

Dated: January 9, 2013

Respectfully submitted,

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CX 2510

05/11/2012 Groeniger Deposition

Corrected Copy

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)	
In the Matter of)	
)	
McWANE, INC.,)	DOCKET NO. 9351
Respondent.)	
_____)	

**COMPLAINT COUNSEL’S DESIGNATED DEPOSITION
OF
MICHAEL GROENIGER
MAY 11, 2012**

1 UNITED STATES OF AMERICA
2 BEFORE THE FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4 PUBLIC DOCKET NUMBER 9351

6 IN THE MATTER OF
7 McWANE, INC., a Corporation,
8

9 and
10 STAR PIPE PRODUCTS, a Limited
11 Partnership,
12 _____/

15 DEPOSITION OF
16 MICHAEL GROENIGER

17 May 11, 2012
18 9:15 a.m.

21 6111 Bollinger Canyon Road
22 San Ramon, California

25 Jean M. Ferrario, CSR No. 5655

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1 INDEX TO EXHIBITS

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4 Exhibit 1	Testimony of Michael Groeniger	
5	Taken December 14, 2010	66
6 Exhibit 2	Letter dated September 22, 2009	
7	From Tyler	86

8 The following exhibits were marked in previous
9 depositions but are attached to the transcript for
10 the convenience of the reader:

- 11 Exhibit CX 1690
- 12 Exhibit CX 0006
- 13 Exhibit CX 0056
- 14 Exhibit CX 0138

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1 SAN RAMON, CALIFORNIA
 2 FRIDAY, MAY 11, 2012, 9:15 a.m.
 3
 4 MICHAEL GROENIGER,
 5 having been first duly sworn, was
 6 examined and testified as follows:
 7
 8 EXAMINATION BY MR. TRUITT
 9 MR. TRUITT: Q. Mr. Groeniger, my name is Alan
 10 Truitt, we meet just briefly here a few moments ago,
 11 I represent McWane in this matter and I will be
 12 asking you a few questions this morning.
 13 A. Okay.
 14 Q. Could you please state your full name?
 15 A. Michael Holmes Groeniger.
 16 Q. And what is your address, Mr. Groeniger?
 17 A. You are talking about my home address?
 18 Q. Yes, sir.
 19 A. It's 331 Guadalupe Terrace, that's in
 20 Fremont, California.
 21 Q. And your business address?
 22 A. It would be 27750 Industrial Boulevard,
 23 Hayward, California.
 24 Q. I am sure you have had a chance to talk to
 25 your lawyers about what is going to take place

1 today, but just to get us started I am going to try
 2 and ask you a series of understandable questions.
 3 If I fail and you don't understand what I am
 4 asking you, if you would tell me and I will try and
 5 ask a better question, okay?
 6 A. Yes, sir.
 7 Q. And we can take breaks whenever you'd like
 8 to, let us know.
 9 We may make objections at various times, those
 10 are for the record, you can go ahead and answer the
 11 pending question unless your lawyers tell you not
 12 to, okay?
 13 I understand that until recently you were the
 14 owner of Groeniger & Company, or you and your
 15 family; is that correct?
 16 A. That's correct.
 17 Q. And what business were you involved in,
 18 please, sir?
 19 A. We were in the, the second and third
 20 generations of the water works supply business,
 21 started in 1949 by my father. I took over in 1984.
 22 My children were involved through its final
 23 days. I had three children, my wife was the CFO,
 24 and I had three children and we had other people
 25 also part owners of the company and their families.

1 Or their family I should say.
 2 Q. I understand you recently sold the
 3 business?
 4 A. That's correct.
 5 Q. Do you retain any ownership interest or
 6 does your family?
 7 A. No.
 8 MR. PARKS: Objection, you can answer.
 9 THE WITNESS: Okay, I am sorry, no.
 10 MR. TRUITT: Q. You started with the company in
 11 1984?
 12 A. No, I started working at the company in
 13 1950 -- probably 1955, '54. Unloading boxcars.
 14 Q. Can you walk me generally through the
 15 various positions that you held?
 16 A. Well, the dates may vary slightly.
 17 Q. Sure.
 18 A. But I started out working at, after school
 19 when I was in high school. Before I could drive
 20 even. Working in the warehouse, unloading boxcars
 21 for ten cents per hundred pounds.
 22 And that was my pay and it was good for that
 23 time, we could get through a boxcar, 80,000 pound
 24 boxcar in a day, so it was good money.
 25 Then during high school vacations I worked in

1 the warehouse, shipping and receiving and those
 2 types of things.
 3 When I got out of high school and went to junior
 4 college, I worked part-time while I was going to
 5 junior college.
 6 Then I went into the service in 1960, in the
 7 Marine Corps which is kind of a tradition with my
 8 two other brothers.
 9 When I got out of the Marine Corps I at that
 10 time got engaged and married and then came to the
 11 business full-time.
 12 Started as the warehouseman, warehouse manager,
 13 truck driver. Went to inside sales, then inside
 14 outside sales.
 15 The dates would be, when I went into sales
 16 approximately probably in the mid 70s, late 60s, mid
 17 70s. Maybe sales manager, still not an officer.
 18 We moved the business from Hayward -- we moved
 19 the business from Oakland to Hayward about 1975 to
 20 its present location. I became a vice-president at
 21 that time.
 22 Q. Excuse me, about when was that?
 23 A. Oh, approximately '75, '76. My wife then
 24 came, the kids were grown and in high school so my
 25 wife came to work, she had an accounting degree,

1 came to work and worked under my mother who was the
 2 financial person of the company at that time.
 3 And then as my parents retired, my father at 80
 4 some, 83, 84 years old, retired, and I took over the
 5 company.
 6 I became executive vice-president before that,
 7 that means I was more or less running the company
 8 before that time, but when he retired then I took
 9 over as an executive vice-president, ran the company
 10 and then eventually became president.
 11 Then eventually became chairman of the board,
 12 all this progressing as my father decided that he no
 13 longer wanted to travel. He moved to Arizona and he
 14 didn't want to travel.
 15 And during that period of time we started -- I
 16 should say after 1984, after he retired we started
 17 expanding with multiple branches throughout northern
 18 and central California. Developing a water works
 19 wholesale application based on a family atmosphere.
 20 And we were able to attract good people, good
 21 water works people from other parts of the country
 22 to open up facilities and be successful almost
 23 immediately.
 24 So we grew from that point. So we were at the
 25 peak of our capability probably in 2005, 2006 with

1 16, 17 branches.
 2 Q. And were all of those branches in northern
 3 and central California?
 4 A. Some in Southern California.
 5 Q. Throughout California?
 6 A. Yes. I didn't give you dates, specific
 7 dates when I became this or that.
 8 I think that's in records of previous things and
 9 I would be, I probably remembered it better then
 10 than I do now.
 11 Q. Okay. And you mentioned records of
 12 previous things, you have testified in this matter
 13 before?
 14 A. Yes, sir.
 15 Q. And if those dates are in those records,
 16 like you said you probably remembered it better then
 17 than now.
 18 A. Yes, sir.
 19 Q. I can rely on those.
 20 A. That's fine.
 21 Q. I am primarily, Mr. Groeniger, interested
 22 in the '07 to 2010 time frame.
 23 A. Okay.
 24 Q. And how many branches did you have in that
 25 time frame?

1 A. We had -- well, 2010 we were starting to
 2 close some down because of the economy and we were
 3 closing branches, especially the Southern California
 4 branches, Temecula and Santa Paula.
 5 They were the first to go. We were on a
 6 downturn trying to stay ahead of the economy which
 7 for an operation of our size was very difficult.
 8 Q. Let's talk about that for just a second.
 9 Can you explain how the water works business
 10 that you were in is tied to the economy?
 11 MR. PARKS: Objection, you can answer.
 12 THE WITNESS: The economy supports home starts,
 13 construction and all of those are important factors
 14 in our abilities to sell product.
 15 When there is no money, the lenders don't lend
 16 for construction, then we don't sell anything.
 17 MR. TRUITT: Q. Again, I think I understand
 18 this, I want to make sure, you basically were a
 19 distribution supply company, correct?
 20 A. That's correct.
 21 Q. You would buy various water works materials
 22 from manufacturers and suppliers, correct?
 23 A. Correct.
 24 Q. And then you would sell those to your
 25 customers, correct?

1 A. That's correct.
 2 Q. Who were your customers in general terms?
 3 A. Political subdivisions, water districts,
 4 both private and public. Cities that have their own
 5 water systems, sewer systems.
 6 Pipeline contractors, plumbing contractors, fire
 7 protection contractors. And some paving and grading
 8 contractors.
 9 Q. Can you tell me in general terms again by
 10 way of background what your annual revenues were
 11 from the '07 to 2010 time frame?
 12 MR. PARKS: Objection, you can answer.
 13 THE WITNESS: Well, our highest I think were in
 14 excess of 200 million, the exact number would have
 15 to be, I'd have to go through, but in excess of 200,
 16 maybe 210, 215 million at the high point.
 17 MR. TRUITT: Q. When would that have been?
 18 A. 2006.
 19 Q. Okay.
 20 A. Then it started dropping from there.
 21 Q. And did it decline every year thereafter?
 22 A. Yes.
 23 Q. Do you recall what your revenues were in
 24 2010?
 25 A. Probably less than a hundred million.

1 Q. What percentage of your revenue was derived
2 from ductal iron fittings?
3 MR. PARKS: Objection, you can answer.
4 THE WITNESS: Ductal iron fittings as part of a
5 package or part of our underground package was
6 probably, probably 20 percent, 25 percent.
7 MR. TRUITT: Q. When you say part of an
8 underground package, what do you mean?
9 A. Well, you have to look at the industry as
10 different segments of the industry.
11 A municipality may just buy fittings on a
12 contract. But a pipeline contractor supplies the
13 fittings, the pipe, the valves on one bid, one
14 purchase order. And that is part of your package.
15 An important part of your package.
16 Pipe may be 50 percent, valves may be 25 percent
17 and fittings may be 25 percent. But all of them are
18 integral because they are the main line.
19 What I mean by the main line is that it
20 constitutes the primary backbone of a pipeline, the
21 stuff that goes in, that has to be available, goes
22 in together, that keeps the contractor or the
23 installing group of people constantly working to
24 maintain their schedule.
25 So it's not the periphery stuff that they might

1 not need at the same time they are doing the
2 backbone. Or it can come on after the backbone gets
3 done and be put in on a different schedule.
4 The fittings, the pipe, the valves are all
5 primary, important parts of the backbone of the
6 system.
7 Q. Okay.
8 A. And at that time we were probably 80
9 percent of our business was done through subdivision
10 pipeline contractors.
11 Q. When you say at that time, what time are
12 you talking about?
13 A. 2006, 2007, 2008, it started to drop off
14 because subdivisions were not in favor, the economy
15 wouldn't allow for it so the public works then
16 became the primary mode, and we were 80, 20.
17 Let's say at 2006 we were 80, 20 subdivision
18 versus public works. Today it's reversed.
19 Q. So it would be 80 percent public works
20 projects in the 2008 to 2010 time frame?
21 A. Yeah.
22 MR. PARKS: Objection.
23 THE WITNESS: Sorry --
24 MR. TRUITT: Q. I'm asking you, what --
25 MR. PARKS: It's important you let him finish

1 the question so you know what he is asking and the
2 court reporter can transcribe the proceedings.
3 MR. TRUITT: It's hard to remember.
4 Q. Mr. Groeniger, in the 2008 to 2010 time
5 frame, what was the break-out between public works
6 work and subdivision work?
7 A. Public works was rising, subdivisions were
8 lowering.
9 Q. And I think you told me the percentages
10 flipped; is that correct?
11 A. That's correct.
12 Q. So at some point in there you were doing 80
13 percent of your work for public works?
14 A. Say that again, please.
15 Q. Sure. At some point during that 2008 to
16 2010 time frame was 80 percent of your business made
17 up of public works projects?
18 A. No.
19 Q. Help me understand, what is wrong about
20 that?
21 A. 2008 to 2010 one was rising, the other was
22 lowering, there was a time when you were possibly
23 doing fifty-fifty, 60, 40.
24 So one was rising, one was lowering during that
25 period of time, I can't tell you exactly 2009 what

1 it was, it was -- but the trend was going toward
2 public works.
3 Q. Okay. And just so I am clear, I understand
4 what a subdivision project is. Could you explain to
5 me what a public works project is?
6 A. Well, a public works project is put out by
7 the political subdivisions or cities under bonds or
8 government subsidies or whatever, public improvement
9 projects that come out with a set of standard
10 specifications, probably takes months of
11 preparation.
12 It's usually a more difficult type of work,
13 larger projects, months to supply, months to get the
14 material.
15 Whereas a subdivision is what they call blow and
16 go, that means you may have two or three days from
17 the time you get the purchase order to supply it.
18 So you are very under the gun for service, your
19 inventories are affected more, your ability to
20 service the customer is affected more, your trucks
21 are utilized more.
22 Whereas public works is more a lot of direct
23 sales, a lot of time involved just in getting the
24 paperwork done and that type of a thing.
25 Q. How much time might be involved in a public

<p style="text-align: right;">Page 17</p> <p>1 works project between the bid and you getting the 2 job and then shipping the job? 3 MR. PARKS: Objection, you can answer. 4 THE WITNESS: Time frame would be significant as 5 far as office support, paperwork, meeting the 6 specifications, understanding the specifications, 7 talking to the consulting engineers when they have 8 made mistakes that it doesn't fit, and that was our 9 responsibility to go and talk to an engineer and say 10 these two pieces that you have designed don't fit. 11 And before we can supply it we have to know how 12 you are going to handle that. 13 In almost every case, every public works project 14 there are serious design, not flaws but restrictions 15 that require somebody, some knowledgeable person in 16 materials to be able to go in there and say how are 17 you going to get around this point that you don't 18 show it accurately. 19 So there is all that work that has to be done, 20 plus the submittal process, because the engineers 21 aren't necessarily knowledgeable on what materials 22 have been used in that region before. 23 And the political push and shove and so forth 24 that is done within a region as what products they 25 have historically used.</p>	<p style="text-align: right;">Page 19</p> <p>1 Let's just walk through sort of two generic 2 examples. Let's start with a subdivision example if 3 we can. 4 As I understand it a contractor will get a job 5 would be the first step, is that fair? 6 A. No, actually there is a multitude of 7 contractors, let's say you are talking about a 8 territory, there is a multitude contractors that do 9 work in that territory, some bigger than others. 10 When a job comes out they all call us for 11 material quotations. But at that point you don't 12 know who is going to get the job. And you support 13 material quotations to a multitude of different 14 customers. 15 And you could be quoting on the neighborhood of 16 15 to 20 projects throughout your territory with 15 17 to 20 different types of specifications that you had 18 to adhere to in quoting a price. 19 Q. So what is the next step in that project? 20 A. Then you file it. And then you don't hear 21 anything until a customer calls you and says I got 22 that job and then you go through your file and say 23 okay, here is the quotation for that, verify that 24 the manufacturer's pricing is still accurate. 25 And when the contractor tells you he has the</p>
<p style="text-align: right;">Page 18</p> <p>1 So the paperwork is much more demanding, your 2 accuracy is much more demanding and in most cases 3 you are dealing with an engineering firm that is 4 coming in to do this particular job and not 5 necessarily in the region on an everyday basis. 6 Dealing with a water district or something, you 7 know the people, we have dealt with them for years, 8 those types of things, but with an engineering 9 project you are probably talking with people that 10 don't know you or don't know what the service is or 11 that type of thing, so you are dealing strictly with 12 paperwork, sending submittals, getting questions and 13 answers back and forth. 14 When the job finally goes, then all that 15 paperwork is done and you may or may not impact your 16 warehouse or your trucks or any of the inventory 17 that you currently have. 18 It might all be coming from afar and going 19 direct to the job site. 20 Q. Let me stop you there if I may. I am 21 interested in getting a sense of the timelines 22 involved in the subdivision work versus the public 23 works project. 24 I think I understood you to tell me that one 25 might go a lot faster than the other.</p>	<p style="text-align: right;">Page 20</p> <p>1 job, different ones, different contractors handle it 2 differently. 3 Some call you and want it the next day, others 4 will give you a week, the organized ones might give 5 you two weeks to get it together. 6 So everything focuses on your ability to service 7 that unique specification and how it differs from 8 the other specifications which you have material 9 for. 10 If the fittings have to be coated, if the 11 fittings have to be cement lined, if the fittings 12 are flanged, push-on or mechanical joint, those 13 variables. Or if the manufacturer is even approved 14 in that particular location. 15 So you have those variables that you have to, 16 behind our closed doors we are saying do we have the 17 material to get this out to the guy in two days so 18 the backbone, the pipeline can be put in according 19 to his time, and if it can't it could be very 20 expensive for us. 21 Because the contractor, if he has to stop what 22 he is doing and wait for something of the backbone 23 when he has got crews and tractors and cranes and 24 all the other stuff that they have to put on the 25 project which they account for by the minute, it's</p>

1 easy for them to say okay, you owe me \$4,853 because
 2 you held me up for four hours and 15 minutes, and
 3 it's not unusual.
 4 So you have to have that material, you have to
 5 be accurate, you have to be quick.
 6 Public works you are talking about days,
 7 subdivision, months public works.
 8 Q. Everything just happens slower?
 9 A. Yes.
 10 Q. Is there a typical time on a subdivision
 11 and a typical time on public works or does it just
 12 depend on the job?
 13 A. It depends on the job.
 14 Q. Do the size of the fittings that you would
 15 supply, is there any difference between a
 16 subdivision project and a public works project?
 17 A. I would say yes. Traditionally public
 18 works are larger diameter.
 19 Q. When you say larger diameter, what sizes
 20 are we talking about?
 21 A. Well, probably up through 36 inch, 24 inch,
 22 16 inch and larger. Maybe down to 12 inch.
 23 In your subdivisions, it may go up to 12 inch or
 24 16 inch, but very few have them larger than that.
 25 Q. We have talked about the time frame, we

1 have talked about the distinction in size, are there
 2 any other distinctions that readily come to mind
 3 between a public works project and a subdivision
 4 project?
 5 MR. PARKS: Objection, you can answer.
 6 THE WITNESS: Specifications. If it's a unique
 7 specification that a particular engineer specifies
 8 over what is currently being approved or used, then
 9 we have to adjust to that requirement, either by
 10 manufacturer and/or by type of fitting or by
 11 exterior coatings or interior coatings or the
 12 linings of the fittings, differentiate what the
 13 standard used.
 14 And I don't know why they designed it that way
 15 but they are the engineers, I am not.
 16 MR. TRUITT: Q. You mentioned earlier that you
 17 began I think expanding and when your business was
 18 at its most successful you had 16 or 17 different
 19 locations throughout California. What benefit would
 20 having multiple branches provide?
 21 MR. PARKS: Objection, you can answer.
 22 THE WITNESS: Well, it goes back to what we were
 23 doing then which was 80 percent subdivision. 80
 24 percent subdivision requires service and the closer
 25 you are to the project, the better service that you

1 can give.
 2 And the inventory that we would carry, let's say
 3 in Fresno, would be pretty much dominated to the
 4 Fresno specification and market.
 5 It would not be necessarily the same material
 6 that we would stock in Hayward for the market here.
 7 Because there are so many variables.
 8 The one thing that you have to understand is
 9 that the water works business has many variables,
 10 unlike the plumbing business, every city is
 11 different than every other city, every water
 12 district is different from every other water
 13 district.
 14 Some of their specifications are built around
 15 the people who service them, some of them are set
 16 along their own personal ones, they wanted to have
 17 one brand so they will specify one brand, even
 18 though there are a multitude of brands that will
 19 comply, they only want one.
 20 And if they don't get the right one and they
 21 bury it underground for some reason and they find
 22 it, we have to get it out and it's very, very
 23 costly.
 24 So we have to be able to handle multiple
 25 specifications and have the technical people to

1 understand what is going to be supplied.
 2 The contractors, our customers realize that we
 3 know that, they don't know it, in most cases they
 4 rely on us to make sure that the material that goes
 5 out on to a project meets all the applicable
 6 specifications, and they can install it, bury it and
 7 cover it up after inspection or during inspection or
 8 whatever, and be assured they are not going to have
 9 to come back and take it out of the ground.
 10 Q. Generally what geographical area would one
 11 of your branches service?
 12 A. Well, you can think concentric circles
 13 around a branch and say 50 miles, 75 miles, a
 14 hundred miles and relate that to time back and forth
 15 to get a piece of equipment out there and service
 16 it.
 17 And we were probably in the neighborhood of two
 18 hours, we separated our branches by about two hours'
 19 driving time. So that means that we were an hour
 20 away from our projects in most cases. At the far
 21 reach.
 22 Q. And would your answer be the same for
 23 public works projects as for subdivision work, would
 24 you want to be as close to those as well?
 25 A. Not necessarily.

1 Q. Explain that to me if you will.
 2 A. Public works projects, they are much longer
 3 to come to fruition, large quantity, large fittings
 4 that are not normally a stocking item would be
 5 brought in special for special projects.
 6 There was not a time frame issue in most cases
 7 that would enable us from calling a manufacturer and
 8 having them ship that product directly in for a job.
 9 It would not impact our inventory, it would not
 10 impact our trucks to come directly.
 11 And the contracts, you could supply these
 12 contracts from hundreds of miles away. And there
 13 was no need to have the local inventory to support
 14 it because it would all be handled from afar.
 15 Q. Let's shift topics a little bit and talk
 16 about who the suppliers of fittings were and are.
 17 When you I guess first started in the business,
 18 in I think you said the 50s and 60s, who were the
 19 manufacturers or suppliers of fittings to your
 20 company?
 21 A. Well, there is probably, there was probably
 22 just two major suppliers of underground pressure
 23 fittings which is Trinity Valley Iron and Steel out
 24 of Texas and Tyler Pipe out of Tyler, Texas. And
 25 there was Grinnell Company that made fittings on a

1 smaller level.
 2 There were a couple of foundries that made
 3 specialized fittings but not a complete line.
 4 U.S. Pipe and Foundry made fittings, made a
 5 relatively complete line. And there were other
 6 ductal manufacturers that made partials and fittings
 7 and so forth.
 8 I don't know what time frame because they were
 9 predominantly East Coast suppliers and they didn't
 10 come out west.
 11 But Griffin made fittings and I think Atlantic
 12 States made fittings and that was part of a McWane,
 13 I think, Company.
 14 But they weren't out of the West Coast so I
 15 don't know exactly when they started and stopped and
 16 what their level was of completeness as to a fitting
 17 inventory.
 18 Q. American Cast Iron?
 19 A. American made fittings, predominantly big
 20 fittings for their large diameter pipe.
 21 Q. Even back historically?
 22 A. Well, yeah, I do believe so. I am not sure
 23 because here again they were not West Coast
 24 oriented.
 25 Q. Okay.

1 A. But I am sure that they had some sort of
 2 capability, they had foundries that made fittings
 3 but I don't know what exactly fittings they made to
 4 be honest with you.
 5 Q. Were all the suppliers at that time located
 6 in the United States?
 7 A. At that time there was one that was out of
 8 Mexico.
 9 Q. Who was that?
 10 A. I can't think of the name but they were
 11 bringing, they were made in Mexico. I can't
 12 remember the name to be honest with you, sorry.
 13 Q. That's okay.
 14 A. But that was pretty long ago, goes back 30
 15 years I think.
 16 Q. And the company that was in Mexico, were
 17 their fittings accepted by the cities and water
 18 districts at the time?
 19 A. Not really.
 20 Q. How much of the market did they have, if
 21 you have any judgment?
 22 A. Less than, probably less than two percent.
 23 Q. So 98 percent of the market again in the
 24 50s and 60s was made up of domestic manufacturers?
 25 A. That's correct.

1 Q. How did that change over time?
 2 A. Well, I am trying to think of times and
 3 dates and when, and under what auspices that foreign
 4 manufactured fitting came into it.
 5 And who introduced it, whether it was SIGMA or
 6 Star or it came through a fire protection group of
 7 people that were importing foreign cast iron screwed
 8 fittings.
 9 And they could see where they could be
 10 competitive with domestic cast iron screwed
 11 fittings. All together different animal, small
 12 diameter for fire protection systems.
 13 But there became an open window that they could
 14 make these things, they were making these things for
 15 other people anyway, they could cast these things,
 16 come out of India, China was not a factor then, but
 17 out of Korea and out of South America, Brazil.
 18 Q. And again what time frame are we talking
 19 about when you first started seeing this?
 20 A. Probably late 60s, early 70s.
 21 Q. And did that progress over time where
 22 foreign manufactured fittings began to capture more
 23 of the market?
 24 A. Well, one of the two major domestic
 25 manufacturers, Trinity Valley Iron and Steel went

1 out of business or was sold or whatever and they
 2 were out of the market.
 3 Q. I am sorry, when did that happen?
 4 A. I can't tell you the date.
 5 Q. Roughly, decade?
 6 A. Well, probably in the late 60s, early 70s.
 7 Q. Okay. And did importers begin to fill the
 8 void left by Trinity Valley?
 9 A. I think that was probably one of the
 10 reasons. Back in those days you were a Trinity
 11 Valley supplier or you were a Tyler supplier or you
 12 were a Grinnell supplier, Grinnell was a big
 13 national supply house, made their own fittings
 14 themselves with the Grinnell name.
 15 They made mechanical joint and they made flanged
 16 and they made at that time caulk fittings out of
 17 cast iron. And they were one of the major players
 18 throughout the country.
 19 But if you weren't a Grinnell company, which we
 20 were not, and if you weren't a Tyler distributor you
 21 were a Trinity Valley distributor. And you competed
 22 in that realm.
 23 And it wasn't until after Trinity Valley was
 24 gone and that, and you didn't happen to be in the
 25 Tyler format, you felt a need and I am sure that was

1 part of that throughout the country.
 2 And then when Grinnell decided to get out of it
 3 which was probably late 70s, early 80s, then there
 4 was only basically one full line on the West Coast,
 5 as far as I am concerned.
 6 We had others that would partly do things on the
 7 East Coast but not on the West Coast. To have a
 8 mechanical joint or a flange fitting at that time,
 9 it was Tyler.
 10 Q. And did your company have a relationship
 11 with Tyler at that time? Were you a Trinity Valley
 12 company or Tyler --
 13 A. We were Trinity Valley. Because of
 14 politics that were in place at the time with our
 15 competitor who was big, who is the big guy? By the
 16 name of P.E. O'Hair Company, good company, well run,
 17 profitable, well run company, highly respected, I
 18 respected them even though they were a competitor, I
 19 copied a lot of things that they did as far as
 20 equipment and handling things, but they were the big
 21 guy.
 22 And when we started to become a thorn in their
 23 side, they said get rid of them, they will go
 24 somewhere else and they did, so they came and said
 25 we no longer can sell you, part of Tyler's format

1 was soil pipe which is a plumbing item, the biggest
 2 plumbing supply house on the West Coast was P.E.
 3 O'Hair Company and if P.E. O'Hair said jump, I
 4 probably would jump, they are big money and I could
 5 understand that and I accepted that. But I
 6 remembered it. And that strength is strength and
 7 your ability to service is strength.
 8 And so we went to Trinity Valley and we were
 9 Trinity Valley for five or six years, one of their
 10 bigger players in our little world.
 11 Then they left and we didn't have anybody that
 12 we could trust that would give us a competitive
 13 format against the current hierarchy of
 14 organizations that used Tyler, so we certainly moved
 15 toward SIGMA who was an up and coming group that
 16 would, we had to do specification work which we did,
 17 but they did too.
 18 Q. Let me stop you there. About what point
 19 did you begin developing a relationship with SIGMA?
 20 A. I think after the Trinity Valley, whatever
 21 that date was, I can't tell you, whatever that date
 22 was, I can tell you it's in the decade of probably
 23 late 70s, early 80s.
 24 Q. Okay.
 25 A. But I could be wrong, I could be ten years

1 off on that.
 2 Q. Okay. And you mentioned specifications
 3 just now, you said, I think you said change
 4 specifications. What does that mean?
 5 A. A specification may call for a particular
 6 name.
 7 Q. So, for example, a city would say we only
 8 want Trinity Valley or we only want Tyler?
 9 A. Well, you have to submit, if they see
 10 something new they want to make sure it meets the
 11 AWWA standard and the standards that they hold dear
 12 to them.
 13 And that it matches up with the piping that they
 14 are accustomed to using, it has the same thickness,
 15 and all the things that are pertinent, the same
 16 cement lining, the same applications and this takes
 17 you to sit down or have them put a piece in the
 18 ground and see how it works with their crews.
 19 It's a long process in some cases to get
 20 something approved that is unusual.
 21 Q. Would some cities specify domestic versus
 22 foreign, for example, as opposed to a particular
 23 manufacturer?
 24 MR. PARKS: Objection, can I get a clarification
 25 of time frame?

1 MR. TRUITT: Sure. Thank you.
 2 Q. I am talking about even when you first
 3 began working with SIGMA, whenever that is.
 4 A. No.
 5 Q. Okay. You were not, when Groeniger first
 6 began working with SIGMA, the specifications
 7 identified specific manufacturers?
 8 A. That's correct.
 9 Q. Okay. And they didn't specify simply
 10 domestic or foreign?
 11 A. No, sir.
 12 Q. Did you, was your company involved in
 13 assisting SIGMA in those early years in meeting
 14 specifications?
 15 A. Yes.
 16 Q. And how would you go about doing that?
 17 A. We have sales people and engineering type
 18 sales people in certain cases that have historic
 19 relationships in the area that can go in to people
 20 and explain to them the benefits of the fitting over
 21 what currently is available.
 22 And the move to a compact fitting versus a long
 23 fitting. I am throwing that at you, it's a new
 24 word.
 25 Q. Yes, sir.

1 A. The AWWA standard is the C-110, there is
 2 two standards, they come out with the C-110 which is
 3 the old heavy pattern, weighs three times as much
 4 and they have gone to a compact type fitting, C-153
 5 which is a ductal iron.
 6 When the date they went to that, I can't tell
 7 you, but that probably was mid to late 80s.
 8 So they went to a real lightweight fitting which
 9 was probably, on an eight-inch fitting which is like
 10 this, it's probably a hundred pounds lighter,
 11 different materials, ductal versus cast iron.
 12 Ductal is stronger, can be thinner and get the
 13 same pressure rating, that was done then. That
 14 changed things.
 15 Q. By 2005 which I think you told me was sort
 16 of the peak of your business, what was the mix of
 17 domestic versus foreign fittings in the marketplace?
 18 A. When, 2005?
 19 Q. Roughly.
 20 MR. PARKS: While you are thinking about that
 21 let me make an objection, you can answer.
 22 THE WITNESS: It's hard to say accurately but I
 23 think it's probably two-thirds to three-quarter
 24 would allow foreign.
 25 MR. TRUITT: Q. My sense was when you first

1 started in the business I think you told me it was
 2 something like 98 percent domestic manufacturers
 3 supplied the fittings, correct?
 4 A. They supplied the fittings, yes.
 5 Q. And by the time that Groeniger & Company
 6 was at its peak that had changed, correct?
 7 A. It had changed.
 8 Q. And by that time 75 percent of the fittings
 9 in the market were non-domestic, made outside the
 10 U.S., correct?
 11 A. That is my interpretation of my area. And
 12 some of those were Tyler also. It wasn't as if
 13 Tyler was not making them too at that time.
 14 Q. Making what?
 15 A. Foreign fittings.
 16 Q. When did Tyler begin making foreign
 17 fittings?
 18 A. Probably early -- late 1990s, middle 90s.
 19 I think the specification of the C-153 specification
 20 for the AWWA, when that came out, that allowed for a
 21 change in philosophy for a district because it was a
 22 printed standard by the holy grail of the water
 23 works industry which the American Water Works
 24 Association.
 25 And one of their sole duties is to set up

1 standards and specifications for manufacturing
 2 products to work within water districts.
 3 And they approved a new standard allowing for a
 4 thin wall ductal lined fitting, both push on or
 5 mechanical joint, to correspond with the new
 6 thicknesses of ductal iron pipe which are
 7 considerably thinner in thickness than cast iron.
 8 Easier to handle, easier to install.
 9 And once that specification came out it was just
 10 a matter of time I believe until you wouldn't see
 11 cast iron or you wouldn't see the heavy fittings at
 12 all.
 13 Everybody was going to a more compact scenario
 14 of which, it was kind of in use before then by the
 15 foreign people, and that kind of fell into their
 16 capability almost easier than it was any established
 17 manufacturer.
 18 That's from my point of view. That might not be
 19 accurate in other parts of the country, but that is
 20 my point of view.
 21 Q. Comparing a foreign fitting to a domestic
 22 fitting that met the same standard, the C-153 you
 23 are telling me about, is there any difference in the
 24 function of those two items?
 25 A. No.

