

<p style="text-align: right;">Page 186</p> <p>1 --oOo--</p> <p>2 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>3 OXY VINYLs, LP</p> <p>4 --oOo--</p> <p>5 BY MS. BROZ:</p> <p>6 Q. Good morning, Mr. Neikirk. My name</p> <p>7 is Alycia Broz, and I represent Oxy Vinyls. And</p> <p>8 I'm going to be asking you some questions today.</p> <p>9 A. All right.</p> <p>10 Good morning.</p> <p>11 Q. Good morning.</p> <p>12 I've handed you what we've</p> <p>13 marked as Deposition Exhibit 15, and I ask you to</p> <p>14 take a look at that, please.</p> <p>15 A. Okay.</p> <p>16 (Whereupon, the witness reviews</p> <p>17 the material provided.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MS. BROZ:</p> <p>20 Q. Have you had a chance to look at</p> <p>21 Exhibit 15?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Okay. Did you speak with any</p> <p>2 Norfolk Southern employees in order to answer</p> <p>3 questions about Exhibit A of Deposition Exhibit</p> <p>4 15?</p> <p>5 A. I did not.</p> <p>6 Q. Did you review any Norfolk Southern</p> <p>7 deposition testimony in order to answer questions</p> <p>8 about Exhibit A of Deposition Exhibit 15?</p> <p>9 A. It -- it -- David Schoendorfer's</p> <p>10 testimony is -- I've seen that.</p> <p>11 Q. Anyone else?</p> <p>12 A. I know we have statements from</p> <p>13 people on the scene immediately after the</p> <p>14 incident that were there as well --</p> <p>15 Q. And I --</p> <p>16 A. -- I didn't get their names.</p> <p>17 Q. That's okay. I apologize. I don't</p> <p>18 have a copy of your binder.</p> <p>19 What did we mark that as?</p> <p>20 A. Oh. That's Exhibit 8.</p> <p>21 Q. Are those statements and destine --</p> <p>22 depositions -- let me start that again.</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Can you turn to the last page of</p> <p>2 Exhibit 15, please?</p> <p>3 A. I'm there.</p> <p>4 Q. And to Exhibit A?</p> <p>5 A. I'm there.</p> <p>6 Q. Are you prepared to testify about</p> <p>7 the topics listed in Exhibit A of Deposition</p> <p>8 Exhibit 15?</p> <p>9 A. I am.</p> <p>10 Q. And earlier this morning, you</p> <p>11 talked about what you did to prepare for your</p> <p>12 deposition today.</p> <p>13 Did you do anything additional</p> <p>14 to what we've already discussed in order to</p> <p>15 prepare to respond about questions on Exhibit A</p> <p>16 of Deposition Exhibit 15?</p> <p>17 A. No.</p> <p>18 Q. Did you speak with anyone to</p> <p>19 prepare for answering questions about Exhibit A</p> <p>20 of Deposition Exhibit 15?</p> <p>21 A. We met yesterday to prepare for</p> <p>22 them and discussed the topics then.</p>	<p style="text-align: right;">Page 189</p> <p>1 Are the depositions and</p> <p>2 statements in Dep -- what we've marked as</p> <p>3 Deposition Exhibit 8?</p> <p>4 A. I believe the last one, the Tab 35,</p> <p>5 is David Schoendorfer's testimony.</p> <p>6 Q. Are those statements that you</p> <p>7 referred to also in the binder we've marked as</p> <p>8 Deposition Exhibit 8?</p> <p>9 A. I believe they are.</p> <p>10 These statements?</p> <p>11 Q. The statements that you just</p> <p>12 testified that you reviewed in preparation to</p> <p>13 answer questions about Exhibit A of Deposition</p> <p>14 Exhibit 15.</p> <p>15 A. David Schoendorfer's testimony.</p> <p>16 I -- I have not reviewed it in</p> <p>17 great detail.</p> <p>18 Q. Did you review anything else other</p> <p>19 than Dan Schoen- -- David Schoendorfer's</p> <p>20 deposition testimony in preparation to answer</p> <p>21 questions about the two topics listed in</p> <p>22 Exhibit A of Deposition Exhibit 15?</p>

<p style="text-align: right;">Page 190</p> <p>1 A. Nothing else.</p> <p>2 Q. Earlier, you referenced that you</p> <p>3 reviewed some statements.</p> <p>4 What statements were you</p> <p>5 referring to?</p> <p>6 A. There were e-mails back and forth</p> <p>7 regarding the potential presence of aluminum.</p> <p>8 Q. But not statements that were made</p> <p>9 to the NTSB under oath?</p> <p>10 A. I don't recall seeing those, no.</p> <p>11 Q. Did you do -- review any other</p> <p>12 Norfolk Southern deposition testimony in</p> <p>13 preparation to answer questions about Exhibit A</p> <p>14 of Deposition Exhibit 15?</p> <p>15 A. I did not.</p> <p>16 Q. Did you speak with Mr. Schoendorfer</p> <p>17 prior to your testimony today?</p> <p>18 A. I did not.</p> <p>19 Q. Did you speak with -- well, let's</p> <p>20 start again.</p> <p>21 Did you -- do you know who SRS</p> <p>22 is?</p>	<p style="text-align: right;">Page 192</p> <p>1 today?</p> <p>2 A. I don't recall reviewing those.</p> <p>3 Q. Did counsel, in preparing for your</p> <p>4 deposition today, tell you that representatives</p> <p>5 of SRS or SPSI were deposed in this case?</p> <p>6 A. I don't recall that either.</p> <p>7 Q. Mr. Neikirk, after high school, did</p> <p>8 you -- were you -- did you receive any education</p> <p>9 after high school?</p> <p>10 A. Education? Yes.</p> <p>11 Q. And what was that?</p> <p>12 A. A college degree from</p> <p>13 William & Mary and a Master's of business from</p> <p>14 University of North Carolina.</p> <p>15 Q. And was your million --</p> <p>16 William & Mary degree also in business?</p> <p>17 A. It was economics. Close.</p> <p>18 Q. And after graduating with your MBA,</p> <p>19 did you immediately go to work for Norfolk</p> <p>20 Southern?</p> <p>21 A. I did.</p> <p>22 Q. And can you just briefly run down</p>
<p style="text-align: right;">Page 191</p> <p>1 A. I do not.</p> <p>2 Q. And did you -- I assume, then, you</p> <p>3 didn't speak with anybody from SRS in preparation</p> <p>4 for your testimony today?</p> <p>5 A. I did not.</p> <p>6 Q. And I believe earlier today, you</p> <p>7 testified you didn't know who SPSI was; is that</p> <p>8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And I take it, then, you didn't</p> <p>11 speak with anyone from SPSI to prepare for your</p> <p>12 testimony today?</p> <p>13 A. I did not.</p> <p>14 Q. And you didn't review transcripts</p> <p>15 from representatives of SRS or SPSI in</p> <p>16 preparation for your testimony today?</p> <p>17 MS. PUJARI: Objection: vague.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. BROZ:</p> <p>20 Q. Did you review deposition</p> <p>21 transcripts from representatives of SRS or SPSI</p> <p>22 in preparation for your deposition testimony</p>	<p style="text-align: right;">Page 193</p> <p>1 the jobs that you've had at Norfolk Southern</p> <p>2 since being hired there?</p> <p>3 A. I started as a marketing trainee,</p> <p>4 and I went into our market research and economics</p> <p>5 group. I spent some time in our properties</p> <p>6 group. I worked for a coal marketing group. I</p> <p>7 worked in investor relations, financial planning,</p> <p>8 treasury and finance pretty much from 2012 on</p> <p>9 with a five-year stint in the chairman's office</p> <p>10 as the chief of staff-type role.</p> <p>11 Q. Where's your office located?</p> <p>12 A. In Atlanta.</p> <p>13 Q. And where do you reside?</p> <p>14 A. That's a good question. Mostly in</p> <p>15 Atlanta, but I -- I -- my wife lives in</p> <p>16 Virginia Beach, so I spend a lot of time there,</p> <p>17 too.</p> <p>18 Q. And you traveled from Atlanta to</p> <p>19 Washington, D.C. for your deposition?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Given your educational and work</p> <p>22 history, were you surprised when you were asked</p>

