

EXHIBIT D

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4 -----X

5 In Re: East Palestine) Index Number

6 Train Derailment) 4:23-CV-00242

7 -----X

8

9

10 30(B)(6) VIDEOTAPED DEPOSITION OF

11 NORFOLK SOUTHERN RAILWAY COMPANY

12 BY AND THROUGH ITS CORPORATE REPRESENTATIVE,

13 CHRISTOPHER REX NEIKIRK

14 Friday, March 1, 2024; 8:11 a.m. EST

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18

19

20 Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR,
21 CCR, CLR, RSA, NYRCR, NYACR, CA CSR 14409, NJ CCR
30XI00244600, NJ CRT 30XR00019500, Washington State
CSR 23005926, Oregon CSR 230105, TN CSR 998, NM CSR
589, TX CSR 12778, Remote Counsel Reporter,
LiveLitigation Authorized Reporter, Notary Public

22 Job No. 2024-931289

30(b)(6)

2

1 30(B)(6) Videotaped Deposition of Norfolk
2 Southern Railway Company, By and Through its Corporate
3 Representative, CHRISTOPHER REX NEIKIRK, held at the
4 law offices of Wilmer Cutler Pickering Hale and Dorr
5 LLP, 2100 Pennsylvania Avenue, Northwest, Washington,
6 D.C. 20037, before Cindy L. Sebo, Registered Merit
7 Court Reporter, Certified Real-Time Reporter,
8 Registered Professional Reporter, Certified Shorthand
9 Reporter, Certified Court Reporter, Certified LiveNote
10 Reporter, Real-Time Systems Administrator, California
11 Shorthand Reporter 14409, New Jersey Certified Court
12 Reporter 30XI00244600, New Jersey Certified Realtime
13 Reporter 30XR00019500, New York Realtime Certified
14 Reporter, New York Association Certified Reporter,
15 Washington State CSR 23005926, Oregon CSR 230105,
16 Tennessee CSR 998, New Mexico CSR 589, Texas
17 CSR 12778, Remote Counsel Reporter, LiveLitigation
18 Authorized Reporter and Notary Public, beginning at
19 approximately 8:11 a.m. EST, when were present on
20 behalf of the respective parties:

21

22

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21 ALSO PRESENT:

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Technician

--oOo--

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(Exhibits Provided to Reporter.)

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Southern Railway Company

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E-mail string, Bates stamped

NS-CA-000017054 through

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Hazardous Materials Group

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P R O C E E D I N G S

--oOo--

Washington, D.C.

Friday, March 1, 2024; 8:11 a.m. EST

--oOo--

THE VIDEOGRAPHER: We are now on
the record.

My name is Daniel Holmstock. I
am the videographer retained by Lexitas.

This is the video deposition
that's pending before the United States
District Court for the Northern District
of Ohio, Eastern Division, with the index
number of 4:23-CV-00242.

This deposition is being held at
the address of 2100 Pennsylvania Avenue
Northwest, Washington, D.C. in the matter
of In re: East Palestine Train
Derailment.

The deponent is a 30(b)(6) for

Page

Norfolk Southern, represented today by

Mr. Christopher Rex Neikirk.

All counsel present will be noted
on the stenographic record for your
appearances.

Our court reporter today is
Cindy Sebo who will now administer the
oath to the witness.

--oOo--

CHRISTOPHER REX NEIKIRK,
after having been first duly sworn under penalty
of perjury by the certified stenographer, to tell
the truth, the whole truth, and nothing but the
truth, was examined and testified as follows:

--oOo--

CERTIFIED STENOGRAPHER: Thank
you.

The witness is sworn.

///

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Page

--oOo--

EXAMINATION BY COUNSEL FOR DEFENDANTS

GATX AND GENERAL AMERICAN MARKS

--oOo--

BY MR. ELLIS:

Q. Good morning, Mr. Neikirk. My name is Rob Ellis. I represent GATX and General American Marks.

You understand you're under oath to tell the truth today, right?

A. I do.

Q. Okay. I'm going to ask you a series of questions.

If you don't understand any of my questions, will you tell me that?

A. I will.

Q. If I ask a question and you answer, I'm going to assume you understood.

Is that fair?

A. Fair.

Q. Any reason today why you can't give your full, complete and accurate testimony?

Page

1 A. No.

2 Q. Where are you employed?

3 A. Norfolk Southern Corporation.

4 Q. What is your title?

5 A. Vice president and treasurer.

6 Q. How long have you had that title?

7 A. Since June of 2020.

8 Q. Were you employed at Norfolk

9 Southern before then?

10 A. I was.

11 Q. Okay. And what was your title?

12 A. Assistant vice president, finance.

13 Q. How long have you been with Norfolk

14 Southern?

15 A. For over 30 years.

16 Q. You understand that you're

17 testifying today on behalf of Norfolk Southern as

18 a corporate representative, correct?

19 A. I do.

20 Q. When did you first learn you were

21 going to get that assignment?

22 A. Maybe three weeks ago or so.

Page

1 MR. ELLIS: Thank you for passing
2 that.

3 Mark that. That will be
4 Exhibit 1.

5 --oOo--

6 (Neikirk Deposition Exhibit Number
7 1, Defendants and Third-Party
8 Defendants GATX Corporation and
9 General American Marks Company's
10 Second Amended Notice of Rule
11 30(B)(6) Deposition of Norfolk
12 Southern Railway Company, marked
13 for identification, as of this
14 date.)

15 --oOo--

16 BY MR. ELLIS:

17 Q. You have it in there in front of
18 you -- you've been handed, Mr. Neikirk, what's
19 been marked as Neikirk Deposition Exhibit 1.

20 You have it in front of you?

21 A. I do.

22 Q. Sorry. There's a machine --

Page

1 A. Yeah --

2 Q. -- that's blocking it --

3 A. -- yeah.

4 Q. -- so it's hard to see what you
5 have on the table.

6 A. I have it.

7 Q. Take a moment and look through it.

8 Let me know if you've seen it before, please.

9 (Whereupon, the witness reviews
10 the material provided.)

11 THE WITNESS: Maybe not exactly
12 in this format, but I have seen the
13 topics --

14 BY MR. ELLIS:

15 Q. Okay.

16 A. -- represented.

17 Q. And you have this document sitting
18 in front of you, correct (indicating)?

19 A. Correct.

20 Q. Would you hand that to the court
21 reporter?

22 We'll mark that as Neikirk

Page

Deposition Number 2.

THE WITNESS: All right.

--oOo--

(Neikirk Deposition Exhibit Number
2, Combined GATX & Oxy Vinyls
30(B)(6) Topics - Chris Neikirk
30(B)(6) Deposition, marked for
identification, as of this date.)

--oOo--

CERTIFIED STENOGRAPHER: Thank

you.

There you go, sir.

THE WITNESS: Thank you.

BY MR. ELLIS:

Q. Neikirk Deposition Exhibit 2 is a
document you brought with you today, correct?

A. Correct.

Q. Is that the format that you've seen
Exhibit 1 in?

A. No. There's another document I
believe you have that lists the topics --

Q. Okay.

Page

1 A. -- a little more in detail.

2 Q. Okay. Exhibit 1 is an amended
3 version of the original 30(b)(6) notice.

4 Does the one you saw have more
5 topics on it?

6 A. Not more topics, more than this
7 about the topics --

8 Q. Okay.

9 A. -- Exhibit 2.

10 Q. Exhibit 2 -- is that something you
11 prepared?

12 A. I did not.

13 Q. Was that prepared by your lawyers
14 for you?

15 A. I believe that's correct.

16 Q. Okay. Is this something,
17 Exhibit 2, that you used to prepare for your
18 deposition today?

19 A. Yes.

20 Q. So focusing on Exhibit 2 -- well,
21 let's go to Exhibit 1, Page 3, please.

22 There's a list -- list of

Page

1 topics numbered 12 through 18 on Exhibit 1,
2 correct?

3 A. Correct.

4 Q. The topic labeled 12 is Remediation
5 or response costs Norfolk Southern has incurred
6 to date in response to the February 3rd, 2023
7 derailment in East Palestine, Ohio.

8 Correct?

9 A. Correct.

10 Q. That's one that you're prepared to
11 testify about on behalf of the Corporation today,
12 correct?

13 A. Correct.

14 Q. Thirteen, All factual bases for
15 your contention that GPLX 75465 (Car 23) was
16 improperly maintained.

17 That's another topic you're
18 prepared to testify about on behalf of the
19 Corporation today, correct?

20 A. Correct.

21 Q. Topics 14 through 18 on Exhibit 1
22 also are topics that you're prepared to testify

Page

1 about on behalf of the Corporation today,
2 correct?

