing I would say is that, one of the things that I've been trying to do as the CEO of FieldTurf is move the industry to more objective standards around fiber performance; whether it be the fiber performance index done by third parties; whether it be the testing laboratories done by Penn State -- to get marketing out of the conversation and get objective standards around fiber performance that the consumers -- or not consumers, but the municipalities, school districts, and the like -- and engineers and architects -- can rely on.

SENATOR POU: So are you saying that the Duraspine product was discontinued prior to when you arrived? Because my understanding was that it was continued to be installed; and many of these particular school districts throughout the country -- and certainly in New Jersey -- while you were still the CEO. And the marketing information that you were providing to -- as a sales pitch to all of these various different entities -- didn't change.

Am I saying something incorrect?

MR. DALIERE: So what I would say to you is, is that in 2010, we transitioned to a different product.

SENATOR POU: So what happen prior to 2010? Because by then -- it's my understanding that-- I know that in 2012, Duraspine was discontinued altogether. Is that correct?

MR. DALIERE: The last Duraspine field was installed in 2012, I believe.

SENATOR POU: So why would you install a field in 2012, when you've found that the product itself was not as durable or as revolutionary as it's so indicated, and you had a new product?

MR. DALIERE: Well, so, there's a difference between a product that-- My answer to that question would be is -- many customers around the world are happy with Duraspine.

SENATOR POU: I don't doubt that.

MR. DALIERE: Right.

SENATOR POU: Just the same-- I don't doubt that, by the way. I absolutely-- Part of my research also indicated that there were many different school entities and school districts that were happy.

The point here is that when you have a significantly large number of others equally -- that have indicated that they have problems or concerns with the warranty, and the replacement, and the immediate looseness of the fibers within a shorter period of time than what was actually indicated to them--

How much are these fields?

MR. DALIERE: The fields themselves will run between $300,000 and $400,000.

SENATOR POU: Between $300,000 and $400,000 each. And how long is the warranty?

MR. DALIERE: Eight years.

SENATOR POU: Eight years; not ten years-plus.

MR. DALIERE: That's the (indiscernible).

SENATOR POU: Was it ever campaigned with -- that it would be 10 years or more?

MR. DALIERE: I think what the marketing materials, in the 2006 through--

SENATOR POU: Six; right.

MR. DALIERE: --timeframe suggested that it would outlast the incumbent product that preceded it. And those products have been shown to last well past eight years. So I don't think there was a number, per se; but they gave the expectation that the fields would last past their warranty period.

SENATOR POU: Okay.

MR. DALIERE: I mean, there may have been numbers-- I wasn't part of the sales conversation, but there may have been numbers that said, you know, "It's going to last 10 years."

SENATOR POU: So how many fields were installed during 2010 and 2012? You said you recognized a problem back-- You eliminated that in 2010; but up until 2012, you still had some fields that were being installed. Is that--

MR. DALIERE: Well, I guess what I would distinguish here is -- there are two different ideas here, right? One idea is: What is the defect for the product, which is, it doesn't have the UV stabilization to withstand high UV environments, right? So we've installed 3,000 Duraspine fields around the world. In low-UV environments, the warranty claim level is less than 1 percent. So I think it's important to say, "Okay, how many Duraspine fields do we install in high-UV environment?" -- once we had figured out that the UV stabilization was an issue.

So if we installed a Duraspine field in a low-UV environment, we wouldn't necessarily believe that we were creating a problem for ourselves, because the product has performed in low-UV environments.

SENATOR POU: I'm sorry; repeat that again, please.

MR. DALIERE: So if we look at how the product has performed in low-UV environments--

SENATOR POU: Yes.

MR. DALIERE: --the warranty claim -- right? -- or the issues that we have within low-UV environments are extremely low.

SENATOR POU: Okay. So let's talk about the warranty, because I think that seems to be -- what appears to be a very constant repeat. And all the different states, and all the different cases that I've read, or the articles that have been written throughout the country -- and, certainly, in New Jersey -- talk about mostly what the product was supposed to provide, what warranty there was in place, and how well was that living up to its expectations.

So let's discuss that for just a moment, if you will.

Let me just get my -- the point that I was trying to reach here; give me one second. I have so many different notes on this; I'm just trying to get the one that -- in front of me. I just said something here that I lost my place.