1 Q. They are identical other than where they
2 are made; is that correct?
3 MR. MANN: Objection, leading.
4 MR. PARKS: I am going to object as well,
5 different reason.
6 MR. TRUITT: Q. You can answer.
7 A. I can answer?
8 Q. Yes, sir.
9 A. Well, quality of manufacturer.
10 Q. Tell me about that, please.
11 A. When SIGMA, speaking of one manufacturer
12 now, who was our preferred manufacturer at the time,
13 first introduced their fitting which was made in
14 Korea, it was investment cast.
15 Now, what does that mean? That means it had, the
16 tolerances were right on. When you cast a fitting
17 it changes, the tolerances change between hot and
18 cold, when you are casting it you have to allow for
19 cooling and shrinkage and all those types of things,
20 so it might go plus six-thousandths or minus
21 six-thousandths over what you want which is still
22 within tolerance, and there are times when the pipe
23 is high on tolerance and the fitting is low and the
24 fittings won't go together, that's rare but it
25 happens.

1 But with SIGMA, they investment cast and that
2 was due to the fact that in Korea during those
3 periods had great manufacturing capability but no
4 industry, the auto industry hadn't taken off and
5 investment cast fittings products are needed in the
6 car business, manifolds, things like engine blocks,
7 things like that.
8 They have to be very precise in the types of
9 patterns that are used, types of production that is
10 used.
11 And that was currently unavailable in the United
12 States, but in Korea it not only was available, they
13 will make an underground fitting out of it. So the
14 quality was extremely high.
15 Never had a failure, never had a problem with
16 one being oversized or undersized, never had sand
17 holes, never had those types of things that you
18 would get with the American production format.
19 They were all cast by the lost foam method and
20 they make a pattern out of foam and put it in sand
21 and when the iron is poured in that the foam melts
22 away and the molten metal fits into that exact
23 thing, there is no two parts going together and
24 everything else, a different philosophy all
25 together.

1 But it's so unique, they make jewelry out of it,
2 the lost foam method, and now all the car parts that
3 are coming out of Korea now are done with the lost
4 foam method and the Korean business is booming.
5 Thus it became too expensive to make fittings,
6 underground fittings under this process. And so
7 they got out of the market.
8 Q. Is the cope and drag process less expensive
9 than the lost foam process?
10 A. I don't know that it's less expensive but
11 that is the way, when your foundry is set up for
12 that, that's old style but your foundry is all set
13 up for that, so it's hard to go in and say we are
14 going to change everything.
15 Lost foam has its drawbacks in the fact that the
16 gas that comes out of the burning urethane or
17 whatever that original casting was is toxic.
18 So that, in the United States that throws
19 another unique problem for a foundry, they can't be,
20 whereas they might get away with it in Korea, they
21 couldn't get away with it here.
22 So they had to reorganize how they were doing
23 some of their casting here to even get involved in
24 lost foam.
25 And they have done that, most manufacturers in

1 valving now cast a certain part of their product out
2 of the lost foam method because it's cleaner,
3 easier, and as long as they have the environmental
4 resources to siphon off any odors or harmful product
5 byproduct, they are fine.
6 Q. Let's back up just a second. I think I
7 took us down this road when I asked you the question
8 about when you first started forming a relationship
9 with SIGMA in the early 1980. What was the market
10 mix.
11 Did SIGMA continue to make their fittings in
12 Korea?
13 A. For ten years.
14 Q. From the early 1980s until the early 1990s,
15 is that accurate?
16 A. Maybe seven years. Until Dewanza
17 (phonetic) and Hyundai and those other car companies
18 started gaining international capability.
19 So when that happened then the manufacturing
20 became too expensive to make fittings under that
21 process.
22 Q. Let's fast forward to the 2007, 2010 time
23 frame that I am talking to you about.
24 A. Okay.
25 Q. Is there a difference in quality in your

1 judgment in foreign and domestic fittings during
 2 that time frame?
 3 A. No.
 4 Q. They are of equal quality?
 5 A. Yes.
 6 Q. They function the same?
 7 A. Yes.
 8 Q. If I ground off "Made in the U.S." and
 9 ground off "Made in Wherever It's Made" and painted
 10 them the same, could you tell them apart?
 11 A. There are little things that you could see,
 12 the difference in the way that they have locking,
 13 their locking ends and things like that, I could
 14 tell the difference.
 15 Probably a contractor in the field probably
 16 wouldn't notice a difference.
 17 Q. So during the 2007, 2010 time frame a
 18 foreign fitting and a domestically manufactured
 19 fitting are essentially the same, correct?
 20 A. Yes.
 21 Q. How did they compare in cost?
 22 A. Variable.
 23 Q. It would be incorrect to make a general
 24 statement that foreign fittings were cheaper than
 25 domestically manufactured fittings?

1 A. It would be easier to say foreign fittings
 2 must be cheaper because everybody kind of is going
 3 to use a foreign fitting rather domestic fitting,
 4 probably they are less expensive. They are
 5 certainly marketed by Tyler as being less expensive.
 6 Anybody that made both marketed them separately,
 7 and the domestic was held at a higher format and so
 8 forth.
 9 Whether it was or not, I am not into that area
 10 of knowing how much iron costs, shipping costs,
 11 containerization costs that come over from China or
 12 from India or from Brazil, that varies.
 13 Q. Well, let's go back to I guess the early
 14 80s when you were developing a relationship with
 15 SIGMA.
 16 Were you also buying domestically manufactured
 17 fittings at the same time? When I say you, I mean
 18 your company.
 19 A. I presume we were.
 20 Q. Okay.
 21 A. But we had developed a capability, a we
 22 help you, you help us scenario with the manufacture
 23 which we did not have with --
 24 Q. Let me stop you, when you say the
 25 manufacturer, are you talking about with SIGMA?

1 A. With SIGMA.
 2 Q. Okay.
 3 A. They designed their capability around our
 4 needs. And normally manufacturers don't take that
 5 much time to look at an individual customer and say
 6 we are going to tailor our service to your needs,
 7 and it was refreshing and it was supportive of us
 8 and it enabled us to grow and gain market share.
 9 Q. In the 2007, 2010 time frame which
 10 manufacturers of fittings was your company doing
 11 business with?
 12 A. We were doing business with all three,
 13 Star, Tyler, all four. So with U.S. Pipe and
 14 Foundry fittings, that was primarily our domestic
 15 manufacturer.
 16 Q. Who was your predominant domestic supplier
 17 during that time frame?
 18 MR. PARKS: Just to clarify, we are talking
 19 about the 2006 to 2010?
 20 MR. TRUITT: Q. 2007 to 2010.
 21 A. Tyler.
 22 Q. And I just missed your answer,
 23 Mr. Groeniger. What was U.S. Pipe doing during that
 24 time frame?
 25 A. U.S. Pipe went out of business about that

1 time, they were a domestic supplier and they were
 2 working very closely with us on the domestic side.
 3 And they made a very complete line and they were
 4 manufactured in Birmingham I believe. But we sold
 5 their pipe and their fitting too together.
 6 But they went out of business, I can't remember
 7 the time they went out of business because we had
 8 several long term contracts with municipalities that
 9 supplied their fitting.
 10 So it was a, we had to move very quickly to get
 11 other fittings approved where we were using the U.S.
 12 Pipe fitting.
 13 Q. So I think in the 2007 to 2010 time frame
 14 you were using I think you said Star, Tyler, SIGMA
 15 and U.S. Pipe, and whenever they went out of
 16 business that's when you stopped using them?
 17 A. That's correct.
 18 Q. I recall from looking at your prior
 19 testimony that you mentioned a company called NAPAC?
 20 A. That wasn't until quite a bit later. They
 21 came into the area, a foreign manufacturer --
 22 Q. Was that after 2010?
 23 A. Well, they probably were involved in the
 24 business prior to that.
 25 Q. Okay.

1 A. But they were not a player for us. They
2 may have been a player for somebody else to utilize,
3 I am sure they have very, very good pricing but they
4 are not, I don't know that they are in specification
5 by name, you would have to almost introduce them
6 every where and put our reputation behind their
7 quality because they have no marketing capability
8 themselves I don't think.

9 Q. Okay. And again focusing on that 2007,
10 2010 time frame, you were doing business with Star,
11 Tyler, SIGMA and U.S. Pipe as long as they were
12 around, correct?

13 A. That's correct.

14 Q. Can you break it down for me percentage
15 wise, how your fittings business was allocated
16 between those four suppliers?

17 MR. PARKS: Objection, you can answer.

18 THE WITNESS: Well, I know that probably SIGMA
19 was the largest. Tyler was second, Star was third.

20 MR. TRUITT: Q. Do you have any more detail
21 other than that?

22 A. Percentages?

23 Q. Yes, sir. 70, 80 percent of your business
24 would be with SIGMA?

25 MR. PARKS: Objection, you can answer.

1 THE WITNESS: As best as I can put that in
2 without having the books the look at, I would say
3 that SIGMA was probably two-thirds and then Tyler
4 was 50 percent ahead of Star.

5 MR. TRUITT: Q. I wasn't a math major so --

6 A. Neither was I. But percentage wise that is
7 what I would say was going on at the time.

8 Q. And you raise a good point, you have books
9 and records, correct, that would reflect exactly how
10 much you bought from each?

11 A. Yes.

12 MR. PARKS: Objection, when you say "you," do
13 you mean Groeniger & Company which you established
14 is no longer in his control?

15 MR. TRUITT: Let me ask the witness.

16 Q. How would we find out, Mr. Groeniger,
17 precisely what Groeniger & Company purchased in
18 terms of fittings during the 1997 to 2010 time
19 frame?

20 A. I believe we can check the archives to
21 figure that out.

22 Q. Well, your lawyer just made an objection
23 about who, who has those archives, you or somebody
24 else?

25 A. Well, that's a good question. And I can't

1 answer that.

2 Q. Okay.

3 A. I don't know. We have been sold. The due
4 diligence for the past year and a half, the movement
5 of files, the transportation of people moving out,
6 closing branches, moving file cabinets, I presume
7 they are somewhere but I could not in a short
8 reasonable amount of time find them myself.

9 Q. Just on that topic, we would obviously ask
10 that any of those records that exist be preserved,
11 both electronic and hard copy.

12 MR. PARKS: Preservation order has been issued
13 so the question is not so much as whether they are
14 going to be preserved as to who owns them, if they
15 are not under our control any more, they are not
16 under our control any more.

17 MR. TRUITT: I am at a good breaking point, do
18 you want to keep plowing ahead or would you like a
19 short break?

20 (Brief recess taken.)

21 MR. TRUITT: Q. Mr. Groeniger, when we took a
22 short break we had just talked about the fact that
23 U.S. Pipe had ceased manufacturing fittings.

24 You told me earlier about Grinnell. Are they
25 still in the market?

1 A. No, sir.

2 Q. When did they exit the market?

3 A. Early 60s.

4 Q. How about Griffin?

5 A. Late 80s.

6 Q. I asked you a poor question. When did
7 Griffin leave the fittings market?

8 A. Late 80s.

9 Q. We also talked about when you began doing
10 business with SIGMA, you assisted them in being
11 included in various specifications. How difficult
12 was that?

13 MR. MANN: Objection, leading.

14 MR. PARKS: I'll join that objection.

15 THE WITNESS: Varied.

16 MR. TRUITT: Q. Did it change over time?

17 A. Not necessarily.

18 Q. It remained very difficult even into the
19 1990s to 2000s to have SIGMA included in
20 specifications?

21 MR. MANN: Objection, leading.

22 MR. PARKS: Objection, you can answer.

23 THE WITNESS: It varied, some were easy, some
24 weren't.

25 MR. TRUITT: Okay.

1 Q. Were you ultimately successful in having
2 SIGMA included in the specifications for the
3 municipalities to whom you were trying to provide
4 product?

5 A. In most cases.

6 Q. Can you assign a percentage to that?

7 MR. PARKS: Objection, you can answer.

8 THE WITNESS: 90 percent.

9 MR. TRUITT: Q. You mentioned earlier, I think
10 it was P.E. O'Hair, did I hear that correctly?

11 A. That's correct.

12 Q. And they were one of your competitors?

13 A. Yes, sir.

14 Q. In the 2007 to 2010 time frame, who were
15 your competitors?

16 MR. PARKS: Objection, you can answer.

17 THE WITNESS: Ferguson Enterprises. R&B Supply.
18 Camellia Valley Supply. McGuire & Juvet.

19 Different areas, different combinations. Pace
20 Supply and Ed Walsh Company.

21 Kenko Utility Supply Company, K-i-n-k-o -- I am
22 sorry, K-e-n-k-o. That covers probably 90 percent
23 of it.

24 Q. Okay. Would you include HD Supply?

25 A. No. Because they were not, HD purchased

1 during that period of time or later, they purchased
2 McGuire & Juvet.

3 And other people in the southern area, Southern
4 California, excuse me, that were competing with us
5 down there, Marden Susco was another one in Southern
6 California. Was purchased by those people.

7 There was a lot of acquisition working done by
8 the big people at that time.

9 Q. Are you active -- well, first of all, do
10 you know what I mean when I say WASDA?

11 A. Yes, sir.

12 Q. What is WASDA?

13 A. WASDA is Water and Sewer Distributors of
14 America.

15 Q. And what did WASDA do? What was its
16 function?

17 A. WASDA was a gathering place for
18 distributors of water and sewer -- I should say
19 water and sewer distributors throughout the United
20 States, Canada and possibly Mexico too, that allowed
21 for discussion as to best practices, support in how
22 things were done, the camaraderie.

23 It later, in its later years it became a, also
24 instructional, that the manufacturers would take
25 part in in supporting it.

1 It would have round table discussions with each
2 particular customer, or each individual member about
3 the benefits of their products versus others. Who's
4 Who I guess of the industry were there.

5 The manufacturers sent their top people,
6 certainly the owners were there representing the
7 different companies.

8 The national companies, the international
9 companies were represented there by their owners and
10 managers and presidents and chief executive
11 officers, those types of things.

12 So it was a, it changed rather drastically in
13 the early 90s to include manufacturers.

14 Q. Is it fair to say it's a trade organization
15 for distributors and others in the water works
16 industry?

17 A. Yes.

18 Q. And do you know how many members roughly
19 there are of WASDA?

20 A. 80s, members, I mean, there is two levels
21 of membership.

22 One is a distributor member and one is a
23 manufacturer member, or an associate, a manufacturer
24 coming in is an associate member.

25 I guess there are certain rights and privileges

1 of both but in the early 90s before that, a
2 manufacturer couldn't attend the meetings.

3 But after that time manufacturers were welcome
4 as being a part, as an associate member, welcome to
5 all of the functions -- welcome to several of the
6 functions, there is one function of the year that I
7 think is held to regular members only.

8 It's been awhile since I have been there because
9 I gave that to my son to be responsible for.

10 Q. And I think you said there were roughly 80
11 or 90 members, did I hear you correctly?

12 A. Well, when you add the manufacturers that
13 doubled. So probably -- I can't tell you exactly.

14 Q. The same thing, are you familiar with the
15 distribution group or TDG?

16 A. Yes.

17 Q. What is TDG?

18 A. A buying group.

19 Q. Is it made up of water works distributors
20 such as Groeniger & Company?

21 A. Yes.

22 Q. And how many members are there of TDG?

23 A. Probably 20 to 30.

24 Q. And do they go from small members to
25 members with multiple branches?

<p style="text-align: right;">Page 53</p> <p>1 MR. PARKS: Objection, you can answer. 2 MR. TRUITT: Let me ask you a better question. 3 Q. Is size a requirement for membership in any 4 way for TDG? 5 A. No. 6 Q. Is the membership made up of all size water 7 works distributors? 8 A. Yes. 9 Q. And do you have any information of the 10 breakdown, how many are multiple branches versus how 11 many are mom and pops? 12 A. Probably half are mom and pops and half are 13 multiple branch application. 14 Q. During the 2007 to 2010 time frame that I 15 am focused on, we have talked about that the fitting 16 suppliers were SIGMA, Tyler, Star and U.S. Pipe for 17 some period of time, do you remember our discussion 18 about that? 19 How did those suppliers or manufacturers price 20 their fittings? In other words, was there a 21 published list price? 22 MR. PARKS: Objection, you can answer. 23 THE WITNESS: Counselor, are you referring to 24 TDG? 25 MR. TRUITT: No, sir, no, sir.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. And did all four of the manufacturers that 2 you purchased from in the 2007 to 2010 time frame 3 have a list and a discount price? 4 MR. PARKS: Objection, you can answer. 5 THE WITNESS: Possibly, probably. I couldn't 6 tell you actually. 7 MR. TRUITT: Q. You couldn't tell me because 8 you can't recall? 9 A. I was -- I was the chief executive officer, 10 I wasn't involved in purchasing, the only time I get 11 involved is when we have problems. 12 Q. Who would have been more involved in that 13 area of your business? 14 A. Our sales people and purchasing department. 15 Q. Is there one person who would have dealt 16 with the manufacturers on pricing? 17 A. Not necessarily. 18 Q. Was it done on a branch by branch basis? 19 A. Probably. 20 Q. Do you know if your purchasing and sales 21 people ever played manufacturers off one another in 22 an effort to achieve lower prices? 23 MR. MANN: Objection, foundation. 24 THE WITNESS: I assume that they would or did, 25 I'd say would, I would assume they did.</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. I am moving onto another question. 2 A. In what regard? Would you say that question 3 again? 4 Q. Let me try again. I am going to draw an 5 objection, I am going to tell you how I understand 6 it and then we'll back up. 7 I understand that there is basically a list 8 price and then there is a multiplier off a list 9 price and then there is further negotiation on a 10 project by project basis. Would I be correct? 11 MR. MANN: Objection, leading. 12 MR. PARKS: Objection, you can answer. 13 THE WITNESS: Yes. 14 MR. TRUITT: Let's back up and see if I can cure 15 that objection now. 16 Q. Mr. Groeniger, can you tell me how fittings 17 suppliers and manufacturers price their products? 18 MR. PARKS: Objection, you can answer. 19 THE WITNESS: List and discount. 20 MR. TRUITT: Q. What is a list? 21 A. Manufacturer's published list of individual 22 pricing on individual product. 23 Q. And what is a discount? 24 A. A discount is a percentage added or 25 subtraction from that price.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. TRUITT: Q. Why would you assume that? 2 A. It's very competitive. 3 Q. What is very competitive? 4 A. Margins are very low, as far as we are 5 concerned. A percent here or a percent there could 6 make a difference in the project. 7 Q. And you are talking about margins on 8 fittings? 9 A. Margins, yes, on fittings but other things 10 too. Especially on fittings. 11 Q. In the 2007 to 2010 time frame, do you know 12 what your margins were on fittings? 13 A. No. 14 Q. Can you offer me a range? 15 A. Not accurately. 16 Q. Who would know that information? 17 A. I would have to look in the records, that's 18 how I would check it. 19 Q. There is not someone you would pick up the 20 phone and call that would know? 21 A. It depends on the region, the time of year 22 and if they are still working for us. 23 Q. I have heard the terminology "project 24 pricing" and "job pricing," does that mean anything 25 to you?</p>

1 A. Yes.

2 Q. Can you explain to us what that means?

3 MR. PARKS: Objection, you can answer.

4 THE WITNESS: Public works is a project, a

5 project application, not a subdivision, a project

6 application, that means it's one big job.

7 Manufacturers sometimes allows for special pricing

8 on a job basis. That goes beyond normal pricing.

9 Because of the uniqueness of the size or

10 whatever, they feel it necessary that it has to be

11 more competitive.

12 MR. TRUITT: Q. So would job pricing be a

13 further reduction off the discount price?

14 A. It could. Or it could also be an adder to

15 that price.

16 Q. Job pricing could be an increased price?

17 A. Yes.

18 Q. Would that be rare?

19 A. It would not necessarily be rare, it

20 probably happens less than the other way, but it

21 does happen.

22 Q. We have talked about the list price,

23 discount price, I have asked you about job pricing.

24 Did fittings manufacturers offer any rebates to

25 Groeniger & Company?

1 A. Yes.

2 Q. How were rebates structured?

3 MR. PARKS: Objection, you can answer.

4 THE WITNESS: Volume.

5 MR. TRUITT: Q. In other words, depending on

6 what volume of product you bought you'd get a

7 different rebate back?

8 A. That's correct.

9 Q. Were rebate programs annual in nature?

10 A. Some.

11 Q. Were the rebate programs in the 2007 to

12 2010 time frame of the four suppliers we have talked

13 about similar?

14 A. Similar, yes.

15 Q. Did they have differences?

16 MR. PARKS: Objection, you can answer.

17 THE WITNESS: There were differences, some were

18 paid differently, some were difference in

19 percentages. Some were based on different criteria.

20 MR. TRUITT: Q. Did you negotiate with the

21 suppliers on rebate programs?

22 A. A little bit.

23 Q. Were you successful in your negotiations

24 with the suppliers on rebate programs?

25 A. Some, not all the time.

1 Q. Would it be fair to say that you were

2 looking for price reductions if you could achieve

3 them?

4 A. Yes, you are always looking for price

5 reductions if you can achieve it.

6 Q. Was TDG involved in any fashion in

7 negotiating a rebate programs?

8 A. Yes.

9 Q. How was TDG involved in negotiating

10 rebates?

11 A. They have a negotiating committee that

12 negotiated, we didn't, they negotiated it in certain

13 applications of products that we dealt with.

14 Q. Were you ever on the negotiating committee?

15 A. No.

16 Q. And did TDG identify preferred vendors?

17 A. Yes.

18 Q. Do you recall in the 2007 to 2010 time

19 frame who the preferred vendors were for TDG?

20 MR. MANN: Objection, vague.

21 THE WITNESS: Some of them I remember, some I

22 probably have to look.

23 MR. TRUITT: Q. Just tell me as best you can

24 what you remember.

25 A. With regard to what product?

1 Q. Fittings.

2 A. Fittings. I believe SIGMA, Tyler, Star and

3 Metal Fit.

4 Q. I don't know how this works. Were they all

5 preferred during the same time frame or each year

6 would there be a different preferred vendor?

7 A. The top three were always as I can recall

8 preferred members. You had choices to what you

9 could do, who you could buy from and maintain

10 acceptance within the buying group.

11 Q. Can you explain that a little bit further

12 to me?

13 You say in terms of what you could do and

14 maintain acceptance within the buying group. How

15 did that program work?

16 A. Well, the program, you had to buy a certain

17 percentage of your material from the approved

18 suppliers -- manufacturers I should say.

19 Q. And if you bought a certain percentage from

20 the approved manufacturer, what benefit would inure

21 to you?

22 A. You would be part of the rebate process.

23 Q. What would happen if you did not buy a

24 certain percentage from the approved vendor?

25 A. Then you would not get the, you would not

1 be able to share in that -- well, I guess you would
2 share in it what part of it you did supply, but if
3 you weren't buying the percentage, then you would
4 have to zero that out of one of your acceptable
5 areas. And they'd give you certain exceptions you
6 could take.

7 And manufacturers that don't service your
8 territory or manufacturers that won't sell you
9 because you are not a distributor, normally a
10 distributor, so there are variables, and exceptions
11 you can take.

12 But you are allowed so many, which I don't know
13 what that is, but there was a factor for it.

14 Q. Did these rebates only get paid over some
15 period of time, like at year end, for example?

16 A. No, they were quarterly.

17 Q. Okay, they were quarterly. Is it only a
18 situation where you would get zero or the rebate or
19 is there some possibility you could end up owing
20 money?

21 A. Well, if you were not adhering to the
22 bylaws of the association you could leave, you could
23 leave yourself or they could penalize you because
24 you are taking profits and not adding to it by
25 sales.

1 And so they have that responsibility and you
2 have exceptions that keep you out of harm's way in
3 most cases.

4 But if you are not doing -- if you are not
5 holding up your end, whether you be a one branch
6 operation or a 20 branch operation, then, yeah, you
7 theoretically could be fined. But in most cases you
8 decided this ain't for me and you leave.

9 Q. Were the rebates passed on to your
10 customers to whom you sold the products?

11 A. Probably not in most cases.

12 Q. Those were financial incentives that stayed
13 with the distributors?

14 A. In most cases. There were exceptions, but
15 in most cases.

16 Q. What would an exception be?

17 A. A large customer that was buying a large
18 volume of a certain product might be given incentive
19 from us which took into consideration the incentive
20 that we were getting. But that was probably rare,
21 but it happened.

22 Q. In the 2007 to 2010 time frame, do you
23 recall if you had an exception like that?

24 A. I'd have to go back and check each of our
25 branches at the time and the people -- no, but I

1 would, it was not prohibited by us, let's put it
2 that way.

3 So we have, you know, we had 17, 18 branch
4 people, branch managers that could theoretically do
5 something like that for the sake of a major player.

6 Q. But as you sit here today, can you recall
7 one offhand in the '07 to 2010 time frame where you
8 shared a rebate with a customer?

9 A. I can't give you a name.

10 Q. I have covered list price, discounts, we
11 have talked about job pricing, rebates.

12 Did you negotiate terms of payment with your
13 fitting suppliers?

14 A. Probably at some time, when I was doing the
15 negotiations we did, both ways. Pay them quicker,
16 pay them further back.

17 There was times when they needed money, they
18 paid them ahead of time. That was rare. But it
19 happened.

20 Q. How about freight terms, did you ever
21 negotiate freight? Payment for freight?

22 A. Yes.

23 Q. Any other price terms that I haven't
24 covered that you would negotiate with your fittings
25 suppliers?

1 A. Standard versus public works. Here again,
2 inventory versus not having to inventory, there was
3 discussions a lot of times on a project basis that
4 could cover all three of those ranges, terms,
5 pricing and freight.

6 Q. And when you say standard, are you
7 referring to residential --

8 A. Subdivision.

9 Q. Subdivision work. On a subdivision
10 project, what percentage of the total project would
11 fittings make up in terms of revenue?

12 A. Varied.

13 MR. PARKS: Objection, you can answer.

14 THE WITNESS: Varied.

15 MR. TRUITT: Q. Can you give me a range?

16 A. No.

17 Q. Would it ever, would the dollars assigned
18 to fittings on subdivision work ever make up more
19 than ten percent of the overall project?

20 A. Yes.

21 Q. How frequently would it exceed ten percent?

22 MR. PARKS: Objection, you can answer.

23 THE WITNESS: I can't give you an accurate, it
24 varies.

25 MR. TRUITT: Q. Can you allocate the cost of

1 materials among the different products in a typical
 2 subdivision project?
 3 A. On a typical subdivision product -- say
 4 that again, please.
 5 Q. Yes, sir. Could you allocate the cost of
 6 materials among the different products in a typical
 7 subdivision project?
 8 MR. PARKS: Objection, asked and answered, you
 9 can answer.
 10 THE WITNESS: Yes, on a typical subdivision
 11 project. Being a typical probably pipe 50, valves,
 12 valves and hydrants 25 and fittings about 20
 13 percent.
 14 MR. TRUITT: Q. How about on a typical public
 15 works project?
 16 MR. PARKS: Objection, you can answer.
 17 THE WITNESS: There is no typical public works
 18 project, they are all different. It could be a
 19 hundred percent, it could be zero percent, they are
 20 variable.
 21 MR. TRUITT: Q. So the fittings component could
 22 range from zero to a hundred percent of a public
 23 works project?
 24 A. Sure, sure, yeah. And it can, the same way
 25 on a subdivision also but it's more of a rarity.

1 Q. We have talked about your testimony
 2 previously in this case, correct?
 3 A. Yes.
 4 Q. And you told me that was I guess a couple
 5 of years ago when you were running your business,
 6 correct?
 7 A. Yes.
 8 MR. PARKS: Objection, you can answer.
 9 MR. TRUITT: Q. And if you told Mr. Renner then
 10 that the cost of materials just for the fittings for
 11 a public works project would never be more than ten
 12 percent, would you disagree with that testimony here
 13 today?
 14 MR. PARKS: First of all, I am going to object,
 15 if you want to show him his testimony, that's fine.
 16 I'd like to see the what the question is --
 17 MR. TRUITT: Page 60 and 61.
 18 MR. MANN: Object to foundation as well.
 19 THE WITNESS: 60 and 61.
 20 MR. TRUITT: Q. Yes, sir.
 21 A. Okay.
 22 MR. TRUITT: Can we go off the record for just a
 23 second?
 24 (Discussion held off the record.)
 25 (Whereupon, Exhibit Number 1.

1 was marked for identification)
 2 MR. TRUITT: Q. Mr. Groeniger, I am going to
 3 hand you what I have marked as Exhibit 1 to your
 4 deposition, which I understand is a copy of your
 5 testimony in the investigational hearing taken on
 6 December 14th, 2010. Mr. Mann was kind enough to
 7 provide us with that.
 8 A. Okay.
 9 Q. We were talking about your testimony on
 10 pages 60 and 61. Let me ask you first, you were
 11 under oath for that testimony?
 12 A. That's correct.
 13 Q. And to the best of your ability you
 14 testified accurately and truthfully?
 15 A. Yes.
 16 Q. And I think I asked you earlier did you
 17 tell Mr. Renner, the lawyer who was talking to you
 18 then, that the cost of materials just for fittings
 19 would not exceed ten percent in a public works
 20 project?
 21 MR. PARKS: Objection, you can answer.
 22 THE WITNESS: Yes, I did say that.
 23 MR. TRUITT: Q. And was that accurate?
 24 A. Kind of. As best you can say is if you
 25 have to define this thing and say on every project

1 it's different, and there could be a project that's
 2 all fittings.
 3 So you really can't say in a public works
 4 scenario generally speaking, and the same thing you
 5 can't say in a subdivision, because there are
 6 manufacturers that will take the pipe on a direct
 7 basis.
 8 That means we as a supplier don't have that 40
 9 percent of the job anymore, that went direct to the
 10 manufacturer. So now we are dealing with a
 11 different set of percentages. So saying ten
 12 percent.
 13 If we are supplying everything on the job, okay,
 14 that very easily could be ten percent consistently.
 15 But there are so many variables it's hard to put
 16 it into that, and public works even more so.
 17 There are jobs the only thing we supply on the
 18 whole project are fittings. So that means that we
 19 are supplying a hundred percent and our quotation is
 20 based on a hundred percent, fittings are a hundred
 21 percent of our quotation.
 22 Does that happen a lot? There is a reasonable
 23 chance that it will happen, that all you will get
 24 out of this multi-million dollar project is the
 25 fittings, or the valves, or the service material,

1 the brass, different thing all together.
 2 But you don't normally get a turnkey order from
 3 the customer, he is going to buy a portion from you.
 4 So theoretically our quotation may have been for
 5 a million dollars of which fittings were ten
 6 percent, but in actuality, the only thing that we
 7 got an order for is the fittings at ten percent.
 8 So that would be been a hundred percent of what
 9 we supplied. So it varies.
 10 Q. Okay. I appreciate that. Can we agree
 11 when you were talking to Mr. Renner, the FTC lawyer
 12 who was taking your deposition, you told him on a
 13 typical project, on a typical subdivision project,
 14 the cost of fittings wouldn't exceed ten percent?
 15 MR. PARKS: Objection, you can answer.
 16 THE WITNESS: Yes.
 17 MR. TRUITT: Q. And likewise you told him the
 18 cost of fittings on a a typical public works project
 19 wouldn't exceed ten percent?
 20 MR. PARKS: Objection, you can answer.
 21 THE WITNESS: Yes.
 22 MR. TRUITT: Thank you.
 23 Q. Are you familiar with the American Relief
 24 and Reinvestment Act of 2009?
 25 A. Yes.