3 A. Correct.

4 Q. Were there any others that you're
5 prepared to testify about today that are not on
6 this list?

7 A. Yes, two topics relating to
8 Oxy Vinyls.

9 Q. Okay. I'm going to leave
10 Oxy Vinyls' lawyer to talk to you about those.

11 Other than those two additional
12 ones, are there any other topics that you're
13 prepared to testify about today on behalf of the
14 Corporation?

15 A. That -- that covers it.

16 Q. Okay.

17 --oOo--

18 (Neikirk Deposition Exhibit Number
19 3, Making It Right, 12-Month
20 Progress Report on East
21 Palestine, Ohio and Surrounding
22 Communities, marked for

Page

1 identification, as of this date.)

2 --oOo--

3 MS. PUJARI: Thank you.

4 BY MR. ELLIS:

5 Q. Mr. Neikirk, you've been handed
6 what's been marked as Neikirk Deposition Exhibit
7 Number 3.

8 Take a minute and look through
9 it. Let me know when you've finished, please.

10 (Whereupon, the witness reviews
11 the material provided.)

12 MS. PUJARI: Do you have another
13 copy, Counsel? Are they stopped down
14 there?

15 Thank you.

16 (Whereupon, the witness continues
17 to review the material provided.)

18 THE WITNESS: Okay.

19 BY MR. ELLIS:

20 Q. You've had a minute to look through
21 Neikirk Deposition Exhi- -- Exhibit Number 3; is
22 that correct?

Page

1 A. I have.

2 Q. Have you seen that before?

3 A. Not that in depth. I imagine it's
4 probably on our website or accessible that way.

5 Q. Okay. Is this a document you
6 reviewed to prepare for your deposition today?

7 A. Not this, specifically.

8 Q. Okay. And this document -- the
9 cover page says, Making It Right, 12-Month
10 Progress Report on East Palestine, Ohio and
11 Surrounding Communities.

12 Correct?

13 A. Correct.

14 Q. Okay. And before today, have you
15 read this document from front to back?

16 A. I have not.

17 Q. Did you have any involvement in
18 creating this document, to your knowledge?

19 A. I did not.

20 Q. Okay. Do you know who did?

21 A. I could speculate, but I -- I can't
22 say specifically who -- who put it together.

Page

1 Q. Okay. Directing your attention to
2 Page 4.

3 Mr. Neikirk, while you're
4 getting to Page 4, have you seen reports like
5 this updating the East Palestine community on
6 efforts Norfolk Southern has taken in response to
7 the February 3rd derailment?

8 A. I have.

9 Q. Okay. There was a 6-month report
10 like this -- 12-month report that was released by
11 Norfolk Southern about 6 months after the
12 derailment.

13 Did you see that one?

14 A. I saw it. I may not have read it
15 cover to cover.

16 Q. Okay. On Page 4, on the right-hand
17 column, at the top, it says, In the six months
18 since our last progress report, we have -- and
19 then there's several bullet points.

20 Do you see that?

21 A. Is it the fourth page of the --

22 Q. Yeah. I'm sorry. It's actually

Page

1 Page 5 of -- if you look on the right -- Page --

2 A. Got it. Okay --

3 Q. -- it says Page 4 on --

4 A. -- I see it.

5 Q. -- the bottom left, but it says

6 Page 5 on the right --

7 A. Right. Okay.

8 Q. -- so it looks like maybe,

9 originally, this was a smaller pamphlet folded
10 together, but --

11 A. I'm -- I'm there.

12 Q. Okay. You see, then, where it
13 says, In the six months since our last progress
14 report, we have: -- and the first bullet is
15 Provided a \$500,000 grant for economic
16 development.

17 Do you see that?

18 A. I do.

19 Q. Are you familiar with that grant?

20 A. Not specifically.

21 Q. Generally, are you familiar with
22 the grant?

Page

1 A. Generally, I would say. I know
2 we've been providing a lot of assistance to the
3 community.

4 Q. Okay. And the -- the 500,000 grant
5 for economic development that's listed in this
6 Norfolk Southern document issued to the community
7 in East Palestine -- that's something that
8 Norfolk Southern voluntarily undertook in
9 response to the derailment, correct?

10 A. I believe it was voluntary.

11 Q. Okay. And is that \$500,000 grant
12 something that Norfolk Southern is seeking as
13 damages from the three Third-Party Defendants in
14 this case?

15 MS. PUJARI: Objection: calls for
16 a legal conclusion.

17 THE WITNESS: I -- I don't know.

18 BY MR. ELLIS:

19 Q. Okay. As you sit here today, you
20 can't tell me whether or not that \$500,000 grant
21 is something that Norfolk Southern seeks as
22 damages from the three Third-Party Defendants in

Page

1 this case; is that correct?

2 MS. PUJARI: Objection --

3 THE WITNESS: I don't --

4 MS. PUJARI: -- objection: legal

5 conclusion.

6 BY MR. ELLIS:

7 Q. You can -- sorry. Your lawyer

8 talked over you --

9 A. I'm sorry --

10 Q. -- so it's better --

11 A. -- I spoke --

12 Q. -- for the court reporter if you

13 give a clean response --

14 A. I do not --

15 Q. -- okay.

16 A. -- I do not know. I have not seen

17 the list.

18 Q. Okay. And I take it you didn't do

19 anything to prepare today to testify about

20 whether this \$500,000 grant listed in Exhibit 3

21 is something that Norfolk Southern seeks as

22 damages from the three Third-Party Defendants in

Page

1 this case; is that correct?

2 MS. PUJARI: Objection: form.

3 THE WITNESS: Which is Exhibit 3?

4 BY MR. ELLIS:

5 Q. Exhibit 3 is the one you're --
6 you -- this -- it's this document we're looking
7 at.

8 A. Okay. Right, right, right.

9 Q. This Exhibit 3 and, specifically,
10 the first bullet on -- I guess it's Page 5 that
11 says, Provided a \$500,000 grant for economic
12 development -- my question was: Did you do
13 anything to prepare today to tell us whether or
14 not that's an item that Norfolk Southern seeks as
15 damages in this case?

16 A. I --

17 MS. PUJARI: Objection: form.

18 THE WITNESS: -- I have not.

19 BY MR. ELLIS:

20 Q. Okay. The next bullet says,
21 Pledged nearly \$4.3 million to support upgrades
22 to drinking water infrastructure.

Page

1 Are you familiar with that
2 \$4.3 million expenditure by Norfolk Southern to
3 support upgrades to drinking water
4 infrastructure?

5 A. I am familiar with it --

6 Q. Okay.

7 A. -- I couldn't have told you the
8 amount, but . . .

9 Q. Okay. Is that the first time
10 you're seeing the amount listed here?

11 A. I receive a lot of updates. I -- I
12 don't commit those to memory. I may have seen it
13 but might not recall exactly what the dollar
14 amount was.

15 Q. Okay. Is that -- and that
16 \$4.3 million pledge for upgrades to the drinking
17 water infrastructure -- is that referring to the
18 drinking water infrastructure in East Palestine,
19 Ohio?

20 A. I believe it covers
21 East Palestine --

22 Q. Okay.

Page

1 A. -- I don't know if it extends
2 beyond or not.

3 Q. Okay. That 4.3 million -- that
4 \$4.3 million pledge -- that's something that
5 Norfolk Southern voluntarily undertook in
6 response to the February derailment, correct?

7 A. I don't know if that was voluntary
8 or not.

9 Q. Is that \$4.3 million pledge to
10 support upgrades to the drinking water
11 infrastructure something that Norfolk Southern
12 seeks as damages against the three Third-Party
13 Defendants in this case?

14 MS. PUJARI: Objection. I'm
15 going to object based on beyond the
16 scope -- witness not -- not designated.
17 It's not part of Topic 12 -- and also
18 form.

19 BY MR. ELLIS:

20 Q. You can answer.

21 A. I don't know.

22 Q. You didn't do anything today -- you

Page

1 didn't do anything to prepare today to testify
2 about whether or not that \$4.3 million listed
3 here in the second bullet is something that
4 Norfolk Southern seeks as damages against the
5 three Third-Party Defendants in this case; is
6 that correct?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: I did not.

9 BY MR. ELLIS:

10 Q. Okay. The third bullet says, Broke
11 ground in East Palestine on the First Responder
12 Training Center -- which will be a regional asset.