One second. (looks through notes)

Okay; let me go back to that.

So the warranty -- I think in one of the articles that I read recently talked about how you were only dealing with certain entities that had a concern or problem with their particular field. And that you assumed that everyone was familiar with what all the articles that were going on, or that were published -- that you didn't feel the need to do a -- to notify all of you clients, or all of your customers, to determine as to whether or not they were satisfied.

Could you talk to that point again? What was behind the decision for you not to notify every customer that you had about the problems with the Duraspine fields? Why did you feel you didn't need to change your marketing and advertising claims once you found out that there were problems?

For example, my understanding -- in one of the articles that I read -- was that you've only been able to identify 14 or so problems, or entities, that had problems. Did you make a full disclosure to all of your clients of some of the problems that were experiencing -- that were currently being experienced in some of the other locations?

MR. DALIERE: So I think we're very responsive to customers when they've asked us questions as it relates to the performance of Duraspine.

As I was saying earlier, what our -- what we alleged in the lawsuit, and what our technical analysis showed us, is that the problems with Duraspine were predominantly in high-UV areas, and some colors. And so disclosing to all customers who were not impacted was not something we felt was necessary.

SENATOR POU: Okay. Are there any other-- Are there any of our other members who have any questions? I don't want to continue to keep asking-- I'm happy to continue doing that; I didn't want to give you -- I didn't want to make it feel as those you're not given the opportunity to do that.

SENATOR KEAN: Chairwoman?

SENATOR POU: We're good?

SENATOR KEAN: Prerogative, please.

SENATOR POU: Okay; thank you.

Thank you very much.

Let me ask you, could you -- was there any additional information that you were going to share with the Committee before I continue on in my line of questioning?

MR. DALIERE: No, keep going. I think I would rather take the time to address your questions.

SENATOR POU: So let me -- let's go back to some of the early warnings and reactions. Because when I-- One of the things that I referenced was how the Duraspine fields were sold, and I think it dates back to some of your earlier CEOs. But some of your-- It dates back to some -- the product being sold in South America -- South American countries that talked about the UV radiation. There were complaints that started from Chile, right on through-- The company executive suspected that one of their earlier suppliers, Met Tech (indicating pronunciation)--

MR. DALIERE: Mattex.

SENATOR POU: Mattex; thank you. Prior to it being purchased by TenCate, made a change to the formula and to Duraspine. Is that correct?

MR. DALIERE: Can you repeat your question? I'm sorry.

SENATOR POU: Prior to it being purchased by TenCate -- sorry -- they made a change to the formula used in Duraspine. Are you aware of that?

MR. DALIERE: That is something that we alleged in the lawsuit.

SENATOR POU: Okay.

MR. DALIERE: Right; that we discovered in 2012 -- 2011, 2012. It was only through the discovery process of our litigation against TenCate that we found that to be the case.

SENATOR POU: However, was there -- was it also part of your records that showed that there was a financial benefit that was going to be yielded by a particular partner, or a person who was connected to the company?

MR. DALIERE: I don't know what you're referring to.

SENATOR POU: Okay. I'm referring to-- Records show that FieldTurf, TenCate, and Mattex -- a Jeroen van Balen--

MR. DALIERE: Van Balen; Jeroen. (indicating pronunciation)

SENATOR POU: --had a 10 percent stake in Mattex and stood to earn millions of dollars from the deal.

MR. DALIERE: That's a separate entity that we didn't-- But so -- what I can--

SENATOR POU: He actually made $13 million from that purchase.

MR. DALIERE: So he was the supplier to FieldTurf. He would have been the vendor, a totally independent entity. And what we alleged in our lawsuit against TenCate, which was -- the litigation started in 2011 and finished, I think, in 2014. What we learned in that discovery process was that Mattex changed its formulation to Mattex's benefit, and Jeroen -- who was an owner of the company -- benefitted from that change. But that wasn't something that the company knew; or had any -- the company I'm referring to is FieldTurf -- knew or had any part of.

SENATOR POU: So let me jump real quickly from that to some of the questions that we're learning about.

It's my understanding, from some of the districts, that they were unfamiliar with some of the legal problems, or questions, or concerns that have been raised around the country; and again, in New Jersey.