<p style="text-align: right;">Page 194</p> <p>1 to testify today about aluminum components in</p> <p>2 railcars?</p> <p>3 MS. PUJARI: Objection: form.</p> <p>4 THE WITNESS: It's -- it's not my</p> <p>5 area of expertise.</p> <p>6 BY MS. BROZ:</p> <p>7 Q. And were you surprised, given your</p> <p>8 educational background and your work experience,</p> <p>9 that you were asked to testify today about</p> <p>10 Federal Railroad Administration specifications</p> <p>11 for railcars?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: Again, it's not my</p> <p>14 area of expertise.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. Is it true that what you know about</p> <p>17 components on railcars you learned yesterday in</p> <p>18 preparing for this deposition with your counsel?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: Some, yes. I</p> <p>21 learned some yesterday about that.</p> <p>22</p>	<p style="text-align: right;">Page 196</p> <p>1 trainings?</p> <p>2 A. Gosh. A lot in 2007 through 2012.</p> <p>3 Q. Any other experience with railcar</p> <p>4 components?</p> <p>5 A. No.</p> <p>6 Q. And how about with FRA, or</p> <p>7 Federal Railroad Administration, regulations?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: Not much experience</p> <p>10 there.</p> <p>11 BY MS. BROZ:</p> <p>12 Q. Okay. Can you describe your</p> <p>13 experience with those regulations?</p> <p>14 A. It's very little. It's reading</p> <p>15 about things when events happen when the FRA is</p> <p>16 involved.</p> <p>17 Q. Is it fair to say that most of your</p> <p>18 experience with respect to Federal Railroad</p> <p>19 Administration regulations came in preparing for</p> <p>20 your deposition today?</p> <p>21 MS. PUJARI: Objection: form.</p> <p>22 THE WITNESS: Some of them did,</p>
<p style="text-align: right;">Page 195</p> <p>1 BY MS. BROZ:</p> <p>2 Q. Okay. And where -- when did you</p> <p>3 learn about the components of railcars other than</p> <p>4 yesterday in preparing for your deposition</p> <p>5 testimony today?</p> <p>6 A. Probably a small bit on the third</p> <p>7 call and the majority of it yesterday.</p> <p>8 Q. Other than the calls that you've</p> <p>9 had with your lawyers, did you have any other</p> <p>10 exposure to railcar components during your work</p> <p>11 history with Norfolk Southern?</p> <p>12 A. I went through switchman training</p> <p>13 school. So we learned to set hand brakes and tie</p> <p>14 hoses together, and whatnot. But --</p> <p>15 Q. Okay. And what year was that?</p> <p>16 A. '93.</p> <p>17 Q. Any other experience that you've</p> <p>18 had during the course of your employment at</p> <p>19 Norfolk Southern with railcar components?</p> <p>20 A. Other than riding on inspection</p> <p>21 trainings, no.</p> <p>22 Q. And when did you ride on inspection</p>	<p style="text-align: right;">Page 197</p> <p>1 yes.</p> <p>2 BY MS. BROZ:</p> <p>3 Q. Most of it?</p> <p>4 MS. PUJARI: Objection: form.</p> <p>5 THE WITNESS: I can't estimate a</p> <p>6 percentage.</p> <p>7 BY MS. BROZ:</p> <p>8 Q. All right.</p> <p>9 Okay. Let's turn back to what</p> <p>10 we've marked as Deposition Exhibit 15 and to --</p> <p>11 Exhibit A we're going to be looking at.</p> <p>12 A. Okay.</p> <p>13 Q. Do you have that in front of you?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Do you see that Topic 1</p> <p>16 references Paragraph 167 of the Third-Party</p> <p>17 Complaint?</p> <p>18 A. I see it.</p> <p>19 Q. And your testimony is that you did</p> <p>20 not see a copy of the Third-Party Complaint until</p> <p>21 your deposition today; is that correct?</p> <p>22 MS. PUJARI: Objection: form.</p>

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<p>1 THE WITNESS: I believe that to</p> <p>2 be correct.</p> <p>3 BY MS. BROZ:</p> <p>4 Q. And then Topic 2 references</p> <p>5 Paragraphs 120(b) and 152 of Third-Party</p> <p>6 Complaint; is that correct?</p> <p>7 A. I'm sorry. Topic 2?</p> <p>8 Q. References Paragraphs 120(b) --</p> <p>9 A. Ah, yes, yes, yes.</p> <p>10 Q. Yes.</p> <p>11 Okay. And you have -- you did</p> <p>12 not review that paragraph in the Third-Party</p> <p>13 Complaint in preparation for your deposition</p> <p>14 today, did you?</p> <p>15 MS. PUJARI: Objection: form.</p> <p>16 THE WITNESS: I did not.</p> <p>17 BY MS. BROZ:</p> <p>18 Q. Okay. Let's turn to what we've</p> <p>19 previously marked as Deposition Exhibit 9, if you</p> <p>20 have that in front of you.</p> <p>21 Can you turn to Page 34 of that</p> <p>22 document?</p>	<p>1 the material provided.)</p> <p>2 MS. PUJARI: Objection: form and</p> <p>3 vague.</p> <p>4 All that came up, Alycia, was</p> <p>5 "And any of the other cars."</p> <p>6 MS. BROZ: Right. Question mark.</p> <p>7 (Whereupon, the witness continues</p> <p>8 to review the material provided.)</p> <p>9 THE WITNESS: I don't see it</p> <p>10 referenced in our materials here, but --</p> <p>11 BY MS. BROZ:</p> <p>12 Q. And what are you reading when</p> <p>13 you're saying "referenced in materials here"?</p> <p>14 A. This is Exhibit 6.</p> <p>15 Q. And when did Norfolk Southern learn</p> <p>16 that, allegedly, TI- -- the TILX car contained</p> <p>17 alumin- -- aluminum in the PRD springs?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: Specifically at the</p> <p>20 springs? I -- I don't know the answer to</p> <p>21 that.</p> <p>22</p>
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<p>1 A. I'm there.</p> <p>2 Q. Okay. And we'll just read this</p> <p>3 into the record.</p> <p>4 Oxy Vinyl shipped vinyl</p> <p>5 chloride in tank cars with aluminum components</p> <p>6 and the pressure release devices and in other</p> <p>7 components on each of the vinyl chloride tank</p> <p>8 cars. For example, Cars 26, 27, 28 and 29</p> <p>9 contained aluminum in the PRD springs, PRD</p> <p>10 surface or had aluminum used in various valves on</p> <p>11 a tank car. When the PRDs activated -- releasing</p> <p>12 flammable vinyl chloride that ignited -- the vinyl</p> <p>13 chloride mixed with air, sunlight and aluminum.</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Of the five vinyl chloride</p> <p>17 railcars, which one do you allege contained</p> <p>18 aluminum in the PRD springs?</p> <p>19 A. TILX 402025 is listed as having</p> <p>20 aluminum-coated spring.</p> <p>21 Q. And any of the other cars?</p> <p>22 (Whereupon, the witness reviews</p>	<p>1 BY MS. BROZ:</p> <p>2 Q. And which Norfolk Southern</p> <p>3 employees, at some point in time, learned that</p> <p>4 there was allegedly aluminum in the PRD springs</p> <p>5 of the TILX car?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: I don't know who</p> <p>8 that person was for the spring</p> <p>9 specifically.</p> <p>10 BY MS. BROZ:</p> <p>11 Q. And let's go back -- let's look --</p> <p>12 you're looking at Deposition Exhibit 6, so let's</p> <p>13 look at Deposition Exhibit 6 together.</p> <p>14 Can you tell me where you're</p> <p>15 referencing the fact that the TILX car contained</p> <p>16 aluminum in the PRD springs? What are you</p> <p>17 looking at?</p> <p>18 A. So it was three pages back from the</p> <p>19 last page.</p> <p>20 Q. I assume that's Page 9?</p> <p>21 A. Is that, again, with Oxy Vinyls'</p> <p>22 Topic 1?</p>