13 Do you see that?

14 A. I see that.

15 Q. And that East Palestine First
16 Repon- -- Responder Training Center -- that's
17 something that Norfolk Southern voluntarily
18 undertook in response to the derailment; is that
19 correct?

20 MS. PUJARI: Objection: form;
21 beyond the scope.

22 THE WITNESS: I believe that to

Page

1 be voluntary.

2 BY MR. ELLIS:

3 Q. Okay. Is that something -- the
4 costs associated with that First Responder
5 Training Center something that Norfolk Southern
6 seeks as damages from the three Third-Party
7 Defendants in this case?

8 MS. PUJARI: Objection: beyond
9 the scope; form.

10 THE WITNESS: Again, I don't
11 know.

12 BY MR. ELLIS:

13 Q. Didn't do anything to prepare to
14 testify about whether or not that First Responder
15 Training Center and the costs associated with it
16 that Norfolk Southern voluntarily undertook is
17 something that Norfolk Southern seeks as damages
18 in this case?

19 MS. PUJARI: Objection: form;
20 facts not in evidence.

21 THE WITNESS: I did not.

22

Page

1 BY MR. ELLIS:

2 Q. The next bullet says, Completed the
3 initial intensive phase of environmental
4 remediation.

5 Are you familiar with the
6 initial intensive phase of environmental
7 relief -- remediation that's identified here in
8 Exhibit 3?

9 MS. PUJARI: Objection: beyond
10 the scope; form.

11 THE WITNESS: I'm familiar with
12 the environmental re -- remediation.

13 BY MR. ELLIS:

14 Q. Okay. Are the costs associated
15 with that environmental remediation something
16 that Norfolk Southern seeks as damages against
17 the -- from the three Third-Party Defendants in
18 this case?

19 MS. PUJARI: Objection: beyond
20 the scope.

21 THE WITNESS: I do not know.
22

Page

1 BY MR. ELLIS:

2 Q. The next bullet says, Announced the
3 next phase of our Community Assistance Program.

4 Are you familiar with the
5 Community Assistance Program that Norfolk
6 Southern voluntarily undertook in response to the
7 derailment for the folks of East Palestine?

8 A. I'm aware of it.

9 Q. Do you know what the costs
10 associated with that Community Assistance Program
11 mentioned here in the fifth bullet on Exhibit 3,
12 Page 5 -- do you know what those costs associated
13 with -- with that were?

14 A. I'm aware that over \$21 million
15 went to the families who visited the Facility
16 Assistance Center.

17 Q. Okay. And is that \$21 million the
18 Community Assistance Program referenced in this
19 bullet?

20 A. I believe it's related. I can't
21 say for certain it is.

22 Q. Okay. Is that \$21 million damages

Page

1 that Norfolk Southern seeks against the three

2 Third-Party Defendants in this case?

3 MS. PUJARI: Objection: beyond

4 the scope; form.

5 THE WITNESS: I don't know.

6 BY MR. ELLIS:

7 Q. Did you do anything to prepare
8 today to testify about whether or not the funds
9 associated with the next phase of the Community
10 Assistance Program referenced here in Exhibit 3
11 were damages sought against the three Third-Party
12 Defendants in this case?

13 MS. PUJARI: Objection: form.

14 THE WITNESS: I did not.

15 BY MR. ELLIS:

16 Q. The next bullet point says that
17 Norfolk Southern began implementing changes based
18 on the independent review by Atkins Nuclear
19 Secured (ANS).

20 Do you see that?

21 A. I see that.

22 Q. Are you familiar with Atkins

Page

1 Nuclear Secured?

2 A. I'm familiar with that program.

3 Q. Okay. Are the costs associated
4 with that program referenced here in the Making
5 It Right brochure something that Norfolk Southern
6 seeks as damages against Third-Party Defendants
7 in this case?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: I do not know.

10 BY MR. ELLIS:

11 Q. You didn't do anything to prepare
12 today to testify about whether the costs
13 associated with that independent review were
14 something that Norfolk Southern sought -- seeks
15 as damages against the three Third-Party
16 Defendants in this case?

17 MS. PUJARI: Objection: form.

18 THE WITNESS: I did not.

19 BY MR. ELLIS:

20 Q. The last bullet there says, Made
21 significant progress on the Six-Point Action Plan
22 for Safety.

Page

1 Are you familiar with the
2 six-point action plan for safety identified here
3 in Exhibit 3?

4 A. I'm familiar with it.

5 Q. Do you know the costs associated
6 with the Six-Point Action Plan for Safety
7 referenced in that last bullet?

8 A. I do not know the cost.

9 Q. Are the costs associated with the
10 six-point action plan for safety something that
11 Norfolk Southern seeks as damages against
12 Third-Party Defendants in this case?

13 MS. PUJARI: Objection: beyond
14 the scope; form.

15 THE WITNESS: I don't know.

16 BY MR. ELLIS:

17 Q. Then in the column immediately to
18 the right, there's some blue lettering that
19 highlights To date, Norfolk Southern has
20 committed more than 103 million to East Palestine
21 and the surrounding areas in Ohio and
22 Pennsylvania.

30(b)(6)

39

Page

1 Do you see that?

2 A. I see that.

3 Q. Is that 103 million to
4 East Palestine and the surrounding areas in Ohio
5 and Pennsylvania damages that Norfolk Southern
6 seeks from the Third-Party Defendants in this
7 case?

8 MS. PUJARI: Objection: beyond
9 the scope of the 30(b)(6) and form.

10 THE WITNESS: I don't know.

11 BY MR. ELLIS:

12 Q. I take it you didn't do anything to
13 prepare today to testify about whether that
14 amount was something that Norfolk -- Norfolk
15 Southern seeks as damages from the Third-Party
16 Defendants in this case?

17 A. I didn't --

18 MS. PUJARI: Objection: form.

19 THE WITNESS: -- I did not.

20 BY MR. ELLIS:

21 Q. Okay. If you turn the page of this
22 exhibit and look at the right side, which, at the

Page

1 bottom right, is numbered Page 7.

2 A. I'm there.

3 Q. Do you see that?

4 A. Yes.

5 Q. And here, Norfolk Southern is
6 highlighting for the folks in East Palestine who
7 received this that there were notable actions and
8 accomplishments Norfolk Southern has achieved as
9 of the date of this 12-month update, right?

10 A. Are you referencing the highlights?

11 Q. Yes.

12 A. Okay. Yes.

13 Q. You see where Norfolk Southern is
14 highlighting for the community some of the
15 notable actions and accomplishments we've
16 achieved to date, "we" being Norfolk Southern,
17 right?

18 A. Yes.

19 Q. And the first one is \$300,000 to
20 district academics, athletics and
21 extracurriculars.

22 Are you familiar with that

Page

1 \$300,000 commitment to the district academics,
2 athletics and extracurriculars?

3 A. I'm familiar with it.

4 Q. Okay. Is that something that
5 Norfolk Southern seeks as damages from the
6 Third-Party Defendants in this case?

7 MS. PUJARI: Objection: beyond
8 the scope; form.

9 THE WITNESS: I do not know.

10 BY MR. ELLIS:

11 Q. For all of these items highlighted
12 here -- \$220,000 to East Palestine Fire
13 Department for SCBA Air-Paks, 103 million plus
14 donated to support the East Palestine community,
15 \$500,000 committed to East Palestine's economic
16 development -- all of these items highlighted
17 here are items that Norfolk Southern voluntarily
18 undertook in response to the February derailment,
19 correct?

20 MS. PUJARI: Objection: form;
21 compound.

22 THE WITNESS: I do not know if

Page

1 they're all voluntary.

2 BY MR. ELLIS:

3 Q. Okay. The \$300,000 commitment to
4 the district academics, athletics and ex- --
5 extracurriculars -- is that something that
6 Norfolk vol- -- Norfolk Southern voluntarily
7 undertook in response to the derailment?

8 A. I believe that is voluntary.

9 Q. Okay. What about the
10 East Palestine Fire Department SCBA Air-Paks?

11 MS. PUJARI: Objection: vague.

12 THE WITNESS: I believe that
13 would be voluntary, too.

14 BY MR. ELLIS:

15 Q. Okay. The 103 million plus donated
16 to support the East Palestine community -- that
17 was something that Norfolk Southern voluntarily
18 undertook in response to the East Palestine
19 derailment, right?

20 MS. PUJARI: Objection: form;
21 compound.

22 THE WITNESS: That looks

Page

1 voluntary.

2 BY MR. ELLIS:

3 Q. And the 500,000 committed to
4 East Palestine's economic development -- that
5 also was a voluntary effort Norfolk Southern
6 undertook in response to the derailment, correct?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: I believe that
9 would be voluntary as well.