For example, they didn't realize how widespread the problem was. It talks about California -- right? -- one of the common areas, one of the things that they talk about is how a particular field-- This was the Union High School in California. It talked about -- was struggling with the field that they purchased in 2009, but it was already falling apart by 2012. There was a three-year period that they referred to.

Apparently, they also -- they allege that they did everything that FieldTurf told them to do, including the purchase of special grooming machines, and even raking the field by hand. Nothing worked. It wasn't until the Superintendent read about an article at a school district in another part of the state, that was suing FieldTurf over the potentially defective field, that he realized that this may be a bigger problem.

That goes to my earlier question. Given that many of your clients may not be aware, did you, in fact, call and communicate with each of your customers to see whether or not they had any problem? Because the fact that they didn't know that this was going on, and the fact that there was some question with regards to the product, how would you know whether or not it was a larger problem than what it actually as?

MR. DALIERE: So in high-UV areas, we've been proactive with our customer base, remedying issues and responding to their inquiries; and also being proactive in terms of reaching out to them.

So I would say -- and I can't speak to the specifics of any particular school -- for obvious reasons, related to litigation -- but I think the record has shown that the vast majority of impacted municipalities and school districts in high-UV areas have been satisfied with the way that FieldTurf has handled it.

Now, we haven't been perfect; and we certainly have had customers who have slipped through the cracks, or we haven't done things as I would have liked us to. But there are a large number of FieldTurf customers who are pleased with the way we have handled this issue; and I would say the majority of them have been happy with the way we've handled it, and reached resolution. And we have -- we faced, I think, seven lawsuits out of 1,500 fields that we've installed.

SENATOR POU: Is that a common number of-- I mean, seven lawsuits; is that fairly common in a company of your size and the type of work that you do?

MR. DALIERE: It would be hard for me to say that it's common. But I would -- my suggestion would be, like I said, I don't know that we've handled it perfectly, but I think we've handled it reasonably. And I think we've been forthright in trying to come, and handle, and deal with these customers. And we've incurred significant costs, and I'm happy that we've been able to take care of those customers that have been impacted.

SENATOR POU: Has FieldTurf modified or adjusted their marketing information to lower the 10-year-plus life expectation of its products, after 2006 when it was obvious -- when it was evident -- the evidence that emerged that it was not performing as expected? Was there

any attempt to change your marketing tool to ensure -- to inform the public that it no longer, really, had the expectation of 10 years-plus?

MR. DALIERE: (confers with counsel) So you can guess what I was just advised, right?

SENATOR POU: I'm sure I-- (laughter)

SENATOR KEAN: Can you just make sure the microphone is on? So if you could turn it on--

MR. DALIERE: Can you hear me now? Yes?

SENATOR POU: I'm sorry; you didn't hear him, right? (speaking to Senator Kean)

SENATOR KEAN: No, I just wanted to make sure. Because I thought he had turned it off when he leaned back.

MR. DALIERE: I think that Dale did that for me.

D A L E J. F L O R I O, Esq.: I did, I did.

MR. DALIERE: So Dale did it--

SENATOR POU: Yes, I think Dale-- Dale made sure--

MR. DALIERE: Dale understood the mechanics here, so I think you--

SENATOR POU: Dale is doing his job.

MR. DALIERE: Yes, exactly. They're all doing their job; but the question is, am I doing mine? (laughter)

SENATOR POU: Yes, yes.

MR. DALIERE: So no, I think as you can imagine, what he just instructed me -- that that's getting a little too close to the litigation.

SENATOR POU: I understand.

All right, thank you very much. I appreciate your candidness.

I think, quite honestly-- Look, here's what I, kind of, surmise in all of this.

It sounds as though this is a product and an opportunity for a company to put its -- do its work and make sure to provide the kind of service that you want for any customer -- for your customer. I think we're not talking about an inexpensive product; we're talking about a significantly -- a product that is significantly not only important, but quite costly. In fact, part of the marketing tool that I read -- and I'm trying to do this by memory -- but part of the marketing tool that I read indicated that while -- that you were getting the Cadillac; that this was the Cadillac of fields of its type. And so you would pay that; but that it would certainly outweigh its life because you were going to be able to save -- both in maintenance, and the durability of it would really outlast-- So it was not only safe, but also one that will allow for the best use of your dollars.