1 Q. Tell me what that was.
 2 MR. MANN: Before you begin, it's actually the
 3 American Recovery and Reinvestment Act.
 4 MR. TRUITT: Q. I know it was ARRA, do you know
 5 what ARRA means when I use ARRA?
 6 A. Yes.
 7 Q. Tell me what ARRA meant to your business,
 8 please, sir? Why were you interested in that?
 9 MR. PARKS: Objection, you can answer.
 10 THE WITNESS: Because it limited our capability
 11 of supplying traditionally what we supplied into
 12 certain regions.
 13 MR. TRUITT: Q. How so?
 14 A. Well, that everything had to be of domestic
 15 manufacture, not relating to NAFTA or other
 16 agreements for bringing material from Canada or
 17 Mexico.
 18 It required us to have written proof from our
 19 manufacturers that the material that is included in
 20 their product is of domestic origin.
 21 Q. Did you understand the law, the ARRA to
 22 require that or did you understand it to provide
 23 certain economic incentives if those goals were met?
 24 MR. PARKS: Objection, you can answer.
 25 THE WITNESS: I think both. I think it started

1 out as the goals but there was also enforcement, so
 2 that turned into a requirement.
 3 MR. TRUITT: Q. Do you know when ARRA was in
 4 effect?
 5 A. Approximately 2008, 2009. '10, '11. Even
 6 today I guess there is still a project here and
 7 there that comes out with a stipulation with the
 8 money being provided through the ARRA.
 9 Q. Prior to ARRA being enacted, what
 10 percentage of the fittings that you sold were of
 11 foreign manufacture?
 12 MR. PARKS: Objection, you can answer.
 13 THE WITNESS: Hard to say. 80 percent might be
 14 a reasonable number.
 15 MR. TRUITT: Q. Would the balance be made up of
 16 domestically manufactured fittings?
 17 A. Yes.
 18 Q. During the period that ARRA was in effect,
 19 did you sell any imported fittings?
 20 A. On an ARRA project?
 21 Q. No, sir, at all?
 22 A. Sure.
 23 Q. What was the mix of your sales during the
 24 time period that ARRA was in effect as to domestic
 25 and foreign?

1 MR. PARKS: Objection, you can answer if you
 2 can.
 3 THE WITNESS: What years?
 4 MR. TRUITT: Q. Whenever ARRA was in effect.
 5 A. From 2009 to '11?
 6 Q. Yes, sir. I am not agreeing with you
 7 that's when it was in effect, but let's say 2009,
 8 what was your mix?
 9 MR. PARKS: Same objection.
 10 THE WITNESS: It's hard to say, it's really
 11 difficult to say. And anything you are saying is
 12 putting it in a guesstimate just because it's being
 13 ahead at the time.
 14 I don't know that it can't be brought in more by
 15 looking at the archives or looking at historically
 16 what was done in the industry. But there were
 17 certain requirements on the ARRA projects and
 18 because the public works side was extremely
 19 confusing as to what monies were ARRA versus other,
 20 then probably 50 percent, let's say.
 21 MR. TRUITT: Q. I am sorry, I am just not sure
 22 I understood your testimony.
 23 I thought you said that pre-ARRA your mix was
 24 80, 20 where you were buying 80 percent imported
 25 fittings.

1 Do I understand you to tell me once ARRA was
 2 enacted the mix went to fifty-fifty?
 3 A. That's best estimate.
 4 Q. Best guestimate?
 5 A. Yeah.
 6 Q. Okay. What was the date of sale of
 7 Groeniger & Company?
 8 A. November --
 9 MR. PARKS: Let me interpose an objection. You
 10 can answer.
 11 THE WITNESS: November of 2010 -- '11. 2011.
 12 MR. TRUITT: Q. Did you understand ARRA to be
 13 in effect then?
 14 A. I assumed it was in effect. The money, if
 15 there were still extenuating projects that for one
 16 reason or another didn't get put out that were still
 17 covered under those, but it was very obvious when
 18 they were, they were stated as AARA financed, I
 19 presume it to have been, yes.
 20 Q. By 2011 was your mix still fifty-fifty or
 21 had it changed again?
 22 MR. PARKS: Objection, you can answer.
 23 THE WITNESS: I would say fifty-fifty still.
 24 MR. TRUITT: Q. And did Groeniger & Company at
 25 the time keep records that if we had access to them

1 we could tell exactly what the mix was?
 2 A. I presume they do, we have somewhere, yes.
 3 Q. You mentioned NAFTA just a minute ago. Did
 4 any of your suppliers of foreign fittings ever tell
 5 you that you'd be able to supply ARRA jobs with
 6 their foreign manufactured fittings under NAFTA?
 7 MR. PARKS: Objection, you can answer.
 8 THE WITNESS: There was some discussion about
 9 that, not with regard to ductal iron fittings
 10 because there was nobody that was bringing in
 11 fittings from Canada or actually anybody that had a
 12 complete line of fittings coming out of Mexico at
 13 that point.
 14 But I don't know if NAFTA incorporated South
 15 America, if that's part of the Americas, that they
 16 could come in from Brazil.
 17 But none of that ever materialized as far as I
 18 know from any of the manufacturers that we dealt
 19 with.
 20 MR. TRUITT: Okay.
 21 Q. Did you ever have conversations with SIGMA
 22 about being able to continue to use fittings they
 23 supplied under NAFTA?
 24 A. What time frame?
 25 Q. During the time period that ARRA was

1 active?
 2 A. Yeah, they said they could supply the Tyler
 3 fitting, so yes, they could supply a domestic
 4 fitting.
 5 Q. Let's back up. Did you ever have
 6 conversations with SIGMA about supplying a foreign
 7 made fitting during the time period that ARRA was in
 8 effect under NAFTA?
 9 A. No.
 10 Q. Any conversations with SIGMA during the
 11 time period that ARRA was in effect about using
 12 foreign manufactured fittings under any other act or
 13 treaty?
 14 MR. PARKS: Objection, you can answer.
 15 THE WITNESS: No, not that I know of.
 16 MR. TRUITT: Q. Were there waivers and
 17 exemptions to ARRA?
 18 MR. MANN: Objection, leading.
 19 MR. PARKS: Objection.
 20 THE WITNESS: I am sure there were some de
 21 minimis, the word "de minimis" came out of that,
 22 some sort of a "get out of jail free" card so to
 23 speak with regard to complying with a strict
 24 domestic NAFTA requirement.
 25 If it was not as, a portion of the project was

1 deemed significant and for the sake of getting the
 2 project done in a timely manner, there was
 3 exceptions that could be made.
 4 I don't know that I ever got any waiver of de
 5 minimis in all the time that I dealt with it, I
 6 don't even know that we knew enough about the
 7 legalities of what it was that we were trying to do
 8 to even attempt it.
 9 MR. TRUITT: Q. Do you know if other
 10 distributors took advantage of the de minimis
 11 exception?
 12 MR. MANN: Objection, vague.
 13 MR. PARKS: Objection.
 14 THE WITNESS: Couldn't tell you personally.
 15 MR. TRUITT: Q. Did you observe any end users
 16 relying on those waivers under ARRA to allow the use
 17 of imported fittings?
 18 A. No.
 19 Q. Mr. Groeniger, I refer you to page 105 of
 20 Exhibit 1, please.
 21 A. (Witness complies)
 22 Q. Have you had a chance to read --
 23 A. Yeah.
 24 Q. Do you see testimony at the top of page
 25 105, the question that was posed to you in your

1 prior testimony in this case, "Did you observe any
2 end users relying on those waivers to allow the use
3 of imported fittings?" Did I read that correctly?
4 A. Yes.
5 Q. And your answer was, "Yes." Did I read
6 that correctly?
7 A. Yes.
8 Q. Did Groeniger ever supply imported
9 fittings? To an ARRA job? I'm sorry.
10 A. We could have.
11 Q. Do you know as you sit here today if you
12 did?
13 A. I would assume that we probably could have.
14 Q. I am confused.
15 A. You are asking for have you ever supplied a
16 foreign fitting to an ARRA project?
17 Q. Yes, sir.
18 A. I would have to say probably we did, but
19 not under an exception to the rule, but as a
20 requirement if they needed a product that was
21 unavailable in a time frame to support the project.
22 And we supplied a fitting and got it approved
23 for that fitting, or whatever because of the need of
24 maintaining -- but as a whole, our submittals
25 without exception were for domestic applications.

1 In the act of supplying a project dealing with a
2 contractor, dealing with a local engineer, dealing
3 with those scenarios of getting the project done in
4 a timely manner, there are exceptions made. Whether
5 there is paperwork to that extent, I doubt.
6 But it was, we supplied a product that may not
7 have been domestic to a specification calling for
8 domestic because of the time constraints and
9 construction schedules, fully approved, fully
10 knowledgeable that was going on, it just had to be
11 done.
12 Q. Do you have any estimate of how many times
13 that occurred?
14 A. No.
15 Q. Would there be any records that would
16 reflect that?
17 A. No.
18 Q. Even if you had access to your records
19 today, that's not something that you would have kept
20 up with?
21 A. You would have to look at each individual
22 invoice on a project and look at the codes on the
23 particular item to verify this, if it was a domestic
24 or foreign manufacturer.
25 And you could probably find out that way but you

1 would be going through reams and reams and reams of
2 paperwork.
3 Q. If it was approved by a municipality would
4 that be another way to look for it?
5 MR. PARKS: Objection.
6 THE WITNESS: A municipality?
7 MR. TRUITT: Q. I think you just told me if
8 Groeniger did do that, that it was fully disclosed
9 and would have been approved by someone, correct?
10 A. I am sure it would have been okayed by the
11 engineer and the inspector. But not necessarily, I
12 don't know how far up the food chain it went.
13 Q. Would those records have been kept?
14 A. I doubt it.
15 MR. PARKS: Objection.
16 MR. TRUITT: Q. Did Groeniger ever supply ARRA
17 jobs with domestic product?
18 A. Yes.
19 Q. And do you have a sense of how many?
20 MR. PARKS: Objection, you can answer.
21 THE WITNESS: Some. Difficult, percentage of
22 what?
23 MR. TRUITT: Q. Percentage of total.
24 A. Total? Oh, it wasn't big, but it was
25 certainly not as big as I thought it was going to

1 be. Certain years possibly five, ten percent maybe
2 at the most. But then other years none.
3 MR. TRUITT: Q. Who did you buy the domestic
4 fittings from for the ARRA jobs that you supplied?
5 A. Predominantly Tyler.
6 Q. Anyone else?
7 A. Star. And some SIGMA.
8 Q. When did Star enter the domestic market?
9 A. 2008, 2009, in that time frame. I believe
10 that was about the approximate time. It was when
11 the ARRA became a viable business format.
12 Q. So whenever ARRA was passed?
13 A. Yes.
14 Q. Star would have entered about that time
15 frame?
16 A. Uh-huh.
17 Q. I need you to say yes or no.
18 A. I am sorry, yes.
19 Q. No problem. Do you know where Star was
20 obtaining the domestic product that they were
21 offering for sale?
22 A. As far as which foundry was making them?
23 No, I know it was a domestic, qualified as a
24 domestic manufactured item.
25 Q. Do you know if it was one or more than one

1 foundry?
 2 A. No.
 3 Q. Do you know if Star offered a full line?
 4 A. They did not.
 5 Q. What did they offer?
 6 A. They offered a basic line and were striving
 7 to build a complete line.
 8 Q. Are you familiar with the terms A, B and C
 9 items?
 10 A. Yes.
 11 Q. Just so we make sure we have the same
 12 terminology, would you tell me what your
 13 understanding of A, B and C items are?
 14 A. "A" items would be predominantly the high
 15 percentage usage items in small and medium sized
 16 diameters, four, six inch, eight inch, ten inch,
 17 twelve inch in size. Standard fittings, elbows,
 18 T's, adapters.
 19 When you start getting above 12 inch, that
 20 becomes more of a B item, bigger in diameter,
 21 different end connections, standard end connections
 22 would be B items.
 23 When you start getting into weird connections it
 24 goes to a C item, when you start getting into the
 25 bigger diameter, above 16 inch, then you are

1 starting to get specials and those would be the
 2 items that you would not normally stock, it would
 3 not be considered an A are a B item, would be
 4 definitely a C or beyond.
 5 Q. So when you told me that Star had a basic
 6 line, in terms of A, B and C items, did they have a
 7 complete line of A items?
 8 A. Relatively complete. I would say 80
 9 percent complete of A items.
 10 Q. And then what about B and C items?
 11 A. B items were less percentage, but they did
 12 B and some C items.
 13 Q. What time frames were involved in getting
 14 these items from Star?
 15 A. Varied.
 16 Q. Did they have inventory?
 17 A. They were building inventory, they had
 18 inventory on some items.
 19 Q. On some of the A items?
 20 A. Some of the A items they had inventory on,
 21 some of the B items they had inventory in, and they
 22 could make the C items for you in a reasonable
 23 amount of time that would make them equivalent to
 24 anyone in the industry.
 25 Q. What is a reasonable amount of time?

1 A. A items probably two weeks, B items no
 2 longer than three weeks to a month. And C items two
 3 or three months.
 4 Q. Was Tyler a full line supplier?
 5 A. On A items, yes. B items pretty much so.
 6 C items they would produce them as you wanted them.
 7 Q. Did they have an inventory of A, B and C
 8 items?
 9 A. Yes.
 10 Q. Could they provide those items to you
 11 faster than Star could?
 12 A. Domestically?
 13 Q. Yes, sir.
 14 A. Yes, yes, definitely.
 15 Q. Would that be a possibility of why some
 16 customers might prefer to do business with Tyler as
 17 opposed to Star on domestic fittings?
 18 MR. MANN: Objection, leading, foundation.
 19 MR. PARKS: Objection, calls for speculation.
 20 You can answer.
 21 THE WITNESS: Certainly availability is
 22 important, pricing is important. Cooperation is
 23 important.
 24 MR. TRUITT: Let's back up.
 25 Q. Let me ask you a question.

1 MR. PARKS: I am sorry, were you done with your
 2 answer?
 3 MR. TRUITT: Q. I am sorry, I didn't mean to
 4 cut you off.
 5 A. Whatever. Am I through? That was my
 6 answer.
 7 Q. I was going to ask you a better question.
 8 A. Okay.
 9 Q. What factors did you consider important
 10 when determining to do business and buy products
 11 from a domestic fittings supplier?
 12 A. Service, service, service. That is price,
 13 product availability and overall support.
 14 Q. How did Tyler's prices on domestic compare
 15 to Star's prices on domestic?
 16 A. I think A items were approximately the
 17 same, B items that were there, I think they were
 18 predominantly the same.
 19 I don't know that there was, in some cases they
 20 were less expensive, in some cases they were more
 21 expensive.
 22 We didn't buy that many A and B items from Star,
 23 we bought mostly C items from Star which were
 24 specials, cast specially for a project and so forth
 25 like that.

1 Q. Were those mainly for plant jobs?
 2 A. Those were mainly for public works jobs.
 3 Q. Thank you. What about product availability,
 4 how did Star and Tyler compare on domestic product?
 5 A. We never went to a formal agreement with
 6 Star as to A and B items. We went on a purchase
 7 order basis for public works application. ARRA
 8 projects. And in those cases their availability was
 9 equivalent, in some cases better.
 10 Q. And you mentioned, I think the third item
 11 you mentioned was overall support. How did Tyler
 12 and Star compare in overall support?
 13 A. Star was better in overall support.
 14 Q. What do you mean when you say overall
 15 support?
 16 A. Let me just say they were better in
 17 support.
 18 Q. What do you mean when you say support?
 19 A. Discussions on our needs, tailoring the
 20 deliveries to our standards, looking at us as the
 21 important customer, not just one of the boys,
 22 singling us out as different and supporting us
 23 uniquely.
 24 Q. It sounds like based on your testimony you
 25 preferred to do business with Star as opposed to

1 Tyler. Would that be correct?
 2 A. Not necessarily.
 3 Q. Okay. Why not?
 4 A. Total product availability, A and B items,
 5 total inventory, those are reasons.
 6 Q. You were free to do business with either
 7 one, right?
 8 MR. PARKS: Objection, you can answer.
 9 MR. MANN: I will also object leading.
 10 THE WITNESS: It's not all that clear of a
 11 scenario.
 12 MR. TRUITT: Q. Why not?
 13 A. There could be ramifications and that could
 14 affect us drastically if things were not done
 15 certain ways.
 16 Q. I am trying to understand what those are,
 17 Mr. Groeniger. What ramifications are we talking
 18 about?
 19 A. We could lose the Tyler capability of
 20 buying at a competitive price from Tyler. If we
 21 didn't support them completely with regard to
 22 domestic fitting.
 23 (Whereupon, Exhibit Number 2 was
 24 marked for identification)
 25 MR. TRUITT: Q. Mr. Groeniger, I am showing you

1 what I have marked as Exhibit 2 to your deposition.
 2 Take as much time as you need to review that.
 3 A. (Witness complies) Okay.
 4 Q. Are the ramifications you were just telling
 5 me about, are those embodied in this letter I have
 6 marked as Exhibit 2?
 7 A. Part of it, yes, it was.
 8 Q. Again, I am still trying to understand.
 9 Some of the ramifications that you were concerned
 10 about are set forth in Exhibit 2; is that right?
 11 A. Some of them, yes.
 12 Q. Well, let's try and get them all out there.
 13 What others are there -- tell me the ones that are
 14 in Exhibit 2 first, please.
 15 A. What is your question then?
 16 Q. Yes, sir. What are the ramifications that
 17 you were concerned about that you testified earlier
 18 that are embodied in Exhibit 2?
 19 A. Well, at first appearance this didn't seem
 20 like a major threat, mainly because the word SIGMA
 21 was involved.
 22 SIGMA was our prime supplier of foreign product,
 23 but understanding that they were now part of this
 24 domestic application, we felt that SIGMA's support,
 25 SIGMA's service would now reflect a domestic

1 forehand, that we really did not need Tyler.
 2 And going through the hoops and jangles, the
 3 policemen looking over our fences, taking pictures
 4 of what we did, we could simply buy the Tyler from
 5 SIGMA which was potentially great for us.
 6 Because SIGMA had the best service, service,
 7 service by far, not even close. Better than Star,
 8 much better than Tyler.
 9 So we felt, we didn't -- if this was as it was
 10 on the face of the letter, I could have lived with
 11 it.
 12 Didn't turn out to be that way, but as this
 13 letter here shows, I felt confident that we were,
 14 that we would be able to supply through SIGMA and
 15 everything was going to be the same format.
 16 Q. Okay. If you look at the third from the
 17 bottom paragraph, it says, "Customers who elect not
 18 to support this program may forgo participation in
 19 any unpaid rebates for domestic fittings and
 20 accessories."
 21 Was that one of the ramifications that you were
 22 concerned about?
 23 A. Well, if SIGMA wasn't in this then I
 24 would -- yes, because I would have thought buying
 25 them through SIGMA would still be enforcing the

1 McWane idea or philosophy.
 2 Q. I'm sorry, go ahead.
 3 A. That's --
 4 Q. Let me ask you, after this letter of
 5 September 22, 2009, Groeniger purchased materials,
 6 domestic materials from Star, correct?
 7 A. Some.
 8 Q. Did you forego any rebates from Tyler?
 9 A. Yes. Or pricing from Tyler.
 10 Q. What rebates did you forego?
 11 A. Rebates I have to look at to be accurate
 12 because Tyler was involved through TDG and the
 13 rebates were coming back through them.
 14 And SIGMA was also in the TDG and rebates were
 15 coming back through them.
 16 Q. Let me back up then. Is your testimony as
 17 to whether or not you had to forego any rebates that
 18 you don't know?
 19 A. I don't know.
 20 Q. And then this paragraph third from the
 21 bottom goes on to say, "Customers who elect not to
 22 support this program may forego shipment of their
 23 domestic fitting and accessory orders of Tyler Union
 24 or Clow Water products for up to 12 weeks."
 25 After you purchased Star domestic product

1 postdating the date of Exhibit 2, was there any 12
 2 week period where Tyler refused to sell to
 3 Groeniger?
 4 A. I don't know if we purchased any Star
 5 domestic fittings after this date. I think
 6 fittings, the project that we did with Star were
 7 probably before these dates.
 8 And looking at the time frame of a public works
 9 job the size of one, I know two particular jobs that
 10 we supplied, big projects that we supplied Star
 11 fittings on, and I think those probably were before
 12 this letter came out.
 13 Q. What were those two jobs, what were the
 14 names of those two jobs?
 15 A. They were in Yuba City, big projects in
 16 Yuba City.
 17 Q. Was one the Walton Avenue job?
 18 A. That's one.
 19 Q. Was the second the Kerman, California job?
 20 A. I don't recall Kerman. That's not in Yuba
 21 City.
 22 Q. Do you recall supplying product for a
 23 Kerman, California water treatment plant job?
 24 A. That might have come out of the plant
 25 division, which was a division of ours at the time.

1 May have, I couldn't tell you.
 2 Q. Walton was one of the Yuba City jobs, do
 3 you remember the name of the second?
 4 A. It might have been in the form of two
 5 different jobs, I don't remember the names but I can
 6 find those out but I don't remember the exact name.
 7 But Walton was one I know.
 8 Q. Do you remember there ever being a 12 week
 9 period after September 22, 2009 when Tyler declined
 10 to sell you domestic product?
 11 A. Are you talking about the threat or actual
 12 happening?
 13 Q. No, sir, I am talking about did they ever
 14 do it? Was there ever a 12 week period where they
 15 said because you bought from Star we are not going
 16 to sell to you? Did that ever happen?
 17 MR. PARKS: I am sorry, I am confused by the
 18 question.
 19 MR. TRUITT: Sure.
 20 MR. PARKS: Are you saying did they ever say
 21 that or did they ever do that?
 22 MR. TRUITT: Q. Well, I think my question is
 23 clear.
 24 What I am saying is was there ever a 12 week
 25 period after September 22, 2009 when Tyler declined

1 to sell you domestic product?
 2 A. No.
 3 Q. Was there ever a period after September 22,
 4 2009 when you asked for domestic product and they
 5 said they wouldn't sell it to you?
 6 A. Yes.
 7 Q. Tell me when that was.
 8 A. I can't tell you the date but it was
 9 probably sometime after that. We were informed that
 10 they were going to pull everything away from us, a
 11 threat.
 12 Q. And did they follow up, did they in fact do
 13 it?
 14 A. Some of it they did.
 15 Q. Well, I am confused. What some of it did
 16 they do?
 17 A. We have annual contracts for different
 18 municipalities. And these contracts are priced in
 19 December of one year and carry on through December
 20 of the next year.
 21 And these are quite sizeable districts, you are
 22 signing contracts with these people that you hold
 23 prices for a period of time.
 24 Some of them have escalators, others don't. And
 25 the people that don't require you as the supplier to

1 hold the prices.
 2 So when you go out to a manufacturer to support
 3 the specification, you have to get them to honor
 4 that time frame, otherwise you either don't bid it
 5 or you bid it so high that you can handle price
 6 increases throughout the year that may or may not
 7 happen. And you hope you are accurate so it doesn't
 8 cost you money at the end.

9 But in the case of one major district, Tyler
 10 declined after the fact to support the pricing after
 11 we had received the purchase order for a portion of
 12 that contract.

13 Q. Let me make sure I understand your
 14 testimony. They offered to sell you the product but
 15 at a higher price?

16 A. That's correct.

17 Q. And was the price competitive with other
 18 suppliers at the time?

19 A. No.

20 Q. It was higher than you could get from other
 21 suppliers?

22 A. It was higher than other suppliers were
 23 selling the same thing to the same district to the
 24 same construction contractors.

25 Q. Which job are we talking about now?

1 A. This is the city of, San Jose Water
 2 Company, annual contract.

3 Q. So did you end up buying domestic from Star
 4 in that case?

5 A. No.

6 Q. Who did you buy from?

7 A. Tyler.

8 Q. Did they reduce their price?

9 A. Not for six months they didn't.

10 Q. Did you purchase at the higher price?

11 A. Yes.

12 Q. After six months did they reduce their
 13 price?

14 A. Yes.

15 Q. What happened for the six month interim
 16 period?

17 A. Many e-mails, letters from our customers,
 18 letters from the agency in support of our position.

19 And they finally agreed that we did have the
 20 contract and went back to the contract price.

21 Q. So for the six month period did they
 22 reimburse you for the difference between the two?

23 A. Some of it they reimbursed us for.

24 Q. What was the total amount that you are not
 25 reimbursed for?

1 A. I couldn't tell you, that comes in the form
 2 of brownie points with our customers, the agency.
 3 Because we had to go to them and say one of our
 4 suppliers is not working with us, and in all cases
 5 they could go buy it from another person at the
 6 contract price, and it was just the loyalty to us
 7 that said, and the fact that during the interim we
 8 sold them at the contract price, that means we were
 9 losing money on every fitting we sold them, but we
 10 said we had to do that, we were obligated, but we
 11 needed their help to get the manufacturer, who was
 12 the only manufacturer approved in this district, the
 13 only domestic manufacturer that is approved.

14 Q. Let me make sure I understand. After
 15 September 22nd, 2009, the date of Exhibit 2, Tyler
 16 never declined to sell you product, correct?

17 A. That's correct.

18 Q. You have told me about this one instance
 19 with the San Jose water district where your
 20 testimony is that Tyler raised the price of the
 21 product for a six month period, correct?

22 A. That's correct.

23 Q. And subsequently they went back down to a
 24 lower price you believe you had previously agreed
 25 to, correct?

1 A. That's correct.

2 Q. And then they reimbursed you for the
 3 amount, the delta between the higher price and the
 4 price you thought you had agreed to for the six
 5 months, correct?

6 MR. PARKS: Objection.

7 THE WITNESS: No, I wouldn't say they did for
 8 all of it, no. We made an agreement that we would
 9 get some of that back. All of it, I don't think so,
 10 but some of it.

11 I can't tell you what percentage, but it was an
 12 agreement we made finally to resolve the issue but
 13 it was we'll give you some of that. They didn't go
 14 back and correct the complete issue, no.

15 MR. TRUITT: Q. Other than the one example with
 16 San Jose, was there another issue with Tyler
 17 supplying you product at what you believe was a
 18 higher price?

19 A. Well, I don't know when the loyalty pricing
 20 was enacted id or suspended or whatever, but there
 21 was a loyalty discount that Tyler gave beyond any,
 22 beyond any rebates.

23 Q. Are you talking about way back, many years
 24 ago?

25 A. This is many years ago, in the 2000s, so it

1 could be 4, 5, 6 and there was constantly pressure
 2 that if you bought somebody else's material you
 3 could lose that. So that was a constant fight.
 4 Q. In the 2007 to 2010 time frame that I have
 5 been talking to you about today, did Tyler have any
 6 sort of a loyalty program?
 7 A. They could have but I couldn't tell you.
 8 Q. To your knowledge the loyalty program you
 9 just testified about predates that time frame,
 10 doesn't it, predates the 2007, 2010?
 11 A. I couldn't tell you, I honestly can't.
 12 Q. Fair enough, you just don't know one way or
 13 the other; is that correct?
 14 A. That's correct.
 15 Q. I am trying to understand all the
 16 ramifications.
 17 I understand that there is a policy set forth in
 18 Exhibit 2 that Tyler may decide not to honor rebates
 19 and that they may withhold product from you for 12
 20 weeks. We have talked about that, you have told me
 21 about San Jose.
 22 Are there any other examples that you call
 23 ramifications that you talked about earlier?
 24 MR. PARKS: Objection, you can answer.
 25 THE WITNESS: I am inclined to feel that there

1 were, but I can't tell you. I can't remember the
 2 exact times and dates.
 3 There was -- considering all the manufacturers
 4 we buy from, the hundreds of manufacturers that we
 5 supply material from, Tyler was the most aggressive,
 6 most demanding, most policed than any other supplier
 7 we dealt with, and that's big because we deal
 8 millions of dollars with other manufacturers.
 9 And some manufacturers we were one of their
 10 largest suppliers in the country. And we always
 11 paid our bills on time.
 12 If they offered a discount we discounted, so we
 13 were paying very, very quick. So it had to do with
 14 the loyalties of why we would prefer to go with
 15 someone else versus Tyler.
 16 Q. You didn't like the way Tyler did business?
 17 A. No.
 18 Q. But in terms of refusing to deal with you,
 19 they never refused to sell you anything because you
 20 had a relationship with Star, did they?
 21 A. Yes.
 22 Q. Tell me what, please.
 23 A. What --
 24 Q. What did Tyler refuse to sell you --
 25 A. They shut us down once, they said no more

1 materials.
 2 Q. When was this?
 3 A. Back probably in the late 80s. I am just
 4 telling you when it happened.
 5 MR. PARKS: You can laugh all you want, but you
 6 asked a question without a date restrictor and you
 7 got an answer without a date restrictor. That's
 8 your fault.
 9 MR. TRUITT: Q. In the 2009 time frame after
 10 receiving this letter, Mr. Groeniger, did Tyler ever
 11 refuse to sell you something because you had a
 12 relationship with Star?
 13 A. Not to my knowledge.
 14 Q. In the 2009 time frame after receiving
 15 Exhibit 2 and later, did Tyler ever not pay you a
 16 rebate that you were due because you had a
 17 relationship with Star?
 18 A. I don't think so.
 19 Q. Are there any other ramifications other
 20 than the one you have told me about with the San
 21 Jose project that you believe you suffered because
 22 of your relationship, that you suffered from Tyler
 23 because of your relationship with Star?
 24 A. No.
 25 Q. One of the allegations in this case made by

1 the FTC is that in the 2008, 2009 time frame, Star,
 2 SIGMA and Tyler engaged in a price fixing
 3 conspiracy.
 4 Do you have any personal knowledge about that
 5 one way or the other?
 6 A. No.
 7 Q. Do you know of anyone at Groeniger &
 8 Company who has any information about that?
 9 A. No.
 10 Q. Groeniger & Company has filed its own
 11 separate private party lawsuit against Tyler; is
 12 that correct?
 13 A. That's correct.
 14 Q. And is that still for lack of a better word
 15 an asset that belongs to you after the sale of the
 16 business?
 17 A. I believe so.
 18 Q. I am going to look at my notes, I think
 19 those are the vast majority of the questions that I
 20 have, Mr. Groeniger.
 21 While I am doing that, I am going to let Mr.
 22 Mann -- so we don't slow down.
 23 (Lunch recess taken.)
 24 EXAMINATION BY MR. MANN
 25 MR. MANN: Q. Good afternoon, Mr. Groeniger.

1 A. Good afternoon.
 2 Q. We met earlier today but just for the
 3 record my name is Andrew Mann and I am an attorney
 4 with the Federal Trade Commission.
 5 A. Yes.
 6 Q. And back in December of 2010 you provided
 7 previous testimony to my colleague Chris Renner; is
 8 that correct?
 9 A. That's correct.
 10 Q. A lot of the questions just to give you a
 11 preview that I am going to go over, may seem
 12 somewhat redundant but I wanted to go over some of
 13 the basic industry facts that were discussed
 14 previously, not only this morning but also in your
 15 previous testimony, just so I can make sure we are
 16 still, things haven't changed. Is that okay?
 17 A. Yes, sir.
 18 Q. Before I get there though, do you have
 19 personal knowledge of what your customers wanted
 20 when Groeniger & Company was a going concern?
 21 A. Yes.
 22 Q. And how did you know what your customer's
 23 wanted?
 24 A. I was a salesman, I was a warehouseman, I
 25 was a truck driver.

1 I came from the bottom of the food chain in
 2 dealing with customers, in dealing with
 3 relationships and in most cases I am dealing with
 4 the sons of the owners that I dealt with from
 5 inception, so I know who begat who, begat who, who
 6 died and where they were buried. And so I have that
 7 background.
 8 We attempted to hire people with that type of
 9 background. And we were successful at that and so
 10 most of our outside salesmen had 20 plus years, 30
 11 years, some cases 40 years backlog from other
 12 companies all right in their format.
 13 Q. Did your customers communicate directly to
 14 you when you were serving as a salesman and also in
 15 your previous positions why they wanted certain
 16 things?
 17 A. Yes.
 18 Q. And was having this knowledge important to
 19 the success of Groeniger & Company?
 20 A. I believe so.
 21 Q. Mr. Truitt before we broke for lunch asked
 22 you a question about whether or not Tyler had ever
 23 cut you off from supply and you mentioned that there
 24 was an instance back in the 80s. Could you tell me
 25 about that instance?