10 BY MR. ELLIS:

11 Q. Okay. Underneath that, the
12 9.1 million to Pennsylvania community support --
13 that also was something Norfolk Southern
14 voluntarily undertook in response to the
15 derailment, correct?

16 MS. PUJARI: Objection: form.

17 THE WITNESS: I believe it was
18 in -- in response.

19 BY MR. ELLIS:

20 Q. And that's something Norfolk
21 Southern voluntarily undertook in response to the
22 derailment for the folks in Pennsylvania -- in

Page
1 the community to support the community, right?

2 MS. PUJARI: Objection: form.

3 THE WITNESS: Yeah. I -- I don't
4 know the breakdown on that one, what --
5 what all it entails.

6 BY MR. ELLIS:

7 Q. That's -- the \$9.1 million
8 referenced here -- that's not something you
9 reviewed or prepared to testify about today; is
10 that right?

11 MS. PUJARI: Objection: form.

12 THE WITNESS: It -- I do have
13 something that reconciles to \$9 million
14 for Pennsylvania.

15 BY MR. ELLIS:

16 Q. Okay. And when you say I have
17 something, you're looking at a list that was
18 prepared for you to testify for today, right?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: Yes.

21 BY MR. ELLIS:

22 Q. Okay. Looking back, though, at

Page

1 Exhibit 3, this 9.1 million referenced here, is
2 the 9.1 million referenced here something that's
3 on the sheet that you have that was prepared for
4 you today?

5 A. It reconciles very close to that
6 number.

7 Q. Okay. Do you know whether or not
8 it's the same effort, the number that you're
9 looking there on your -- at on your sheet and the
10 9.1 million to Pennsylvania community support
11 referenced on Exhibit 3 -- are those two the same
12 thing?

13 A. They appear to be.

14 Q. Okay. Is that something that
15 Norfolk Southern voluntarily undertook to help
16 the folks in Pennsylvania as part of its
17 community support?

18 MS. PUJARI: Objection: form;
19 vague.

20 THE WITNESS: They look to be
21 voluntary.
22

Page

1 BY MR. ELLIS:

2 Q. Okay. And to the left of that,
3 11,690-plus family visits to our Family
4 Assistance Centers -- is that something Norfolk
5 Southern voluntarily undertook in response to the
6 derailment?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: I believe that to
9 be voluntary.

10 BY MR. ELLIS:

11 Q. Okay. And is that -- do you know
12 the costs associated with those 11,690-plus
13 family visits?

14 You're looking on your sheet.

15 Is that on your sheet?

16 A. It does -- yeah. I do -- I do not
17 see this number directly on the sheet.

18 Q. Okay. That 11,690-plus family
19 visits referenced here on the -- on the document
20 circulated to the folks in East Palestine at --
21 at part -- as part of the year anniversary --
22 those 11,690-plus family visits -- are the costs

Page

1 associated with that something that Norfolk
2 Southern seeks as damages from the three
3 Third-Party Defendants in this case?

4 MS. PUJARI: Objection: beyond
5 the scope; form; and foundation.

6 THE WITNESS: I don't know.

7 BY MR. ELLIS:

8 Q. Okay. There's also a reference
9 again to the \$4.3 million fund established to
10 protect drinking water.

11 Do you see that?

12 A. I do.

13 Q. Okay. Is that \$4.3 million fund on
14 your list?

15 A. It is.

16 Q. Okay. Is that \$4.3 million fund
17 something Norfolk Southern voluntarily undertook
18 in response to the derailment?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: Yeah. I -- I do
21 not know if that is voluntary or not.

22

Page

1 BY MR. ELLIS:

2 Q. Okay. Is that something that
3 Norfolk Southern seeks as damages against the
4 three Third-Party Defendants case --

5 MS. PUJARI: Objection: beyond --

6 BY MR. ELLIS:

7 Q. -- Defendants in this case, the
8 \$4.3 million fund?

9 MS. PUJARI: -- objection: beyond
10 the scope; form.

11 THE WITNESS: I don't know.

12 BY MR. ELLIS:

13 Q. And it says, Aquatic life has
14 returned to the area streams, and work continues
15 to address the remaining impact.

16 Are the costs associated with
17 that aquatic life restoration work referenced
18 here in Exhibit 3 -- is that something that's on
19 your list?

20 A. I can't -- there's no dollar
21 associated with it on here, and I don't see it
22 referenced in this manner on my list.

Page

1 Q. Okay. Are the costs associated
2 with returning aquatic life to the area something
3 that Norfolk Southern voluntarily undertook in
4 response to the derailment?

5 MS. PUJARI: Objection: form.

6 THE WITNESS: Yeah. I don't know
7 if that is voluntary.

8 BY MR. ELLIS:

9 Q. Okay. Are the costs associated
10 with that something that Norfolk Southern seeks
11 as damages in this case from the Third-Party
12 Defendants?

13 MS. PUJARI: Objection: beyond
14 the scope; form.

15 THE WITNESS: Yeah.

16 I don't know.

17 BY MR. ELLIS:

18 Q. Down at the bottom of this same
19 page on Exhibit [sic] 7, it says, Phase 2, The
20 next phase of our commitment announced in late
21 2023, includes -- and the first item there is
22 \$500,000 for an economic development agency to

Page

1 work with the East Palestine community leaders.

2 Do you see that?

3 A. I see that.

4 Q. Are you familiar with that effort?

5 A. Not very, but it's here in the

6 documentation, so --

7 Q. Okay. That -- is that the first

8 time you saw it, reading this documentation?

9 A. It may be --

10 Q. Okay.

11 A. -- I can't say for sure.

12 Q. Is that \$500,000 commitment to

13 economic development something that's on your

14 list there in front of you?

15 (Whereupon, the witness reviews

16 the material provided.)

17 THE WITNESS: Yeah. I do not see

18 it specifically --

19 BY MR. ELLIS:

20 Q. Okay.

21 A. -- that dollar amount.

22 Q. Is that \$500,000 something that

Page

1 Norfolk Southern seeks as damages against
2 Third-Party Defendants in this case?

3 MS. PUJARI: Objection: beyond
4 the scope; form.

5 THE WITNESS: I don't know.

6 BY MR. ELLIS:

7 Q. Do you know whether any of the
8 items referenced in this Making It Right pamphlet
9 entitled Making It Right, 12-Month Progress
10 Report on East Palestine and Surrounding
11 Communities -- all of the efforts and the costs
12 associated with this -- are you prepared today to
13 talk about whether any of them are amounts that
14 Norfolk Southern seeks as damages against
15 Third-Party Defendants in this case?

16 MS. PUJARI: Objection: beyond
17 the scope; form.

18 THE WITNESS: Yeah.

19 I'm not prepared.

20 --oOo--

21 (Neikirk Deposition Exhibit Number
22 4, PowerPoint presentation, Q4

Page

2023 Earnings Call, January 26,
2024, marked for identification,
as of this date.)

--oOo--

BY MR. ELLIS:

Q. All right. Going back to this
Exhibit 3 for just a minute, Mr. Neikirk, these
items, for example, at Page 7, the highlighted
items -- \$300,000 to the district for academics,
athletics and extracurriculars; the 220,000 to
East Palestine Fire Department for the SCBA
Air-Paks -- all these items that Norfolk Southern
voluntarily undertook for the community -- are
those items that you think Norfolk Southern
should be seeking as damages in response to the
derailment from the Third-Party Defendants?

MS. PUJARI: Objection: assumes
facts; calls for speculation; legal
conclusion; and form.

THE WITNESS: I don't know.

BY MR. ELLIS:

Q. Do you think it would be right for

Page

1 Norfolk Southern to seek those items as damages
2 after telling the community that Norfolk Southern
3 was undertaking those things --

4 MS. PUJARI: Object --

5 BY MR. ELLIS:

6 Q. -- for the community?

7 MS. PUJARI: -- objection:

8 assumes facts and form.

9 THE WITNESS: I don't know.

10 BY MR. ELLIS:

11 Q. Exhibit 4 I think you've now got in
12 front of you.

13 I take it you've seen Exhibit 4
14 before?

15 A. Yes.

16 Q. Okay. Did you help prepare
17 Exhibit 4?

18 A. I was involved in the process.

19 Q. Okay. Exhibit 4 is the -- or a
20 deck prepared and associated with the Q4 2023
21 earnings call from Norfolk Southern, correct?