So the fact that that, still today, is in question -- in light of all these particular cases that I referred to -- is really the question. The question is: Were there, in fact, marketing tools that were in place upon learning of some of the concerns and problems that it had -- the fact that it was discontinued in 2012, yet, up until that time, there were a number of different fields -- even after learning that there was a product that was questionable, as to whether it had the durability of the 8- or 10-plus years that the product touted itself, publicly, as part of your sales pitch?

Those are the questions that we, as members of this Committee, are really raising today -- to see whether or not there was some clear indication that there should have been -- and I'm trying to carefully word it so that you can answer the question -- that it would have given you

the opportunity, as a company, to really be a bit more forthcoming with your clients -- how the sale of these products would go out.

MR. DALIERE: So I think to steer away from things that I can't really speak to because -- going on the record about some of the marketing issues is going to be difficult for me.

I guess what I would point you to, as a way to answer this question, is some of the numbers that I gave you at the beginning: which is, 92 percent of the fields that are 8 years and older are still in use. And that's for the 592 fields that are out there. And think about the distribution of those fields that are 8 years and older: It's not like they're 9 years old. They are 9 years, they are 10 years, they're 11, they're 12, they're 13. So there is a distribution; but 92 percent of those fields -- whether they were the original installed in 1997, or the ones that were installed in 2004 -- 92 percent of that cohort are still in use today. So from a point of view of value for money for State of New Jersey, I think that's a relevant fact.

The other thing I would point you to is, 89 percent of the fields -- they're going into their 10th year -- that are Duraspine fields, are still in there. So from a marketing point of view, what we said in -- that if we asserted that it was going to make it 10 years, 89 percent of those that were installed in 2007 are making it to their 10th year. And 70 percent of those, from 2006, are going into their 11th year.

So to me, the other thing that I would look at is the fact that, before the story ran there weren't customer issues.

SENATOR POU: There were what?

MR. DALIERE: There were no -- these were not customer issues in New Jersey. We were not dealing with customer issues in New Jersey.

SENATOR POU: But they were all throughout the country.

MR. DALIERE: High-UV areas.

SENATOR POU: No; how would you explain New York, Pennsylvania, Massachusetts? How would you compare some of those very obvious different locations to some of the states that you are referring to?

MR. DALIERE: There have been a few selected -- very few selected issues with Duraspine outside the high-UV areas; this is true. But they are -- those cases did not go forward; and I think we worked with those customers to satisfy their levels -- to make them ultimately satisfied customers.

SENATOR POU: So let's do this: California. High UV?

MR. DALIERE: Yes.

SENATOR POU: You would agree; okay.

Georgia?

MR. DALIERE: High UV.

SENATOR POU: Kansas?

MR. DALIERE: High UV.

SENATOR POU: Oklahoma?

MR. DALIERE: High UV.

SENATOR POU: New Jersey?

MR. DALIERE: There were no cases in New Jersey prior to the *Star-Ledger* article.

SENATOR POU: Well, you have the Clifton High School (*sic*), you have Newark High School, you have Carteret; and I don't know if--

MR. DALIERE: I can't comment on current pending litigation, for obvious reasons.

SENATOR POU: Okay.

What I'd like to do-- You know, at some point, obviously, I want to kind of go back to-- While it may be true-- And it's important to remember that what happened to enough fields -- that it should have warranted an appropriate response from the company; I'm talking about some of those premature deteriorations that occurred with the Duraspine fields.

For example, let's look at what we all know -- if you recall, in terms of what happened -- it's very similar to the Samsung Galaxy Note 7. We all remember when we read about that. While the majority of the owners did not experience their phones catching fire or exploding -- remember that? -- and were probably content with their phones, this problem was happening to a sizable enough minority of customers that it could not be ignored, and they took the appropriate action.

So I guess what I'm trying to do is say, if it was clear that it happened to enough customers throughout the country, early enough, why wasn't the appropriate action taken so as to ensure that whatever was happening in those early years, the remainder of what took place thereafter-- In how many fields later, did you say; 300 and -- how many were installed?

MR. DALIERE: I don't think I answered that question.

SENATOR POU: How many fields were installed from 2006 to 2012? Because 2006 was when the problem was learned.

MR. DALIERE: No, I don't think that's accurate.

SENATOR POU: Okay. When was the problem first identified?

MR. DALIERE: Well, the first that I was aware of the issue that was when I started the investigation on the defect in early 2010. But at that point, I didn't understand what the defect was.

