
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



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RAYMOND J. LESNIAK
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SENATE COMMERCE COMMITTEE

STATE HOUSE ANNEX

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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.
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Issued 1/23/17

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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.

JONATHAN PUSHMAN: 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 Dalieri--

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 through 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 public 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. Dalieri.

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 *revolutionary*, that it was -- it had the durability that your marketing brochure, or information, or campaign, led to believe? Is it your position 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 though 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.

DALE J. FLORIO, 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)