22 A. That is correct.

Page

1 Q. And at Page 7 of this deck,
2 Exhibit 4, there's an estimate of East -- Eastern
3 Ohio derailment-related costs.

4 Do you see that?

5 A. I do.

6 Q. And the reference to the
7 Eastern Ohio derailment is the February
8 derailment in East Palestine, correct?

9 A. Correct.

10 Q. The numbers that are reflected here
11 -- did you help prepare these?

12 A. Yeah, we -- we were involved in
13 gathering. This was mostly done by our
14 accounting department, though --

15 Q. Okay. Folks in your --

16 A. -- and claims and legal.

17 Q. -- I'm sorry. Go ahead.

18 A. -- and claims and legal.

19 Q. Okay. So folks in your part --
20 accounting department prepared the numbers.

21 Did you see them and sign off
22 on them before this was released in connection

Page

1 with the Norfolk Southern earnings call?

2 A. I -- I saw them. I did not sign
3 off on them.

4 Q. Okay. There's a list here for
5 Expenses, 9-month, Q4 and Total.

6 The 9-month column -- is that
7 from the date of the derailment until the end of
8 Q3?

9 A. Yes.

10 Q. Do you know what the \$699 million
11 referenced here -- do you know what items went
12 into that \$699 million number?

13 A. I know some of them.

14 Q. Which ones do you know?

15 A. There were -- among the
16 \$515 million paid, 89 million related to soil
17 remediation; 156 million related to water
18 disposal; 53 million related to air monitoring;
19 217 million related to consultants; and
20 \$2 million to the Ohio EPA.

21 Q. What was that last? 200 to Ohio
22 EPA?

Page

1 A. Two million.

2 Q. Oh, 2 million to Ohio EPA.

3 And the 137- incurred in Q4 for
4 environmental response costs and expected
5 remediation monitoring activity -- do you know
6 what the breakdown for that 137- is?

7 A. I do not have a breakdown of that.

8 Q. That's not something you looked at
9 to prepare for today?

10 MS. PUJARI: Objection: form.

11 THE WITNESS: I did not.

12 BY MR. ELLIS:

13 Q. Okay. I take it you can't tell me
14 whether the \$699 million referenced here is
15 something -- an amount that Norfolk Southern
16 seeks as damages against Third-Party Defendants
17 in -- in this case.

18 Am I right about that?

19 MS. PUJARI: Objection: beyond
20 the scope; form.

21 THE WITNESS: I don't know.

22

Page

1 BY MR. ELLIS:

2 Q. We were little ships passing in the
3 night.

4 I'm correct that you can't tell
5 me today whether that 699 is something that
6 Norfolk Southern seeks as damages in this case
7 against the Third-Party Defendants, right?

8 MS. PUJARI: Objection: beyond
9 the scope; form.

10 THE WITNESS: Yeah. I don't
11 know.

12 BY MR. ELLIS:

13 Q. And same with the 137- -- the 137-
14 listed here as an expense in Q4 for
15 environmental-related costs, you don't know the
16 breakdown and you can't tell me whether any of
17 the items in that breakdown were -- are something
18 that Norfolk Southern seeks as damages from the
19 Third-Party Defendants in this case, right?

20 MS. PUJARI: Objection: beyond
21 the scope; form.

22 THE WITNESS: I do not know.

Page

1 BY MR. ELLIS:

2 Q. The paid in 2023 number, 517-, I
3 think you -- you mentioned 515 before.

4 Is that the number you have,
5 515-, not 517-?

6 A. I have 515- in my remarks. That
7 could be due to rounding.

8 Q. Okay. But in your remarks, you
9 mean in the document that someone prepared for
10 you today, right?

11 A. A prepared document, correct.

12 Q. Okay. You didn't prepare the
13 remarks, did you?

14 A. Correct; I did not.

15 Q. Okay. Who did?

16 A. For these specific cost breakdown,
17 it was Kristin Hoffman.

18 Q. Who's Kristin Hoffman?

19 A. She's assistant vice president of
20 corporate accounting.

21 Q. Did you ask her to prepare that?

22 A. I did not.

Page

1 Q. Who did?

2 A. I believe our counsel requested it
3 in -- in working with our law department.

4 Q. Okay. Who from the law department?

5 A. Nate's last name.

6 Q. Smith?

7 A. Nate Smith, I believe, is involved.

8 Q. Anybody else other than Nate Smith?

9 A. I don't know.

10 Q. Okay. And that 517 -- 517 million
11 identified there in this document, and I
12 understand it's 2 million off from the number you
13 have, you think maybe because of rounding
14 errors -- can you tell me today whether or not
15 that's an amount that Norfolk Southern seeks as
16 damages from the three Third-Party Defendants in
17 this case?

18 MS. PUJARI: Objection: assumes
19 facts; beyond the scope.

20 THE WITNESS: I don't know.

21 BY MR. ELLIS:

22 Q. And underneath, there's an item

Page

1 here in the Q3 -- sorry -- Q4 2023 earnings call
2 deck, Legal and other costs. And there's, for
3 the nine months, 292 million and then, for Q4,
4 89 million for a total of legal and other costs
5 of 381 million in 2023, right?

6 A. I see that.

7 Q. And are those numbers correct?

8 A. I believe they are.

9 Q. Okay. And then of that, 236 had
10 been paid as of the creation of this deck,
11 correct?

12 A. Correct.

13 Q. Okay. Do you know the breakdown of
14 the 292 million?

15 A. I do not.

16 Q. What about the 89 million? Do you
17 know the breakdown to that?

18 A. I don't know that either.

19 Q. Okay. And the 236 million -- do
20 you know the breakdown for that?

21 A. I don't know.

22 Q. Those aren't items that you

Page

1 prepared to testify about today?

2 MS. PUJARI: Objection: form.

3 THE WITNESS: I did not.

4 BY MR. ELLIS:

5 Q. And I take it that you can't tell
6 me whether or not any of those amounts -- 292-,
7 89-, 381- -- any of those legal and other costs,
8 including the amount paid of 236 million as of
9 the date of this deck, are amounts that Norfolk
10 Southern seeks as damages against Third-Party
11 Defendants in this case.

12 You're not prepared to do that
13 today, are you?

14 MS. PUJARI: Objection: beyond
15 the scope of the 30(b)(6) and form.

16 THE WITNESS: I am not.

17 BY MR. ELLIS:

18 Q. And you can't tell me the breakdown
19 of those numbers either in terms of who was
20 responsible for those various costs, which
21 entities represented those numbers, correct?

22 MS. PUJARI: Objection: asked and

Page

1 answered; form.

2 THE WITNESS: I cannot.

3 --oOo--

4 (Neikirk Deposition Exhibit Number

5 5, Norfolk Southern 2023 10-K,

6 marked for identification, as of

7 this date.)

8 --oOo--

9 MR. ELLIS: If you want another

10 one, there's another one for anyone who's

11 interested.

12 CERTIFIED STENOGRAPHER: This is

13 Exhibit 5.

14 THE WITNESS: Thank you.

15 MR. ELLIS: Thank you. You read

16 my mind.

17 BY MR. ELLIS:

18 Q. Okay. Mr. Neikirk, Exhibit 5 --

19 that is definitely one you've seen before?

20 A. I have seen it.

21 Q. Okay. I was hoping that was the

22 case.

Page

1 That's your 10-K issued just
2 this past February, right, for Norfolk Southern?

3 MS. PUJARI: Objection: form.

4 THE WITNESS: It looks like it.

5 BY MR. ELLIS:

6 Q. Okay. You have involvement in
7 preparing this, right?

8 A. Some, yes.

9 Q. Okay. What about -- directing your
10 attention to Page 117 -- no. I'm sorry. Start
11 at 115 of 153 at the bottom right.

12 There's Note 17, specifically
13 the Eastern Ohio Incident.

14 Do you see that?

15 A. I do.

16 Q. Did you have involvement in
17 preparing this particular note?

18 A. I was not involved in this note.

19 Q. Not involved at all in this?

20 A. No.

21 Q. Okay. Do you know who was?

22 A. I don't know. It would be --

Page

1 accounting was certainly involved, but I'm not
2 exactly sure who.

3 Q. Okay. The -- at Page 117, under
4 Financial Impact, it reads, Although we cannot
5 predict the final outcome or estimate, the
6 response will -- the response -- the reasonably
7 possible -- sorry -- range of loss with
8 certainty, we recognized 1.1 billion of expense
9 in 2023 for costs direct -- directly attributable
10 to the incidents.