SENATOR POU: So all the problems that occurred with some of those school districts prior to 2010 were not part of your records?

MR. DALIERE: I'm not sure what problems you're referring to prior to 2010.

SENATOR POU: So we talked about-- Let me just go back to some of the-- California was in 2009 -- when they purchased it in 2009, and it was already falling apart in 2012.

Let me look at another state that talked about -- give me just a moment here. (looks through notes)

Here we go; okay: 2006. In 2006, you had -- there was, pardon me, there was the Pittsburg Unified School District of Kansas; in 2008, was the Piper USD -- Unified School District of Kansas and Texas; in 2009 and 2010, you had several customers across North America with some quality of fields that had been installed. But Seaman Unified School District in Kansas, again -- it's a different school district -- that installed the FieldTurf, and had some problems.

By 2010, your executives were having weekly telephone conferences and monthly in-person meetings to address the quality of the

production issue, which is to your point earlier. In 2011 -- that's when you sued TenCate for -- can I say the amount? -- for the $30 million; and in 2012, FieldTurf agreed to replace the Pittsburg USD -- Unified School District -- of Kansas -- the field for free. In May, the school district (*sic*) of Texas sued FieldTurf -- 2012; in 2013, in February, FieldTurf agreed to pay Port Neches-Groves School District of Texas $275,000; in 2014, in May, FieldTurf and TenCate settled midway through the trial; in 2016, Piper USD -- that I referred to before -- sued FieldTurf in May, and settled in May, receiving an upgraded field for $130,000; Seaman USD of Kansas paid $330,000 to replace its field; Ashburn and Washburn began experiencing problems with their field.

That's just one state.

The next state was Oklahoma. It took three years to get FieldTurf to replace a $300,000 field, and it became -- and it only came after the district threatened legal action, according to the District Superintendent.

In New Jersey -- we've already talked about Newark, Carteret, and Clifton High School (*sic*). But in particular, let me just say that according to Carteret, it said that the Borough sent three additional letters to FieldTurf between October 2015 and May 2016, but the warranty did not move forward, according to the complaint. FieldTurf eventually responded 38 months after Carteret first said they were having problems, offering proposals requiring the Borough to pay thousands in repair and replacement costs. With regards to Clifton, the company-- And I'm trying to just peruse through this really quickly-- Let me go to-- Without having to repeat myself, I don't want to go back to the same thing I said earlier.

Let me go to New York. Apparently Duraspine fields across New York failed prematurely; similar issues in other states happened here. Other school districts invested in FieldTurf under the belief that they would be worthy investments for a long time. Pennsylvania -- one of the colleges alleges -- Allegheny College alleges -- officials allege in a lawsuit that they made a claim in 2013; but that FieldTurf delayed their response until the school's warranty expired a year later, and then refused to provide a free replacement.

Palisades School District in Pennsylvania, while trying to replace their field still under warranty -- they received dramatically different offers. They were offered a replacement, using the FieldTurf *Revolution* -- which I think talks about what you said, later on --- that was your new product. Is that correct?

MR. DALIERE: Yes.

SENATOR POU: Revolution is your new product -- for $410,611. When they refused, the company went down to $310,000, despite offering other customers a similar replacement for $175,000.

Tennessee, Texas, Washington state -- I don't want to keep going on. But my point is, that it's clear that the problems started earlier on with some of the marketing end of it. And then the warranty issue was the one that -- when you had a problem in place, you had an opportunity to replace the product, and that didn't happen.

MR. DALIERE: So I think -- and I quite clearly believe -- that I respectfully disagree with your descriptions of how the company behaved. And I think the truth will come out in the litigation.

SENATOR POU: Okay.

Let me-- Thank you, first of all. Thank you. I recognize -- I realize the situation that you're in, and I respect that. I appreciate you being here.