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<p>1 Q. Yes.</p> <p>2 A. Okay.</p> <p>3 This is Page 9.</p> <p>4 Q. Okay. We're on the same page.</p> <p>5 And what paragraph are you</p> <p>6 referencing?</p> <p>7 A. So I'm looking at Subbullet 1 under</p> <p>8 Bullet 1.</p> <p>9 Q. The one that starts with NTSB Group</p> <p>10 B – Exhibit 10?</p> <p>11 A. Right, Hazardous Materials Group</p> <p>12 Chair's Factual Report.</p> <p>13 Q. At 34?</p> <p>14 A. At 34, yeah.</p> <p>15 Q. Okay. And who provided this</p> <p>16 information to the NTSB?</p> <p>17 MS. PUJARI: Objection: form.</p> <p>18 THE WITNESS: I would have to</p> <p>19 consult this (indicating) binder, I</p> <p>20 believe, to --</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Go ahead.</p>	<p>1 MS. PUJARI: Objection: form.</p> <p>2 (Whereupon, the witness continues</p> <p>3 to review the material provided.)</p> <p>4 THE WITNESS: It doesn't say on</p> <p>5 the reference page. And there's a list</p> <p>6 of people who participated in this, but</p> <p>7 it's not tied to the person.</p> <p>8 BY MS. BROZ:</p> <p>9 Q. And in preparing for your</p> <p>10 deposition today and relying upon NTSB Group</p> <p>11 Exhibit 10, you did not determine who provided</p> <p>12 the information about the alleged aluminum</p> <p>13 components in the PRD springs to the NTSB?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: The specific</p> <p>16 person, I -- I cannot tell right now at</p> <p>17 this time.</p> <p>18 BY MS. BROZ:</p> <p>19 Q. And when did Norfolk Southern learn</p> <p>20 that the P- -- PRD spring in the TILX car</p> <p>21 allegedly contained aluminum components?</p> <p>22 MS. PUJARI: Objection: form;</p>
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<p>1 (Whereupon, the witness reviews</p> <p>2 the material provided.)</p> <p>3 THE WITNESS: Am I able to ask</p> <p>4 for assistance here in --</p> <p>5 BY MS. BROZ:</p> <p>6 Q. No.</p> <p>7 A. -- where that is?</p> <p>8 (Whereupon, the witness continues</p> <p>9 to review the material provided.)</p> <p>10 THE WITNESS: All right. We're</p> <p>11 on Page 61. It says, The spring part,</p> <p>12 and gives a number.</p> <p>13 Do you want that number?</p> <p>14 BY MS. BROZ:</p> <p>15 Q. No.</p> <p>16 And my question was: Who</p> <p>17 provided that information to the NTSB?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: The -- the NTSB?</p> <p>20 Who provided it to them?</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Correct.</p>	<p>1 asked and answered.</p> <p>2 THE WITNESS: Yeah. I don't know</p> <p>3 when.</p> <p>4 BY MS. BROZ:</p> <p>5 Q. All right. Let's turn back to the</p> <p>6 -- what we've marked as Deposition Exhibit 9.</p> <p>7 Do you have that in front of</p> <p>8 you?</p> <p>9 A. Okay. Yeah.</p> <p>10 Q. Okay. Of the five vinyl chloride</p> <p>11 railcars, which one do you allege contain</p> <p>12 aluminum on the PRD surface?</p> <p>13 (Whereupon, the witness continues</p> <p>14 to review the material provided.)</p> <p>15 THE WITNESS: OCPX 80235 had</p> <p>16 .56 pounds of loose aluminum debris</p> <p>17 inside the PRD top guide discharge port.</p> <p>18 BY MS. BROZ:</p> <p>19 Q. And that's what your evidence is</p> <p>20 that one of the five vinyl chloride railcars</p> <p>21 contained aluminum on the PRD surface?</p> <p>22 MS. PUJARI: Objection: form.</p>

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<p>1 (Whereupon, the witness continues</p> <p>2 to review the material provided.)</p> <p>3 THE WITNESS: That's the only one</p> <p>4 I'm seeing.</p> <p>5 BY MS. BROZ:</p> <p>6 Q. You have no other facts to support</p> <p>7 the allegation that the five vinyl chloride</p> <p>8 railcars contained aluminum on the PRD surface?</p> <p>9 MS. PUJARI: Objection: form.</p> <p>10 (Whereupon, the witness continues</p> <p>11 to review the material provided.)</p> <p>12 THE WITNESS: That -- that's the</p> <p>13 only one I'm seeing.</p> <p>14 BY MS. BROZ:</p> <p>15 Q. When did Norfolk Southern allegedly</p> <p>16 learn that one of the five vinyl chloride</p> <p>17 railcars contained aluminum on the PRD surface?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 (Whereupon, the witness continues</p> <p>20 to review the material provided.)</p> <p>21 THE WITNESS: It appears to be</p> <p>22 around the time of the incident. There</p>	<p>1 you just asked.</p> <p>2 Q. I understand it's another question.</p> <p>3 A. Yes.</p> <p>4 Q. That was one of the topics you were</p> <p>5 asked to be prepared about?</p> <p>6 A. That's correct.</p> <p>7 Q. Did you ask anybody at Norfolk</p> <p>8 Southern when they learned that the five</p> <p>9 vinyl chloride railcars allegedly contained</p> <p>10 aluminum components?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: I did not ask.</p> <p>13 BY MS. BROZ:</p> <p>14 Q. Do you have the date and time at</p> <p>15 which Norfolk Southern allegedly learned that the</p> <p>16 five vinyl chloride railcars contained aluminum</p> <p>17 components written down anywhere on Deposition</p> <p>18 Exhibit 6?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I do.</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Where is that?</p>
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<p>1 is a reference here to responders on the</p> <p>2 scene -- the scene to be concerned about</p> <p>3 PRDs had become plugged due to aluminum</p> <p>4 or other components melting, according to</p> <p>5 David Schoendorfer's testimony.</p> <p>6 BY MS. BROZ:</p> <p>7 Q. Okay. And we'll get to that.</p> <p>8 Is that the basis for your</p> <p>9 testimony, that the -- Norfolk Southern learned</p> <p>10 that the -- the vinyl chloride cars contained</p> <p>11 aluminum on the PRD surface is the sole quote</p> <p>12 from David Schoendorfer?</p> <p>13 MS. PUJARI: Objection: form.</p> <p>14 THE WITNESS: That's to the best</p> <p>15 of my knowledge at this point.</p> <p>16 BY MS. BROZ:</p> <p>17 Q. And you understand that the topic</p> <p>18 that you were asked to prepare about and testify</p> <p>19 to included the date and time that Norfolk</p> <p>20 Southern learned that the railcars included</p> <p>21 aluminum components?</p> <p>22 A. That's a different question than</p>	<p>1 A. So that is on the following page,</p> <p>2 third bullet down, first subbullet, second</p> <p>3 subbullet, e-mail correspondence on February 4th</p> <p>4 at 12:54 p.m. between Paul Williams of Norfolk</p> <p>5 Southern and Ron Lawler of Trinity regarding</p> <p>6 certificates of construction.</p> <p>7 Q. And have you reviewed the</p> <p>8 certificates of construction?</p> <p>9 A. I have not reviewed them</p> <p>10 specifically.</p> <p>11 Q. Do you know whether the</p> <p>12 certificates of construction identify winner --</p> <p>13 whether any of the railcars had aluminum</p> <p>14 components?</p> <p>15 A. To my knowledge, I don't believe</p> <p>16 they identified components.</p> <p>17 I believe these were</p> <p>18 modifications --</p> <p>19 Q. Okay. And what --</p> <p>20 A. -- from the original certificate of</p> <p>21 construction.</p> <p>22 Q. What were modifications to the</p>