1 MR. TRUITT: Objection, relevance.
 2 MR. PARKS: That's just for the record, you can
 3 answer the question.
 4 MR. MANN: Q. Go ahead.
 5 A. It was a situation where we were buying the
 6 vast majority of our materials from SIGMA, but there
 7 were districts or customers that required Tyler. By
 8 name.
 9 Not necessarily because they were domestic, but
 10 they were the standard, the long time standard.
 11 And so even though we had something we thought
 12 was the equivalent and/or better, they still said we
 13 want Tyler, okay, we will supply Tyler. So we were
 14 buying from Tyler to support those specifications.
 15 Did we actively try to change these
 16 specifications? Maybe a little bit but we left that
 17 pretty much up to the other manufacturers to get
 18 them changed.
 19 We didn't at that time, we were not that active
 20 in the specification work for SIGMA. They had their
 21 own people in the area that were from their factory
 22 so they could do a better job anyway so we left that
 23 to them.
 24 But there were certain districts that required
 25 Tyler and we were buying Tyler. 20 percent maybe of

1 our total fitting purchases were coming from Tyler.
 2 Q. And at what point were you cut off, at what
 3 point did Tyler cut you off?
 4 A. They came in and said all or nothing, I
 5 think they more or less made their mind up, you are
 6 out, you are not buying enough, you are out. It was
 7 a shock, I was upset that that could happen.
 8 And I think it's the first time any manufacturer
 9 shut us off because of that, because they didn't
 10 like the way we were paying, I have had that over
 11 the years, early years, but certainly not because we
 12 weren't buying enough or there was complaints from
 13 other people that were buying more that they should,
 14 if they cut us off it would allow them to make more
 15 profit on their whole project, whatever it was.
 16 It was one of those or all of those, but we were
 17 cut off, I was upset. I called SIGMA and told them
 18 what happened. They said don't worry about it,
 19 we'll support you.
 20 Which I didn't realize to the extent to which
 21 they would support us at that point, we did a lot of
 22 work with them, had a long history with them.
 23 But they did, they supported us so well that we
 24 didn't miss it at all, we were buying Tyler fittings
 25 from SIGMA, where they were buying them, I don't

1 know, this was before any arrangements like this or
 2 anything like this.
 3 They were bitter competitors at the time. So
 4 they went out and bought them on the open market and
 5 sold them to us at the price we would pay Tyler for
 6 them.
 7 They were losing money, I knew that, but they
 8 did this and I was just amazed that someone would go
 9 out of their way to support us that way. And that
 10 kind of tightened the relationship well.
 11 Q. At what point did Groeniger & Company and
 12 Tyler start doing business again after this
 13 instance?
 14 A. Well, I think that was due to change in
 15 command. The only gentleman that I have ever
 16 escorted out of my office and off my property was a
 17 Tyler manager, the only time in 48 years of business
 18 that I ever did anything like that. So I mean, the
 19 relationship is certainly up and down.
 20 People changed, new people came in, were more
 21 sale oriented and I thought hey, maybe these guys
 22 can maybe make a change and we'll give it a shot and
 23 it worked for awhile.
 24 But they were wanting more and we were not
 25 giving them as much as they would like to see from

1 us. But we probably gave them more business because
 2 of that, maybe 33 percent of our business.
 3 Star was still not a viable alternative. So it
 4 was SIGMA getting the vast majority and then we were
 5 not buying any more domestic at all from SIGMA, we
 6 were buying strictly from Tyler when we needed Tyler
 7 or domestic application, some of that was starting
 8 to show its head at that point.
 9 Q. Do you recall how long you were cut off
 10 from Tyler?
 11 MR. TRUITT: Objection, relevance.
 12 THE WITNESS: Year, two years. Maybe three.
 13 MR. MANN: Q. Shifting focus, just going back
 14 to earlier testimony that you provided, could you
 15 clarify exactly what lines of business Groeniger &
 16 Company did business in?
 17 It sounded like you stated that it's a
 18 distributor for water projects, what other types of
 19 projects?
 20 A. Depends on the years you are talking about.
 21 From its inception, from Groeniger's inception we
 22 were a manufacturer's representative for a
 23 manufactured item, then we became a full line
 24 distributor for many items.
 25 We were in the irrigation, fire protection,

1 water works, sewer, storm drain. So that pretty
 2 well covers it.
 3 Q. Did Groeniger & Company ever compete in the
 4 plumbing business?
 5 A. No.
 6 Q. Are you familiar with the terms, or let me
 7 back up. If I were to use the term "water works
 8 business," what would that mean to you?
 9 A. That would be valve, pipe and fittings for
 10 water application.
 11 Q. Are those same fittings used in the water
 12 works business used in other lines of your business?
 13 A. Yes.
 14 Q. And what lines would those be?
 15 A. Well, fire protection uses some of the same
 16 materials, except with a little bit different
 17 specification, different approvals.
 18 Underwriters Laboratory, Factory Mutual
 19 requirements for fire protection items are mandatory
 20 so there are certain product lines in all these
 21 things that have to carry those approvals beyond the
 22 AWWA standard.
 23 Q. So what products are sold, you stated
 24 already that the pipe, valves, hydrants and fittings
 25 for water works.

1 What about in waste water, what other products
 2 sold in waste water?
 3 A. The same, the same. They could even use a
 4 hydrant in a waste water application. They do it
 5 out here, they just paint it purple.
 6 Waste water is raw sewage, treated waste water,
 7 which they pump back into the system and send out
 8 for irrigating, golf courses, that type of stuff,
 9 usually coming back from the sewage treatment plant,
 10 but it's been re-energized and disinfected, probably
 11 doesn't taste real good but wouldn't kill you.
 12 So that would be considered waste water
 13 application even though it's using it with a meter,
 14 they even have the meter outside your house and that
 15 is another meter next to the water meter and those
 16 goes for the irrigation for your yard and the other
 17 is for the potable water that goes into the house.
 18 More of your new subdivisions today are now
 19 putting those type of systems in effect so they
 20 don't have to use all the water, good water for
 21 irrigating property and plants, they can use the
 22 reclaimed which maybe makes them grow better, I
 23 don't know.
 24 Q. What products are sold in the drainage side
 25 of the business?

1 A. Well, drainage is, they still have valves
 2 for that and they still have fittings for that but
 3 they are low pressure because it's more of gravity
 4 application.
 5 Sewer systems are mostly gravity, there are
 6 exceptions where you are pressurizing where you
 7 don't have a gravity fall.
 8 But when it's -- the standard products are
 9 usually thinner wall, not pressure rated, handling
 10 up to three or four pounds of pressure, and it's
 11 just for when you have rainfall that fills the line
 12 up and it moves the water from one place to another.
 13 Q. Are ductal iron fittings, pipe fittings
 14 used in drainage situations?
 15 A. Some.
 16 Q. Do you see them used typically in drainage
 17 lines?
 18 A. Typically, no, but there are reasonable
 19 ways that you would, that's if you are shallow, if
 20 you are not deep and you can be affected by road
 21 traffic, then they would make the line ductal so
 22 they don't have to worry about a track driving over
 23 it and squashing it.
 24 Q. So if the pipeline is using ductal iron
 25 pipe in a drainage application, then you would see a

1 ductal iron pipe fitting being used?
 2 A. Most likely, yes.
 3 Q. All right. What type of pipe is typically
 4 used in a drainage application?
 5 A. They call it storm drain piping, low
 6 pressure. It could be PVC, it could be thin wall
 7 ductal, it could be steel, corrugated steel,
 8 corrugated polyethylene, anything that doesn't
 9 require a high pressure water application.
 10 Q. Are ductal iron pipe fittings primarily
 11 used in high pressured applications?
 12 A. Yes.
 13 Q. Are you familiar with the terms "line work"
 14 and "plant work"?
 15 A. Yes.
 16 Q. What is line work?
 17 A. Plant, they can be confused because there
 18 is line work within a plant project.
 19 A project is so big and the plant is the piping
 20 that is within the plant that is usually exposed,
 21 it's got your valves and it's in a building and you
 22 can get to all the products, the line work is
 23 underground.
 24 In most cases, all plants have line work too
 25 because they have sections bringing the water in and

1 coming out that are underground.
 2 So they are part and parcel to the whole
 3 picture, but they are separated by -- maybe a
 4 different contractor will sub bid that portion from
 5 the general contractor that is doing the whole
 6 plant. Other times they could do it themselves too.
 7 Q. So if you were explaining to someone not
 8 familiar with the water works industry what line
 9 work is, how would you describe line work?
 10 A. That is a phrase that is not really used
 11 real heavily in our business.
 12 Line work is something you would use in the
 13 power line I think. If it's pipeline work then it's
 14 underground or overhead or exposed or not exposed.
 15 And that details the type of contractor, whether
 16 he is a mechanical contractor or underground
 17 contractor.
 18 Q. So in an underground pipeline project, what
 19 are the typical products that are used in an
 20 underground pipeline project?
 21 A. Pipe, valves, fittings, accessories, air
 22 valves, little things to make the pipeline work.
 23 Q. And what are the products that are sold in
 24 the plant work projects that you have previously
 25 described?

1 A. Pipe, valves and fittings, the same, but a
 2 different end connection. Different coatings,
 3 linings, different end conditions there of the
 4 piping too.
 5 Different variables of accessories items to make
 6 the line work, different types of air valves,
 7 different types of control valves, turn things on,
 8 turn things off type of thing.
 9 Q. Does Groeniger & Company keep track of the
 10 number of projects it services in a particular year?
 11 A. No.
 12 MR. PARKS: You mean like on a score card or
 13 something like that?
 14 MR. MANN: Q. Just if I were to ask how many
 15 did Groeniger & Company service in 2008, would you
 16 be able to answer that?
 17 A. Hundreds.
 18 Q. Hundreds in more than 200 but less than
 19 five?
 20 A. It would be more than 200. But you are
 21 talking about a project of this size and you are
 22 talking about a project of this size.
 23 So you are talking about immense differences,
 24 there is projects that will span years.
 25 Q. I won't worry about that. Earlier

1 Mr. Truitt asked you about some revenue and I
2 believe you stated that in 2006 it was, your annual
3 revenue was 210 million and that by 2010 it was less
4 than a hundred million. Do you recall that?

5 A. Yes.

6 Q. And he then asked what percentage of that
7 revenue was derived from ductal iron pipe fittings
8 and you stated it was 20 to 25 percent as part of a
9 package.

10 I guess I wanted to circle back around and make
11 sure. Is it your testimony that 20 to 25 percent of
12 your annual revenue is ductal iron pipe fittings?

13 Or is it your testimony that 20 to 25 percent of
14 a typical package would be consisted of fittings and
15 so we could extrapolate -- do you see where I am
16 going with this? Can you clarify for us?

17 MR. TRUITT: Object to the form of the question.

18 MR. PARKS: You can answer.

19 THE WITNESS: It's difficult to say because in
20 some cases of annual contracts, we at that time had
21 the annual contracts for the City and County of San
22 Francisco for fittings. And that's all the contract
23 was for was for fittings.

24 We had the annual contract for pipe but not
25 necessarily all at the same time. If we were low

1 bid on that contract for that year we got that.
2 So different times we had contracts for specific
3 things and one was for fittings and it was a big
4 contract, that was a considerable amount of
5 fittings, that's possibly 5, \$600,000 of fittings
6 over a year's period of time. So that skews things
7 a bit.

8 I'd have to go back and take a look at our total
9 volume of fittings from the three or four or five
10 people we bought fittings from and relate that to
11 the total and say it was over ten percent, it's 12
12 percent, I don't think it was much more than 15
13 percent on a total average of everything, but there
14 could have been times where, years where it was
15 higher or lower.

16 MR. MANN: Q. During the time period of 2007 to
17 2010, did you purchase the majority of your
18 fittings, ductal iron pipe fittings through the
19 distribution group?

20 MR. TRUITT: Object to the form, majority.

21 THE WITNESS: Well, we didn't, I would say we
22 didn't purchase anything from the group, they gave
23 us the outline of manufacturers that we could
24 support. And be within their scope of approvals.

25 And yes, we did buy the vast majority if not all

1 from that. We did not deviate at all.

2 MR. MANN: Q. And as part of the current
3 proceeding Groeniger & Company received a subpoena
4 from both McWane as well as from the FTC
5 specifically asking for the total amount of
6 purchases that were made from the different ductal
7 iron pipe fitting suppliers.

8 And the distribution group also received a
9 subpoena and there was an agreement that the
10 distribution group would supply the Federal Trade
11 Commission as well as McWane with all of the
12 purchases for this time period for the members.
13 And what I am trying to figure out is whether or
14 not that would be a good source to turn to to figure
15 out what your purchases were during this time
16 period.

17 And so my question to you is were the majority
18 if not all of your fittings purchases in 2007, 2008,
19 2009 and 2010 purchases that would have fallen under
20 the distribution group umbrella?

21 A. That would be an excellent source, and
22 extremely accurate.

23 Q. How many employees did Groeniger & Company
24 employee?

25 MR. PARKS: At what time?

1 MR. MANN: Q. In 2011.

2 A. Oh, we were possibly down to less than a
3 hundred.

4 Q. And in 2010?

5 A. Maybe 105.

6 Q. And in 2009?

7 A. 120. This is all guessing of course. I
8 could verify that but I'd have to search through
9 records again.

10 Q. And in 2008 do you recall?

11 A. Well, let's put it this way, Counselor. At
12 2006 we had over 250 employees and we were starting
13 to slide about 2007 and we were laying people off,
14 closing branches, trying to stay ahead of the
15 recession.

16 Q. In general what percentage of your
17 employees are involved in management?

18 A. What do you mean by management?

19 Q. Let me ask a better question. If you had
20 to divide up all of your employees into different
21 categories, like management, administration, sales,
22 what type of categories would you classify your
23 employees in?

24 A. What we call managers, we had regional
25 managers, we had branch managers and we had

1 officers. That was our breakdown.

2 Q. What percentage of your total number of
3 employees would fall into the regional manager,
4 branch manager and officers categories?

5 MR. TRUITT: Objection, it's vague and
6 ambiguous, number of employees changed dramatically
7 over time he testified.

8 THE WITNESS: Well, as far as the officers, we
9 had a core of officers that really didn't change
10 until real late, and that was one, two, three, four,
11 five, six, seven. Seven people that were the
12 officer core and the senior management of the
13 company, ownership, maybe weren't an officer but had
14 ownership of the company that worked there. They
15 had to be working to be in that group.

16 And it continued all the way on until probably
17 2011 before some of those departed.

18 MR. MANN: Q. Focusing on sales, how many sales
19 people did you have in 2011?

20 A. Hard to say. Each branch had four or five.
21 We considered inside sales, outside sales.

22 Q. What are the differences between an inside
23 sales individual and an outside sales individual?

24 A. Outside sales are classified as being
25 outside and usually do not run on the clock.

1 The inside sales punch a time clock and are
2 compensated differently, in regards to vehicles,
3 that type of scenario.

4 Q. What are the responsibilities of an outside
5 salesperson?

6 A. They have responsibility for the account,
7 they have a responsibility to see that their
8 accounts are handled properly and efficiently.

9 And they support from their inside counterpart,
10 if they are not in the office the inside person will
11 take care of the calls and make sure things are
12 processed as if the outside sales person were there
13 also.

14 It's a two pronged attack, if the customers, if
15 they can't get ahold of the outside salesperson,
16 this was before cell phones really took off, you can
17 get ahold of anybody anytime now, but back then we
18 had two way radios and sometimes it was hard to get
19 people, whether they wanted to be found or not. But
20 the inside person was always there and could handle
21 it.

22 Q. Any other responsibilities that an outside
23 salesperson would have other than managing an
24 account?

25 A. Well, we were relatively loose as far as

1 our responsibilities go and that if he could
2 purchase, he could purchase materials for his
3 projects.

4 So instead of having one purchasing agent, we
5 had five, some were better at it than others.

6 Q. When you say he could purchase, what does
7 that mean?

8 A. Well, he could purchase the products for
9 his job. So he could regulate in some cases his
10 costs.

11 If he was really good at it or had a real good
12 friend, he could buy something cheaper than maybe
13 our purchasing agent could buy it for his project.

14 And every invoice prints out and has the
15 percentage on it, and if it falls below a certain
16 percentage a light will go on and then we'll counsel
17 him, what happened here.

18 So they would like to avoid that at all costs
19 just because it makes them a little more vulnerable
20 I guess.

21 Q. Early earlier you indicated that one of the
22 rationales for having multiple branches was to be
23 close to the projects. Is one of the functions of a
24 branch, is it to carry inventory?

25 A. Yes.

1 Q. And do you recall what Groeniger's
2 inventory value was in 2011?

3 A. Probably 14 million.

4 Q. Do you recall what it was in 2010?

5 A. No, but I can tell you the high mark and
6 the low mark, we were somewhere in between. We were
7 at 26 million in 2005.

8 Q. I am just focused on water works inventory.

9 So when I say water works let's include the
10 water works as well as the waste water applications.

11 Do you know how much of your inventory value in
12 2011 was for water and waste water products?

13 A. I would think vast majority of inventory
14 was for water.

15 Q. Are you able to provide a dollar value for
16 your ductal iron pipe fitting inventory for these
17 years at all?

18 A. Not offhand, no.

19 Q. Earlier Mr. Truitt talked to you about A
20 items, B items, C items and I have also heard D
21 items be used.

22 Focusing on those terms as they relate to ductal
23 iron pipe fittings, do you know what percentage of
24 your inventory is made up of A items?

25 A. I would hope a hundred percent, but it's

1 not unfortunately. I would say at any given time 70
 2 percent, 65 percent, 70 percent.
 3 Q. The same question for B items, what
 4 percentage of your ductal iron pipe fitting
 5 inventory is made up of B items?
 6 A. Probably another 10 percent on top of that.
 7 Q. And for your C items?
 8 A. The remainder. And those are the things
 9 that have come back off of a project and you are
 10 just holding them for the right time and right place
 11 and it becomes larger and larger and larger every
 12 year that you are in business, because these boat
 13 anchors as we call them have a tendency to collect.
 14 Q. So am I understanding correctly that your
 15 percentage of C items is larger than your percentage
 16 of B items in an inventory?
 17 A. No. I don't think so. I would not say so.
 18 But there are so many variables, you have to go back
 19 and look at what a B item is.
 20 You are probably right, if I am looking at A and
 21 B items, together certainly you are going to be in
 22 the highest percentage we have.
 23 But there are still a large quantity of things
 24 that do not move, month after month, year after year
 25 that you still have in inventory and that you'll

1 sell one or two of those things a month that you
 2 have had for a year.
 3 So it's hard to say, I am sorry, I can't give
 4 you the right answer on that.
 5 Q. Focusing on just the B items, is it
 6 necessary to stock B items in inventory?
 7 A. Yes, it is to an extent. Would you be out
 8 of business if you didn't have the B items?
 9 Probably not, you could find them somewhere close by
 10 but you'd pay for it, you'd pay the freight to get
 11 it there and everything else.
 12 So you have a tendency to want to stock some of
 13 those things that aren't as commonly used just to
 14 complete the package.
 15 Subdivisions, yes, public works no, there is no
 16 need for B items and C items in the public works,
 17 you sell everything you buy and everything's fine.
 18 Q. If you didn't have access to B items or C
 19 items, all you could get was A items, what would the
 20 ramifications be to your business?
 21 MR. TRUITT: Object to the form, asked and
 22 answered.
 23 THE WITNESS: It would be difficult. You would
 24 have to buy those from your competitors. And pay
 25 whatever rate that they would charge you, you would

1 not be competitive in your complete package.
 2 And if your competitors knew that you were
 3 requiring on them to support your package, the price
 4 could double or triple or not be available, we just
 5 don't have that, sir, sorry, that can happen. It
 6 has happened.
 7 And when they do have it they just don't want
 8 you to get it, that's all. So you have a tendency
 9 to want to have everything under your own control
 10 and that's important.
 11 Q. Is it safe to say that you couldn't build
 12 your business on relying on your competitors for B
 13 items and C items?
 14 MR. TRUITT: Objection to the form.
 15 THE WITNESS: That's not conducive to longevity,
 16 let's put it that way. No, I think you would
 17 eventually, the margin of profit in the water works
 18 business would not allow for that very long.
 19 MR. MANN: Q. How long would you be able to
 20 sustain that, if that was your business model?
 21 A. If your competition understood that then
 22 they would play on that and it would be very
 23 difficult to get a consistent player, customer to
 24 say you are my people.
 25 Q. In your previous testimony, I don't know if

1 you want to pull it up, I think we marked it as
 2 Exhibit 1.
 3 On page 42, Mr. Renner at the very top asks, "Do
 4 you know how many distinct type of fittings or SKU's
 5 of the fittings that Groeniger & Company would sell
 6 in a given year?"
 7 "Answer: Yes, about a thousand, 1150 average,
 8 probably."
 9 Is that still correct?
 10 A. As a shot in the dark, without knowing, now
 11 understand that a fitting kind of is a fitting and
 12 it kind of is a fitting, but different manufacturers
 13 are approved here than here.
 14 So you may have to have two types of the same
 15 fitting from two different manufacturers to supply
 16 to, or keep a district or a customer happy.
 17 And so yeah, I think that's in the realm of what
 18 it is, if you are looking at their price lists and
 19 how many SKU's they have and if you double that or
 20 triple that by manufacturers.
 21 Q. When Groeniger & Company sold to Ferguson
 22 Enterprises in 2011, how many branches did Groeniger
 23 & Company have?
 24 A. Say that again, sir, I am sorry. I was
 25 looking at this, I am sorry.

1 Q. That's fine. At the end of 2011 when
2 Groeniger & Company sold its business to Ferguson,
3 how many branches did Groeniger & Company have?

4 A. Nine I think. I think it was nine
5 branches.

6 Q. And in 2010, how many branches did
7 Groeniger & Company have?

8 A. Ten, eleven. It's going to work its way
9 down from --

10 Q. Do you recall how many branches you closed
11 in 2009?

12 A. No, I couldn't, I am just guessing, that is
13 going downhill, I know that.

14 I don't have the exact dates of the closures,
15 but we were closing them pretty heavily about that
16 time.

17 Q. Earlier you stated that one of the
18 rationales for having multiple branches was to be
19 close to the projects.

20 Are there any other rationales to having
21 multiple branches other than just being close to the
22 projects?

23 A. Being close to the project is big, it's not
24 just being chose by physically, it's mentally and
25 the people that are talking to the local people are

1 local people themselves.

2 And they understand the ramifications of dealing
3 with certain districts and being local.

4 When you get out into the Central Valley of
5 California, it's very big, if you are local you get
6 preferences that you wouldn't normally get.

7 The good old boy syndrome is certainly alive and
8 well in the Central Valley, much more than it is in
9 the Bay Area. So you have those things.

10 By having a branch and having physical identity
11 into an area gives you that capability. It supports
12 service certainly, it supports the local
13 specifications, but also you have your employees are
14 living there and are on the same baseball team,
15 their kids are on same baseball team, they are
16 coaching the other kids, so a lot of intertwining
17 which is very important for relationships.

18 Q. So being close in terms of just the number
19 of miles or the time it takes to service a project
20 would be one factor.

21 Another one that you have just stated would be
22 the relationships between the local sales
23 individuals and the contractors or the end customer.

24 Are there any other rationales for having
25 multiple branches?

1 A. Knowledge about what is done locally. A
2 specification is a written book, it tells you what
3 brands you can use and how they are installed.
4 That doesn't necessarily mean that a local
5 contractor who the district likes does it that way.
6 But if you are coming from afar and they don't know
7 how well to trust the contractor, they'll give him,
8 that's the Bible of what you do here, and he may
9 have to do it considerably different than the local
10 would do it. That doesn't happen all the time, but
11 it does happen.

12 Q. Any other rationales that come to mind?

13 A. All of the above, that's all. That in
14 itself is enough to want you to be close by.

15 Q. As a general rule of thumb you stated that
16 you tried to position your branches about two hours
17 driving time.

18 Two hours driving time in the Bay Area is
19 probably a different distance than two hours of
20 driving time in central California; is that correct?

21 A. Well, it all comes down to a day by
22 horseback to be honest with you.

23 Fresno to Stockton, Stockton to Sacramento,
24 Sacramento to other places was about a day's
25 horseback ride.

1 And that's just the way the towns built
2 themselves. So it comes down in our speed to two
3 hours, an hour and a half to two hours.

4 Q. So as a general rule of thumb, how large of
5 a radius is a branch servicing in terms of miles?
6 Earlier you stated it was about 50 miles, but then
7 you also said 75 or a hundred miles.

8 A. Well, two hours away you are talking about
9 an effective radius of 60 miles, 70 miles.

10 And then you would be interfering with the
11 effective radius of another branch.

12 And there was always conflict between who had
13 rights to a particular job, that was up to
14 management to make the decision and say this is the
15 way this was going to be handled and so forth, and
16 we did that pretty good.

17 Q. Was there a particular branch that had a
18 relatively small service area compared to another
19 branch that you would say had a large service area?

20 A. Well, yes, only because of locations.
21 There were branches with big inventories and there
22 were branches with small inventories. Depending on
23 the amount of time it takes them to go through their
24 inventory, and their inventory is based on monthly
25 sales.

1 So in the summertime when they are doing more
2 business they are turning that inventory faster, we
3 allow them more inventory.
4 In the wintertime when they are not turning it
5 as fast it comes from a different ratio. So smaller
6 branches have smaller inventories and are probably
7 defined into a smaller area.
8 But that doesn't mean they can't go two and a
9 half to three hours away from them to supply a
10 project. Because there is nobody else that can do
11 it either. So there is exceptions to every rule.
12 Q. What is driving the level of sales within a
13 particular branch? Did you understand my question?
14 A. No.
15 Q. You just stated that the smaller branch
16 maybe isn't turning over its inventory as quickly as
17 a larger branch, so it doesn't have as much
18 inventory which makes it a smaller branch.
19 What is it that's causing the larger branch to
20 be able to turn over its inventory quicker than a
21 smaller branch?
22 A. Home starts, certain areas that they are
23 building heavily would indicate that.
24 Sacramento was booming back in the early 2000s,
25 they were just booming there. Anybody could be

1 successful moving to Sacramento then. And that was
2 our highest, largest by far operations were in the
3 Sacramento area.
4 Now they may be ranked third or fourth because
5 there is not any building, no subdivisions at all
6 going on up there, they will come back but right now
7 there is none. So that changes.
8 But where there is a lot of subdivisions being
9 built, then you usually have a big inventory and
10 lots of business going on and pressure for us to
11 increase our size and our service support.
12 But if there isn't, if you take a look at
13 Bakersfield, not a lot of subdivisions in
14 Bakersfield, but there is a lot of money in
15 Bakersfield through oil and through agriculture that
16 they are redoing some of the infrastructure and
17 things like that, so there is business. But there
18 is not the subdivision format.
19 Q. Do you recall where the nine locations
20 were, where your nine branches were at the end of
21 2011?
22 A. Yes.
23 Q. Can you tell me what locations those were?
24 A. Okay. Bakersfield, Modesto, Fresno,
25 Sacramento, Chico, Hayward, Salinas, and Santa

1 Maria. That's eight, and then Tracy.
2 Q. And what two branches were closed?
3 A. Tracy, Santa Maria.
4 Q. Those have since been closed?
5 A. Yes. We reopened one, we reopened San
6 Jose.
7 Q. And when did you reopen San Jose?
8 A. Just after the acquisition.
9 Q. So the first part of this year?
10 A. Yes.
11 Q. And when you say we --
12 A. I shouldn't say that, I'm sorry. Ferguson
13 had an operation in San Jose, a very small
14 operation.
15 When the acquisition was finalized we moved some
16 of our salesmen that we brought back from a branch
17 we previously had in San Jose to there and changed
18 their name from Ferguson to Groeniger, to take
19 advantage of the good name and that's very
20 successful right now.
21 Q. So is Ferguson operating these branches
22 under the Groeniger name?
23 A. Yes.
24 Q. In 2009 do you recall what other branches
25 were open?

1 A. We had Redding, Santa Rosa --
2 Q. Was your Roseville branch open?
3 A. Roseville branch was open. And Santa Paula
4 and Lancaster. Lancaster, Palmdale. And Temecula.
5 Q. Just based on your recollection all those
6 branches were open in the 2009 calendar year?
7 A. I think so, I think 2009, yeah, I would
8 think so.
9 Q. Mr. Groeniger, if I were to hand you a
10 collection of just some Google maps, would you be
11 able to identify what the service areas were for
12 each of the branches that we have just identified?
13 A. Sure.
14 Q. I am going to hand you what's been marked
15 CX 1690 and just for the record, this is a
16 collection of five different snapshots taken from
17 Google Maps of different areas in California.
18 And you can use whatever maps make the most
19 sense to identify the different regions. But I am
20 going to hand you a red pen and if you want to
21 start, I think you said that headquarters for
22 Groeniger & Company was Hayward.
23 MR. TRUITT; I will object to this line of
24 questioning on foundation and also there is no scale
25 to these maps.

1 MR. MANN: Q. Go ahead.
 2 A. Hayward, I am going to put a big round box
 3 around Hayward because that was our corporate
 4 headquarters.
 5 Q. Okay.
 6 A. And you are talking about what year?
 7 Q. Let's focus on the 2010 calendar year.
 8 2009, 2010 calendar year.
 9 A. Okay. Well, we had an operation, I am
 10 putting the square around it because that's
 11 corporate headquarters. Round circle here.
 12 Q. Where is "here"?
 13 A. San Jose, I am sorry.
 14 Q. Okay.
 15 A. And Salinas, here we have one here. We
 16 have Santa Rosa, we have one there. We had one in
 17 Sacramento and then one in Roseville.
 18 We had one I didn't bring to your attention
 19 which was Lodi, sorry about that, I forgot about
 20 Lodi, it was a small operation.
 21 Q. That's all right.
 22 A. Modesto and Fresno on this map. So what
 23 you were looking at, if I was to draw a map around
 24 it I would say it would go like this and it would go
 25 kind of like --

1 Q. You can just draw it, you don't have to
 2 narrate for us, it be entered as an exhibit and we
 3 will all have copies of it.
 4 A. Let's go by the road here. Okay. I am not
 5 going to narrate, I am sorry.
 6 Q. On the next page there is a better snapshot
 7 of the northern part of California, I don't know if
 8 that will help.
 9 A. All right.
 10 Q. Maps 3 and 4 I think we may have already
 11 covered, I think they are just different in terms of
 12 scale. And then maybe between 4 and 5.
 13 A. Okay.
 14 Q. Can I take a look at that? So just focusing
 15 on the geographic area that you have identified as
 16 with Hayward, who do you compete with in what I'll
 17 refer to as the Hayward market?
 18 A. Hayward market, R&B Supply. You would
 19 compete against Ferguson, several branches of
 20 Ferguson, several branches of R&B Supply.
 21 You would compete against Pace Supply, several
 22 branches, couple of branches I should say.
 23 And Corex, that's today. Back years ago there
 24 was different ones but that's right today.
 25 Q. Were there any that exist today, or that

1 don't exist today that did in 2009 or 2010?
 2 A. Yes.
 3 Q. And what would those be?
 4 A. That would be Kenko Utility Supply, they
 5 had three branches, Ed Walsh Company which had three
 6 branches.
 7 Q. And when you say Kenko had three branches,
 8 did they have three branches within all what you
 9 would identify as Hayward?
 10 A. They serviced contractors in our area.
 11 They had one in San Jose, one in Tracy but they were
 12 coming after the group of contractors, Bay Area
 13 contractors but they would come over the hill and
 14 support that. And they had one in Antioch.
 15 Q. Do you have any idea what your market share
 16 was in what you have identified as the Hayward
 17 market?
 18 A. I think our Hayward market share was
 19 probably in the 40 to 50, 40 to 45 percent.
 20 Q. And how much did Ferguson have?
 21 A. Ferguson had probably 10 percent.
 22 Q. And Pace?
 23 A. Pace had probably 15 percent.
 24 Q. And Corex?
 25 A. Corex had probably, oh, probably five to

1 ten percent.
 2 Q. And then Kenko?
 3 A. Kenko, didn't I mention those before? Am I
 4 over 150 percent now?
 5 Q. No, you are not quite.
 6 A. Our biggest competition in the Bay Area is
 7 R&B Company. But as a model they have one, two, in
 8 the Bay Area. They have one, two, three operations
 9 which are directly in the Bay Area that compete
 10 against us and they probably have 20 percent of the
 11 market.
 12 The rest of them are all done differently, they
 13 are our biggest competition in the Bay Area, but
 14 only the Bay Area.
 15 Q. And when you say the Bay Area, that would
 16 be the Hayward market?
 17 A. Hayward facility, yes.
 18 Q. So you believe that you are at 40 to 45
 19 percent, R&B is at about 20 percent --
 20 A. And the rest of them are small, they will
 21 take a job now and then but they are not in the
 22 every day market.
 23 It's better to say it that way instead of giving
 24 everybody a percentage that's going to total over a
 25 hundred percent.