I think without having to constantly repeat, and for the sake of the hearing, here's what I would say. I think I'm going to conclude my questions here, for you in particular. I think what we wanted to make sure is that we do the following: We need to make sure that we follow carefully what's happening in New Jersey, and all throughout the country. I am going to just share with you one of the things that-- I'm going to take Senator Cardinale's recommendation, with respect to making some -- asking our Attorney General to -- our AG -- to seriously take a look at this; look to see whether or not there is something that we ought to be concerned about; and have him and his office review this. I think in light of some of the cases -- that, as you well pointed out, you're refrained from being able to speak because there are active lawsuits, and I understand that. Our position here today was not so much to say, "Yes, the company did or did not--" Our decision to -- wanting to make sure to have this hearing was so that we had an opportunity to hear from you directly. It's clear that there are some questions that still remain in our mind. And as you've pointed out, the opportunity to get some of the answers more clearly will hopefully come out in the court decisions.

So with that said, I don't know if anyone has any further comments. But Senator Cardinale, let me just say that your suggestion about a resolution is something that I will seriously entertain.

SENATOR CARDINALE: I'd like to just clarify one point, if I may here, Madam Chair.

SENATOR POU: Yes, please.

SENATOR CARDINALE: I think you've done a very, very thorough job of questioning the whole subject, and you have a great mastery of the subject. Thank you.

But I think I heard you say that prior to the *Star-Ledger* article, there were no complaints in New Jersey. Is that correct? Did I hear that correctly?

MR. DALIERE: There were no lawsuits filed in New Jersey, and there were no filings with the Office of Consumer Affairs.

As with any business, there were customers who reached out to us, but that's the vast minority of customers. And I know -- I think our customer retention rate that we have, and the number of customers who have repurchased from us in New Jersey, sort of gives an indication of the overall state of mind of FieldTurf customers in New Jersey

SENATOR CARDINALE: So just so I get this clear, I will risk being repetitive. Prior to the *Star-Ledger* article, there were no consumer complaints officially filed; there were no lawsuits. The three lawsuits that currently are going were all filed post the article date. Is that your testimony?

MR. DALIERE: That is correct.

SENATOR CARDINALE: Okay. That's clearly--

SENATOR POU: Can I-- Just to stay on that.

Prior to the *Star-Ledger*'s reports, were there -- are you saying that you had no complaints from any of your customers in New Jersey? Not filed a lawsuit; but did they reach out to your company and express concern about their products -- about their fields, either it not living up to

its standards, or the flatness of the fibers? Was there any outreach to your company asking for the warranty to be recognized, and replaced, or corrected? Are you saying that there was no communication from any of these school facilities during that time?

MR. DALIERE: No, that's not what I said.

SENATOR POU: No, I'm asking; I'm sorry.

MR. DALIERE: No, but I didn't say that, right?

SENATOR POU: Oh, okay.

MR. DALIERE: I think there were -- I don't want to talk about specific cases--

SENATOR POU: So there may not have been lawsuits, Senator, but it appears -- I'm not putting words in your mouth; let me just say, it appears that there were, indeed, complaints and concerns that were raised by your clients -- any number of these school districts that you've provided FieldTurf to, whereby they would have reached out to your company expressing concern about the repairs or the product that you sold them.

MR. DALIERE: There were a few.

SENATOR POU: Okay.

SENATOR CARDINALE: Can I follow up on that question, Madam Chair?

SENATOR POU: Sure, absolutely.

SENATOR CARDINALE: Would you characterize your relationship with your customers, prior to this article -- as when you got a complaint, you were able to satisfy the customer's concerns; or did you just ignore the customer's concerns and they went away?

MR. DALIERE: No, we worked with-- I missed the first part of your-- I'm sorry. Can you start the question over?

SENATOR CARDINALE: In every business--

MR. DALIERE: Yes.

SENATOR CARDINALE: --I mean, if you're selling refrigerators, okay? You're occasionally-- I mean, we even passed a Lemon Law because of this happening with cars. Would you characterize-- In every product, there is going to be something that goes wrong once in a while; and that's normal with material things. Prior to the *Star-Ledger* article, did you have a relationship with your customers such that when a complaint occurred, you were able to satisfy the customer's complaint; or did you simply ignore the customer's complaints? Did you have an active program where a municipality said, you know, "There's a problem with this product. We have another field down the block that's fine, but this one happens to have some problems. Would you come in and look at it, and repair it, or replace it, or do whatever is necessary to make it operate properly?"

MR. DALIERE: Yes, I would--

SENATOR CARDINALE: You had an active program to do that.