11 Do you see that?

12 A. I see that.

13 Q. Okay. Is that 1.1 billion
14 reflected in the document you have there, your
15 remarks?

16 A. No, it is not.

17 Q. Okay. Do you know whether some or
18 all of that 1.1 billion are costs that Norfolk
19 Southern seeks as damages against Third-Party
20 Defendants in this case?

21 MS. PUJARI: Objection: beyond
22 the scope; form.

Page

1 THE WITNESS: Yeah.

2 I -- I don't know.

3 BY MR. ELLIS:

4 Q. That's not something you prepared
5 to testify about today; is that right?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: I'm not prepared.

8 BY MR. ELLIS:

9 Q. There's a reference here to
10 101 million in insurance recoveries received in
11 2023 from claims made under Norfolk Southern's
12 insurance policies, right?

13 A. I see that.

14 Q. Okay. And any costs associated
15 with the derailment for which Norfolk Southern
16 received insurance -- that wouldn't be something
17 that Norfolk Southern sought as damages against
18 Third-Party Defendants in this case, right?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I -- I don't know
21 the answer.

22

Page

1 BY MR. ELLIS:

2 Q. It says in the next sentence,
3 During 2023, our cash expenditures attributable
4 to the incident net of insurance proceeds
5 received were 652 million, which are presented in
6 net cash provided by operating activities.

7 Do you see that?

8 A. I see it.

9 Q. Are you familiar with that
10 \$652 million amount?

11 A. I'm familiar with the total number.

12 Q. Okay. And is that 652 million
13 broken down in your -- the document you referred
14 to earlier as your remarks?

15 A. It is not.

16 Q. That's not something you're
17 prepared to testify about today?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: No.

20 BY MR. ELLIS:

21 Q. And if you look at Page 119, about
22 a third of the way down the page, it says, In

Page

1 connection with the foregoing items, we
2 recognized 836 million of expense during 2023 of
3 which 517 million was paid during 2023 related to
4 the probable obligations that are reasonably
5 estimable in accordance with FASB, et cetera.

6 That 836 million of which 517
7 was paid -- is that broken down in your -- the
8 document you referred to earlier as your remarks?

9 MS. PUJARI: Objection: form.

10 THE WITNESS: Not -- not
11 specifically to the 836, just the
12 amount -- the 517 we broke down earlier.

13 BY MR. ELLIS:

14 Q. Okay. So the 517 referenced here
15 on Page 119 of your 10-K -- those are broken down
16 in this (indicating) document that you
17 prepared -- or that was prepared for you today?

18 A. That's correct.

19 Q. Okay. And I take it you can't tell
20 me whether that 517 are -- all or a portion of it
21 are amounts that Norfolk Southern seeks as
22 damages against Third-Party Defendants in this

Page

1 case, right?

2 A. I don't know --

3 MS. PUJARI: Objection: beyond

4 the form; scope -- scope -- I'm sorry --

5 beyond the scope and form.

6 Sorry about that.

7 CERTIFIED STENOGRAPHER: What was

8 your answer?

9 THE WITNESS: "I don't know."

10 BY MR. ELLIS:

11 Q. Then further down the page on 119,
12 in the first bullet point that's entitled Legal
13 Proceedings and Claims (Non-Environmental) -- in
14 that paragraph, there's a sentence that says, In
15 accordance with FASB ASC 450, Contingencies, we
16 recognize a \$116 million loss during 2023 with
17 respect to the incident lawsuits and related
18 contingencies of which 34 million have been paid.

19 Do you see that?

20 A. I see that.

21 Q. Are you familiar with that 116
22 number?

Page

1 A. I'm familiar with the total.

2 Q. You are?

3 A. Yes.

4 Q. Okay. And do you know the
5 breakdown of it?

6 A. I do not.

7 Q. That's not something you prepared
8 to testify about today?

9 MS. PUJARI: Objection: form.

10 THE WITNESS: I'm not.

11 BY MR. ELLIS:

12 Q. Mr. Neikirk, when you sat down to
13 -- so you said you learned three weeks ago that
14 you were going to have the fun of testifying
15 today as corporate representative, right?

16 A. Correct.

17 Q. Okay. And when you were told that
18 you were the corporate representative for today,
19 what were you told your job would be?

20 MS. PUJARI: Objection to the
21 extent it calls for privileged
22 information.

Page

1 THE WITNESS: That I would be
2 deposed about East Palestine.

3 BY MR. ELLIS:

4 Q. Okay. It was just about
5 East Palestine? Did anybody give you any more
6 detail?

7 A. It -- it was more to -- to the
8 Complaint -- to our Complaint.

9 Q. Okay. So you were told you were
10 going to testify today about your Complaint?

11 A. Yes.

12 Q. Anything more specific?

13 A. Not really initially.

14 Q. Okay. Did you ask people to do
15 things for you to help you prepare for today?

16 A. Not -- not directly, no.

17 Q. Did you, yourself, undertake to do
18 anything to prepare for today?

19 A. I did.

20 Q. Okay. What did you do?

21 A. I worked with -- with our counsel.

22 Q. Okay. Before you worked with your

Page

1 counsel, did you do anything yourself to prepare
2 for today?

3 A. I did not.

4 Q. Okay. When's the first time you
5 met with your lawyers?

6 A. I don't have the exact date.

7 Q. How about a guesstimate?

8 A. About three weeks ago, we had a
9 call followed up by another call about an hour or
10 so long.

11 Q. Okay. The first call -- was that
12 when you found out you were going to testify
13 today?

14 A. I believe there was an initial call
15 and then a follow-up call.

16 Q. Okay. The initial call was about
17 three weeks ago?

18 A. I would say roughly. I can't swear
19 to what the date was.

20 Q. That's okay.

21 Do you keep a calendar?

22 A. I do keep a calendar.

Page

1 Q. You do.

2 Is that in your calendar?

3 A. It probably is in my calendar.

4 Q. Okay. And the second call -- is
5 that one in your calendar?

6 A. It would be.

7 Q. Okay. Does someone keep your
8 calendar for you?

9 A. I do it myself.

10 Q. Okay. Me too.

11 Did you bring it with you
12 today?

13 A. I have my computer with me, and
14 it's on my computer.

15 Q. Okay. You got that in the other
16 room?

17 A. I do.

18 Q. Okay. Terrific.

19 So you had the first call where
20 you learned you were going to testify today as
21 corporate representative.

22 And I think I understand you

Page

1 didn't yourself do anything after that first call
2 to prepare to testify, right?

3 MS. PUJARI: Objection: form.

4 THE WITNESS: Not specifically,

5 no.

6 BY MR. ELLIS:

7 Q. Generally?

8 A. Generally.

9 Q. What did you do?

10 A. I learned about what the case was
11 about and began educating myself on it with the
12 help of counsel.

13 Q. Okay. And what did you do to
14 educate yourself about what the case was about --
15 is that the first time you heard about the case?

16 A. No.

17 Q. Okay. Is that the first time you
18 heard Norfolk Southern had sued the three
19 Third-Party Defendants?

20 A. That's not the first time.

21 Q. Okay. And what did you do to
22 educate yourself?

Page

1 A. Worked with counsel on the facts
2 around the case according to the various topics
3 to discuss.

4 Q. Okay. Did -- when you were working
5 with counsel, did counsel give you facts?

6 MS. PUJARI: Objection: form.

7 Objection to the extent it calls
8 for privileged information.

9 BY MR. ELLIS:

10 Q. You can answer.

11 A. Okay.

12 Yeah, I -- I -- they had a fact
13 sheet --

14 Q. Okay.

15 A. -- summarized and in detail.

16 Q. Okay. And is that fact sheet this
17 (indicating)?

18 A. That's the summarized level of it.

19 Q. Okay. So they gave you facts in
20 the form of this document that we'll mark in a
21 little bit, the thing you've called your remarks.

22 Did counsel give you facts in

Page

1 other ways?

2 A. There's a binder that's part of
3 this -- that's much more detailed that's
4 referenced in this document (indicating).

5 Q. Okay. So you got your remarks, and
6 then you got a binder that goes with your
7 remarks?

8 A. Correct.

9 Q. Okay. Did -- and those are facts
10 that the lawyers gave you.

11 Did lawyers give you any other
12 facts?

13 MS. PUJARI: Objection: form.

14 Objection: assumes facts.

15 THE WITNESS: It's all in this
16 document.

17 BY MR. ELLIS:

18 Q. Okay. In the document and the
19 binder?

20 A. In the document and further in
21 detail in the binder.

22 Q. Okay. And then -- so that was the

Page

1 first call. And the lawyers gave you -- did the
2 lawyers give you the sheet in the binder in
3 between the first and the second call?