1 Q. That's fine. Who could potentially enter
2 this market in the next two years?
3 MR. TRUITT: Objection, foundation.
4 MR. MANN: Q. Do you keep track of who
5 potential entrants might be?
6 A. We know pretty much who it would be, HD
7 Supply --
8 MR. TRUITT: Also speculation.
9 THE WITNESS: HD Supply, a national company,
10 they were one of the companies that looked at us,
11 who have very little representation, have since
12 within the last month opened a branch in Hayward by
13 the way. But they are novices at it so it will take
14 a long time.
15 HD Supply is a national company, lot of money.
16 You have Corex which is a Canadian company, it's
17 come and bought Ed Walsh Company and are opening up
18 three or four new branches in or around the Bay
19 Area.
20 You have Pace which is an employee owned company
21 out of Santa Rosa who now has opened three or four
22 branches around the Bay Area.
23 They were basically in Santa Rosa, and we
24 competed against them with our Santa Rosa branch and
25 as soon as we got out of town they have in the

1 middle of all this expanded, which is amazing, but
2 they did. Now they have branches in San Francisco,
3 San Jose, Oakland and Stockton. And Sacramento.
4 HD has opened a branch in the last year and a
5 half in Sacramento, one in Hayward and they are
6 talking about reopening in Fresno and, let's see if
7 they can get the people to do that but that is what
8 their plans are.
9 Q. So as far as the Hayward market is
10 concerned though, you said HD Supply is a potential
11 entrant and others who have entered would be Pace?
12 A. Pace.
13 Q. And --
14 A. R&B is big --
15 Q. R&B already is here though, right?
16 A. Right. And Corex.
17 Q. And Corex. Other than HD Supply who you
18 said just recently opened up, is there anyone on the
19 horizon who you think is potentially looking at
20 entering the Hayward market?
21 MR. TRUITT: Objection, speculation, foundation.
22 THE WITNESS: I don't think at this point in the
23 economy there would be, it would have to be a
24 national account and all the national people are
25 represented now.

1 MR. MANN: Q. If we were to shift gears to the
2 Modesto market that you have identified, who do you
3 compete with?
4 A. Ferguson primarily. That was until they
5 bought us. R&B just opened a branch out in
6 Stockton.
7 Q. And what is your market share do you
8 believe in the Modesto market?
9 A. Probably 55 to 60 percent.
10 Q. And before Ferguson purchased you what was
11 their market share?
12 A. Ten or less.
13 Q. And what's R&B's market share in your
14 Modesto market?
15 A. About, probably ten percent.
16 Q. Who would have made up the remainder 20
17 percent?
18 A. It would have been Edward Walsh Company who
19 is now Corex.
20 Q. Anyone else?
21 A. Not right now, no.
22 Q. Shifting to what you have identified as the
23 Sacramento market --
24 MR. TRUITT: Objection, time frame. Are we
25 talking about presently?

1 THE WITNESS: What time frame?
2 MR. MANN: Q. So in the 2009, 2010 time period,
3 2011, those three years, if there is any significant
4 difference between those three years --
5 A. There is, yes.
6 Q. So in 2011, what was your market share in
7 the Sacramento market?
8 A. Probably 40 percent. Largest single
9 entity, the others together are more than we do.
10 Q. And who else is in the Sacramento market?
11 A. In 2011 you have some new players. Of
12 course, you have got Corex opening up there, you
13 have HD opening up there, you have Pace opening up
14 there, all aggressively going after business.
15 So it's a very, very tough market right now. We
16 had the market way more than 50 percent at one time
17 but we don't have that now.
18 Q. And what do you think the current, in 2011,
19 how much market share did Corex have?
20 A. Probably less than, probably less than two
21 percent.
22 Q. And how much market share did HD have in
23 2011?
24 A. Probably less than five percent.
25 Q. And in 2011 how much market share did Pace

1 have in the Sacramento market?
 2 A. Pace had 10 to 15 percent.
 3 Q. So if you are approximately 40 percent and
 4 Corex, HD and Pace make up approximately 20 to 22
 5 percent, who else --
 6 A. Ferguson.
 7 Q. And how much market share did Ferguson have
 8 in 2011? And you said it was 15 to 20 percent?
 9 A. 15 to 20 percent, if that adds up, good.
 10 Q. We are actually about 15 percent shy, was
 11 there another person in there or are your estimates
 12 maybe a little low?
 13 A. Just redo the estimates to fit, but that is
 14 the ratios of I would say one to the other or to the
 15 other as far as personnel, as far as equipment, as
 16 far as inventory, as far as capabilities.
 17 Q. In 2010 in the Sacramento market, what was
 18 your market share?
 19 MR. TRUITT: Objection, foundation.
 20 THE WITNESS: It was greater. Probably over 50
 21 percent.
 22 MR. MANN: Q. And what was Ferguson in 2010 in
 23 Sacramento?
 24 A. About the same.
 25 Q. The 15 to 20 percent?

1 A. Yeah, uh-huh.
 2 Q. Now you said that Corex, HD and Pace
 3 entered in 2011. So who was competing in 2010?
 4 A. Well, it was Ferguson, ourselves, Pace was
 5 there and there was Camellia Valley Supply which was
 6 purchased by Ferguson sometime around there on the
 7 year before and took them out of the ballgame.
 8 And HD did not come along until the people left
 9 us to go to HD, so they took away from us to open up
 10 up there. And Corex was not there yet.
 11 But there was other people sniping from afar I
 12 should say from the Bay Area, R&B was quoting
 13 projects up there, they didn't get a lot of them but
 14 they got some.
 15 Q. Shifting gears to, actually before we do
 16 that, that was in 2010.
 17 Was there a significant difference in 2009
 18 compared to 2010 as far as market share and who your
 19 competitors were in the Sacramento market?
 20 MR. TRUITT: Objection, foundation.
 21 THE WITNESS: I would say that there was, we had
 22 more market share.
 23 MR. MANN: Q. How much was your market share in
 24 2009?
 25 A. Two or three points, four or five points

1 more.
 2 Q. So close to 60 percent?
 3 A. No, but between 50 and 60 percent.
 4 Q. And was Ferguson still the same, about 15
 5 to 20 percent?
 6 A. Yeah, because I think back in 2009 we still
 7 had our operation in Roseville which combined with
 8 Sacramento and that's the same market area, we were
 9 servicing customers from both areas which no one
 10 else had the ability to do, which was big.
 11 So we were getting the lion's share of the
 12 market up there at that time.
 13 Q. Focusing on the Santa Rosa branch and the
 14 market that you have identified, who did you compete
 15 with in 2009 in Santa Rosa?
 16 A. Pace Supply. And Ferguson.
 17 Q. Anyone else?
 18 A. People coming out of the Bay Area up there
 19 on occasion, following their contractor would bid a
 20 job, and they could supply one up there, but as a
 21 whole those were the three that were actively
 22 involved in selling everyday stuff to the districts
 23 and to the contractors.
 24 Q. And what was in 2009 Groeniger's market
 25 share in the Santa Rosa market?

1 A. Probably 40 percent.
 2 Q. And what was Pace's market?
 3 A. About 60 percent.
 4 Q. And Ferguson just had some fringe business?
 5 A. Yes, everybody else was just fringe
 6 business.
 7 Q. And in 2010 were there any new entrants in
 8 that market?
 9 A. I think 2010 we left the area. Our
 10 contractor was purchased, went out of business and
 11 he was our biggest customer, our rent was heavy up
 12 there, we decided to close it, move the employees to
 13 Sacramento or to Hayward and move the inventories
 14 back to one of the others and close the branch.
 15 Q. So in 2010 you closed the Santa Rosa
 16 branch?
 17 A. I believe, yes.
 18 Q. Shifting to the Modesto market, in 2009
 19 what was your market share in the Modesto market?
 20 MR. TRUITT: Same objections. May I have a
 21 standing objection so I don't have to interrupt you
 22 every time?
 23 MR. MANN: That's fine.
 24 MR. TRUITT: Thank you.
 25 THE WITNESS: Modesto itself is not a big town

1 compared to Stockton. So their influence went as
 2 far as Stockton, to the north of Stockton all the
 3 way down to between Modesto and Fresno and all the
 4 way through the foothills.
 5 So I think our market share in that area was
 6 significant. Probably in the 60s, high 60
 7 percentage points.
 8 MR. MANN: Q. And who also serviced the Modesto
 9 market?
 10 A. When?
 11 Q. In 2009 as you have identified on this map.
 12 A. Ferguson and Ed Walsh Company.
 13 Q. And what was Ferguson's market share in
 14 2009?
 15 A. Minimal, 5 to 10 percent.
 16 Q. And Ed Walsh Company?
 17 A. They were the other, they did a
 18 considerable amount of business.
 19 Q. And in 2010 what was your market share in
 20 the Modesto market?
 21 A. You went up to 2010 from 2009, correct?
 22 Q. Correct, yeah.
 23 A. Then we have now the R&B coming into town
 24 and we have Ed Walsh being purchased by Corex and
 25 suddenly a more aggressive format.

1 And then you had Pace coming all the way down
 2 from, they opened up a facility in Stockton and they
 3 were coming down. Not effectively but they were
 4 there. It did vary a small amount downward for us.
 5 Q. So you said you were in the high 60s in
 6 2009, were you in the --
 7 A. 50s.
 8 Q. High 50s?
 9 A. Mid 50s. Still a very big branch for us
 10 though.
 11 Q. And was Ferguson still there in 2010?
 12 A. Yes.
 13 Q. And in 2009 you say that they were five to
 14 ten percent.
 15 A. They didn't change much, it was the other
 16 people that changed more than Ferguson did.
 17 Q. And Corex purchased the Ed Walsh Company?
 18 A. Yes.
 19 Q. And Ed Walsh had approximately 20 percent
 20 in 2009. Did Corex maintain that?
 21 A. Probably a little -- mostly, yes, they
 22 maintained it, they grew it but they maintained.
 23 Q. And Pace would have had the remainder?
 24 A. Pace would have with the remainder and R&B
 25 would have had some of that.

1 Q. So between Pace and R&B, did they split the
 2 rest of the business?
 3 A. As much as I can tell you. I wasn't as
 4 interested in those people as the ones who had the
 5 potential to challenge us both sales wise and
 6 service wise.
 7 Q. Going to Chico, 2009 what was your market
 8 share?
 9 A. 2009 probably 20 percent.
 10 Q. And who else did you compete against in the
 11 Chico market?
 12 A. Ferguson. They were about 60 percent.
 13 Q. And in 2009 who made up the remainder 20?
 14 A. It came out of R&B Supply out of Redding,
 15 came from some of the other players at that time,
 16 Camellia Valley Supply had a branch there too, they
 17 were significant.
 18 Q. And in 2010 did anyone enter?
 19 A. Ferguson went out of business, bought
 20 Camellia Valley Supply which had a branch there.
 21 They eventually moved out of town.
 22 We were left there, we were the only one for
 23 awhile. R&B has come down and put a small operation
 24 in there.
 25 And Ferguson has tried to compete in the area

1 from afar with relationships and so forth and they
 2 have done some work there.
 3 Q. So in 2010 you stated that Ferguson left
 4 the Chico market?
 5 A. Yeah. I might say they didn't leave it,
 6 they took their branch out and local inventory
 7 disappeared there.
 8 Q. So what was your market share in 2010 in
 9 the Chico market?
 10 A. I think it was rising, it was in the 35
 11 percent market, we grew, maybe 40 percent toward the
 12 end of that year.
 13 Q. And what was Ferguson in 2010, what was
 14 Ferguson's market share?
 15 A. Probably less than 15 percent, maybe 20
 16 percent.
 17 Q. Did you say that R&B was there in 2010?
 18 A. R&B was quoting in that area, yeah, maybe
 19 getting ten percent of the market too. It's not a
 20 big market.
 21 Q. Anyone else in 2010 that would have been in
 22 the Chico market?
 23 A. Camellia Valley if they still owned their
 24 own business, but I think it was Ferguson by that
 25 time.

1 Q. And how much of a market share did they
2 have? Camellia Valley? The remainder?
3 A. I couldn't tell you at that time. I'd have
4 to go back to all my notes of that ARRA and see when
5 they left town and who they took with them and so
6 forth.
7 It's kind of a complicated thing. Not that I
8 couldn't find out but I don't have it to my
9 knowledge at the moment.
10 Q. Going up to Redding, what was your market
11 share in 2009?
12 A. 2009?
13 Q. Correct.
14 A. Probably, we were still in business there
15 in 2009, we probably had 50 percent of the market.
16 Q. And who else was in the Redding market?
17 A. Ferguson had the other 50. That was it.
18 Q. And in 2010?
19 A. R&B came to town, we left town. The market
20 was not, even if you had 50 percent of it it was 50
21 percent of nothing.
22 Q. Gotcha.
23 A. So we decided to close it and we sold the
24 property and moved on.
25 Q. So it was 2010 that you closed the Redding

1 market?
2 A. Yes.
3 Q. The Redding branch?
4 A. Yes, and the market too probably.
5 Q. Going down to the Fresno area, 2009, what
6 was your market share in Fresno?
7 A. Probably 65 percent.
8 Q. And who else did you compete with in --
9 A. Ferguson. About 30 percent. And then HD
10 Supply, yeah, HD Supply is the other, that was it.
11 Q. And in 2010?
12 A. 2010?
13 Q. What was your market share?
14 A. I think it was probably 60, 40, HD Supply
15 was not a factor, 60, 40, us versus Ferguson.
16 Q. Shifting to Bakersfield, what was your
17 market share in 2009 in the Bakersfield market?
18 A. Basically fifty-fifty with Ferguson.
19 Q. And in 2010?
20 A. Fifty-fifty with Ferguson. And there is HD
21 Supply located there but they don't do much, less
22 than ten percent, less than five percent probably.
23 Q. The Santa Maria market?
24 A. Santa Maria market --
25 Q. In 2009 what was your market share?

1 A. Probably I would say 60 percent.
2 Q. And who did you compete with?
3 A. Ferguson.
4 Q. And what was their market share?
5 A. 45, 40, whatever.
6 Q. And in 2010? What was your market share in
7 the Santa Maria market?
8 A. I think it held pretty consistent.
9 Q. 60, 40 between you and Ferguson?
10 A. Yeah.
11 Q. And in Santa Paula, in 2009 what was your
12 market share?
13 A. Probably, oh, probably 25 to 30 percent.
14 Q. And who else was in that market? In 2009?
15 A. There was Ferguson, there was an
16 independent, I am trying to think of his name, name
17 doesn't come to me, independent there that was well
18 respected.
19 We tried to purchase him at one time, it was an
20 independent and I can't think of his name at the
21 moment.
22 Q. And how much market share did Ferguson have
23 in 2009?
24 A. Probably about the same amount as we had
25 and the independent had the remainder.

1 Q. So the independent was the dominant
2 supplier in Santa Rosa?
3 A. You are talking about Santa Paula?
4 Q. Yes, excuse me.
5 A. Santa Paula is very small but you have
6 Ventura and you are going up to Santa Barbara and
7 that is the area they were located and they were
8 closer to the user than we were.
9 Q. In 2010 did your market share stay constant
10 at 25, 30 percent in Santa Paula?
11 A. That was one of the first ones we closed,
12 we had to be closed by then.
13 Q. I think we are done, I have got two left.
14 So Palmdale, 2009 in Palmdale, what was your market
15 share?
16 A. Ten percent.
17 Q. And who did you compete against in 2009 in
18 the Palmdale market?
19 A. HD Supply.
20 Q. What was their market share?
21 A. Probably 65 percent. And Ferguson, the
22 difference between the two.
23 Q. And in 2010, anyone enter?
24 A. We closed that pretty quick too. So right
25 now the market share is between Ferguson and HD.

1 Q. And then in Temecula in 2009, what was your
2 market share?
3 A. Probably 25 to 30 percent.
4 Q. And was Ferguson in that market?
5 A. Yes, sir.
6 Q. What was their market share?
7 A. Probably about the same.
8 Q. And HD?
9 A. HD was in there, close to the same.
10 Q. Close to the same --
11 A. Between all three of us we were the vast
12 majority of the business but there were probably two
13 or three independents that were at the outer fringes
14 of their service capability, but they would enter
15 into it also.
16 And you had, at that time 2009, it was still HD
17 at that time. They purchased my brother's business
18 which was pretty heavy down there and that's why we
19 moved down there because he was no longer.
20 But it's hard to say exactly what percentage
21 each of them had in comparison to the other. I know
22 we didn't have the majority, I knew that.
23 Q. So you said there were two to three fringe
24 players, what percentage do you think they had in
25 2009?

1 A. Probably less than ten percent total.
2 Q. And then between Groeniger, Ferguson and
3 HD, the rest of you split the remainder 90 percent
4 so each of you had roughly about 30 percent?
5 A. Yeah.
6 Q. Did that change in 2010 or is that the year
7 that you closed?
8 A. We closed.
9 Q. Thank you for walking me through that
10 although it probably was extremely painful for you
11 to do, it's helpful for us.
12 A. I can't say how accurate it was but we'll
13 see.
14 MR. TRUITT: Drew, are you at a good point for a
15 short break?
16 MR. MANN: Yeah, let's do that.
17 (Brief recess taken.)
18 MR. MANN: Let's go back on the record.
19 Q. Mr. Groeniger, before we broke, we were
20 going over the different market shares and you made
21 a comment that I just wanted to circle back around
22 to.
23 And that was when HD Supply entered the Hayward
24 market, that they were, it was a novice branch that
25 they had opened and it was going to take some time.

1 What did you mean by that?
2 A. Historically, I am giving you a soliloquy
3 here again, but historically the big companies buy
4 smaller companies and gain market share. And they
5 have done that successfully.
6 But what they haven't done is to start out from
7 scratch and build something that is not already
8 there. Especially if they are competing against
9 independents who have been there for awhile, it's
10 very, very difficult.
11 And usually the big guys don't have the staying
12 power of wanting to lose money for a period of time
13 while they get their act together. And so you don't
14 see much of that, nor have they been successful at
15 that. Hard to see any representation of success
16 from that type of a venture in the state of
17 California that I have seen.
18 But when they take over and buy a company that's
19 got market share already, all they have to do is add
20 their money or overhead capability to it and
21 support, then they can be successful. But starting
22 out from scratch it's a tough road to hoe.
23 Q. What are the challenges that, for example,
24 HD Supply or anyone that's entering a market just
25 starting from scratch, what are the challenges that

1 they have to overcome?
2 A. Know the territory, know the people, know
3 the culture. In some cases that's extremely big.
4 Central Valley, that is the name.
5 When you get into the big metropolitan areas
6 it's not as big a thing, but certainly in the
7 Central Valley which Sacramento is part of the
8 Central Valley, that's big there.
9 And knowing the diversity of the specifications,
10 what type of material you have to handle, what
11 brands you have to handle. Sometimes those brands
12 are available, sometimes they are not.
13 Q. What do you mean by sometimes a brand is
14 not available?
15 A. Well, sometimes they have relationships
16 with other people.
17 Q. So when you say that they have
18 relationships with other people, you are suggesting
19 that a particular manufacturer of a product would
20 have a relationship with someone that would prevent
21 a new distributor from being able to gain access to
22 that manufacturer?
23 MR. TRUITT: Object to the form.
24 THE WITNESS: Yes.
25 MR. MANN: Let me see if I can cure that

1 objection.
 2 Q. What did you mean when you stated that they
 3 would have an challenge gaining access?
 4 A. Your product lines consist of many
 5 manufacturers. Some manufacturers you have a long
 6 history with of which you have opened up
 7 specifications for them.
 8 Maybe you feel you have a competitive advantage
 9 to be able to use their material in a specification.
 10 Or that the specifying agency likes the way you
 11 service them, so that's all they want is that
 12 particular product.
 13 And so when somebody else comes to town they
 14 want that price so they can compete directly with
 15 you and the manufacturers say no, we got this
 16 relationship with one guy and that's the way we want
 17 to keep it. You can get your other material
 18 approved if you want, that's fine. That has
 19 happened.
 20 Not as much any more because the economy
 21 certainly changed a lot of that. But before,
 22 everybody had their manufacturer they dealt with and
 23 it was good to know who the enemy was but now it's
 24 all mixed up.
 25 Q. So in the 2009 time period, what lines of

1 products did distributors have these tight
 2 relationships with?
 3 A. Valves, fire hydrants, brass, service
 4 material, wasn't as much fittings because they were
 5 always, everybody could buy anybody's I guess.
 6 But certainly the other products, pipe, certain
 7 manufacturers dealt with certain people.
 8 Q. So in 2009 although a distributor may have
 9 access to the fittings like you just stated, valves,
 10 pipe, hydrants, those were all lines that you needed
 11 to actually have a relationship with the supplier?
 12 A. Uh-huh.
 13 MR. PARKS: You have to say yes or no.
 14 THE WITNESS: Yes, I am sorry.
 15 MR. PARKS: That's okay.
 16 MR. MANN: Q. Is there any distributor in your
 17 market that is just selling ductal iron pipe
 18 fittings?
 19 A. No.
 20 Q. Why not?
 21 A. The margin that you have on a ductal iron
 22 fitting doesn't allow for the profit necessary
 23 enough to survive for a complete house, they
 24 couldn't do that.
 25 Q. So in order for the distribution model to

1 work you need to have a full line of products?
 2 MR. TRUITT: Object to the form.
 3 THE WITNESS: Yes.
 4 MR. MANN: Q. Earlier this morning you used a
 5 term that I gues I wasn't familair with and it was
 6 in relationship to your explanation that a compact
 7 fitting is the new C-153 standard.
 8 You also used the word "long," did I mishear you
 9 or is there a type of fitting called a long fitting?
 10 A. Long pattern, the A-2110, it was the old
 11 cast iron long pattern fitting, if you saw the two
 12 of them together you would think they were made for
 13 different specifications, difference uses, but it's
 14 the same use but one weighs 200 pounds, the other
 15 one weighs 75.
 16 Q. Is the long fitting the C-110?
 17 A. The long fitting is the C-110.
 18 Q. The compact is the C-153 standard, the long
 19 fitting would be the C-110 fitting?
 20 A. Yes.
 21 Q. Are you familiar with the term "full body
 22 fitting"?
 23 A. That was the C-110.
 24 Q. Is that the same?
 25 A. The C-110, A-2110 are kind of the same,

1 C-153 is the lightweight fitting made out of ductal.
 2 Q. So a full body, if I were to pick up some
 3 industry material and it said, it referred to
 4 something as a full body fitting, that would refer
 5 to a fitting manufactured with the C-110
 6 specification?
 7 A. Yes. That would be my analogy, yes.
 8 Q. What percentage of your overall fitting
 9 sales are under the 24 inch product separator? So if
 10 we go 24 inches and below and 24 inches and above --
 11 MR. TRUITT: Objection, time frame.
 12 MR. MANN: Q. In 2009, what percentage of your
 13 overall sales of fittings consisted of 24 inches and
 14 below, if you know?
 15 A. Probably, in 2000 --
 16 Q. Nine.
 17 A. 2009, I would say still about 80 percent.
 18 Q. 80 percent of your total fittings purchases
 19 would be under 24 inches in 2009?
 20 A. Yes, you are talking total dollar purchase
 21 or unit purchases?
 22 Q. We'll stick with dollars.
 23 A. Yeah, I would say 80 percent, 75, 80
 24 percent.
 25 Q. If we were to focus on the units, would

1 that percentage change?
 2 A. No, vastly small diameter. 24 inch is a
 3 big size for us, I would cut the thing down to 16
 4 inch rather than 24. 24 encompasses all that stuff,
 5 you don't get very much above 24.
 6 As a matter of fact, Tyler doesn't make too much
 7 above 24, they are starting to make them now, they
 8 didn't make them at the time, those would be special
 9 special orders from anybody. 24 encompasses almost
 10 the whole band of fittings on down.
 11 Q. So almost a hundred percent?
 12 A. Almost a hundred percent.
 13 Q. And in 2010 is that the same?
 14 A. Well, even more so because the public works
 15 was just starting to kick in and the big projects,
 16 that is where you use the big fittings, the big
 17 projects, but 24 inch is considered a big fitting
 18 for us.
 19 So yeah, I'd say a hundred percent covers it, 99
 20 percent, 98 and a half percent.
 21 Q. Just to make sure we get that clear on the
 22 record. So in 2010, 98 and a half to 99 percent of
 23 your overall fittings purchases would be 24 inches
 24 and below?
 25 A. Yes. Counselor, you have to define that a

1 little bit more as to cast iron, ductal iron
 2 fittings, versus fabricated steel.
 3 Q. My question was just as it related to
 4 ductal iron pipe fittings.
 5 A. Yes, yes, okay.
 6 Q. So your answer is still is same?
 7 A. Yes.
 8 Q. Just as an example, how much does a six
 9 inch T cost?
 10 MR. TRUITT: Object to the form, time frame.
 11 MR. MANN: Q. Today.
 12 A. I am not in the purchasing business. I
 13 would say a 6 inch T would cost around 49, \$50 for a
 14 6 inch mechanical joint T. Maybe \$60.
 15 Q. If a project required let's say ten 6 inch
 16 T's that had a dollar value of \$60 apiece, if the
 17 price of that fitting went up to let's say \$65,
 18 would that kill a project?
 19 MR. TRUITT: Objection.
 20 THE WITNESS: I don't think so. I mean, all
 21 manufacturers have price increases from time to
 22 time, at least yearly, price has more a tendency to
 23 go up than down, discount takes it down on occasion
 24 but the price never usually goes down.
 25 MR. MANN: Q. Let me ask a better line of

1 questions. In basic economics, as the price of a
 2 product goes down the demand goes up.
 3 Is that the case for a fitting, if prices go
 4 down does demand go up for a fitting?
 5 A. No.
 6 Q. So if the prices on a fitting go up, do the
 7 demand for those fittings go down?
 8 A. No.
 9 Q. So if you were to see a ten percent
 10 increase in the price of a ductal iron pipe fitting,
 11 what effect would that have on the demand for ductal
 12 iron pipe fittings?
 13 MR. TRUITT: Objection, foundation. Ambiguous.
 14 MR. MANN: Q. Based on your experience.
 15 A. I don't think it would have any change.
 16 Q. I am going to hand you back your previous
 17 testimony. If you could turn to page 40?
 18 A. Okay.
 19 Q. On page 40, line 20, I'll read it.
 20 It says, "And in terms of the split between
 21 domestic and import, do you know what that split
 22 would be?"
 23 "Answer: This time I do have. I would say
 24 approximately probably 60 to 40. 60 would be
 25 import, 40 percent would be domestic."

1 A. Okay, I see that.
 2 Q. Do you see where I am at there?
 3 A. Okay.
 4 Q. And this is going up to line 6, it would be
 5 in the year 2010 was the time period for this.
 6 Do you believe that that was an accurate
 7 statement, that in 2010 roughly 60 percent of your
 8 fittings business was import and 40 percent was
 9 domestic?
 10 A. Yes.
 11 Q. And jumping down to page 41 starting at
 12 line 8, or line 7, it says, "Question: Let's go
 13 back before the ARRA. Do you have a sense of what
 14 your split in terms of revenue in terms of domestic
 15 and imported fittings was before ARRA?"
 16 "Answer: 75, 25 foreign."
 17 "Question: 75 percent foreign, 25 percent
 18 domestic?"
 19 "Answer: Yes."
 20 Is that accurate?
 21 A. Yeah.
 22 Q. Previous to the ARRA period, what was the
 23 average cost difference between an imported fitting
 24 and a domestic fitting, if there is one?
 25 MR. TRUITT: Objection, asked and answered.

1 THE WITNESS: I couldn't give you that.
 2 accurate -- 10 percent, 15 percent maybe.
 3 MR. MANN: Q. Why do you say that?
 4 A. I don't know, I know that the foreign
 5 fitting whether it be bought by the multitude of
 6 foreign people selling product, had a different
 7 price format than if you buy it from Tyler, it had a
 8 different price format than the domestic fitting
 9 did.
 10 To be exact, I would have to go back and
 11 research that, I could find it out but I couldn't
 12 tell you at the moment what it would be. I know
 13 foreign was less expensive.
 14 Q. And if you had to guess, your testimony is
 15 that it was 10 to 15 percent higher?
 16 MR. TRUITT: Objection.
 17 THE WITNESS: Yes.
 18 MR. MANN: Q. In 2009 do you have a rough idea
 19 as to how many ARRA jobs you responded to?
 20 MR. PARKS: And just a clarification, by
 21 "responded to" you mean bid on?
 22 MR. MANN: Q. Correct.
 23 A. Oh, quite a few, quite a few.
 24 Q. More than ten?
 25 A. Oh, probably more than ten.

1 Q. More than a hundred?
 2 A. No.
 3 Q. More than 50?
 4 A. I wouldn't think so, no.
 5 Q. So more than ten, less than 50, is there a
 6 number in between those two --
 7 A. I couldn't, it would be strictly a blind
 8 guess and I know there was a time when all the big
 9 projects we were bidding were ARRA financed or
 10 portions of it were that we had to be careful of.
 11 So those were certainly handled differently and
 12 we bid a lot of them, we didn't get a lot of them
 13 but we bid a lot of them.
 14 Q. In 2009 do you have a rough idea as to how
 15 many ARRA projects you actually serviced?
 16 A. I can't give you a number, I know that I
 17 personally serviced two or three. And we may have
 18 serviced one or two out of each one of our branches.
 19 But we are doing, we are sending out 20 to 30
 20 quotations a week and a small percentage of that
 21 would be been ARRA compliant requirements.
 22 And of those that come to fruition with an order
 23 would be a fraction of that.
 24 Q. So focusing on that bidding period of 2009,
 25 2010 when the ARRA bidding was going on, did you

1 ever see requests during that bidding process for
 2 both the domestic spec using the ARRA money and then
 3 an import spec on the fittings so that the, they
 4 could see what the price differential was going to
 5 be?
 6 A. I think at the start we were giving the
 7 contractor pricing on both so that he could see, so
 8 we would protect ourself from somebody that was
 9 bidding it wrong, there was a lot of novices that
 10 didn't understand and were just pricing it whatever
 11 way they priced their normal stuff.
 12 So we could be made to look very, very poorly on
 13 a total quote because somebody mispriced their
 14 fittings.
 15 So we listed them and as stated these are
 16 foreign manufacturer and not in compliance with ARRA
 17 regulations, but here is the fittings that are.
 18 So that made the end user, the contractor, our
 19 customer stop and take notice that you're
 20 competitive up here and not competitive down here,
 21 and it caused them to look and to check.
 22 And in a lot of cases, not a lot, but there are
 23 several cases I know of it caused the contractor to
 24 go back to another supplier and say what are you
 25 doing, you are pricing, your fittings are cheap, are

1 you ARRA compliant and they said what's, and oh, no,
 2 these aren't domestic, so that worked for awhile.
 3 But we did that for awhile, all the time, but when
 4 we first started out we did.
 5 Q. If we were to go down the chain in that
 6 bidding process, although you were responding to a
 7 contractor's request, do you have any knowledge of
 8 the bid coming from the project owner ever
 9 requesting to see both an import price as well as a
 10 domestic price?
 11 A. I would imagine it happened but I can't
 12 recall which job or what particular thing. But
 13 knowing owners as they are, I would expect that had
 14 happened.
 15 Q. Did that dynamic ever play out previous to
 16 the ARRA period where a project owner, whether it's
 17 a project engineer, the person who is writing the
 18 specs, actually puts both a domestic and an import
 19 specification to see the difference between the two?
 20 A. Well, there is no difference in
 21 specification, it's just if they list a
 22 manufacturer.
 23 So they say Tyler or SIGMA are approved equal,
 24 you are talking about apples and oranges or apples
 25 and apples depending on how you look at the

1 specification.

2 Does the guy know what he is doing, no, he

3 probably doesn't know what he is specifying or the

4 end result of what he is specifying, the open door

5 that it gives for people to come in or how closed

6 that door is.