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<p>1 original certificate of construction?</p> <p>2 A. The addition of aluminum</p> <p>3 components.</p> <p>4 Q. And did you review those papers</p> <p>5 showing these alleged modifications to the</p> <p>6 certificates of construction to include aluminum</p> <p>7 components on the five vinyl chloride railcars?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: I did not review</p> <p>10 them.</p> <p>11 BY MS. BROZ:</p> <p>12 Q. So what is your basis for testimony</p> <p>13 today -- for testifying today that the five</p> <p>14 vinyl chloride railcars included aluminum</p> <p>15 components because of modifications?</p> <p>16 MS. PUJARI: Objection: form;</p> <p>17 assumes facts.</p> <p>18 THE WITNESS: Beginning with</p> <p>19 the -- the e-mail correspondence between</p> <p>20 Paul Williams and Ron Lawler.</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Okay. And where is that in</p>	<p>1 (Whereupon, the witness reviews</p> <p>2 the material provided.)</p> <p>3 THE WITNESS: And the -- just the</p> <p>4 valves?</p> <p>5 BY MS. BROZ:</p> <p>6 Q. Um-hum.</p> <p>7 A. Okay.</p> <p>8 TILX 402025 and OCPX 80235 and OCPX</p> <p>9 80179 had aluminum angle valve handwheels.</p> <p>10 Q. I don't want to cut you off.</p> <p>11 Are you finished?</p> <p>12 A. And OP- -- OCPX 80370 had aluminum</p> <p>13 angle valve handwheels also.</p> <p>14 Q. What was that last number?</p> <p>15 A. OCPX 80370.</p> <p>16 Q. Anything else?</p> <p>17 A. That's it.</p> <p>18 Q. And what are you referring to in</p> <p>19 answering that question?</p> <p>20 What were you reading off of</p> <p>21 when you answered that question?</p> <p>22 A. Oh. This is Exhibit 6.</p>
Page 211	Page 213
<p>1 Deposition Exhibit 6?</p> <p>2 A. Those are the two -- two subbullets</p> <p>3 under Bullet 3 on the second-to-last page, 10, I</p> <p>4 guess.</p> <p>5 Q. And are those two e-mails contained</p> <p>6 in your binder, which we've marked as Deposition</p> <p>7 Exhibit 8?</p> <p>8 A. I believe they are.</p> <p>9 Q. Okay. What tabs are those?</p> <p>10 (Whereupon, the witness reviews</p> <p>11 the material provided.)</p> <p>12 THE WITNESS: Tab 30.</p> <p>13 BY MS. BROZ:</p> <p>14 Q. And could you read the Bates number</p> <p>15 for me, since I don't have a copy of your binder?</p> <p>16 A. It says, NS-CA-000017054.</p> <p>17 Q. Okay. Anything else that you</p> <p>18 relied upon?</p> <p>19 A. Not -- not to my knowledge.</p> <p>20 Q. Okay. Of the five vinyl chloride</p> <p>21 railcars, which one do you allege had aluminum</p> <p>22 used in the various valves for the tank cars?</p>	<p>1 Q. Okay. And specifically, what pages</p> <p>2 of Exhibit 6?</p> <p>3 A. Exhibit -- or Page 9, first bullet,</p> <p>4 second bullet, third bullet; and Page 10, the</p> <p>5 second bullet.</p> <p>6 Q. Anything else?</p> <p>7 A. That's it.</p> <p>8 Q. And when did Norfolk Southern learn</p> <p>9 that the four vinyl chloride railcars allegedly</p> <p>10 used aluminum in the valves of the tank cars?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: Valves</p> <p>13 specifically? I -- I can't say if that</p> <p>14 was covered in that February 4th e-mail.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. So is your answer, I don't know?</p> <p>17 (Whereupon, the witness reviews</p> <p>18 the material provided.)</p> <p>19 THE WITNESS: I don't see</p> <p>20 anything specifically in what I have.</p> <p>21 BY MS. BROZ:</p> <p>22 Q. So your answer is you don't know?</p>

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<p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 Okay. Let's turn to that</p> <p>4 February 4th e-mail. And, unfortunately, I don't</p> <p>5 have a copy in front of me.</p> <p>6 Can you tell me what tab that</p> <p>7 is in your binder?</p> <p>8 A. It's Tab 30.</p> <p>9 MS. BENAVIDES: Counsel, do you</p> <p>10 have electronic copies of the binders, or</p> <p>11 anything, for the rest of us to look at?</p> <p>12 MS. PUJARI: I don't believe so.</p> <p>13 MS. BENAVIDES: Okay.</p> <p>14 MS. BROZ: Would you be able to</p> <p>15 make a copy if we went off the record?</p> <p>16 MS. BENAVIDES: It would be</p> <p>17 helpful, I think, if we all could have a</p> <p>18 copy.</p> <p>19 MS. PUJARI: Of the entire</p> <p>20 binder?</p> <p>21 MS. BROZ: No; that e-mail.</p> <p>22 MS. PUJARI: Oh, the e-mail?</p>	<p>1 A F T E R N O O N S E S S I O N</p> <p>2 (12:46 p.m. EST)</p> <p>3 --oOo--</p> <p>4 CHRISTOPHER REX NEIKIRK,</p> <p>5 was called for continued examination and, after</p> <p>6 having been previously duly sworn, was examined</p> <p>7 and testified further as follows:</p> <p>8 --oOo--</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 12:46 p.m., and we are back on the</p> <p>11 record.</p> <p>12 --oOo--</p> <p>13 EXAMINATION (CONTINUED) BY COUNSEL FOR DEFENDANT</p> <p>14 OXY VINYLs, LP</p> <p>15 --oOo--</p> <p>16 BY MS. BROZ:</p> <p>17 Q. Good afternoon, Mr. Neikirk.</p> <p>18 Before our lunch break, we were</p> <p>19 talking about your binder, which is -- we've</p> <p>20 marked as Deposition Exhibit 8. And we were</p> <p>21 specifically talking about Tab 30.</p> <p>22 A. Yes.</p>
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<p>1 MS. BROZ: Yes.</p> <p>2 MS. PUJARI: Sure. Yeah.</p> <p>3 MS. BROZ: Okay. Let's go off</p> <p>4 the record.</p> <p>5 THE VIDEOGRAPHER: Okay. The</p> <p>6 time is 12- --</p> <p>7 MS. PUJARI: Can we --</p> <p>8 THE VIDEOGRAPHER: -- 12:10 p.m.</p> <p>9 -- the time is 12:10 p.m. We're going</p> <p>10 off the record.</p> <p>11 --oOo--</p> <p>12 (Whereupon, at 12:10 p.m. EST, a</p> <p>13 luncheon recess was taken.)</p> <p>14 --oOo--</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 Q. Could you turn to that, please?</p> <p>2 A. Okay.</p> <p>3 Q. Okay. And for the record, what is</p> <p>4 the Bates label on that document?</p> <p>5 A. The Bates label is NS-CA-000017054.</p> <p>6 Q. And just to bring us back to where</p> <p>7 we were before lunch, your testimony that -- was</p> <p>8 that was the evidence that you had that Norfolk</p> <p>9 Southern was aware that there were aluminum</p> <p>10 components in the five vinyl chloride railcars</p> <p>11 prior to February 6th, 2023; is that correct?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: From what I could</p> <p>14 tell, it's the first indication that we</p> <p>15 had that there was aluminum on some of</p> <p>16 the cars.</p> <p>17 BY MS. BROZ:</p> <p>18 Q. Okay.</p> <p>19 MS. BROZ: Let's go ahead and</p> <p>20 mark that, then.</p> <p>21 What number are we on?</p> <p>22 CERTIFIED STENOGRAPHER: Sixteen.</p>