4 A. No.

5 Q. Okay. Did they give you any facts,
6 the lawyers, in between the first and the second
7 call?

8 MS. PUJARI: Objection: form.

9 And we're getting into privilege,
10 so let's --

11 BY MR. ELLIS:

12 Q. You can answer.

13 MS. PUJARI: -- careful not to
14 ask about substance, Counsel.

15 BY MR. ELLIS:

16 Q. Did the lawyers give you any facts
17 in between the first and the second call?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: I don't recall
20 directly.

21 BY MR. ELLIS:

22 Q. Okay. Did you make any notes?

Page

1 A. Very few.

2 Q. Okay. But you made some notes?

3 A. Maybe about what the follow-up call
4 was going to be. I -- I just -- they're
5 insignificant.

6 Q. Okay. Did you keep them, the
7 notes?

8 A. That, I don't know.

9 Q. You don't know if you kept the
10 notes?

11 A. If it is, it's on a little yellow
12 sticky probably on my desk.

13 Q. Okay. So in between the first and
14 the second call, you got some facts from the
15 lawyers, jotted it down on your yellow sticky.

16 Any other facts from the
17 lawyers orally?

18 MS. PUJARI: Objection: form;
19 assumes facts.

20 THE WITNESS: Like I said, we had
21 a call where I learned about some of the
22 details of the case.

Page

1 BY MR. ELLIS:

2 Q. Okay. Were those details you knew?

3 A. Not all of them, no.

4 Q. And then -- and in between those
5 time -- in between that first and second call,
6 other than getting facts from your lawyers, did
7 you do anything else to prepare? Did you ask,
8 for example, any of the folks that report to you
9 to assemble items or get data for you?

10 MS. PUJARI: Objection: form;

11 assumes facts.

12 THE WITNESS: I did not.

13 BY MR. ELLIS:

14 Q. Then when was the second call?

15 A. Maybe two weeks ago.

16 Q. Two weeks ago.

17 During that -- who participated
18 in the second call?

19 A. I'll have to look --

20 Q. Okay.

21 A. -- I don't recall directly, but --

22 Q. Do you remember anybody?

Page

1 A. I believe Chris was on the call and
2 Mike and --

3 Q. They won't feel bad. Don't worry.

4 A. Yeah. No. It's escaping -- his
5 name, the British-speaking gentleman.

6 Andrew, maybe.

7 Yeah. All right.

8 Q. Okay. So any in-house lawyers on
9 the call?

10 A. I believe there were.

11 Q. Who?

12 A. Nate, Martin --

13 Q. Nate and Martin are two different
14 people.

15 A. Or Nate --

16 Q. Nate Smith?

17 A. Nate Smith. I'm sorry. Yeah,
18 Nate.

19 Q. We won't tell Nate.

20 A. Yeah.

21 Q. And so Nate Smith, Chris, the
22 British-speaking fellow?

Page

1 A. Yeah.

2 Q. Anybody else?

3 A. Possibly Jason Morris -- I don't
4 know --

5 Q. Okay.

6 A. -- might have been on one.

7 Q. Okay. How many calls did you have?

8 A. I believe there were three.

9 Q. And during that second call, did
10 anybody give you facts?

11 MS. PUJARI: Objection: form; and
12 calls for privileged information.

13 BY MR. ELLIS:

14 Q. You can answer.

15 A. Yeah. We -- we -- like I said, we
16 went over details about the case.

17 Q. I just want to know if -- if folks
18 gave you facts about the case.

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I consider what I
21 learned to be facts.

22

Page

1 BY MR. ELLIS:

2 Q. Okay. And what facts did you get
3 in that second call?

4 A. Information about the incident, the
5 cars involved, a few details around the topics
6 that we went over originally.

7 Q. Did you ask anybody to provide you
8 with information after you received those facts?

9 A. I did not.

10 Q. Okay. Did -- did you ask for any
11 facts to prepare for your deposition today?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: I did not.

14 BY MR. ELLIS:

15 Q. Okay. This was a situation where
16 folks were giving you facts and you were
17 absorbing?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: Yes.

20 BY MR. ELLIS:

21 Q. Okay. I take it a lot of the facts
22 you were getting were facts that you did not

Page

1 independently know before you were given them,
2 right?

3 MS. PUJARI: Objection: form.

4 THE WITNESS: That's correct.

5 BY MR. ELLIS:

6 Q. Okay. So that was the second call.

7 And I think you mentioned there
8 was a third call.

9 When was that?

10 A. That was more recently, maybe a
11 week ago, or so.

12 Q. Who was on that call?

13 A. I believe the same folks. I'll --
14 I'll have to look to see who was on that call.

15 Q. Okay. That's in your calendar?

16 A. Yeah.

17 Q. Okay. And in between the second
18 and the third call, did you do anything to gather
19 facts or research or prepare for your testimony
20 today?

21 A. I did not.

22 Q. Okay. So first call, nothing in

Page

1 between; second call, you got some facts, nothing

2 in between; third call, got some facts.

3 Right?

4 MS. PUJARI: Objection: form.

5 THE WITNESS: I believe there
6 were facts in the second and the third
7 call.

8 BY MR. ELLIS:

9 Q. Okay. Yeah. But nothing in
10 between?

11 A. Nothing in between.

12 Q. Okay. Other than those three
13 calls, did you do anything to prepare to testify?

14 A. I did not.

15 Q. Okay. So after the third call, you
16 didn't do anything to gather facts in order to
17 prepare to testify today?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: Not in addition to
20 what I learned on the calls.

21 BY MR. ELLIS:

22 Q. Okay. And could you hand that one,

Page

1 your remarks, to the court reporter there so she
2 can mark it for you?

3 CERTIFIED STENOGRAPHER: Thank
4 you.

5 --oOo--

6 (Neikirk Deposition Exhibit Number
7 6, Chris Neikirk 30(B)(6)
8 Deposition Topics, marked for
9 identification, as of this date.)

10 --oOo--

11 CERTIFIED STENOGRAPHER: This is
12 Exhibit 6.

13 MR. ELLIS: Thank you.

14 BY MR. ELLIS:

15 Q. Okay. Exhibit 6 are what you
16 referenced earlier as your remarks.

17 This, Mr. Neikirk, is a
18 document that was prepared for you by the lawyer,
19 right?

20 MS. PUJARI: Objection: form;
21 assumes facts.

22 THE WITNESS: The lawyers and

Page

1 others from Norfolk Southern.

2 BY MR. ELLIS:

3 Q. Okay. Who else from Norfolk
4 Southern prepared this for you?

5 A. Kristin Hoffman, who we've
6 mentioned before, provided some of the
7 environmental costs breakdown --

8 Q. Okay. Who else?

9 A. -- and Will Harden, who is --

10 Q. H-A-R-D-E-N?

11 A. H-A-R-D-E-N.

12 -- from our claims department,
13 provided some of the community and assistant
14 [sic] cost breakdown.

15 Q. Anybody else?

16 (Whereupon, the witness reviews
17 the material provided.)

18 THE WITNESS: No.

19 BY MR. ELLIS:

20 Q. So which parts are the parts in
21 Exhibit 6 that Kristin Hoffman gave you?

22 A. They are on the first page near the

Page

1 top --

2 Q. Okay.

3 A. -- with her listed as a source.

4 Q. So the first bullet reads, Norfolk
5 Southern has recognized more than 836 million in
6 environmental response costs. It includes 15 --
7 sorry -- 515 million paid.

8 And then there's a breakdown of
9 that. It says, Sources: Kristin Hoffman and the
10 Norfolk Southern 10-K.

11 Right?

12 A. Correct.

13 Q. Is that the piece Kristin Hoffman
14 gave you?

15 A. That is the piece she gave us.

16 Q. Okay. Anything else on here that
17 Kristin Hoffman gave you?

18 A. I don't believe so.

19 Q. Okay. And then can you identify
20 the part that Will Harden gave you?

21 A. Yes. That's the second bullet
22 point on the first page and all subbullet

Page

1 information.

2 Q. Okay. So it's NS has committed
3 more than 103 million in community funds and
4 payments. This includes park revitalization,
5 first responder training, Family Assistance
6 Center, drinking water system updates, and the EP
7 community fund and others.

8 And then there's a breakdown of
9 those, correct?

10 A. That's correct.

11 Q. Okay. These are all items
12 following on the second page ending with a bullet
13 that says Source: Will Harden, Norfolk Southern.