7 You have to go back then to the specifications

8 prior to that or specifications before that district

9 that this job is fitting into.

10 And if they are buying SIGMA or Star then you

11 feel pretty confident you can bid and if the, if you

12 bid the job your way and it comes to push and shove

13 in the submittal process you can say it says right

14 there in the specifications.

15 So then it becomes an addenda and the contractor

16 gets to have the difference in price. So we have to

17 look at what the specification calls for. If you

18 are smart enough, you know the loopholes you can get

19 into, a guy doesn't tie his bows up correctly you

20 can actually bid a foreign fitting because SIGMA

21 didn't make a domestic fitting.

22 You know there was going to be a day of

23 reckoning if they were looking at what they are

24 doing. You can go right back and say here is the

25 project specifications that said SIGMA, realize

1 there is a "buy American" for the whole job but we

2 don't know if you listed SIGMA if that was the case.

3 You'd usually win those arguments in most cases,

4 the engineer says okay, I made a mistake, we want

5 domestic fittings so we'll get the contractor

6 addenda for the difference.

7 Q. So what was the language used to specify

8 domestic fittings prior to the ARRA period?

9 A. Well, they would use an AWWA standard, not

10 list a manufacturer, just AWWA standards plus ARRA

11 requirement.

12 Q. Before the ARRA requirement, if I am an

13 engineer and I want domestic fittings on my project,

14 how would I communicate that in the written spec?

15 A. You would say Tyler only, Tyler domestic

16 only, you'd spell it out.

17 Q. And if I didn't care, if it could be

18 domestic or import?

19 A. You say, you wouldn't even list the

20 manufacturer, you say fittings to comply with the

21 C-153 or A-2110, whatever is more specific to what

22 you want as far as a general specification and not

23 mention anything about ARRA or buy American or NAFTA

24 only or NAFTA allowed, all those things are things

25 that can be added in after the fact to tighten

1 things up, but if they don't list it, to me it's

2 wide open.

3 Q. A wide open spec allows imports?

4 A. Imports.

5 Q. Did you ever observe rivals bidding import

6 fittings when it specifically says Tyler only or

7 Tyler domestic only?

8 A. There is always the oddball in the group.

9 So yes.

10 Q. And do they win?

11 A. Most of the time they don't win.

12 Q. Did you ever bid with an import product

13 price when it specifically called for a domestic

14 fitting?

15 A. We probably have. More by accident, more

16 by branches that didn't know. Getting involved in a

17 branch out of Modesto or Bakersfield that aren't

18 that familiar with what the ARRA stuff is, getting

19 caught up in we have already supplied that district

20 but this job is different even though it's going to

21 the same district, probably have. But not

22 knowingly.

23 Q. So focusing just on the period of time

24 prior to the enactment of the ARRA, and that was in

25 February of 2009, so we are really kind of reaching

1 back to kind of the 2008, early, early period of

2 2009, do you recall if McWane provided discounts on

3 their domestic fittings when a project specifically

4 requested Tyler only?

5 MR. TRUITT: Object to the form.

6 THE WITNESS: I can't tell you.

7 MR. MANN: Q. I recognize I am asking a lot of

8 try to think back that far, so that's fine.

9 A. Yeah.

10 Q. During the ARRA period did Groeniger use

11 any de minimis waivers for fittings?

12 A. We learned the word, what de minimis was,

13 we had conflicting information what products might

14 full into de minimis.

15 It was never fittings, it was bolts, gaskets,

16 small things, accessories to fittings, the accessory

17 packs for the fittings, never the fittings.

18 And we never saw a piece of paper from the

19 government or from the engineer on a project say

20 this is your list of de minimis accepted things,

21 never knew that that existed or if there was, how

22 you would raise your right hand, face the east,

23 whatever you would signal that you wanted to take

24 advantage of some de minimis things because it was

25 de minimis in nature as far as knowledge about what

1 it is. Interesting word though.
 2 Q. So is it your testimony today that
 3 Groeniger did not use any de minimis waivers for
 4 fittings?
 5 MR. TRUITT: Objection, asked and answered.
 6 THE WITNESS: Well, you have to clarify that,
 7 Counselor, as to did you ever file a de minimis
 8 waiver in writing, I would say no.
 9 We may have attempted to use the word de minimis
 10 to support an argument we had with some product, but
 11 not with fittings.
 12 MR. MANN: Q. So you never used a de minimis
 13 waiver for fittings?
 14 A. Not that I can recall. If anything would
 15 come across my desk to have me sign as honest to God
 16 truth and say you have to waiver this as being a de
 17 minimis thing, I would have had to do a lot of
 18 checking. And at that time in my life I was trying
 19 to, I was not taking chances like that.
 20 Q. Earlier today Mr. Truitt asked you who your
 21 customers were and you stated that you had
 22 contractors and you listed different types of
 23 contractors.
 24 And then I believe you also said there were
 25 municipalities and then public agencies; is that

1 right?
 2 A. Yes.
 3 Q. Are there any other types of customers? So
 4 other than identifying different types of
 5 contractors, so we have contractors, municipalities
 6 and public agencies. Any other types of customers?
 7 A. Government? I mean federal government,
 8 Army, Navy bases, things like that.
 9 Q. And what percentage in 2009 of your
 10 business did you deal with contractors in?
 11 A. 2009, versus municipalities?
 12 Q. If we were to break it up, in my mind we
 13 have four categories, we have contractors,
 14 municipalities, public agencies and then federal
 15 projects.
 16 A. Uh-huh.
 17 Q. What I'd like to do is establish a
 18 breakdown of, percentage breakdown of those four
 19 different types of categories for 2009.
 20 A. 20 to 25 percent municipalities.
 21 Q. Okay. And contractors?
 22 A. The rest.
 23 Q. And in 2010, if we were to break down who
 24 your customers were percentage wise, what would they
 25 be for contractors?

1 A. I don't think it would have changed
 2 appreciably, the mix of contractor types might, but
 3 municipalities pretty much carried the same weight.
 4 Q. Is there a difference in the type of
 5 project that a contractor is going to handle versus
 6 a municipality?
 7 A. The contracts are not handled by
 8 municipalities, they govern the specification but
 9 the contractor installs it.
 10 There are several municipalities that have their
 11 own installation crews but they don't bid the big
 12 projects. They take care of their needs as far as
 13 their repair and replacement for their own
 14 districts.
 15 They also have, there are districts that have
 16 the supply concessions where they buy the material,
 17 they inventory it and they sell it to contractors
 18 working, for a premium price they sell it to
 19 contractors working in their area.
 20 They govern the spec of what is used so it meets
 21 a hundred percent of what they want, they cover
 22 that, we supply them the material, they supply the
 23 contractor the material.
 24 East Bay Municipal Utilities, that's a big user,
 25 they use that philosophy. San Jose City Water was a

1 big user of that.
 2 City and County of San Francisco was a big user
 3 of that, they supplied the materials to the
 4 contractor.
 5 Some of them are getting away from that, but at
 6 that time those were the big people around here.
 7 Contra Costa County Water District, they buy
 8 materials to supply to their customers. Marin
 9 Municipal Water District, same scenario.
 10 So we have all these big districts who buy large
 11 volume of materials, but yet don't install it
 12 themselves, they just give it to their contractors
 13 working under their jurisdiction.
 14 Q. Is that type of scenario that you have just
 15 described a situation where you have a contract to
 16 supply them with a particular line of products for a
 17 year?
 18 A. In some cases we do, in some cases they
 19 just go out, in a period of time they just go out,
 20 we are advertising for fittings this month, we are
 21 advertising for pipe next month, they may go out and
 22 advertise those products seven or eight times a year
 23 depending on their needs. And it might be the same
 24 products.
 25 Some go on an annual, East Bay MUDD is annual,

1 Contra Costa is kind of semi-annual, Marin is kind
2 of semi-annual, San Jose is annual.
3 And then the rest of the districts around here,
4 they buy as they need it. And that's only for their
5 own use with their own crews for maintenance work.
6 The contractors buy their own material that meets
7 their own specification.

8 Q. Is there any type of business that isn't
9 bid? You understand my question?

10 A. Yeah. I understand your question. Today
11 very little. The economy has changed that.

12 In 2005, 2006 people didn't have time to quote
13 projects, just get the material to me as quick as
14 you can, we know you are going to treat me fair
15 scenario. We had a lot of that.

16 That was probably 60 percent of our return
17 business was just get the material out there as
18 quick as you can, and the responsibility that we had
19 to be fair was the determining factor.

20 If they caught us not being fair we were out and
21 it's hard to get back in when they lose confidence
22 in your looking out for them.

23 But today everything is bid and if you are not
24 low, very easily you could lose the job with your
25 best customer because he is looking out for his

1 bottom line too.

2 Q. If we were to back up to 2008, 2009 time
3 period, what were the dynamics of the bidding
4 projects versus people just showing up and saying I
5 need the project?

6 A. The same as it is today. As soon as the
7 recession started to hit where everybody was
8 impacted at the bottom line and the business was not
9 there, everybody scrutinized life differently. And
10 certainly the contractors did.

11 Q. So let's talk a little bit about that
12 bidding process that's been going on since 2008 that
13 makes up the majority of your business.

14 Walk me through the steps if you could just to
15 help me understand exactly what happens. So how
16 does it start?

17 A. Well, most of your public agencies have a
18 list of projects coming up to bid that are going
19 through the Builders Exchange, they have a long list
20 of projects that are bidding by a multitude of
21 different agencies or independent people that are
22 trying to build something.

23 And so you go and you look through these plans
24 and specifications until you find one that's got
25 valves and pipes and fittings on it and you say

1 okay, I want to bid on that.

2 So you make copies of those sets of plans and
3 specifications and take them back to your office and
4 you have your estimators make a complete materials
5 take-off which lists every valve, fitting, piece of
6 pipe, bolt, nut and gasket, and you price it up on
7 an individual basis and you send it to the
8 contractors that you know that are bidding the
9 project.

10 And usually there is a list of contractors that
11 have gotten plans and you call them up and say are
12 you bidding this job and yeah, I'll get you a quote.
13 And that's one way of doing it.

14 Another way is your contractor will call you and
15 say I am bidding this project, do you have plans on
16 it? And you say yes or no and if you don't you go
17 out and get plans from his office, he'll make a copy
18 for you, and you make a take-off just for him.

19 Now, if another contractor calls up on the same
20 job and you have already made a bid to one
21 contractor, you don't do that, you have him send you
22 his take-off of what he needs or give you a set of
23 plans.

24 It's common courtesy if a guy is working with
25 you, you work with him exclusively.

1 If another guy calls up on the same job you
2 don't share the information you gave one guy with
3 another.

4 You may have all the information you need but
5 you don't share it until the other guy gives you the
6 same amount of intel to give him a price. Or give
7 you his own estimate of what he needs.

8 If we do the take-off on our own we send it to
9 everybody. And that's kind of the different
10 philosophy how we do it.

11 But we have, at every branch we have two or
12 three estimators, that's all they do is take-offs
13 and pricing and throw them over their shoulders,
14 give them to the sales people and they disperse
15 them, they go out in the mail or whatever.

16 At one time in the region we are talking about
17 today, we could be bidding 25 to 30 jobs a week of
18 major consequence of pipe and valve and fittings.

19 Because these jobs bid and there is a low
20 bidding contractor, that doesn't mean the job is
21 going to go.

22 That means the owner now has a price of what
23 it's going to cost, now he has got to get his
24 financing worked out because he knows it's going to
25 cost X amount of dollars to do this project and then

1 the finance guys dry up.
 2 We have bid jobs four or five times in two or
 3 three month or four month or six month or two year
 4 increments, they try to rebi identify it again and
 5 it never comes in at the price they need so it keeps
 6 evolving.
 7 Or they cheapen the job, cut some stuff out and
 8 rebid it again using a different set of plans. And
 9 there is all sorts of variables.
 10 So just by bidding the job doesn't mean the job
 11 is actually going to be a job. Even if your
 12 contractor or friend ends up with it, then you have
 13 to negotiate with him.
 14 Sometimes they have a rebid after the fact.
 15 They'll say okay, I want you to rebid this item,
 16 rebid this whole job, it's going to go in a month.
 17 So then you go back and sharpen your pencil and
 18 everybody else sharpens their pencil, and there is
 19 always a crazy guy in the group that everybody has
 20 to deal with. So it's a long process before you
 21 actually get an order.
 22 Q. So you provide the material take-off to the
 23 contractor, let's fast forward to the point where
 24 the contractor gets the green light and the project
 25 owner has the financing, he selects the contractor

1 to do the work.
 2 Between that point and the point that you
 3 provide the material take-off, are you providing any
 4 information, are there any submittals?
 5 A. We submit on all the products, especially
 6 for a ARRA project or a big pipeline project that
 7 comes out with an independent set of specifications,
 8 we will submit on everything.
 9 Because there is certainly a lot of review and
 10 resubmit, they make corrections, they scratch this
 11 out, scratch that out.
 12 Q. Who is they?
 13 A. The engineer. To review and resubmit. So
 14 that means the timeline has stopped, we have to
 15 get -- and then resubmit and then the timeline
 16 starts again until they can review it.
 17 Then they say okay, fine, the submittal package
 18 comes back complete and we can order material and go
 19 forward at that point.
 20 Q. So the time between you providing the
 21 contractor with the material take-off's and the
 22 submittal process, is that a negotiating period, I
 23 guess -- let me ask a better question.
 24 Is there a difference between a submittal and a
 25 material take-off?

1 A. Yes.
 2 Q. What is that difference?
 3 A. Material take-off is an estimate. A
 4 submittal is beyond that.
 5 We don't do submittals unless we have been told
 6 that we are responsible for the project.
 7 Now, we have, they can still pull the project if
 8 we don't get our material approved, they can always
 9 do that, we haven't supplied anything yet.
 10 But they have our prices, our costs are in
 11 there, they say okay, does your material meet all
 12 the specs, we say it certainly does, they say send
 13 me your submittals, you pass them the submittals and
 14 it comes back approved and then it's a slam dunk and
 15 you are ready to go.
 16 Q. Focusing on the submittal process, if you
 17 respond -- how do you respond to a specification
 18 that is going to allow imported fittings to be used
 19 in your submittals? Do you specify a particular
 20 supplier?
 21 A. Oh, yes, the submittal tells you the
 22 manufacturer and it's highlighted the sizes of the
 23 materials and the products in their catalog that are
 24 going to be used and the dimensions.
 25 So that if they have to figure the dimension of

1 the project, they can figure out how long the lane
 2 length is of this product versus this product and so
 3 forth. So you give them a complete listing of the
 4 products.
 5 And if there is electronics involved you give
 6 them wiring diagrams. I mean, it gets pretty
 7 intense, some of these submittals take a month and a
 8 half to build just to be able to submit them, let
 9 alone when they come back and say revise and
 10 resubmit, then it could take another month before
 11 you get the revisions again.
 12 These are areas that we can't control, goes back
 13 to the manufacturer.
 14 This doesn't have anything to do with fittings,
 15 this has to do with electronically operated valves
 16 and other things that require pressure for things to
 17 turn off and turn on. Fittings are pretty plain
 18 Jane.
 19 Q. Do you specify you are going to use a SIGMA
 20 imported fitting in your submittals versus a Star
 21 imported fitting or even a Tyler imported fitting?
 22 A. We don't classify imported or domestic, we
 23 just say we'll submit on a SIGMA, we'll submit on a
 24 Star, we'll submit on a Tyler.
 25 If it's an ARRA job we'll submit on Tyler, we

1 wouldn't submit on SIGMA. But we may submit on a
 2 Star if in fact they have the availability of their
 3 domestic application fittings.
 4 Q. So once you have submitted, let's say you
 5 submit on an import job SIGMA, and a month later the
 6 contractor is ready to receive supply.
 7 Can you provide him with Star fittings or do you
 8 have to only supply him with SIGMA fittings since
 9 that's what you submitted?
 10 A. If it's a foreign specification you can
 11 probably get by with supplying a SIGMA or a Tyler
 12 foreign fitting, or import fitting.
 13 But there are those sticklers that say hey, this
 14 is what you specified, this is what you submitted
 15 on, we want this product.
 16 And they are right, we should and we follow up
 17 with the people we submit it on to who we supply in
 18 most cases.
 19 There is always a case where we don't have the
 20 fitting and they need an extra one of these and we
 21 don't have one and we have to give them whatever we
 22 have. But we raise our hand and say please.
 23 I am not one for asking for forgiveness rather
 24 than permission, that is what I wanted to say.
 25 Q. So am I understanding you correctly that

1 you can substitute Star fittings for SIGMA fittings
 2 in most cases, but occasionally you can't because
 3 there is a stickler who wants you to respond with
 4 exactly the submittals that you provided?
 5 MR. TRUITT: Object to the form of the question.
 6 THE WITNESS: Yes. But also there are certain
 7 specifications that say SIGMA only.
 8 So then you have a specifying agency that is
 9 specifying a brand only again. In this case it's a
 10 foreign fitting. So the roles are reversed
 11 theoretically, but that's rare.
 12 Usually if you supply a SIGMA fitting to a
 13 district then you can supply a Tyler fitting or a
 14 Star fitting.
 15 MR. MANN: Q. When the specification
 16 specifically calls for domestic, it doesn't
 17 necessarily say Tyler only but just maybe domestic
 18 fitting, or you know it's an ARRA project, were you
 19 able to substitute out a Star fitting for a Tyler
 20 fitting on a domestic job? Would you have been able
 21 to?
 22 A. Yeah, we have. Only because you can't get
 23 the Tyler fitting or there was a problem with, there
 24 was a problem with performance.
 25 We had a domestic issue on a job in San Jose

1 where the fittings that were coming out of Tyler had
 2 sand holes in them and the sand holes weren't
 3 probably causing the fitting to fail under pressure,
 4 but they were a sand hole that was going
 5 significantly into the core diameter to the casting.
 6 It happened to be a flaw they had with a certain
 7 fitting.
 8 So they allowed us to supply a foreign fitting
 9 in lieu of those because we couldn't get anything
 10 from Tyler in the time frame to support the job
 11 performance. Or construction schedule.
 12 Q. So you could substitute a Star domestic
 13 fitting even though you submitted it as a Tyler
 14 fitting?
 15 A. If everybody was aware and gave their
 16 blessing. Because of availability and construction
 17 schedules, they would allow it.
 18 In most cases, I don't know of anybody that says
 19 absolutely not, no, that's not the case, they will
 20 maintain the construction schedule, it's just they
 21 want the lion's share of the material to be
 22 domestic.
 23 And very few of those around any more as far as
 24 districts, they all have, they might have certain
 25 valves they like, but fittings is pretty much open.

1 Q. So even during the ARRA period, fittings
 2 was still a general spec as opposed to a spec like a
 3 meter or a hydrant?
 4 A. Yes.
 5 Q. Do customers typically source water work
 6 products for a single project from a single
 7 distributor?
 8 A. Say that again, please.
 9 Q. Do customers, that would be your customers
 10 typically source water work products for a single
 11 project from one distributor?
 12 MR. TRUITT: Object to the form.
 13 MR. MANN: Q. In other words, do contractors
 14 split up the bids in projects?
 15 MR. TRUITT: Objection, ambiguous.
 16 THE WITNESS: Certainly the bigger contractors
 17 would like to split it up and spread it around to
 18 everybody. If you allow them to do that.
 19 You can say then no, I am not interested in
 20 that, I want the whole order or I'll take this part
 21 of the order, so forth.
 22 And if it gets broken up too much then we say
 23 give it all to the other guy, we are not interested
 24 in that.
 25 MR. MANN: Q. Why wouldn't you be interested in

1 that?

2 A. Because there is no money in that. We are

3 in the business to make money and if they break up

4 the order so severely that it's costing you money to

5 service part of it, we can always say no and that's

6 up to management, and we have, we have done that

7 considerably lately because of the fact that

8 everybody is looking at everything, and normally

9 speaking those aren't our regular customers.

10 Our regular customers don't, they may buy the

11 whole order from one person or another but they

12 won't split it up.

13 Q. What percentage of your business is from

14 regular customers?

15 A. Oh, I would say probably 80 percent.

16 Q. So 80 percent of your business would be

17 Groeniger & Company responding to an entire project?

18 A. Yes.

19 Q. Have you ever responded to a project that

20 is just fittings?

21 I want to remove the municipal contracts that go

22 out and they want fittings this month and pipe that

23 month, so if we remove that from the equation, are

24 you ever responding to just fittings?

25 MR. TRUITT: Object to the form.

1 THE WITNESS: At the end of the day, yes. Maybe

2 we didn't start out that way.

3 But when a contractor says I'll give you the

4 fitting package on this big, big project, that's all

5 you may end up with, and you may have bid a million

6 dollars worth of material and end up with a hundred

7 thousand dollars of fittings.

8 But in some cases like that the fittings are a

9 big part, I mean a big part of the total and so it

10 would be worthwhile going after it.

11 But those are mostly big plant or big, big

12 projects where the contractors are big

13 multi-functional guys and you are one of the

14 peddlers that are quoting materials and they don't

15 really know you, they don't know your capabilities

16 or qualifications and they are just splitting up the

17 order.

18 Once you work with those people awhile and they

19 get to know your capabilities, that's a different

20 story, but these big guys are coming from out of

21 state and don't know who you are, so you are able to

22 get a portion of it.

23 Q. So on a regular sized project versus this

24 big project that you have just explained for us, do

25 you ever respond to just the fittings?

1 MR. TRUITT: Objection to the form.

2 MR. PARKS: Can I just get a clarification? When

3 you talk about responding to the fittings, do you

4 mean put a bid on limited to the fittings or you put

5 a full bid in and you only get the opportunity to go

6 forward with the fittings piece?

7 MR. MANN: Let me ask a better question.

8 Q. On a regular size project, are you ever

9 just responding to a bid that is only asking for

10 fittings?

11 MR. TRUITT: Object to the form.

12 THE WITNESS: That probably would be very

13 unusual.

14 MR. MANN: Q. And why would it be unusual?

15 A. Because you are talking about an average

16 size job where there is pipe and there is valves and

17 there is fittings and service material, it's a

18 subdivision or if it's an average size transmission

19 main you have big pipe, big item, then you have

20 fittings, big items for the pipe, and you have

21 valves which are big items. So you have all these

22 big things.

23 Now, if it's a transmission there might be a

24 case that we'd end up with just the fittings, but we

25 wouldn't go in with a complete package and we'd bid

1 a complete package of which fittings would be a

2 portion of that, a sizeable portion.

3 Q. What are the benefits to your customers

4 when they purchase the entire package from one

5 distributor?

6 A. Benefits are they only have to go to one

7 place, they only have to yell at one person, they

8 only have to commute their schedule to one person.

9 And that one person can come back to them and adapt

10 everything to a schedule and say you will have this

11 by this date and this by this date.

12 Much easier to manage a project from the

13 contractor's point of view if he's only got one guy

14 he has to coordinate with.

15 There is always one guy that blames the other

16 guy and I have seen that happen. And so it's just

17 better to go with one source and the blame stops

18 there.

19 Q. What are the criteria that your customers

20 use when selecting a water works distributor?

21 MR. TRUITT: Object to the form.

22 THE WITNESS: Could you give me a date?

23 MR. TRUITT: Foundation.

24 THE WITNESS: A date on that.

25 MR. MANN: Sure.

1 Q. In 2010, what criteria did your customers
2 use when selecting water works distributors?
3 MR. TRUITT: Same objections.
4 THE WITNESS: Price, product availability and
5 general servicing -- terms of sale.
6 MR. MANN: Q. Let's open up to page 61 of your
7 previous testimony. It's on page 61, starting on
8 line 6.
9 "Question: In your mind as a distributor what
10 factors are important to contractors when selecting
11 among distributors?"
12 "Answer: Number one would be relationships,
13 number two would be history, number three would be
14 consistency of service and four would be price."
15 Is that true?
16 A. Probably not today.
17 Q. When did that change?
18 A. Well, it changed as the economy went south.
19 Q. So in December 2010 that was your
20 testimony. Your testimony today if you were to rank
21 those four, what would they be?
22 A. Relationships would still be 1. Price
23 would be a close second. Service would be third and
24 history would be fourth.
25 Q. Do your customers have high service

1 expectations?
2 MR. TRUITT: Objection, foundation.
3 THE WITNESS: Yes. Always.
4 MR. MANN: Q. What are those?
5 A. Whatever they need is what they expect.
6 And never what we need, but what they need. So our
7 service is their service. It's mandatory today.
8 Q. And if you fail to perform, you fail to
9 provide them with the service, what does that do to
10 your relationship with the contractor?
11 A. Well, you are put at the end of the line
12 and there is three or four other people in front of
13 you then.
14 Q. Has that ever happened to you?
15 A. Sure.
16 Q. Were you able to overcome that and get back
17 to the front of the line ever?
18 A. Yes.
19 Q. What steps did you have to take in order to
20 get back to the front of the line?
21 A. You just have to hang around and be there
22 and help them when the other guy falls and they
23 will, and then you move up. I wish I didn't have to
24 phrase it that way but that's kind of the way it is.
25 Q. So if you are unable to service a

1 contractor on a particular project like you have
2 promised, do you potentially lose future sales with
3 that contractor?
4 A. Yes, they lose faith in your ability to
5 handle their service needs. Which includes a
6 competitive price and product that meets their
7 installation schedule.
8 Q. Jumping over to page 81 of your previous
9 testimony.
10 A. Okay.
11 Q. Starting on line 11.
12 MR. TRUITT: I am going to object, I think this
13 is improper impeachment, is there a question he has
14 given you an inconsistent answer to? Are you asking
15 him to read and adopt?
16 MR. MANN: Are you asking me, do you want to go
17 off the record?
18 MR. TRUITT: No, I am objecting to improper
19 impeachment on the record, you can do it if you
20 want.
21 MR. GREENAN: What makes you think it's
22 impeachment? Maybe he is asking to clarify an
23 answer.
24 MR. TRUITT: I don't think he can not ask a
25 question, simply referring to prior testimony and

1 then ask a question, but I am just lodging an
2 objection for our record.
3 MR. PARKS: Noted.
4 MR. MANN: Q. So on line 11 your previous
5 testimony was, the question was, "Do you generally
6 in your experience, do contractors tend to deal with
7 a limited number of water works distributors over
8 time?"
9 "Answer: Yes."
10 "Question: Why is that?"
11 "Answer: Trust, ability to supply a region," and
12 you go on and provide further examples. Is that
13 still true today?
14 A. For the most part it is. You have to be
15 competitive price wise.
16 Now, if he is a friend of yours and if he is
17 your customer, he'll give you the opportunity to be
18 competitive, even if you are not. And if you don't
19 take that up, then he'll buy it from somebody else.
20 And he is not going to pay more for it.
21 But they have a tendency to have limited people
22 that qualify for them, not that they won't throw a
23 bomb on you on occasion where some guy from out of
24 town has a real cheap price they say are you going
25 to be in this category, and you have to tell them

1 why, that they don't know what they are doing and
 2 that type of thing, but that's part of the game.
 3 Q. How often do customers go with the lowest
 4 priced bundle of goods?
 5 A. More often than not.
 6 Q. Your previous testimony was that your
 7 relationship was the number one criteria, and then
 8 price would be a close second today, but back in
 9 2010 price was, I think it was fourth.
 10 In 2010, how often would customers go with the
 11 lowest price, were they going with the lowest price
 12 bundle?
 13 A. Probably not as much as today but there was
 14 always the ability to react to a price and make the
 15 contractor whole so he wouldn't have to invest time
 16 and effort in dealing with somebody he didn't know.
 17 But that became harder and harder because other
 18 people stayed around and they kept doing it and the
 19 guy says well, you keep telling me they don't know
 20 what they are doing but I am going to have to give
 21 them one and see.
 22 And they do take orders away and give it to
 23 somebody else, they may have problems with them and
 24 never give it to that guy again, but that order for
 25 all intents and purposes was gone.

1 Q. Do you have a core group of customers that
 2 are giving you almost all of their business?
 3 A. Almost all of our business today would be
 4 60 percent, 65 maybe, 65 percent would be a good
 5 customer day.
 6 Q. And how much business in terms of their
 7 total amount of business that they have to offer are
 8 they giving to you?
 9 A. That's what I mean -- well, oh, probably a
 10 significant 40, 35, 40 percent of the total package
 11 that they buy, they might buy, 40 percent of that
 12 will be from us.
 13 If they are buying 65 percent of the orders that
 14 we deal with, that relationship would be
 15 significant.
 16 There are certain things they don't buy from us
 17 like pipe, stuff they buy, they never buy that from
 18 us, they always buy that from a manufacturer
 19 directly.
 20 So it's not a one map fits all terrain, it
 21 varies. Certain customers have annual requirements
 22 from manufacturers they deal with and we can't get
 23 into that ballpark, but we have all the rest of the
 24 appurtenances for that job.
 25 Q. Given that your relationship with

1 contractors is still number one, are you able to
 2 charge a premium to those, that core group of
 3 customers for providing the service that Groeniger &
 4 Company provides?
 5 MR. TRUITT: Objection, time frame?
 6 THE WITNESS: We thought we did and could. But
 7 to be actual, I don't think we can anymore.
 8 MR. MANN: Q. And when did that change?
 9 A. Part of the same downturn of the economy,
 10 everybody was looking out for their own bottom line.
 11 And relationships aside, we have to do what we got
 12 to go for us, which I understand, don't necessarily
 13 like it but I understand.
 14 And they'll come back, they'll realize there is
 15 a difference and they'll come back, they won't ever
 16 tell you they are going to come back for that reason
 17 but they will and they do.
 18 But here again, you can't bank on your abilities
 19 to do all the peripheral things that you used to be
 20 able to do when somebody can get product from almost
 21 anywhere now, inventories are not as big a thing
 22 with the public works job, so the smaller inventory
 23 guy is, as a matter of fact in a better position
 24 because he doesn't have the overhead.
 25 So here are all these little guys popping up

1 with little or no overhead and they have an
 2 advantage. So it's hard.
 3 Q. Given this dynamic where you see some of
 4 your more loyal customers that you thought you maybe
 5 were able to charge a premium but you no longer are,
 6 do you see them shifting business if they are
 7 getting maybe just a five percentage less on the
 8 fittings of a project?
 9 A. Yes.
 10 Q. Do you observe any direct sales of ductal
 11 iron pipe fittings in your markets?
 12 MR. TRUITT: Object to the form.
 13 MR. PARKS: Can you clarify direct, do you mean
 14 direct from the manufacturer to the user?
 15 MR. MANN: Q. If I were to use the term direct,
 16 what is your understanding of the term "direct
 17 sale"?
 18 A. That comes from the manufacturer directly
 19 to the end user, bypassing the distributor.
 20 Q. Okay. So using that as your baseline, do
 21 you observe any direct sales of ductal iron pipe
 22 fittings in the markets that you service?
 23 A. Yes.
 24 Q. Who is selling direct?
 25 A. Probably the most notorious is American, a

1 ductal iron pipe company out of Birmingham, Alabama.
 2 Great company, make a great product but they
 3 have always been a direct sales company, they don't
 4 know how to handle the distributors well and they
 5 don't think the distributor has the experience nor
 6 the intelligence to quote certain types of work.
 7 They are wrong but that's their philosophy. But
 8 they are the king so they run it that way and they
 9 supply the fittings and the pipe.
 10 We compete against them on the fittings and in
 11 most cases unless it's a big job where they package
 12 everything and hide everything so they can't ever
 13 find what a unit price is until after they start
 14 supplying it, it's difficult to pull it away. Pipe
 15 is a big entity.
 16 Q. Do you observe Star selling direct in your
 17 markets?
 18 A. No.
 19 Q. Do you observe SIGMA ever selling direct
 20 for ductal iron pipe fittings?
 21 A. No.
 22 Q. Do you observe Tyler Union or McWane
 23 selling direct in the ductal iron pipe fittings?
 24 A. Not that I have seen lately at all. Or
 25 that I can recall.