MR. DALIERE: Yes, we tried to respond, in New Jersey, to customers within 24 hours of reaching out to us on any issue and get back to them; and for common issues that you would have -- which will be inlay repairs, or seams-- Inlay repairs -- we average response within three days, and seam repairs within two weeks. If there was something more significant, our goal is to work with the customer to make them happy.

So trying to answer your question -- we are very aggressive in trying to look after the customers in New Jersey; and we have not had many significant claims or complaints. And those customers who have been unhappy with our product -- the few -- we've worked very hard to try to get to an answer that's fair for them and appropriate for the circumstances.

So I think we've been very active in trying to satisfy our customers. As I said, it's really key to who we are as a company.

SENATOR CARDINALE: Thank you.

SENATOR POU: I think, Senator, one of the things -- just to go back to your earlier statement -- one of the things that I learned throughout this whole process is that like anything, whenever you buy a product, if I'm a customer, I'm thinking of -- I'm looking at my very own personal experience. I'm not looking to see whether there are -- who else was having problems out there.

So many-- What I think has happened here was, many of the districts were completely unaware of the widespread concerns that may have existed in other locations. So that was some of the feedback, or some of the information that I read.

SENATOR CARDINALE: What I'm wrestling with, Senator, is--

SENATOR POU: Yes.

SENATOR CARDINALE: You know, all of our lawyers have left.

SENATOR POU: They have. (laughter) Except for one; we have--

SENATOR KEAN: I'm not an attorney-- (laughter)

SENATOR POU: Oh, there you go. Then all of us here--

SENATOR KEAN: With respect to the profession, I am not one.

SENATOR POU: We have the one attorney in the back who's--

SENATOR CARDINALE: I'm really wrestling with the fact that -- did the article stimulate attorneys to bring suits, or did the article stimulate municipalities to take a second look at the product? And that's what is the dilemma that I think we face; and I don't think that we are staffed or equipped to answer that.

SENATOR POU: Right

SENATOR CARDINALE: So I would go back to my original thought, which was -- that you know, this is a serious issue, if there is a safety issue--

SENATOR POU: Right

SENATOR CARDINALE: --and it should not be ignored. But I believe the Attorney General and Consumer Affairs are really the people who--

SENATOR POU: Right. I think you hit it right on the head -- the Consumer Affairs. I think this is a Consumer Affairs issue; I think it's a question as to whether or not there was, in fact-- You know, a question with regards to -- as it allegedly claims -- the marketing tools that took place, or not -- or were not, in fact, properly changed when it was learned that there was some possible defect with the product itself.

So I agree; I think, just as you pointed out, one of the very reasons we had to -- why there was the Lemon Law passed was precisely

that. So as elected officials, our job is to make sure that we are protecting the consumers; but most especially, or equally important here is that the consumers, in this particular case, are the taxpayers. Because the majority of those particular entities that are, in fact, purchasing and entering into this kind of purchase contract agreement are public entities, like that of school districts, municipalities, county -- so these are all taxpayer-funded programs. And so as lawmakers, our job is to ask the questions, have the opportunity to have a conversation like this, and let the -- and allow the proper setting to take place to ensure that those questions have, in fact, been properly answered.

So I think it behooves us -- and we have that responsibility as lawmakers to make sure that we're doing our job to protect them that way.

Senator Kean.

SENATOR KEAN: No, I'm--

SENATOR POU: Oh, I'm sorry; I thought I saw your hand.

Okay, well again, thank you very much. I really appreciate this again.

Let me just say, as the Chair of the Committee, as I pointed out, I am concerned about the millions of dollars that we talked about -- the taxpayers -- on this product that is now the subject of some very considerable legal action. We didn't get a lot of the specifics answered, including about why the company did not contact the clients once they learned that there were problems with the product. I know that I tried a couple of times to refer to that.

But with all due respect, I don't believe that problems developed because of the news reports. Three hundred thousand or

400,000 dollars -- or I read as much as $500,000 -- is a great deal of money; and it is my hope that this is resolved for the districts. And we're going to urge -- as I've pointed out -- the AG to take the appropriate action and review all of this and see where it comes from.

Again, thank you very much. I appreciate your responding; and you were very brave. (laughter)

Thank you.

MR. DALIERE: Thank you.

SENATOR POU: Thank you.

That concludes our hearing, unless there's any other comments from anyone? (no response)

Thank you, ladies and gentlemen, for being present.

Thank you again.

(MEETING CONCLUDED)