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<p>1 --oOo--</p> <p>2 (Neikirk Deposition Exhibit Number</p> <p>3 16, E-mail string, Bates stamped</p> <p>4 NS-CA-000017054 through</p> <p>5 NS-CA-000017059, marked for</p> <p>6 identification, as of this date.)</p> <p>7 --oOo--</p> <p>8 BY MS. BROZ:</p> <p>9 Q. I'll hand you what we've marked as</p> <p>10 Deposition Exhibit 16 and ask you if you</p> <p>11 recognize this.</p> <p>12 A. I do.</p> <p>13 Q. And what is it?</p> <p>14 A. It is an e-mail between</p> <p>15 Paul Williams of Norfolk Southern and Ron Lawler</p> <p>16 of Trinity.</p> <p>17 Q. Okay. And is that the same e-mail</p> <p>18 that's in Tab 30 of your binder, which we've</p> <p>19 marked as Deposition Exhibit 8?</p> <p>20 A. Yes. The date and time are the</p> <p>21 same.</p> <p>22 Q. Is the Bates number the same?</p>	<p>1 vinyl chloride railcars?</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 (Whereupon, the witness reviews</p> <p>4 the material provided.)</p> <p>5 THE WITNESS: Norfolk Southern</p> <p>6 became aware of the aluminum through</p> <p>7 correspondence with the car owners and</p> <p>8 the builders during the derailment</p> <p>9 response.</p> <p>10 BY MS. BROZ:</p> <p>11 Q. Where are you reading?</p> <p>12 A. This is the third bullet on</p> <p>13 Page 10, I believe.</p> <p>14 Q. Okay. And who wrote that bullet on</p> <p>15 Page 10?</p> <p>16 A. This was provided to me by</p> <p>17 WilmerHale.</p> <p>18 Q. WilmerHale wrote that bullet for</p> <p>19 you?</p> <p>20 MS. PUJARI: Objection: form.</p> <p>21 THE WITNESS: I don't know who</p> <p>22 wrote the bullet. It was provided to me</p>
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<p>1 A. It is.</p> <p>2 Q. Okay. And can you point to me</p> <p>3 where in this document the word "aluminum"</p> <p>4 appears anywhere?</p> <p>5 (Whereupon, the witness reviews</p> <p>6 the material provided.)</p> <p>7 THE WITNESS: I don't see the</p> <p>8 aluminum referenced in the document.</p> <p>9 BY MS. BROZ:</p> <p>10 Q. And who is Paul Williams?</p> <p>11 A. He's regional manager, hazardous</p> <p>12 materials for Norfolk Southern.</p> <p>13 Q. Was he on the ground in</p> <p>14 East Palestine between February 3rd and</p> <p>15 February 6th, 2023?</p> <p>16 A. I do not know if he was on the</p> <p>17 ground.</p> <p>18 Q. Okay. Do you have any other</p> <p>19 evidence that individuals on the ground in</p> <p>20 East Palestine between February 3rd and</p> <p>21 February 6th, 2023 understood that there were</p> <p>22 aluminum components on any of the five</p>	<p>1 by WilmerHale.</p> <p>2 BY MS. BROZ:</p> <p>3 Q. It was not something you</p> <p>4 investigated on your own?</p> <p>5 A. I did not.</p> <p>6 Q. And you understand the difference</p> <p>7 between a statement provided by counsel and facts</p> <p>8 to support that statement?</p> <p>9 MS. PUJARI: Objection: form.</p> <p>10 THE WITNESS: I do.</p> <p>11 BY MS. BROZ:</p> <p>12 Q. What facts do you have to support</p> <p>13 that statement?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I can't validate</p> <p>16 the fact.</p> <p>17 BY MS. BROZ:</p> <p>18 Q. Okay. Do you have any evidence to</p> <p>19 support the fact that Norfolk Southern employees</p> <p>20 on the ground in East Palestine between</p> <p>21 February 3rd and February 6th, 2023 knew that any</p> <p>22 of the five vinyl chloride railcars had aluminum</p>

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<p>1 components?</p> <p>2 A. Yeah. I do not know specifically</p> <p>3 who on the ground would have been aware of that.</p> <p>4 Q. Do you know if anyone on the ground</p> <p>5 would have been aware of it?</p> <p>6 A. Not specifically by name.</p> <p>7 Q. Do you have any names of any</p> <p>8 individual on the ground from Norfolk Southern,</p> <p>9 S- -- SRS or SPSI who were aware that the five</p> <p>10 vinyl chloride cars had aluminum components?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: Yeah.</p> <p>13 I don't know other than this</p> <p>14 e-mail.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. The e-mail that we just referred to</p> <p>17 and marked as Deposition Exhibit 16?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Let's turn to what we</p> <p>20 previously marked as Deposition Exhibit 15 and to</p> <p>21 Exhibit A of Deposition Exhibit 15.</p> <p>22 A. Got it.</p>	<p>1 I'm sorry. What page again?</p> <p>2 Q. Page -- it's Paragraph 152, Page 31</p> <p>3 of Exhibit 9.</p> <p>4 Okay. Go ahead and review that</p> <p>5 paragraph and the Subparagraphs a, b, c for me.</p> <p>6 A. Okay.</p> <p>7 (Whereupon, the witness reviews</p> <p>8 the material provided.)</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MS. BROZ:</p> <p>11 Q. Referring to Paragraph 152 of the</p> <p>12 Third-Party Complaint, which we've marked as</p> <p>13 Deposition Exhibit 9, can you tell me when</p> <p>14 Norfolk Southern became aware of these alleged</p> <p>15 discriminate -- discrepancies between its Federal</p> <p>16 certified and approved certificate of</p> <p>17 construction and the tank cars' actual</p> <p>18 characteristics?</p> <p>19 MS. PUJARI: Objection: beyond</p> <p>20 the scope of the 30(b)(6). The witness</p> <p>21 isn't designated.</p> <p>22 (Whereupon, the witness reviews</p>
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<p>1 Q. Do you have that in front of you?</p> <p>2 A. I do.</p> <p>3 Q. We're now going to talk about</p> <p>4 Topic 2.</p> <p>5 A. Okay.</p> <p>6 Q. And for the record, I'll read that.</p> <p>7 It says, The factual basis for</p> <p>8 your contention that, quote, discrepancies . . .</p> <p>9 between the approved documents and the actual</p> <p>10 physical characteristics, closed quote, of TILX</p> <p>11 402025, GATX 95098, OCPX 80235, OCPX 80179 and/or</p> <p>12 OCPX 80370 described in Paragraphs 120(b) and 152</p> <p>13 of the Third-Party Complaint caused Norfolk</p> <p>14 Southern damages.</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Let's go to Paragraph 152 of</p> <p>18 the Third-Party Complaint, which we've previously</p> <p>19 marked as Deposition Exhibit 9.</p> <p>20 A. You said 9?</p> <p>21 Q. Yes.</p> <p>22 A. Okay.</p>	<p>1 the material provided.)</p> <p>2 THE WITNESS: Yeah. I do not</p> <p>3 know when specifically, but they are</p> <p>4 listed in several of the NTSB exhibits:</p> <p>5 Tank car approval, sample summary,</p> <p>6 Hazardous Materials Group Chair's Factual</p> <p>7 Report.</p> <p>8 BY MS. BROZ:</p> <p>9 Q. Can you tell me how Norfolk</p> <p>10 Southern was harmed by these alleged</p> <p>11 discrepancies?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I can't say</p> <p>14 specifically.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. Do you have in generalities how</p> <p>17 Norfolk Southern was harmed by these alleged</p> <p>18 discrepancies?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I -- I don't know.</p> <p>21 MS. BROZ: I don't have any</p> <p>22 questions right -- any further questions</p>