1 Q. What benefits do suppliers gain by selling
 2 to distributors versus selling direct? Or in other
 3 words, what efficiencies do distributors bring to
 4 the supply chain?
 5 A. Service, certainly service, knowledge of
 6 the local specifications, local inventory to pull
 7 the ones and twosies from, credit applications, all
 8 the above I guess.
 9 Q. Do distributors provide one stop shopping
 10 to customers?
 11 A. Some do, yes.
 12 Q. Do distributors handle the billing and
 13 collections from their customers?
 14 A. Yes, that's the credit scenario. Some
 15 people will allow a looser credit format with their
 16 customer than a manufacturer would.
 17 And that's probably one of the main underlying
 18 reasons why manufacturers would rather go through
 19 distribution because they can guarantee their money
 20 quicker than if they were selling to the contractor
 21 directly.
 22 Q. In terms of a sales force, do distributors
 23 provide a larger sales force than manufacturers?
 24 A. Normally speaking, sure, yes.
 25 Q. Do distributors handle returns of products?

1 A. Yes.
 2 Q. Do distributors aggregate small orders?
 3 A. Yes.
 4 Q. Any possibility that McWane, Star, SIGMA
 5 could effectively start selling direct in the
 6 markets that Groeniger & Company competed in in
 7 2011?
 8 MR. TRUITT: Objection, foundation, speculation.
 9 MR. PARKS: You can answer.
 10 THE WITNESS: They could. If there was, if they
 11 all were together and didn't allow any deviation and
 12 the only way you could buy fittings was buying it
 13 direct, they could probably get away with that until
 14 somebody came to town and said we are going to allow
 15 this to go through distribution, then they would be
 16 out of business.
 17 MR. MANN: Q. Any chance anybody on their own
 18 could do it if they didn't have the two to go along
 19 with them?
 20 MR. TRUITT: Same objections.
 21 THE WITNESS: No.
 22 MR. MANN: Q. Why not?
 23 A. Because the distributors would rise up
 24 against it.
 25 Q. What do you mean by that?

1 A. They are taking food out of their mouths,
 2 you are trying to break up their package. The
 3 fittings as a whole are not going to govern the job.
 4 Now, if they put fittings and pipe together,
 5 aha, there is much more of a stick. But even that,
 6 the pipe companies don't do fittings well.
 7 If there is an extra fitting they don't know how
 8 to handle that. If they return the fittings, they
 9 don't handle that well at all, they don't permit it.
 10 And if there is any changes on the job which is
 11 more apt to happen than not, as the job is
 12 progressing, they run into something different and
 13 they make an executive decision we are going to go
 14 around the corner rather than go straight up or
 15 whatever, then there is a need for a small amount of
 16 new types of fittings to handle the change in
 17 specification, they don't handle take well either.
 18 Distributors, that is just part of the game, we
 19 react quickly, adjust, bring the other stuff we took
 20 out there back and give them the new stuff. So we
 21 do that constantly.
 22 And that's kind of why we have a lot of D items
 23 that we would normally not want to stock, but
 24 because of returns that have come back and special
 25 fittings that they didn't need that we took back as

1 part of the relationship we have with the customer,
2 and every now and then they do their yard sweep
3 where they go through the at the end of the job,
4 they pick up everything and bring it back, sometimes
5 we didn't even sell it to them.

6 But we give them something on it. It's
7 relationships.

8 (Brief recess taken.)

9 MR. MANN: Q. Mr. Groeniger, earlier today you
10 stated that you purchased imported fittings from
11 McWane or Tyler, Star and SIGMA; is that correct?

12 A. That's correct.

13 Q. Why do you have multiple suppliers of
14 imported fittings?

15 A. I guess the nature of the beast that we
16 developed, bringing on people from other companies
17 as groups of people that had preferences as far as
18 manufacturers go. And we let them do their thing.

19 Whoever supported them best they used, even
20 though I maybe had preferences, I said you are
21 fighting the battle in your area, you make those
22 choices. We support it.

23 And so suddenly relationships were made with
24 other manufacturers that we traditionally may have
25 not dealt with because of Fresno or because of

1 Bakersfield or because of Sacramento and they had a
2 better salesperson and better support.

3 Q. Are there any price advantages to having
4 more than one supplier on imported fittings?

5 A. Not really. The advantage was support and
6 the fact that these people would help the branch
7 people better than a company that would handle
8 corporate best wouldn't get out to the branches to
9 help them.

10 And we could not or we did not or were not able
11 to transfer that relationship to a branch level
12 which these people have had, in most cases were 20
13 plus year people that came to us.

14 So it's difficult to change those guys, they are
15 entrenched in the way they do business. And the
16 reason they came over to our company is because we
17 allowed them the ability to continue their
18 philosophy with as few changes as possible.

19 Q. Who sells domestic ductal iron pipe
20 fittings --

21 MR. TRUITT: Objection, time frame.

22 MR. MANN: Q. In 2011 -- actually in 2009, who
23 sold domestic ductal iron pipe fittings?

24 A. Tyler and Star.

25 Q. And in 2010 were there any entrants?

1 A. No, I don't think so.

2 Q. In 2011?

3 A. I don't think so.

4 Q. Earlier today you stated that you had
5 purchased domestic fittings from Star, you believed
6 there was two projects; is that correct?

7 A. Two projects that I had knowledge of that I
8 was involved in, yes.

9 Q. Have you considered purchasing more ductal
10 iron pipe fittings from Star on the domestic side?

11 A. Yes.

12 Q. And did you purchase more domestic ductal
13 iron pipe fittings from Star?

14 A. Probably not.

15 Q. Why not?

16 A. Because of the inherent threats of
17 retaliation.

18 Q. Who was threatening you?

19 A. Tyler.

20 Q. When you say retaliation, earlier today
21 Mr. Truitt put Exhibit Number 2, but for consistency
22 purposes I am actually going to enter the same
23 exhibit which has been previously marked as Exhibit
24 Number 6 and I know it's redundant but there is a
25 rhyme and a reason to it.

1 The retaliation that you just spoke of and the
2 threats, Mr. Truitt talked about this particular
3 letter and how it encompasses two particular
4 threats; is that correct?

5 A. Yes. More than that actually, it does have
6 more than that.

7 Q. The letter itself has more than just two
8 threats?

9 A. Yes.

10 Q. What were the other threats?

11 A. Well, it does mention, "In support of the
12 increased demand for domestic products," it doesn't
13 say necessarily fittings there, "we are pleased to
14 announce that McWane's domestic fittings and
15 accessories are sold under Tyler Union and Clow
16 Water brand names."

17 The Clow brand name is very, very important to
18 Groeniger & Company at that time because we were the
19 largest purveyor of fire hydrants of which Clow
20 manufactured probably in the state.

21 And the fire hydrant that is sold predominantly
22 in this state is a specified wet barrel type of fire
23 hydrant, wet barrel is what they call it. Versus a
24 dry barrel.

25 Cold areas require a dry barrel so they don't

1 freeze but around here it's wet barrel.
 2 Clow is the major producer, produces probably 75
 3 percent of all the wet barrel hydrants and we are
 4 their largest distributor.
 5 We are probably at the time of 2006, 2005 the
 6 third largest Clow distributor of valves in the
 7 nation and we were just a small operation, mid size
 8 operation here in California. But we did that type
 9 of volume.
 10 We have the annual contract, we had the annual
 11 contract for San Francisco, for East Bay Water, for
 12 Contra Costa County Water, for Marin Municipal
 13 Water, for annual contracts for valves and hydrants
 14 all at the same time, very unusual, probably the
 15 first time in history that has ever happened.
 16 And we don't have all those together today but
 17 at that time we did and we were, it was very
 18 important.
 19 And when Clow Water brand names was stated, that
 20 meant that we could have problems in the other side
 21 of the Clow products that we handle.
 22 McWane is a big company, well run company, tough
 23 company and we did not handle their pipe, we handled
 24 a competitor of theirs pipe which we were pretty big
 25 in that too, but we did not handle their pipe so we

1 felt they couldn't take that away from us.
 2 But everything else we could lose and that would
 3 have been a tremendous blow, we would have to do
 4 some major reorganization if that had happened.
 5 And I don't think that they would have done that
 6 but you don't know. McWane can, McWane is a tough
 7 company, I am not saying that that's bad but they
 8 are a tough company and they have, Tyler has run
 9 roughshod on their part of the industry for years.
 10 They didn't need to do that but they did it.
 11 All they had to do was sell, all they had to do
 12 was do Salesmanship 1A and they would have been
 13 fine.
 14 But they went to intimidation and riding
 15 roughshod on the industry and that turned a lot of
 16 people off, people like me turned off and we went
 17 out to seek other avenues. And that was part of our
 18 ups and downs with Tyler over the years.
 19 It's not that they are not a good company, Tyler
 20 makes good product, they are a good company.
 21 But they don't, we don't want them to own us and
 22 we are an independent company and we did things
 23 independently, the people who supported us we
 24 supported 110 percent, but those who didn't we went
 25 out of our way to find options.

1 Q. Earlier today you talked about the San Jose
 2 Water Company and the incident there where you had
 3 the contract but that you had to convince Tyler that
 4 you had that contract; is that right?
 5 A. That's correct.
 6 Q. What was your understanding? Why did Tyler
 7 change their price on those fittings?
 8 A. It was to bring pressure.
 9 Q. Why were they bringing pressure?
 10 A. They told us we weren't buying enough
 11 foreign fittings from them, we were buying all our
 12 domestic fittings, but the majority of those
 13 domestics were going to San Jose Water.
 14 They were one of the unique companies in this
 15 recession that grew. They were a private water
 16 company, and they got money from the government to
 17 expand their facilities and they were, it was like a
 18 heyday for them, they had projects going right and
 19 left.
 20 And what happens is they controlled the
 21 specification for the materials, you give them the
 22 price for the materials that meet their
 23 specifications, they take it and give it and say
 24 okay, here is two contractors that they use to do
 25 all their work and they said here, you can buy from

1 either one, both of them meet our specification and
 2 are approved by us to do work here.
 3 Then the contractors could have bought it all
 4 from one guy, but in this case one contractor bought
 5 it from another guy and the other contractor bought
 6 it from us, which is good, it kept the balance going
 7 and it kept everybody, if the you have it all then
 8 you have certain responsibilities that are inherent
 9 with that.
 10 Splitting it up is great with me, I'd rather do
 11 that than have it all to be honest with you. But
 12 anyway, we had half of it and another contractor had
 13 half.
 14 The supplier of the other contractor was
 15 applying pressure to Tyler to get us out of it, they
 16 had the contract with this contractor and Tyler said
 17 well, you don't have the contract with him, and I
 18 said you are right, I don't have it with that
 19 contractor, I have it with this contractor.
 20 Q. Backing up a little bit, earlier you had
 21 stated that prior Tyler Union issuing this September
 22 22, 2009 letter which has been marked as CX 0006,
 23 you had purchased two projects from Star on domestic
 24 fittings; is that correct?
 25 A. That's correct. We may have purchased more

1 through the branches, I don't think so.
 2 I think those were the two, I mean, these were
 3 big, big projects, these were big fittings, some of
 4 the fittings Tyler didn't even make, they would have
 5 to make them and most of the fittings Star didn't
 6 make either but they would make them for this
 7 project.

8 Q. Earlier today when Mr. Truitt was talking
 9 to you about CX 0006 you talked about the San Jose
 10 Water Company experience that you had; is that
 11 correct?

12 A. That's correct.

13 Q. I believe it was your testimony, and
 14 correct me if I'm wrong, but that you believed the
 15 experience that you dealt with as it related to the
 16 San Jose Water Company was because you had purchased
 17 domestic fittings from Star; is that correct?

18 A. That is what the inference was when we had
 19 meetings with Tyler. That we are not -- we are just
 20 buying the domestic fittings from them, and not
 21 buying any foreign fittings.

22 And we said well, you are getting all the
 23 domestics except for that one job, that happened
 24 actually before this letter came out, the job was
 25 bid and submitted on and organized far before this

1 letter came out.

2 Q. So prior to this letter you had this
 3 experience with Tyler where they were trying to get
 4 you to purchase more imported fittings rather than
 5 just their domestic fittings?

6 A. That's correct.

7 Q. And based on the experience that you had
 8 with Tyler Union and as it related to the San Jose
 9 Water Company and the issuance of this letter that
 10 came out on September 22, 2009 that I have marked as
 11 CX 0006, what effect if any did this letter and that
 12 experience have on your willingness to purchase
 13 domestic fittings from Star?

14 A. Well, it was the realization with the size
 15 of our company and our needs for fittings, we could
 16 be upside down in an area that could hurt the
 17 company as a whole.

18 If we couldn't get fittings, the specifications
 19 predominantly in the valley are foreign allowable
 20 all throughout the valley, when you get up to
 21 Sacramento it tightens down a little bit, there is a
 22 couple of domestic only specs or Tyler only specs.

23 But when you hit the Bay Area, it's more
 24 prevalent. There are one or two districts that are
 25 big, San Jose Water was the biggest by far during

1 that era of domestic requirement, not domestic,
 2 Tyler requirement, they didn't approve Star,
 3 domestic they wouldn't approve them.

4 And Tyler did a good job of specification, got
 5 to give them that credit, they did the specification
 6 job and they kept the specification working for
 7 them.

8 We could not do anything about it, Star could
 9 not do anything about it, SIGMA couldn't do anything
 10 about it.

11 We had them all go in there and talk to the
 12 guys, they said no, we are private water, we can do
 13 what we want to do.

14 So the realization is if we were going to be in
 15 that ballgame during that period of time when that
 16 was the biggest entity of anything going on in the
 17 Hayward region, and to support two of our major
 18 contractors in the area that were bidding work down
 19 there, we had to have Tyler. And Tyler knew that,
 20 it was pretty obvious.

21 And we asked when the annual bid came out, we
 22 had the whole bid two years before supplying Tyler,
 23 we had all contractors coming to us.

24 And the year after that we split the bid and
 25 this year we split the bid. And Tyler said well,

1 you didn't get the bid, so we said yes, we did, we
 2 asked you for prices and you gave it so us and now
 3 you are coming back and saying you are not going to
 4 support it.

5 They had a price increase sometime after the
 6 first of the year and they just upped our prices
 7 arbitrarily. And so we couldn't up our prices with
 8 the contractors and maintain a relationship with
 9 them.

10 And the other supplier knew what was going on,
 11 they were in there the same day, and I said hey, you
 12 can't buy Tyler at a good price any more, they knew
 13 about it.

14 As a matter of fact, I think we heard it from
 15 our contractor first before we knew. We said what's
 16 going on and he said well, no, you didn't get the
 17 contract, we can't give you that price anymore.

18 So they were trying to get the business for the
 19 whole thing by hook or by crook, so we were
 20 hustling.

21 So we said hey, there is no change, you get the
 22 prices, and so we were buying Tyler at the higher
 23 price and selling it to them at the contract price,
 24 which means we were losing money.

25 And continuously fighting with Tyler trying to

1 get them to acknowledge the fact that they had
 2 quoted us on the project and having the contractor
 3 talk to their regional guy when he went to the
 4 contractor's office and say we are supplying the
 5 contractor through Groeniger, they gave us the price
 6 and we have the annual contract from the district
 7 and so forth. That didn't work.
 8 We kept selling projects and getting our share
 9 of the business through one contractor. And then so
 10 we went to the district ourselves and complained to
 11 the district saying we have a problem with your
 12 specifications, they are limiting supply to one guy.
 13 And we were up front, we said we are quoting the
 14 job, they knew about it, we got pricing from them
 15 and now they are restricting.
 16 So they wrote a letter from San Jose Water
 17 Company to McWane saying that Groeniger & Company is
 18 part of the San Jose contract for this year.
 19 And even that took a little bit before it sunk
 20 in and finally came back and said okay, we'll give
 21 you that price.
 22 Q. We covered that this morning. Just
 23 focusing, I guess backing up a little bit, setting
 24 aside the San Jose Water Company, that contract and
 25 the experience that you had with Tyler, you stated

1 that you had purchased two big projects from Star
 2 for domestic fittings, prior to the issuance of the
 3 September 22, 2009 letter; is that correct?
 4 A. Yes.
 5 Q. After that, after the issuance did you
 6 purchase any more Star domestic?
 7 A. I think we did but it wasn't, it would have
 8 to be coming from the Hayward store because they are
 9 the ones that were being impacted by this.
 10 Q. What to you mean by being impacted?
 11 A. They were the ones doing the big work for
 12 ARRA projects coming out of our Hayward estimating
 13 group.
 14 There would have been very little requirement
 15 for domestic through the Central Valley unless they
 16 had a big project for ARRA, under ARRA auspices and
 17 they would come to Hayward to have us do the
 18 take-off's and submit the pricing and so forth.
 19 And we would have caught it at that point and
 20 said we have to make sure we submit domestic
 21 materials.
 22 Q. Had Tyler not issued this letter in
 23 September 2009, would you have purchased more
 24 domestic fittings from Star?
 25 A. Yes.

1 Q. How much more do you think you would have
 2 purchased from Star?
 3 MR. TRUITT: Objection, speculation.
 4 MR. PARKS: You can answer.
 5 THE WITNESS: Well, if they had done their
 6 specification work which means that they could get
 7 in at San Jose Water, we would have bought a
 8 significant amount of business from them, possibly
 9 50 to 75 percent of our domestic requirements.
 10 Probably not all of it because they don't have
 11 as complete a line as Tyler does, but between the
 12 two we would have split the business pretty much
 13 fifty-fifty.
 14 MR. MANN: Q. So had Tyler not issued this
 15 letter in September 2009, you would have purchased
 16 50 percent of your domestic fittings needs from
 17 Star?
 18 MR. TRUITT: Object to the form.
 19 THE WITNESS: I would think we would have.
 20 Knowing personalities involved, knowing the history
 21 involved and the sales people that Star had
 22 currently in effect in the Central Valley coming out
 23 of Sacramento who were very astute to our needs and
 24 our capabilities, I think so, yeah.
 25 That's if pricing was identical, that's not

1 saying I am doing this on a price basis, I am
 2 presuming that the pricing would be equivalent.
 3 And if the pricing was equivalent then yeah,
 4 that's what would happen. If the pricing was
 5 lopsided one way or the other, that could affect
 6 what we did.
 7 Q. If you could turn to page 129 in Exhibit 1
 8 and I am going to start on line 9.
 9 "Question: Assume that the Federal Trade
 10 Commission can stop Tyler from engaging in
 11 threatening distributors that want to purchase
 12 domestic fittings from Star, and assuming Tyler
 13 doesn't do anything to improve their service
 14 offering, now in that world are you purchasing more
 15 domestic fittings from Star?"
 16 "Answer: Probably not."
 17 MR. TRUITT: Object to the form of the question.
 18 I am objecting to Mr. Renner's question which is
 19 improper.
 20 MR. MANN: Q. It seems like you just told me
 21 that you would have purchased up to 50 percent of
 22 your domestic fittings needs if Tyler hadn't issued
 23 this letter back in September 2009.
 24 Now, obviously the question that Mr. Renner
 25 posed isn't necessarily asking if Tyler hadn't

1 issued the letter, but it does say if they were able
 2 to stop the threats that were occurring.
 3 So I guess I am just wondering if maybe, if the
 4 testimony you provided on page 129, is there a way
 5 to kind of clarify that?
 6 MR. TRUITT: Objection to the form.
 7 THE WITNESS: It was true at that time but the
 8 question did not answer the fact was Star in all the
 9 specifications.
 10 If that was included in there, if Star was
 11 completely acceptable as a domestic manufacturer,
 12 especially with San Jose Water, I would have
 13 answered that differently.
 14 MR. MANN: Q. Okay.
 15 A. But at that time, and they still are not
 16 and that's a big part of our business.
 17 And I could see right away that it wouldn't
 18 change much because the lion's share of our domestic
 19 product was going into San Jose Water.
 20 Q. Let's explore that a little bit. How much
 21 in 2010 of your domestic fittings purchases went to
 22 San Jose Water if you know?
 23 A. Outside of those two big projects it was
 24 probably 90 percent, 85, 90 percent.
 25 Q. So outside of the two big projects that

1 Star supplied?
 2 A. Yeah.
 3 Q. So setting aside the San Jose Water Company
 4 and their domestic needs, your previous testimony
 5 when I asked how much of your domestic business
 6 would you give to Star, it was 50 percent; is that
 7 right?
 8 A. Yeah. I don't think that we would have
 9 kicked Tyler out, we have relationships with some of
 10 the people at Tyler who are trying to change things
 11 and I respect that.
 12 But by giving Star our business it would promote
 13 better service from Tyler also. And it would make
 14 them work harder I think, it would me if I was a
 15 salesman.
 16 And that's all I am trying to get Tyler to do is
 17 work harder and sell better, not intimidate more.
 18 Q. Jumping over to page 135 of Exhibit 1 now,
 19 Mr. Renner asks a similar question that I just
 20 wanted to clarify based on your testimony today.
 21 A. Okay.
 22 Q. So on page 135 starting at line 23,
 23 "Question: Has the policy that McWane is announcing
 24 in CX 6 with respect to purchases of domestic
 25 fittings" -- let me start over.

1 "Question: Has the policy that McWane is
 2 announcing in CX 6 with respect to purchases of
 3 domestic fittings changed your or affected your
 4 willingness to do business with Star on the domestic
 5 side?"
 6 "Answer: No. "
 7 Your testimony today is that you actually would
 8 have given Star 50 percent of your domestic?
 9 business --
 10 A. Here again --
 11 MR. TRUITT: Object to the form.
 12 THE WITNESS: -- we have to look at acceptance
 13 into the specifications. If I just did 90 percent
 14 of our domestic fittings, outside of a couple of the
 15 ARRA jobs, were going to San Jose Water, and there
 16 was no change, it would have made no difference
 17 today.
 18 Even if they had a complete line and were
 19 competitive and everything else I still could not
 20 use them in a domestic application with San Jose
 21 Water. I could use them everywhere else and I
 22 probably would do that.
 23 MR. MANN: Q. So the question and answer
 24 exchange that occurred back in December of 2010, it
 25 sounds as if it's specific to the San Jose Water

1 Company, the fact that Star was not able to place
 2 its product with San Jose Water Company didn't
 3 affect your willingness to purchase from them --
 4 MR. TRUITT: Objection, the question is clear on
 5 its face.
 6 THE WITNESS: Yes.
 7 MR. MANN: Q. Is Star ready in your estimation
 8 to serve as a supplier of domestic ductal iron pipe
 9 fittings for all specifications that don't
 10 specifically ask for Tyler?
 11 A. Yes.
 12 Q. And were they in 2009?
 13 A. Possibly. I don't know that I checked into
 14 them that well back then.
 15 I was more interested in getting San Jose Water
 16 out of the way and not wanting to get too much
 17 involved further because I was going to end up
 18 getting hammered if I did.
 19 So I just made it easier on me just to stay with
 20 what I had and service my customers and worry about
 21 that later, some other time.
 22 Q. How did Star do in responding to the two
 23 projects that you gave to them?
 24 A. Excellent.
 25 Q. Did you have any issues of quality?

1 A. No.

2 Q. Any issues with service?

3 A. Yeah, a couple of issues, we wanted it
4 quicker than we said we wanted it, the contractor
5 told us, gave us a lay schedule and we were
6 complying with the lay schedule and all of a sudden
7 the contractor changed his mind and wanted to start
8 someplace else, we even supplied some Tyler
9 fittings, we even supplied SIGMA fittings.

10 Because it was that or not get started, and they
11 had a meeting at the top and said that's okay, we
12 can supply two fittings here that were foreign or
13 something other than what we submitted on to get the
14 job going.

15 They met their obligation a hundred percent and
16 that was a tough job, it was an extremely, extremely
17 tough job for them to start out with fittings of
18 this size which they had to create a pattern and
19 make the fitting.

20 And some of those fittings Tyler had to make a
21 pattern and make a fitting too so it wasn't as if
22 Tyler had them all sitting in their shop, they did
23 not. Availability would have been almost
24 identically with Tyler as it was with Star.

25 Q. I want to shift gears now, I am going to

1 hand you what's been marked CX 0056. This
2 particular exhibit, Mr. Groeniger, is a collection
3 of what I believe are referred to as pricing
4 announcements or multiplier changes and it's a
5 sample of the types of I guess pricing letters that
6 are sent out in the industry.

7 And I just wanted you to look over it, if you
8 could tell me whether or not you received these
9 types of letters and we'll start there.

10 A. Yeah, we would have received them. I might
11 have not gotten them in my mailbox but I would have
12 been informed that we got a price increase from
13 these people because it affects our computer system,
14 we have to update our computer system. So that our
15 average costs will be represented accurately.

16 Q. So Groeniger & Company received these types
17 of pricing letters from its suppliers?

18 A. Yes, suppliers, yes.

19 Q. And you stated that you might not get it
20 directly in your mailbox. Who would have received
21 these types of letters?

22 A. Our sales people might get it, I might get
23 it too but I would not have, I'd have looked at it
24 and say oh, they are going up in price, because it
25 doesn't bother me all that much because my inventory

1 looks better to me, it's when they go down in price
2 that it affects my inventory.

3 And I am a big inventory guy so my inventory
4 value just went up by X percent. Now, that is
5 supposing that everybody is doing the same thing,
6 but if they say you are going up and the other guy
7 is not, then you have to look at it and say okay,
8 then we have to change what we do, buy more from
9 this guy because it's better for our inventory
10 levels. But we get these.

11 Q. Over the course of your previous position
12 at Groeniger & Company as the CEO, did you review
13 these types of letters when they were received?

14 A. To be honest with you, probably not. I
15 would leave that to my executive vice-president, my
16 sales manager, my regional managers to give me, what
17 does this implicate as far as you see and does this
18 change your product mix or whatever.

19 It's only when we came to a change in overall
20 suppliers, when we said we are going to go all one
21 way or all the other way, that has to come across my
22 desk.

23 We don't change suppliers without a real general
24 meeting of all the minds. And we have those on a
25 regular basis.

1 We had them with fittings, we had them with all
2 the manufacturers, we have them come in, explain how
3 they are going to handle our company as a whole, not
4 just Hayward branch or the Redding branch to the
5 north or the Bakersfield branch to the south, how
6 are they going to handle those differently, who is
7 going to be calling on them, we lay it all out.

8 And we at the time of 2008, we were still the
9 big supplier of fittings in northern and central
10 California, probably in the state.

11 But I don't know that for a fact, but I just
12 assume from what I know of the industry we were the
13 player.

14 And for somebody to come into the state and not
15 sell us would be a long term -- and that was our, in
16 some ways what Tyler was mad at, the fact that we
17 had too much control and we weren't giving them the
18 business in one branch, we gave them business in the
19 other branch.

20 Some branches were exclusively Tyler, domestic
21 and foreign, but that wasn't enough.

22 We had to face east and say we are going to buy
23 90 percent of our business from you and whatever or
24 else they would say one place is not enough.

25 Q. Just focusing on these pricing letters, how

1 do these pricing letters help Groeniger & Company
 2 make business decisions?
 3 So if the prices are going to go up, how does
 4 them telling you that they are going up affect your
 5 business?
 6 MR. TRUITT: Objection, foundation.
 7 THE WITNESS: Well, normally we know about these
 8 price increases before we get that letter.
 9 MR. MANN: Q. How does knowing that information
 10 help you make decisions?
 11 A. Traditionally price on fittings went up
 12 about five percent a year on cast iron or ductal
 13 iron, pretty much doesn't change, even the world
 14 market, sometimes the raw material gets a little
 15 higher, but it's not like copper, it's not like
 16 aluminum which goes up and down like mad, cast iron
 17 is kind of a gentle rise and they are about five
 18 percent a year it went up.
 19 You could almost book that until toward the end
 20 when everything was skyrocketing and everything was
 21 going up at rather a higher rate.
 22 And it was just keeping track of it so that you
 23 had enough time to bring inventory in to support
 24 outstanding orders that would more than encompass
 25 your inventory.

1 Then we would do that, we would place large
 2 orders before the price increase so that we had
 3 product coming in in the next weeks or month at the
 4 original level so that we could protect our
 5 customers.
 6 Because we can't give letters like this to our
 7 customers, they would say I don't care, go up to
 8 what you want to but I have got a price from you
 9 here, and if you don't get me that price I will find
 10 somebody who else and they can in a heartbeat.
 11 So these letters stopped with us. If we have a
 12 district that has a year contract, we send them a
 13 letter like this and they say too bad.
 14 Or if they have an escalator where it allows you
 15 to raise your prices, you can send them a letter
 16 like this saying these prices are going up five
 17 percent, we are going to go up five percent
 18 accordingly and you might get away with it. But
 19 most of these districts don't have escalators on
 20 their pricing.
 21 Q. I am going to hand you now what's been
 22 marked CX 0138. And this is a, at the bottom it's
 23 Bates stamped TU-FTC-0010321.
 24 This is a letter that Tyler Union sent on May
 25 7th, 2008 to all Tyler Union distribution customers.