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<p>1 right now, but I reserve my time.</p> <p>2 MS. BENAVIDES: Can we do -- can</p> <p>3 we go off the record?</p> <p>4 THE VIDEOGRAPHER: Okay. The</p> <p>5 time is 12:58 p.m., and we're going off</p> <p>6 the record.</p> <p>7 --oOo--</p> <p>8 (Whereupon, a recess was taken from</p> <p>9 12:58 p.m. EST to 1:01 p.m. EST.)</p> <p>10 --oOo--</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 1:01 p.m., and we're back on the record.</p> <p>13 --oOo--</p> <p>14 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>15 TRINITY INDUSTRIES LEASING COMPANIES</p> <p>16 --oOo--</p> <p>17 BY MS. BENAVIDES:</p> <p>18 Q. Good afternoon. My name is</p> <p>19 Nina Benavides, and I represent Trinity.</p> <p>20 So I believe throughout your</p> <p>21 deposition today, you've mentioned a couple times</p> <p>22 the NTSB's Hazardous Materials Group Chair's</p>	<p>1 BY MS. BENAVIDES:</p> <p>2 Q. Great.</p> <p>3 So I don't think the report has</p> <p>4 yet been entered as an exhibit.</p> <p>5 I know you have it there in</p> <p>6 your binder, but I'll pass it out so that others</p> <p>7 can have it as well.</p> <p>8 MS. BENAVIDES: Let's mark this.</p> <p>9 And I think that would be</p> <p>10 Exhibit 17.</p> <p>11 CERTIFIED STENOGRAPHER: That's</p> <p>12 right.</p> <p>13 --oOo--</p> <p>14 (Neikirk Deposition Exhibit Number</p> <p>15 17, Hazardous Materials Group</p> <p>16 Chair's Factual Report, Bates</p> <p>17 stamped NS-CA-000002467 through</p> <p>18 NS-CA-000002625, marked for</p> <p>19 identification, as of this date.)</p> <p>20 --oOo--</p> <p>21 BY MS. BENAVIDES:</p> <p>22 Q. I guess stepping back for a minute</p>
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<p>1 Factual Report, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And is that something that you have</p> <p>4 there in the binder in front of you?</p> <p>5 A. It is.</p> <p>6 Q. So it's something that you reviewed</p> <p>7 in that last session you were discussing in</p> <p>8 person for -- to prepare for this deposition?</p> <p>9 MS. PUJARI: Objection: form.</p> <p>10 THE WITNESS: We were review --</p> <p>11 reviewed it, yes.</p> <p>12 BY MS. BENAVIDES:</p> <p>13 Q. And are you aware that this is a</p> <p>14 comprehensive report prepared by the NTSB after</p> <p>15 the NTSB had conducted several interviews of</p> <p>16 people with roles in the East Palestine</p> <p>17 derailment, reviewed documents and conducted</p> <p>18 post-derailment testing and examinations?</p> <p>19 MS. PUJARI: Objection: form;</p> <p>20 compound.</p> <p>21 THE WITNESS: I believe that to</p> <p>22 be the case.</p>	<p>1 before you take a look at Exhibit --</p> <p>2 MS. BENAVIDES: What exhibit?</p> <p>3 What did you just say?</p> <p>4 CERTIFIED STENOGRAPHER: Seventee</p> <p>5 n.</p> <p>6 MS. BENAVIDES: Seventeen. Thank</p> <p>7 you.</p> <p>8 BY MS. BENAVIDES:</p> <p>9 Q. You're aware that one of the tasks</p> <p>10 that the NTSB performed was on the pressure</p> <p>11 relief devices of the five vinyl chloride cars,</p> <p>12 correct?</p> <p>13 A. I'm sorry. Say that again.</p> <p>14 Q. Yeah, of course. I'll start over.</p> <p>15 Are you familiar with the fact</p> <p>16 that one of the tests the NTSB performed was on</p> <p>17 the pressure relief devices of the five</p> <p>18 vinyl chloride cars?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: Yeah, I believe</p> <p>21 we -- we covered -- covered that.</p> <p>22</p>

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<p>1 BY MS. BENAVIDES:</p> <p>2 Q. And the NTSB found that the</p> <p>3 pressure relief device of the Trinity car</p> <p>4 functioned properly both during the derailment</p> <p>5 and even afterwards when tested, correct?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: Yeah. I was -- I</p> <p>8 was not aware of that.</p> <p>9 BY MS. BENAVIDES:</p> <p>10 Q. But you have no reason to doubt the</p> <p>11 NTSB's testing results on that, do you?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I have no reason to</p> <p>14 doubt that.</p> <p>15 BY MS. BENAVIDES:</p> <p>16 Q. And are you also aware that no</p> <p>17 evidence of polymer was detected in the NTSB's</p> <p>18 examination of the Trinity car's pressure relief</p> <p>19 device?</p> <p>20 MS. PUJARI: Objection: form;</p> <p>21 calls for expert testimony.</p> <p>22 (Whereupon, the witness reviews</p>	<p>1 to Oxy's Topic 1 regarding aluminum</p> <p>2 components.</p> <p>3 MS. PUJARI: I'm going to object:</p> <p>4 it's beyond the scope of that topic. And</p> <p>5 the witness is not designated on this --</p> <p>6 on this variation of -- it's for a</p> <p>7 different topic.</p> <p>8 BY MS. BENAVIDES:</p> <p>9 Q. If you'd like, I can direct you to</p> <p>10 the Exhibit 17 that I provided, the Group Chair's</p> <p>11 Factual Report, if that would be helpful.</p> <p>12 A. That's fine. I -- I --</p> <p>13 Q. Great.</p> <p>14 A. -- I was not aware of that, though.</p> <p>15 Q. If you turn to Page 61 of the Group</p> <p>16 Chair's Factual Report, Exhibit 17.</p> <p>17 A. Okay.</p> <p>18 Q. Do you see there the last sentence</p> <p>19 of that first paragraph? It says, Internal</p> <p>20 surfaces of the PRD and angle valves were coated</p> <p>21 with carbon/soot; however, there was no evidence</p> <p>22 of polymer or other contaminated -- contaminants</p>
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<p>1 the material provided.)</p> <p>2 BY MS. BENAVIDES:</p> <p>3 Q. Are you looking at the NTSB's</p> <p>4 HAZMAT report that I provided?</p> <p>5 A. No. I'm looking at the summary</p> <p>6 docs.</p> <p>7 Q. Exhibit 6?</p> <p>8 A. Page 6.</p> <p>9 Q. Oh, sorry. Were you looking at</p> <p>10 Exhibit 6? I didn't --</p> <p>11 A. Exhibit 6, oh yeah --</p> <p>12 Q. -- mean to interrupt you --</p> <p>13 A. -- yeah --</p> <p>14 Q. -- but --</p> <p>15 A. -- that's all right.</p> <p>16 Q. -- go ahead and, you know, review</p> <p>17 what you need.</p> <p>18 (Whereupon, the witness continues</p> <p>19 to review the material provided.)</p> <p>20 MS. PUJARI: Counsel, what topic</p> <p>21 is this?</p> <p>22 MS. BENAVIDES: This is relating</p>	<p>1 within the guide tube or other components.</p> <p>2 MS. PUJARI: Objection: beyond</p> <p>3 the scope; form.</p> <p>4 THE WITNESS: I see that.</p> <p>5 BY MS. BENAVIDES:</p> <p>6 Q. And you have no reason to doubt --</p> <p>7 disagree with the NTSB's finding here, correct?</p> <p>8 MS. PUJARI: Objection: beyond</p> <p>9 the scope; calls for expert; and form.</p> <p>10 THE WITNESS: Yeah. This is --</p> <p>11 this is not my area of expertise. I had</p> <p>12 --</p> <p>13 BY MS. BENAVIDES:</p> <p>14 Q. So you have no reason to doubt the</p> <p>15 NTSB's finding, right?</p> <p>16 MS. PUJARI: Same objections:</p> <p>17 form; beyond the scope; calls for expert</p> <p>18 testimony.</p> <p>19 THE WITNESS: Yeah. I don't have</p> <p>20 reason to doubt it.</p> <p>21 BY MS. BENAVIDES:</p> <p>22 Q. And you've testified earlier</p>

Page 234	Page 236
<p>1 regarding the components that Norfolk Southern</p> <p>2 has alleged within the Trinity car contained</p> <p>3 aluminum.</p> <p>4 Do you recall that testimony?</p> <p>5 A. I do.</p> <p>6 Q. I'm going to hand you what will be</p> <p>7 marked as Exhibit 18 to the deposition.</p> <p>8 --oOo--</p> <p>9 (Neikirk Deposition Exhibit Number</p> <p>10 18, Norfolk Southern's Responses</p> <p>11 and Objections to Trinity's First</p> <p>12 Set of Interrogatories, marked</p> <p>13 for identification, as of this</p> <p>14 date.)</p> <p>15 --oOo--</p> <p>16 THE WITNESS: Thank you.</p> <p>17 BY MS. BENAVIDES:</p> <p>18 Q. And these are Norfolk Southern's</p> <p>19 Responses and Objections to Trinity's First Set</p> <p>20 of Interrogatories.</p> <p>21 Do you see that there on the</p> <p>22 cover page?</p>	<p>1 the -- Norfolk Southern's response, which begins</p> <p>2 around halfway through the second paragraph of</p> <p>3 Page 16.</p> <p>4 It reads, Norfolk Southern</p> <p>5 responds that it is currently unaware --</p> <p>6 Do you see the sentence I'm</p> <p>7 reading?</p> <p>8 A. Yes.</p> <p>9 Q. Great.</p> <p>10 -- Norfolk Southern responds</p> <p>11 that it is currently unaware of any employee or</p> <p>12 contractor who may have been aware, between</p> <p>13 February 3rd and the time of the vent and burn on</p> <p>14 February 6th, that the specific TILX -- specific</p> <p>15 car, TILX 402025, contained aluminum.</p> <p>16 That's -- did I read that</p> <p>17 correctly?</p> <p>18 A. Yes, yes.</p> <p>19 Q. And that's an accurate statement,</p> <p>20 right?</p> <p>21 MS. PUJARI: Objection: form.</p> <p>22 THE WITNESS: If it's testimony,</p>
Page 235	Page 237
<p>1 A. I do.</p> <p>2 Q. Have you seen this document before?</p> <p>3 A. If I did, I did not go into it in</p> <p>4 detail, if it's in this deck or not.</p> <p>5 Q. And if you could please turn to</p> <p>6 Page 15, Interrogatory Number 8.</p> <p>7 It reads that -- Identify every</p> <p>8 Norfolk Southern employee or contractor who was</p> <p>9 aware of any supposed aluminum in TILX 402025 --</p> <p>10 And you understand that's what</p> <p>11 I've been referring to as the "Trinity car,"</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Great.</p> <p>15 -- or any of its components</p> <p>16 (including the spring on the pressure relief</p> <p>17 device for TILX 402025) and how and when each</p> <p>18 such individual became aware of the supposed</p> <p>19 aluminum.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And if you could please look to</p>	<p>1 I'd probably rely on the testimony -- or</p> <p>2 response.</p> <p>3 BY MS. BENAVIDES:</p> <p>4 Q. Right --</p> <p>5 A. Yeah --</p> <p>6 Q. -- you would have --</p> <p>7 A. -- yeah.</p> <p>8 Q. -- you wouldn't disagree with</p> <p>9 Norfolk Southern's written responses in this</p> <p>10 case, correct?</p> <p>11 A. I don't have a reason to disagree.</p> <p>12 Q. So it's true that at the time of</p> <p>13 the vent and burn on February 6th, no Norfolk</p> <p>14 Southern employee or contractor was aware of any</p> <p>15 aluminum in the Trinity car, right?</p> <p>16 MS. PUJARI: Objection: form;</p> <p>17 misstates the document.</p> <p>18 THE WITNESS: I agree that's</p> <p>19 what's stated here.</p> <p>20 BY MS. BENAVIDES:</p> <p>21 Q. And so you would agree, then, that</p> <p>22 at the time of the vent and burn, no Norfolk</p>

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<p>1 Southern employee or contractor would be aware of</p> <p>2 a specific aluminum-coated spring on the pressure</p> <p>3 relief device of the Trinity car, right?</p> <p>4 MS. PUJARI: Objection: form.</p> <p>5 THE WITNESS: Yeah. I -- I -- I</p> <p>6 see nothing to the contrary.</p> <p>7 BY MS. BENAVIDES:</p> <p>8 Q. Therefore, any coating did not play</p> <p>9 any role in Norfolk Southern's decision-making</p> <p>10 during its response to the derailment, right?</p> <p>11 MS. PUJARI: Objection: form;</p> <p>12 assumes facts.</p> <p>13 THE WITNESS: Yeah. I -- that's</p> <p>14 outside of my area of expertise. I</p> <p>15 don't -- I don't know.</p> <p>16 BY MS. BENAVIDES:</p> <p>17 Q. Well, you did agree that Norfolk</p> <p>18 Southern was not aware of the coating, correct --</p> <p>19 MS. PUJARI: Objection: form;</p> <p>20 asked and answered.</p> <p>21 BY MS. BENAVIDES:</p> <p>22 Q. -- during the time of the vent and</p>	<p>1 assumes facts.</p> <p>2 THE WITNESS: Yeah. I -- I don't</p> <p>3 know the facts around it.</p> <p>4 BY MS. BENAVIDES:</p> <p>5 Q. But you did agree that the coating</p> <p>6 played no role in Norfolk Southern's response,</p> <p>7 right?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: Unless there was</p> <p>10 someone that we were not aware of that</p> <p>11 knew about it, that's correct.</p> <p>12 BY MS. BENAVIDES:</p> <p>13 Q. I'm sorry. I don't know if I</p> <p>14 understood.</p> <p>15 Someone that Norfolk Southern</p> <p>16 was not aware of?</p> <p>17 A. I believe it says that we -- we</p> <p>18 state and respond that no one was aware of it,</p> <p>19 but I don't know for certain that that was</p> <p>20 comprehensive and accurate. But --</p> <p>21 Q. You're not certain if Norfolk</p> <p>22 Southern's responses in this case were accurate?</p>
Page 239	Page 241
<p>1 burn?</p> <p>2 A. I agree that's what it says here.</p> <p>3 Q. So, therefore, there would not be</p> <p>4 any way for something that Norfolk Southern</p> <p>5 didn't know about to have impacted its response</p> <p>6 to the derailment, correct?</p> <p>7 A. If we did not know about it, that's</p> <p>8 correct.</p> <p>9 Q. And ultimately, the Trinity car was</p> <p>10 intentionally blown up in a vent and burn</p> <p>11 operation conducted by Norfolk Southern and its</p> <p>12 contractors on February 6, right?</p> <p>13 MS. PUJARI: Objection: form.</p> <p>14 THE WITNESS: I believe it was</p> <p>15 part of the vent and burn group of cars.</p> <p>16 BY MS. BENAVIDES:</p> <p>17 Q. And nothing about an aluminum</p> <p>18 coating on a spring within the properly</p> <p>19 functioning pressure relief device required</p> <p>20 Norfolk Southern to blow up the stable Trinity</p> <p>21 car, right?</p> <p>22 MS. PUJARI: Objection: form;</p>	<p>1 A. I said --</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 THE WITNESS: -- comprehensive</p> <p>4 and accurate.</p> <p>5 BY MS. BENAVIDES:</p> <p>6 Q. But you have no reason to disagree</p> <p>7 with Norfolk Southern's responses, right?</p> <p>8 A. I -- I have seen nothing that</p> <p>9 concretely says that somebody was on the ground</p> <p>10 and knew about the presence of aluminum for this</p> <p>11 car.</p> <p>12 Q. And then if we could -- if you</p> <p>13 could please put that to the side.</p> <p>14 And if you can look back to</p> <p>15 Exhibit 17, which was the NTSB's Group Chair's</p> <p>16 Factual Report.</p> <p>17 Do you still have that handy?</p> <p>18 A. Yes.</p> <p>19 Q. And if you could please look to</p> <p>20 Page 34.</p> <p>21 And let me know when you're</p> <p>22 there.</p>