1 Would that include you?
 2 A. Yes. In that date, yes.
 3 Q. Could you just review this letter real
 4 quickly, just to yourself?
 5 A. (Witness complies) Okay.
 6 Q. Focusing on the second to last paragraph
 7 where it says, "Before announcing any price actions
 8 we carefully analyze all factors including:
 9 Domestic and global inflation, market and
 10 competitive conditions within each region as well as
 11 performance against our own internal metrics. We
 12 anticipate being able to complete our analysis by
 13 the end of May. At that point we will send out
 14 letters to each specifying region detailing changes,
 15 if any, to our current pricing policy."
 16 Does Tyler Union identify what factors they are
 17 analyzing help you in your business?
 18 MR. TRUITT: Objection, foundation.
 19 THE WITNESS: No, not that I can see. They are
 20 talking about the world scrap market that has a
 21 tendency to go up and down.
 22 But scrap iron is probably one of the most
 23 static, to an extent, static costs, it doesn't
 24 fluctuate a lot.
 25 It did maybe in certain times but it falls back

1 real quick to a standard average. You may have a
 2 spike because of China needing product, scrap iron
 3 because their economy was starting to boom, but
 4 certainly that leveled off quickly.
 5 As soon as the Olympics ended that ended. So it
 6 came back down to a more manageable level.
 7 Those things, world economics have a tendency to
 8 be looked at certainly, a manufacturer has to look
 9 at that, I understand. This letter wouldn't have
 10 done very much for me, there is nothing definite
 11 that is going to impact me.
 12 Q. So why would Tyler send you this letter
 13 then, what do you think?
 14 MR. TRUITT: Objection, speculation.
 15 THE WITNESS: A warning that times are tough and
 16 we are going to have to do wild and crazy things in
 17 the future, and all those wild and crazy things come
 18 down to what actually happens and what actual relief
 19 we as a distributor have to get product before they
 20 go up, so that we are held whole.
 21 And if they give us the time to react to it we
 22 can react to our customers and say the price has
 23 gone up, guys, so give me your orders in right now.
 24 Sometimes it helps us get orders off the street,
 25 we have had price increases and after this date we

1 have to raise our prices, and they say okay, we'll
 2 give you the order now, so we put that in with our
 3 blanket of orders to get price protection and
 4 service our customer.
 5 MR. MANN: Q. So what you have just described
 6 sounds like that's a benefit to getting a price
 7 increase letter, but that's not what this is. This
 8 is an announcement --
 9 A. An announcement of some sort.
 10 Q. -- that they might be raising prices in the
 11 future; is that right?
 12 MR. TRUITT: Objection to the form of the
 13 question.
 14 THE WITNESS: They might be raising prices, as
 15 much as 16 percent or as low as 6 percent.
 16 MR. MANN: Q. But as far as the factors that
 17 they are analyzing, that doesn't help you run your
 18 business?
 19 A. No. I cannot use this letter for any
 20 district or any contractor to get relief because
 21 they don't know what it is, what it means and they
 22 don't know the date that they are going to
 23 effectively change prices to where, and are they
 24 going to allows us to buy fittings until that date
 25 at a specific date or after that date, are they

1 going to give us a grace period?
 2 This letter could mean to me they are going to
 3 give us a grace period, but we don't know how much
 4 it's going up, so it's difficult.
 5 This I would say don't worry about it until you
 6 see the letter come out saying we are going up two
 7 percent, nine percent and so forth.
 8 Q. I am going to hand you now what's been
 9 marked CX 1178. And this has a Bates label of?
 10 TU-FTC-0010307. And this is a letter dated January
 11 11th, 2008. To "Dear Valued Customer."
 12 A. Okay.
 13 Q. Going down to the third paragraph that
 14 starts, "To help our distribution customers better
 15 manage their inventory valuations and compete on a
 16 more level playing field, it is our intention going
 17 forward to sell all products only off the newly
 18 published multipliers."
 19 And it says, "We will continue to monitor the
 20 competitive environment and adjust regional
 21 multipliers as required to provide you with
 22 competitive pricing."
 23 A. Okay.
 24 Q. I understand the first part that says, "to
 25 help our distribution customers better manage their

1 inventory evaluations."
 2 The next part I don't understand where it says,
 3 "and to compete on a more level playing field."
 4 A. I don't understand that either.
 5 MR. TRUITT: Objection, foundation.
 6 THE WITNESS: I don't understand that either.
 7 What playing field are they trying to -- I don't
 8 understand what the playing field is there.
 9 MR. MANN: Q. Do you know how raising the price
 10 would enable you to compete on a more level playing
 11 field if the playing field they are referring to is
 12 you as a distributor, and the field you are playing
 13 on?
 14 MR. TRUITT: Objection, form.
 15 THE WITNESS: To me that doesn't make sense. If
 16 they are cutting the price I can understand it, but
 17 if they are raising the price that means they were
 18 low to begin with and that would be something that
 19 would not be interesting to us, that we had an
 20 advantage and evidently didn't use it because now
 21 they are bringing a price up to a level -- that
 22 doesn't make sense to me, that might make sense to
 23 somebody but it does not make sense the me.
 24 MR. MANN: Q. And the next phrase says: "It is
 25 our intention going forward to sell all products

1 only off the newly published multipliers."
 2 Does that suggest that prior to issuing this
 3 that they weren't selling products off of the
 4 published multipliers?
 5 MR. TRUITT: Objection, foundation.
 6 THE WITNESS: It could mean that.
 7 MR. MANN: Q. What else could it mean?
 8 A. Well, it means they are standardizing and
 9 they would be getting away from discounting off of
 10 list price and discounts that were were pennies
 11 here, two percent here, two percent there.
 12 This week it might be one percentage, this
 13 region it might be, you are up to line 50 or
 14 whatever the lines are, it would indicate to me that
 15 they are trying to standardize their pricing policy
 16 so that it wouldn't be all over the board.
 17 Q. Standardize it against, what is the
 18 standard?
 19 A. Whatever they feel is the standard,
 20 whatever Tyler feels is the standard is the
 21 standard.
 22 And they are trying to get there so that they
 23 are consistent with what they do.
 24 All municipal bids are honored, that's good,
 25 takes me off the hook. All prior to a certain date

<p style="text-align: right;">Page 237</p> <p>1 are honored, that takes me off the hook, that gives 2 me a little bit of time to March 1st, that means 3 anything we have hanging out there at the old price 4 we have to have shipped by March 1st or otherwise we 5 are going to revert to whatever the new system is. 6 That gives us enough time to react, that would 7 have been okay with me. 8 I would have seen nothing in this letter that 9 would have alarmed me because they are giving me the 10 time necessary to react to my outstanding orders, 11 but as far as trying to analyze what they are saying 12 in that paragraph, that's beyond me, I don't 13 understand. They must have a reason for that but I 14 didn't understand it. 15 Q. Do you have any idea what that reason could 16 be or why they would put this type of language in 17 the letter? 18 MR. TRUITT: Object to the form of the question. 19 THE WITNESS: I don't have the slightest idea. 20 MR. MANN: Q. Going to the next sentence in 21 that paragraph that starts with, "To help our 22 distribution customers," the next sentence of that 23 paragraph says, "We will continue to monitor the 24 competitive environment." 25 What competitive environment is Tyler</p>	<p style="text-align: right;">Page 239</p> <p>1 Fitting Research Association? 2 A. Yep. 3 Q. What is that? 4 A. It's an association of producers. 5 Q. Of fittings producers? 6 A. Is that DIPRA? It's not DIPRA? 7 Q. It's not DIPRA, no, that's the Ductal Iron 8 Pipe Research Association, not to be confused with 9 that. Are you aware of DIFRA, the Ductal Iron 10 Fittings -- 11 A. I presume it's similar to DIPRA but in the 12 fittings scenario. 13 Q. Do you know whether or not it exists? 14 A. No. 15 Q. Have you ever had contact with anyone from 16 DIFRA? 17 A. No. 18 Q. Have you had any contact with anyone from 19 DIPRA? 20 A. Yes, only because we were talking about, 21 they were a political arm of the ductal iron pipe 22 people, they were represented in Washington, they 23 would certainly promote the use of ductal iron pipe 24 over everything else, the PVC guys have theirs, the 25 ductal guys have theirs and they are a political</p>
<p style="text-align: right;">Page 238</p> <p>1 monitoring? Are they monitoring -- let me just reask 2 the question. What competitive environment is Tyler 3 monitoring? 4 MR. TRUITT: Objection, foundation, speculation. 5 THE WITNESS: They are monitoring everything, 6 that's all I can say. They will go out and take 7 pictures of projects, they will walk your yard, they 8 will verify, take a look at fittings in your yard, 9 they will take a look at everything that they can 10 come by and look at, they will look at and try and 11 figure out what you are doing. 12 Even though you tell them one thing they are 13 going to think that you are probably lying to them 14 or you are telling them the wrong thing, so they 15 will come and check it out, without approval by the 16 way, but they will just casually walk out in the 17 yard and look at things. 18 And I caught them doing that sometimes and I was 19 very upset with it, but I told them come by the 20 office first and I'll show you everything, but come 21 by the office first, don't go walking out there. 22 And one guy gave me lip and I escorted him off 23 the property, but that was one time, didn't happen 24 again. 25 MR. MANN: Q. Are you aware of the Ductal Iron</p>	<p style="text-align: right;">Page 240</p> <p>1 arm. 2 But they will help if you have a specification 3 problem. They will come out or send an engineer out 4 to help with the specification to get something 5 approved if it is not currently approved. 6 Q. Are you aware of DIFRA offering those same 7 services? 8 MR. TRUITT: Object to the form, foundation, 9 asked and answered. 10 THE WITNESS: What was that question again? 11 DIPRA? 12 MR. MANN: Q. You just explained what DIPRA 13 does, they will send an engineer out to help with 14 specifications, they will help I guess with the 15 promotion of ductal iron pipe. 16 Are you aware of whether or not DIFRA provides 17 those same services? 18 A. No, I am not. 19 Q. Mr. Truitt towards the end of his 20 questioning today pointed out that Groeniger & 21 Company has filed its own lawsuit against McWane 22 Star and SIGMA; is that correct? 23 A. Yes, sir. 24 Q. And after you filed that, I guess it 25 wouldn't have been you, but on your behalf after</p>

1 that complaint was filed, have you had any
 2 communication with anyone from Star Pipe?
 3 A. No.
 4 Q. Have you had any communications with anyone
 5 from Tyler Union?
 6 A. No.
 7 Q. Have you had any communications with anyone
 8 from SIGMA regarding the filing of your complaint?
 9 A. Yes, they have.
 10 Q. Can you tell me about that? Who contacted
 11 you?
 12 A. The vice-president or president of SIGMA.
 13 Q. Who is that?
 14 A. A guy by the name of Larry Rybaci.
 15 Q. Can you spell Rybaci for the record?
 16 A. No, I couldn't spell it, I don't know how
 17 to spell it. It's spelled kind of like it sounds so
 18 I presume, it's a Polish name so I just don't know.
 19 Every time I try to spell it I spell it wrong
 20 but every time I see it I say oh, I can see how that
 21 means that. I can't tell you. R-y-b-a-c-k-i I
 22 think.
 23 Q. I believe the spelling is R-y-b-a-c-i.
 24 A. Okay, that could be.
 25 Q. There is only one Larry Rybaci at SIGMA,

1 correct?
 2 A. In the world there is only one Larry
 3 Rybaci.
 4 Q. He is currently the president of SIGMA?
 5 A. I think he is the president of SIGMA, he
 6 was, I don't know what his title is today.
 7 Q. And after you filed the complaint which
 8 would have been in the middle part of April 2012?
 9 A. Yes.
 10 Q. Did Mr. Rybaci call you?
 11 A. I was in Hawaii and I didn't know the exact
 12 date of the filing, but I was in Hawaii when it was
 13 filed.
 14 And I got a call from the manager of, my old
 15 executive vice-president who is now manager of
 16 Ferguson Water Works on the West Coast called me and
 17 said did Rybaci get in touch with you, I said no.
 18 He said you better call him, he wants to talk to
 19 you. I said okay.
 20 He gave me his phone number. Which I didn't
 21 write down but after thinking about it, I didn't
 22 want to write it down. Because I had an indication
 23 that I probably knew why he was calling.
 24 Then my son called who is the branch manager,
 25 used to be a vice-president of Groeniger & Company,

1 is now branch manager of Ferguson's Hayward
 2 facility. Called him and said would you call Larry
 3 Rybaci, he called me, wants you to call him, wants
 4 to talk to you about this lawsuit thing. I said
 5 okay.
 6 You want his number, no, I said no, I have it.
 7 He said he's on vacation too, he is calling from
 8 some vacation spot that he is in. So I didn't want
 9 to call him. I didn't want to call him.
 10 He is a long time friend for 40 years, I didn't
 11 want to call him but I said well, I'll call his
 12 office because I knew he was not there.
 13 So I called the office and left a message for
 14 Larry, give me a call, here is my cell phone in
 15 Hawaii, call me there.
 16 So it took two more days and I was called again
 17 by my son and by Dick and they said have you called
 18 Larry, I said I left a message for him.
 19 Finally he called me back on my cell phone and
 20 said you are suing me? I said, well, I guess, yeah.
 21 What are you doing that for? Well, you know, it's a
 22 problem area for me to understand and to do. But I
 23 had to do it.
 24 And he says, I says I have got -- he says well,
 25 you know, your attorneys on those things, they won't

1 cover you if there is a counter suit. I said
 2 really? He said yeah, I said well, I don't have
 3 money, I am not in business anymore, I am living on
 4 retirement now, so I don't want to get involved in a
 5 big legal action that costs me money because I can't
 6 afford that.
 7 And he says well, he wasn't mentioning himself,
 8 he mentioned Tyler or McWane. He says they are all
 9 going to counter sue and then you are out in the
 10 open.
 11 I said well, I'll check into it, Larry, but I am
 12 sorry are too, I am sorry too.
 13 It's probably because in the last year since
 14 they merged with Tyler, I felt that it was over for
 15 SIGMA, personally I felt that they have made a pact
 16 with the devil as far as they were concerned and
 17 that they would eventually disappear or be acquired
 18 by McWane, and they had lost all their ability to
 19 service us competitively, I couldn't buy Tyler
 20 fittings from them at the price we needed to have,
 21 they wouldn't sell it to me.
 22 And they would adopt the same rules of the road
 23 with regard to domestic fittings as Tyler had with
 24 us.
 25 So I felt my need or my ability to deal with

1 SIGMA was limited and so we grew apart since 2010,
 2 we grew apart.
 3 But anyway, he called, I said well, I'll be
 4 checking and I'll call you back. As a friend. But
 5 I didn't. And under advice that I shouldn't be --
 6 MR. PARKS: Let me stop you right there. You
 7 are not going to talk about any advice you got from
 8 counsel.
 9 THE WITNESS: I'm sorry, yeah.
 10 MR. PARKS: Thanks.
 11 THE WITNESS: So --
 12 MR. MANN: Q. But Mr. Rybaci called you on your
 13 cell phone in Hawaii; is that correct?
 14 A. That's correct.
 15 Q. And he asked you why you filed the lawsuit;
 16 is that correct?
 17 A. Yes.
 18 Q. And he told you that there would be counter
 19 suits against you for filing the suit against Tyler,
 20 SIGMA and Star?
 21 A. He didn't say -- well, he probably said
 22 that I am not covered for counter suits.
 23 Q. What does that mean to you?
 24 A. It means that I am vulnerable somewhere in
 25 this situation, that I am going to have expenses

1 that could take years -- I didn't want to get into,
 2 I am of the age I don't need to take on scenarios.
 3 If the accusations made by the FTC are accurate
 4 and that in the time frames that they are talking
 5 about, it would have affected me, it would have
 6 affected my company in a bad time in my life, in our
 7 lives, and helped hasten the day when we had to look
 8 at a 53-year-old family company having to sell, and
 9 put lots of people out of work.
 10 MR. MANN: Thank you for your testimony today,
 11 Mr. Groeniger. I have no further questions.
 12 MR. TRUITT: I have a few.
 13 (Brief recess taken.)
 14 MR. MANN: I actually have one more quick line
 15 of questioning.
 16 Q. Mr. Groeniger, you provided testimony to
 17 the FTC back in December of 2010; is that correct?
 18 A. Yes.
 19 Q. And we have entered the transcript from
 20 that testimony as Exhibit 1 in the proceedings
 21 today.
 22 A. Okay.
 23 Q. Did you review your transcript in
 24 preparation for your testimony today?
 25 A. Yeah, I did. I kind of went over it a

1 little bit just, it's pretty dry to read, but I
 2 attempted to, yes, and I did to a certain part of
 3 it, yes.
 4 Q. So there have been a few occasions where we
 5 have gone and reviewed part of the record and
 6 clarified certain statements that were made.
 7 MR. TRUITT: Object to the form.
 8 MR. MANN: Q. Beyond that, do you know of any
 9 parts of your previous testimony that aren't
 10 consistent with what you believe to be true today?
 11 A. Well, there might be changes due to the
 12 difference between that date and today and the
 13 economy and in business relationships and so forth.
 14 And new players and new situations that have
 15 arisen, but as a whole I agreed with what, then I
 16 said, what I said was based on my true feelings at
 17 the time. So --
 18 Q. And you were under oath when you provided
 19 that testimony?
 20 A. That's correct, I was.
 21 Q. And would you incorporate the testimony
 22 that you provided as testimony today?
 23 MR. TRUITT: Objection, incorporate any
 24 objections to his questions that I had that I wasn't
 25 here for.

1 THE WITNESS: Yes.
 2 MR. MANN: I have no further questions.
 3 EXAMINATION BY MR. TRUITT
 4 MR. TRUITT: Q. Mr. Groeniger, you just
 5 testified about a conversation you had with
 6 Mr. Rybaci from SIGMA, correct?
 7 A. That's correct.
 8 Q. I think you said you had no conversations
 9 with anyone from Tyler Union, correct? About your
 10 lawsuit?
 11 A. No.
 12 Q. Okay. And Mr. Rybaci is not associated
 13 with Tyler Union, is he?
 14 MR. PARKS: Objection, you can answer.
 15 THE WITNESS: I don't know, I don't know. I
 16 can't say yes or no, I don't know.
 17 MR. TRUITT: Okay.
 18 Q. Did he, specifically what did he say, I
 19 think you said you inferred something.
 20 What specifically to the best of your memory
 21 were his words?
 22 A. Well, it was, it came across as "why would
 23 you do that to me" scenario. And that's why I
 24 didn't want to call him, because of the 40 plus
 25 years of relationships.

1 Q. I understand, my question to you is what
2 were his words?

3 A. He mentioned to me that McWane, that the
4 other people, there was an assorted group of other
5 people that were, that had also filed suit and they
6 were this guy and that guy, and this guy doesn't
7 know what he's doing, and this guy went out of
8 business, and kind of said that they weren't in the
9 class that we were. And why are we getting involved
10 in that type of a deal.

11 And the fact that we have, I said we have legal
12 representation for this and I told him when I was
13 notified originally by the FTC that they wanted me,
14 subpoenaed me to testify, I called him.

15 He said I can't talk about that, I'll get back
16 to you type scenario, put me off.

17 I called Tyler and said what's going on, they
18 referred me to an attorney.

19 And I called Star, they said I guess we got to
20 have our attorney call you, nothing, nothing, and
21 nothing. So I felt that I was alone.

22 At that point I hired representation to be here
23 and witness the --

24 Q. Let me stop you, Mr. Groeniger, I don't
25 want to know what your lawyers told you, I want to

1 know specifically what Mr. Rybaci told you.

2 A. But I incurred costs from that and I could
3 see right away where this was going.

4 And he said to me there will be a counter suit
5 from McWane, not from him he did, he didn't mention
6 him, but McWane, he said you are not covered for
7 stuff like that, that is going to be on you
8 yourself.

9 And I said wow, I said I didn't know that. So I
10 said I have to find out about that because I don't
11 know.

12 And that caused some scurrying from Hawaii when
13 I was trying to relax but that was beside the point.
14 So anyway I told Larry I would call him back and I
15 did not.

16 Q. And that's as best you can remember the sum
17 total of everything that he told you in that
18 conversation?

19 A. I wanted to get off the phone in the worst
20 way, I didn't like the position I was in or that he
21 was in and I wanted to make it short and I'll get
22 back to you scenario.

23 Q. I understand. I just want to make sure I
24 have heard the four corners of the conversation as
25 best as your memory can recall it.

1 A. That's as best as my memory.

2 Q. If you would look at government Exhibit CX
3 006, it's the September 22, 2009 letter, it's the
4 same one I marked as I think Exhibit 2.

5 A. Uh-huh.

6 Q. All right. I think Mr. Mann took you
7 through the second paragraph of that letter.

8 It says, "We are pleased to announce that
9 McWane's domestic fittings and accessories sold
10 under the Tyler Union or Clow Water brand names will
11 now be available through SIGMA."

12 Did Clow Water sell domestic fittings or
13 accessories?

14 A. Not on the West Coast. They may have done
15 it on the East Coast, I couldn't tell you. Somewhere
16 other than the Pacific west states.

17 Q. You don't know whether they did in
18 California?

19 A. Well, I pretty well understand in
20 Washington State and Oregon they didn't either. Or
21 Arizona or Nevada.

22 So the Pacific west states I think, I felt
23 pretty sure Clow was not a factor.

24 Q. I see the reference to domestic fittings
25 and accessories, can you show me where in this

1 letter it talks about fire hydrants and valves?

2 A. Well, it just says Clow Water brand, and
3 that is what would have gotten my attention.

4 Q. It says domestic fittings and accessories?

5 MR. PARKS: Sorry, he was still answering, we
6 have been doing a good job of letting everybody
7 finish their statements. Can you continue your
8 testimony?

9 THE WITNESS: Well, the letter was entitled
10 "Tyler Union" and it was titled "Clow Water Systems
11 Company." It was a letter from both.

12 And I don't know Scott Frank but I know Jerry
13 Jansen well. And I didn't know what falls under the
14 Clow Water Systems Company, Clow valve, Clow
15 hydrant, Clow pipe, I am sure all of the three do.

16 So I was worried that the proliferation of Tyler
17 rough handling could be moved to the Clow brand.

18 MR. TRUITT: Q. Were fire hydrants and valves
19 that were sold by Clow made available through SIGMA?

20 A. No.

21 Q. Were you ever not sold any fire hydrants or
22 valves that you sought to buy from McWane in the
23 time period after this letter was sent out?

24 A. No.

25 Q. Did anybody at Clow ever tell you they

1 wouldn't sell you product in the time period after
 2 this letter was sent out?
 3 A. I never talked to anyone from Clow
 4 regarding that letter.
 5 Q. Okay. Mr. Mann asked you some questions
 6 about, first of all a letter dated January 11, 2008,
 7 marked CX 1178.
 8 A. Yes.
 9 Q. Did you see that letter at the time it
 10 was --
 11 A. I am sure that I did because it had
 12 increased percentages on it and somebody would have
 13 brought it my attention if I did not get an e-mail
 14 or something like that directly to me, or in my
 15 mailbox.
 16 What happens on stuff like this, the purchasing
 17 agent or the branch manager, we had our corporate
 18 entity located on the second story above our branch
 19 in Hayward, so it would have been put in my box and
 20 I would have seen a copy of it.
 21 Q. I may have misunderstood your earlier
 22 testimony, when you were shown CX 0056 which is the
 23 compilation --
 24 A. Oh, yeah.
 25 Q. My understanding on that was you testified

1 you didn't necessarily see them, somebody else
 2 probably looked at them and you would have talked to
 3 them.
 4 A. I would have -- I wouldn't been interested
 5 in SIP Industries because we didn't do anything with
 6 them and it wouldn't have affected me whatsoever.
 7 Now, when it gets down to the Tyler I would have
 8 seen that. But SIP Industries, I would not -- they
 9 are part of the TDG in certain areas and I know that
 10 they exist, but we don't do much with them.
 11 We don't qualify for their side of it because we
 12 don't buy anything from them, or very little.
 13 Q. What was happening to scrap prices in 2007,
 14 do you know?
 15 MR. MANN: Objection, foundation.
 16 MR. PARKS: You can answer if you understand
 17 what he is asking about.
 18 THE WITNESS: I understand. When was the
 19 Olympics in China?
 20 MR. GREENAN: 2006.
 21 THE WITNESS: Well, it all had to do with the
 22 amount of business that China was siphoning off in
 23 raw materials from the United States.
 24 MR. PARKS: 2008.
 25 THE WITNESS: And it was causing prices to

1 unusually spike on brass and iron, to an extent,
 2 scrap iron because of their demand for materials.
 3 But as soon as the thing was over their economy
 4 started taking a hit and we were back to normal
 5 again I believe.
 6 MR. TRUITT: Q. I am sorry, were you complete
 7 with your answer?
 8 A. Complete, yes.
 9 Q. What was the duration of that spike you
 10 just referenced?
 11 A. Probably one-and-a-half years.
 12 Q. So from what period to what period?
 13 A. I couldn't tell you, just depends on -- I
 14 could relate, I related it to the Chinese and their
 15 introduction to the world through the Olympic games.
 16 And all the work that they did to get their
 17 country ready to show it off.
 18 Q. On Exhibit CX 1690, the maps that Mr. Mann
 19 showed you --
 20 A. Yes, sir.
 21 Q. When you were drawing areas out from your
 22 stores, remind me, what were you showing there?
 23 A. I was showing areas of influence by a
 24 particular branch.
 25 Service areas, areas of influence, taking into

1 consideration local road blocks like mountains and
 2 rivers and areas where there is no people.
 3 Q. Was that -- oh, excuse me, I've got a bad
 4 habit.
 5 A. No, that's fine.
 6 Q. Was that for subdivision jobs or plant work
 7 jobs?
 8 A. Both.
 9 Q. I thought you told me earlier this morning
 10 that on the plants you would service those up to
 11 several hundred miles away, they had long lead times
 12 and they were different.
 13 A. Well, you are partially correct.
 14 Q. Okay.
 15 A. Certainly the quotations and the pricing
 16 would be sent out from one central source which
 17 would have been in Clovis, we had an office, just an
 18 engineering office in Clovis, no warehouse. But it
 19 had no product.
 20 And so material would have been shipped through
 21 or to a branch closest to the job, and then they
 22 would service all the shortages and the small stuff
 23 that they needed that wouldn't come direct from the
 24 manufacturer. But that would go directly to a
 25 branch closest to the project.

<p style="text-align: right;">Page 257</p> <p>1 Q. Did I understand you to testify that Star 2 is still not in the specs for the San Jose Water 3 Authority? 4 A. As far as I know they are not. 5 Q. So notwithstanding your issues with Tyler 6 and their policy of 2009, you couldn't sell Star to 7 San Jose or no one could sell Star to San Jose today 8 if they wanted to, could they? 9 A. No, sir. 10 Q. And the price increase that we talked about 11 with San Jose that you were unhappy about, was that 12 price increase from Tyler only to Groeniger, or was 13 it a price increase across the board to all their 14 customers? 15 A. I think it appeared to be a price increase 16 to all of their customers. 17 Q. Okay. 18 A. But with the exception of contracts, as it 19 says in the letter here, that was probably what most 20 people did there, contracts were exceptions to it 21 and they would service the lifetime of the contract. 22 Q. I jotted down earlier you said something 23 about all these little guys popping up now in 24 relationship to other distributors. Can you explain 25 that to me a little bit?</p>	<p style="text-align: right;">Page 259</p> <p>1 independent independent, they have realized that, 2 and they were going to make an exception, and when 3 they finally came, they were the end person we 4 decided to go with. 5 But since that time there has been, we have been 6 raided by all the people that were looking at us, by 7 hook or by crook, they get somebody else to call and 8 when they do go to meet with them they have a whole 9 idea of what they need to do to get them. 10 So we have lost some people, some good people, 11 they are just worried about what they say about 12 Ferguson and so we are going to have to leave you. 13 If you guys were still handling it we wouldn't 14 leave, but because there has been a change we feel 15 we have to. 16 So we have lost good people, probably five or 17 six or seven good people that have tenure. But as a 18 whole the company has held on to its organization. 19 MR. TRUITT: Q. We have talked today a few 20 times about the downturn of the economy, the housing 21 crash. In your mind when did that start? 22 A. 2006. 23 Q. And so today when you have described since 24 the economy started going bad, you would date that 25 to 2006?</p>
<p style="text-align: right;">Page 258</p> <p>1 A. Well, any time when -- I have to preface 2 that to a little background, is the fact that we 3 were sold. 4 We were interviewed by four companies. We 5 posted our financials in a room, virtual room, if 6 they signed letters of non-compete, not non-compete, 7 but non-solicitation -- 8 MR. PARKS: Non-disclosure. 9 THE WITNESS: Non-disclosure and 10 non-solicitation, they could look into the depths of 11 our financial statements, our branches, our people, 12 even our in some cases our salaries to our 13 employees. 14 We felt relatively confident that the 15 non-solicitation agreement they all signed would be 16 sufficient to keep people from raiding our company. 17 As a lot of people do when places are sold, 18 especially to a well known disaster making company 19 like Ferguson, they have never taken a company that 20 they have bought up to this point and did anything 21 but destroy it. So they have a tremendous history 22 of doing that. 23 And part of it is they change the name to 24 Ferguson, part of it they change all the rules and 25 regulations and take all the things that make an</p>	<p style="text-align: right;">Page 260</p> <p>1 A. We knew, we could see it coming in 2006, we 2 just couldn't visualize the depth, and we didn't 3 visualize -- we own our own properties, and we 4 didn't feel that the properties would be impacted as 5 they were with having to refinance some of them and 6 having the value of the property significantly 7 altered. 8 And all that piled on top of the business, all 9 of that, it was a, yeah, we tried to grab it right 10 until the day we sold, we were trying to grapple 11 with what we had to do, where we could cut to meet 12 our commitments and it was tough. 13 Q. I think you have testified that you were 14 forced to close several branches. 15 A. We weren't forced to close it, it was our 16 decision to close them to meet our monthly averages 17 and so forth so we wouldn't lose money, we had to 18 close them. 19 But it was going faster, the slide was going 20 faster than we were sliding, and we were constantly 21 trying to catch up. 22 Q. Did you lay off some of those employees 23 from those branches? 24 A. Yes. 25 Q. Did any of those people go into business</p>

1 for themselves as water works distributors?
 2 A. They have since come around and are working
 3 for other people that have sprouted up, yes. And
 4 some of them have lasted and some of them have left
 5 them also.
 6 So yes, a lot of people that are competing with
 7 us today from the other suppliers started out in
 8 business with us.
 9 Q. And other distributors like yourself after
 10 the downturn in the economy closed branches and laid
 11 folks off, didn't they?
 12 A. Yes, I think so.
 13 Q. And have some of those people gone out into
 14 the market and opened their own businesses too?
 15 A. Not as much. I mean, they don't have to
 16 have capital to do that and most of the people that
 17 were laid off unfortunately were those who were
 18 drivers and warehousemen, and if a salesman was good
 19 he wasn't laid off, he was our source of revenue.
 20 So the salesmen didn't leave as much as it was
 21 the service and support group that left.
 22 Q. I just, again I was looking at when you say
 23 all these little guys popping up, were you talking
 24 about other distributors starting into business for
 25 themselves of late?

1 A. Well, yes. When Corex came to town they
 2 just didn't open one branch, they opened two or
 3 three branches.
 4 When HD Supply came to town they have opened
 5 multiple branches in the areas on or around our
 6 place.
 7 When Pace Supply decided to open they took 45
 8 people away from Ferguson at one time, left, walked
 9 out the door. And they opened three big new
 10 locations, Hayward, San Francisco and San Jose.
 11 Plus a new big edifice in Stockton.
 12 So I mean, they were able to do that, they
 13 wouldn't have done that with us but with Ferguson,
 14 that was part of their problem, they didn't know how
 15 to run acquisitions.
 16 Q. We have talked about and it's marked as an
 17 exhibit to your deposition now your December 14th,
 18 2010 testimony.
 19 Did you speak with or meet with lawyers from the
 20 FTC before you were deposed?
 21 A. No, sir.
 22 Q. You had no prior contact with --
 23 A. I don't believe so, no. That was the first
 24 time I, and I didn't know if they were coming after
 25 me or whom they were coming after or under what

1 auspices.
 2 And I asked the FTC do I need an attorney? And
 3 he said you can have one if you want. I said I
 4 better have one then.
 5 Q. Have you had any meetings or phone calls
 6 with the FTC in preparation for this deposition
 7 today?
 8 A. I don't know if we had, it was nothing
 9 regarding the deposition other than scheduling,
 10 someone may have called.
 11 I don't know the names of everybody that I
 12 talked to in trying to schedule this or schedule the
 13 types of information that is required under their
 14 information needs. And where I was going to find it
 15 under my new situation that I am in of not being in
 16 charge of my own paperwork.
 17 Q. Other than scheduling and logistics, did
 18 you have any substantive conversations with the FTC
 19 prior to today?
 20 A. No.
 21 Q. Who is Dick Alexander?
 22 A. Dick Alexander was at Groeniger & Company,
 23 he was the executive vice-president.
 24 Q. Did you and Mr. Alexander meet with Leon
 25 McCullough in early 2011 to talk about your fittings

1 business?
 2 A. Leon McCullough came to our office in, it
 3 could have been around that time. And it could have
 4 been, yes, that could have happened, yeah.
 5 Q. And did you discuss payment terms of two
 6 percent on the 25th of each month?
 7 A. We may have.
 8 Q. Did you discuss Tyler assisting you with
 9 take-offs and quotes for plant projects in that
 10 meeting?
 11 A. We could have, yes.
 12 Q. And those are all things that would have
 13 been helpful to Groeniger, right?
 14 A. Yes.
 15 Q. I mean, Mr. McCullough was trying to seek
 16 more business from you, wasn't he?
 17 A. Yes, Mr. McCullough is a fine gentleman, I
 18 have known him for years.
 19 Q. I don't think you have suggested anything
 20 other than that.
 21 What I am trying to understand is Mr. McCullough
 22 came to visit you in early 2011 to try and offer
 23 things that would make it attractive to do business,
 24 your fittings business with Tyler, didn't he?
 25 A. Yes, it could be, certainly.

1 MR. TRUITT: I think that's all I've got, thank
 2 you.
 3 MR. PARKS: We'll reserve the right to read and
 4 sign.
 5 (Whereupon, the proceedings were adjourned at
 6 5:10 p.m.)
 7 --oOo--
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1 DEPOSITION ERRATA SHEET
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 3
 4
 5 Assignment No. 452003
 6 Case Caption: In the matter of McWane and Star Pipe
 7
 8 DECLARATION UNDER PENALTY OF PERJURY
 9 I declare under penalty of perjury that I
 10 have read the entire transcript of my deposition
 11 taken in the captioned matter or the same has been
 12 read to me, and the same is true and accurate, sae
 13 and except for changes and/or corrections, if any,
 14 as indicated by me on the DEPOSITION ERRATA SHEET
 15 hereof, with the understanding that I offer these
 16 changes as if still under oath.
 17 Signed on the _____ day of _____,
 18 20___.
 19
 20
 21 _____
 22 Michael Groeniger
 23
 24
 25

1 REPORTER'S CERTIFICATE
 2
 3
 4
 5 I, JEAN M. FERRARIO, Certified Shorthand
 6 Reporter, in and for the State of California, do
 7 hereby certify:
 8
 9 That the foregoing witness was by me duly
 10 sworn, that the deposition was then taken before me
 11 at the time and place herein set forth; that the
 12 testimony and proceedings were reported
 13 stenographically by me and later transcribed into
 14 typewriting under my direction; that the foregoing
 15 is a true record of the testimony and proceedings
 16 taken at that time.
 17
 18 IN WITNESS WHEREOF, I have subscribed my
 19 name this 15th day of May, 2012.
 20
 21 _____
 22
 23 JEAN M. FERRARIO, CSR No. 5655
 24
 25

1 DEPOSITION ERRATA SHEET
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25 SIGNATURE: _____ DATE:_____

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2013, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

January 9, 2013

By: s/ Thomas H. Brock
Attorney