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<p>1 A. I'm here.</p> <p>2 Q. Great.</p> <p>3 The last sentence of that</p> <p>4 paragraph, which is discussing the equipment</p> <p>5 details of the Trinity car, notes that the</p> <p>6 protective housing cover was fabricated from</p> <p>7 carbon steel.</p> <p>8 Do you see that?</p> <p>9 A. I do see that.</p> <p>10 Q. You have no reason to disagree with</p> <p>11 the NTSB's finding on that point, right?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I have no reason to</p> <p>14 disagree with it.</p> <p>15 BY MS. BENAVIDES:</p> <p>16 Q. Okay. I'm going to hand you now</p> <p>17 what will be marked as Exhibit 19, I believe.</p> <p>18 --oOo--</p> <p>19 (Neikirk Deposition Exhibit Number</p> <p>20 19, Norfolk Southern's Responses</p> <p>21 and Objections to Trinity's First</p> <p>22 Set of Requests for Admission,</p>	<p>1 A. Correct.</p> <p>2 Q. And if you look to Norfolk</p> <p>3 Southern's response, which is on the next page,</p> <p>4 Page 27, starting in the second paragraph, it</p> <p>5 reads, Norfolk Southern admits that it is</p> <p>6 currently unaware --</p> <p>7 Are you with me?</p> <p>8 A. I'm with you.</p> <p>9 Q. Great.</p> <p>10 -- that it's currently unaware</p> <p>11 of any Norfolk Southern employees who were aware,</p> <p>12 between February 3rd, 2023 and the vent and burn</p> <p>13 on February 6th, 2023, of discrepancies between</p> <p>14 the AAR Form 4-2 for TILX 402025 and the tank</p> <p>15 car's actual characteristics.</p> <p>16 Did I read that correctly?</p> <p>17 A. You did.</p> <p>18 Q. And that's an accurate statement,</p> <p>19 right?</p> <p>20 MS. PUJARI: Objection: form.</p> <p>21 THE WITNESS: I have no reason to</p> <p>22 -- to dispute it.</p>
Page 243	Page 245
<p>1 marked for identification, as of</p> <p>2 this date.)</p> <p>3 --oOo--</p> <p>4 BY MS. BENAVIDES:</p> <p>5 Q. And this is Norfolk Southern's</p> <p>6 Responses and Objections to Trinity's First Set</p> <p>7 of Requests for Admission.</p> <p>8 Do you see that there on the</p> <p>9 cover page?</p> <p>10 A. I see that.</p> <p>11 Q. And if you could please turn to</p> <p>12 Page 26, which is Request for Admission</p> <p>13 Number 26.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see that it reads, Admit</p> <p>16 that from February 3rd, 2023 to the time of the</p> <p>17 detonation, no Norfolk Southern employee was</p> <p>18 aware of any alleged discrepancies between the</p> <p>19 AAR Form 4-2 for TILX 402025 and the tank car's</p> <p>20 actual characteristics, as alleged in</p> <p>21 Paragraph 152a of the Complaint?</p> <p>22 Right?</p>	<p>1 BY MS. BENAVIDES:</p> <p>2 Q. Great.</p> <p>3 You have not seen any evidence</p> <p>4 in either Exhibit 6 or anything in the binder</p> <p>5 that would dispute that response, right?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: Correct, although</p> <p>8 I'm unsure of what exactly was seen or</p> <p>9 discussed on that e-mail that was -- had</p> <p>10 been referenced earlier about --</p> <p>11 BY MS. BENAVIDES:</p> <p>12 Q. That e-mail that we looked at --</p> <p>13 A. -- the --</p> <p>14 Q. -- which was -- did we mark that?</p> <p>15 That e-mail that you're</p> <p>16 referencing -- does it mention anything about</p> <p>17 discrepancies?</p> <p>18 A. It does not.</p> <p>19 MS. BENAVIDES: I have no further</p> <p>20 questions at this time. I'll reserve the</p> <p>21 rest of my time.</p> <p>22 Thank you for your time.</p>

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<p>1 THE WITNESS: Yes.</p> <p>2 MR. GOMEZ: Plaintiffs have no</p> <p>3 questions.</p> <p>4 MR. ELLIS: Okay.</p> <p>5 THE VIDEOGRAPHER: Off the record</p> <p>6 for the day, or just go off the record?</p> <p>7 MR. ELLIS: As far as I know, off</p> <p>8 the record for today, right?</p> <p>9 MS. PUJARI: Yeah. We'll take</p> <p>10 five minutes to see if we have any</p> <p>11 questions of our own.</p> <p>12 THE VIDEOGRAPHER: Okay. The</p> <p>13 time is 1:17 p.m., and we're going off</p> <p>14 the record.</p> <p>15 --oOo--</p> <p>16 (Whereupon, a recess was taken from</p> <p>17 1:17 p.m. EST to 1:26 p.m. EST.)</p> <p>18 --oOo--</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 1:26 p.m., and we are back on the record.</p> <p>21 MS. PUJARI: Thank you for taking</p> <p>22 a moment.</p>	<p>1 standing order daily for you?</p> <p>2 Thank you.</p> <p>3 Everyone then has standing order</p> <p>4 for daily and Monday delivery?</p> <p>5 MR. RHEINHEIMER: Yes.</p> <p>6 MS. BROZ: Yes.</p> <p>7 MS. BENAVIDES: Yes.</p> <p>8 CERTIFIED STENOGRAPHER: Okay.</p> <p>9 Thanks so much.</p> <p>10</p> <p>11 (Witness excused.)</p> <p>12</p> <p>13 (Deposition concluded at 1:26 p.m.</p> <p>14 EST.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 We do not have any further</p> <p>2 questions and consider the deposition</p> <p>3 closed.</p> <p>4 THE VIDEOGRAPHER: All right.</p> <p>5 Stand by.</p> <p>6 The time is 1:26 p.m. on</p> <p>7 March 1st, 2024. We are going off the</p> <p>8 record, completing today's videorecorded</p> <p>9 session.</p> <p>10 (Whereupon, the following</p> <p>11 discussion was held off the video record</p> <p>12 and on the stenographic record:)</p> <p>13 CERTIFIED STENOGRAPHER: Counsel,</p> <p>14 I understand you want the final on</p> <p>15 Monday; is that right?</p> <p>16 MR. ELLIS: Yes, our standing</p> <p>17 order.</p> <p>18 CERTIFIED STENOGRAPHER: You have</p> <p>19 a standing order for a daily as well?</p> <p>20 MR. GOMEZ: Yes, we have a</p> <p>21 standing order on delivery.</p> <p>22 CERTIFIED STENOGRAPHER: So</p>	<p>1 C E R T I F I C A T E</p> <p>2 I, Cindy L. Sebo, Nationally Certified Court</p> <p>3 Reporter herein, do hereby certify that the foregoing</p> <p>4 deposition of CHRISTOPHER REX NEIKIRK was taken before</p> <p>5 me pursuant to notice at the time and place indicated;</p> <p>6 that said witness duly swore to tell the truth, the</p> <p>7 whole truth, and nothing but the truth under penalties</p> <p>8 of perjury; that said testimony of witness was</p> <p>9 correctly recorded to the best of my abilities in</p> <p>10 machine shorthand, thereafter transcribed under my</p> <p>11 supervision with computer-aided transcription; that</p> <p>12 deposition is a true and accurate record of the</p> <p>13 testimony given by the witness; that I am neither</p> <p>14 counsel, nor kin to any party in said action, nor</p> <p>15 interested in the outcome; and that a copy of this</p> <p>16 transcript obtained from a source other than the court</p> <p>17 reporting firm, including an adversary or co-counsel</p> <p>18 in the matter, is <u>uncertified</u> and may not be used at</p> <p>19 trial. </p> <p>20 CINDY L. SEBO, RMR, CRR, CLR, RPR, CCR, CSR,</p> <p>21 RSA, CA CSR 14409, NJ Certified CR 30XI0024460,</p> <p>22 NJ Certified RT 30XR00019500, NM CSR 589, NY</p> <p>Realtime Court Reporter, NY Association Certified</p> <p>Reporter, OR CSR 230105, TN CSR 998, TX CSR</p> <p>12778, WA CSR 23005926, Notary Public</p>

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INSTRUCTIONS TO WITNESS

1 Please read your deposition over

2 carefully and make any necessary corrections.

3 You should state the reason in the appropriate

4 space on the errata sheet for any corrections

5 that are made.

6 After doing so, please sign the

7 errata sheet and date it.

8 You are signing same subject to the

9 changes you have noted on the errata sheet, which

10 will be attached to your deposition.

11 It is imperative that you return

12 the original errata sheet to the deposing

13 attorney within thirty (30) days of receipt of

14 the deposition transcript by you. If you fail to

15 do so, the deposition transcript may be deemed to

16 be accurate and may be used in court.

17

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INSTRUCTIONS TO WITNESS

1 CHRISTOPHER REX NEIKIRK NO. 2024-931289

2 E R R A T A S H E E T

3 PAGE _____ LINE _____ CHANGE _____

4 REASON FOR CHANGE: _____

5

6 PAGE _____ LINE _____ CHANGE _____

7 REASON FOR CHANGE: _____

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21 PAGE _____ LINE _____ CHANGE _____

22 REASON FOR CHANGE: _____

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INSTRUCTIONS TO WITNESS

1 CHRISTOPHER REX NEIKIRK NO. 2024-931289

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21 PAGE _____ LINE _____ CHANGE _____

22 REASON FOR CHANGE: _____

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ACKNOWLEDGMENT OF WITNESS

1

2 I, CHRISTOPHER REX NEIKIRK, do hereby

3 certify that I have read the foregoing pages herein,

4 and that the same is a correct transcription of the

5 answers given by me of the proceedings taken remotely

6 to the questions therein propounded under penalty of

7 perjury, except for the corrections or changes in form

8 or substance, if any, noted in the attached errata

9 sheet.

10 _____

11 DATE SIGNATURE

12

13

14

15 Subscribed and sworn to before me

16 this _____ day of _____, 20____.

17

18 My Commission expires:

19 _____

20

21 _____

22 Notary Public