14 I take it that from the
15 beginning of the second bullet until the Source:
16 Will Harden, Norfolk Southern, those are all
17 items that Mr. Harden gave you?

18 A. That's correct.

19 Q. The first point there, 25 million
20 for EP -- I take it that's a reference to
21 East Palestine?

22 A. Correct.

Page

1 Q. So 25 million for East Palestine
2 park revitalization (committed, not fully
3 paid) -- that's an effort that Norfolk Southern
4 voluntarily undertook for the folks in
5 East Palestine as a result of the derailment,
6 right?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: That appears
9 voluntary to me.

10 BY MR. ELLIS:

11 Q. Okay. That's something you
12 consider as voluntary?

13 A. Yes.

14 MS. PUJARI: Objection: form.

15 BY MR. ELLIS:

16 Q. And 25 million for the first
17 responder training center (committed, not fully
18 paid) -- that also is something Norfolk Southern
19 voluntarily undertook for the folks of
20 East Palestine and the first responders there in
21 response to the derailment, right?

22 MS. PUJARI: Objection: form.

Page

1 THE WITNESS: That appears
2 voluntary.

3 BY MR. ELLIS:

4 Q. Certainly something you consider
5 voluntary, right?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: I consider it
8 voluntary.

9 BY MR. ELLIS:

10 Q. Okay. And the 21 million -- more
11 than 4,500 families in East Palestine who visited
12 the Family Assistance Center more than 11,700
13 times -- I think we saw that in that -- in that
14 Making It Right document we looked at.

15 That also was something Norfolk
16 Southern voluntarily undertook for the folks of
17 East Palestine, right?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: I don't know if the
20 whole amount is voluntary.

21 BY MR. ELLIS:

22 Q. Do you know how much of that you'd

Page

1 consider voluntary?

2 MS. PUJARI: Objection: form.

3 THE WITNESS: Yeah. I just don't

4 know the details of what all the money

5 went to.

6 BY MR. ELLIS:

7 Q. Okay. And so for that bullet, you

8 can't give me any detail or breakdown of what

9 those costs or funds en- -- entailed, right?

10 A. No.

11 Q. The 7.1 million first responder

12 reimbursements -- those indicate all paid.

13 Do you have any breakdown of

14 that?

15 A. I don't.

16 Q. The 4.3 million in funding for

17 drinking water system updates in East Palestine,

18 including more than 660,000 for new water

19 treatment technology -- that's something that

20 Norfolk Southern voluntarily undertook for the

21 folks of East Palestine, correct?

22 MS. PUJARI: Objection: form.

Page

1 THE WITNESS: Yeah. I -- I don't
2 know if that's voluntary or not.

3 BY MR. ELLIS:

4 Q. Okay. That's not something you're
5 prepared to testify about today?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: It is not.

8 BY MR. ELLIS:

9 Q. Okay. In other words, someone gave
10 you this bullet, 4.3 million in funding for
11 drinking water system updates -- specifically,
12 Mr. Harden gave you this bullet.

13 And other than giving you that
14 information, you don't have any other details
15 about that, right?

16 A. I don't.

17 Q. Okay. And you didn't ask for any?

18 A. I did not.

19 Q. And when you got this document
20 that's Exhibit 6 and you went through it, I take
21 it you went through it with the lawyers?

22 MS. PUJARI: Objection: form.

Page

1 THE WITNESS: We did -- we did
2 review it.

3 BY MR. ELLIS:

4 Q. Okay. As part of which call?

5 MS. PUJARI: Objection: form.

6 THE WITNESS: It would have been
7 possibly part of it in the third call --

8 BY MR. ELLIS:

9 Q. Okay.

10 A. -- it -- it has changed a little
11 bit.

12 Q. Oh, the document changed.

13 There was earlier versions of
14 this; is that right?

15 A. There were.

16 Q. Okay. Did you keep those?

17 A. I have one prior version.

18 Q. Okay. Do you have it with you here
19 today?

20 A. I do.

21 Q. Okay. So were the changes to the
22 document changes you asked for?

Page

1 A. They were generally to -- to
2 summarize it in a way easier to respond to
3 deposition.

4 Q. Okay. My question was: Were --
5 were they changes that you asked for?

6 A. Some.

7 Q. Okay. Which ones were changes you
8 asked for?

9 A. It's -- it's not related to these
10 first two, Topic 12, but there are, for example,
11 just summarizing the dates of the cars that were
12 at La Porte, just general things like that.

13 Q. Okay. So when you got this
14 document -- and do you have a record of when you
15 got this document, the first draft of it?

16 A. I don't recall.

17 Q. Okay. Did you get it by e-mail?

18 A. I don't recall.

19 Q. Do you remember if you got this --
20 the first draft of this document before the first
21 call?

22 A. I don't believe it was before the

Page

1 first call.

2 Q. How about before the second call?

3 A. I don't think I got it before the
4 second call either.

5 Q. Okay. So you got it between the
6 second call and the third call?

7 A. I think that to be true. I'm not
8 100 percent certain.

9 Q. Okay. And the second call -- do
10 you know what month that occurred in?

11 A. It would have been February, I
12 believe.

13 Q. Okay.

14 Okay. So when you got the
15 first draft of this, you asked for some changes.

16 And the changes you asked for
17 were not with respect to this Topic 12 but with
18 respect to some of the other topics, right?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: Yes.

21 BY MR. ELLIS:

22 Q. Okay. And you said -- I think that

Page

1 you asked for some changes about -- that related
2 to dates?

3 MS. PUJARI: Objection: form;
4 mischaracterizes testimony.

5 THE WITNESS: Yes, the way the
6 dates were presented --

7 BY MR. ELLIS:

8 Q. Okay.

9 A. -- so that they were easier to
10 reference.

11 Q. Okay. Which dates are you
12 referring to?

13 (Whereupon, the witness reviews
14 the material provided.)

15 THE WITNESS: So they would be
16 for Topic 13.

17 BY MR. ELLIS:

18 Q. Okay. Topic 13, your document here
19 that's Exhibit 6, isn't numbered --

20 A. Yeah.

21 Q. -- but it's -- the pages aren't
22 numbered, but --

Page

1 A. Yeah. So it's the --

2 Q. -- can you count in --

3 A. -- three --

4 Q. -- and tell me which one you're

5 looking at?

6 A. -- two, four -- fifth page back --

7 Q. Okay.

8 A. -- the second bullet from the

9 bottom.

10 Q. Ah. The second bullet that says,

11 The car stats -- sat stationary for

12 multiple-months-long periods at the La Porte

13 facility -- that one?

14 A. That's correct.

15 Q. Okay. You didn't write that, did

16 you?

17 A. I did not write that.

18 Q. The lawyers wrote that for you,

19 right?

20 A. I did not write that.

21 Q. The lawyers wrote it for you,

22 right?

Page

1 MS. PUJARI: Objection --

2 objection.

3 I'm going to instruct not to

4 answer.

5 MR. ELLIS: You're going to

6 instruct him not to answer as to how he

7 got the facts in this bullet.

8 Is that what you're saying?

9 MS. PUJARI: Counsel, can you

10 tell me what page we're on, please?

11 MR. ELLIS: I think Mr. Neikirk

12 can tell you.

13 THE WITNESS: I think it's on the

14 fifth page back. I think that's right.

15 MS. PUJARI: Four?

16 Can you repeat the question,

17 please?

18 MR. ELLIS: You can read him the

19 question.

20 --oOo--

21 (Whereupon, the certified

22 stenographer read back the

Page

pertinent part of the record.)

--oOo--

MS. PUJARI: Yeah. I'm

instructing.

Can we move on?

MR. ELLIS: You're instructing

him not to answer that question?

Yes? You're instructing him not

to --

MS. PUJARI: Yes. I've done it

twice now, yes.

MR. ELLIS: Okay.

BY MR. ELLIS:

Q. Who gave you the facts here in this
bullet point?

A. It was part of this document that I
received from WilmerHale.

Q. Okay. Who gave you the facts in
this bullet point, that the car sat stationary
for multiple-months-long periods at the La Porte
facility?

MS. PUJARI: Objection: asked and

Page

1 answered.

2 THE WITNESS: The -- the data is
3 contained in the binder in car location
4 movement data.

5 BY MR. ELLIS:

6 Q. Okay. Who gave you that?

7 A. That was provided by WilmerHale.

8 Q. Okay. The lawyers, right?

9 A. Yes.

10 Q. Okay. And did you write these
11 bullets -- the car cat -- sat stationary for
12 multiple-months-long periods at the La Porte
13 facility -- and then did you write these dates?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I did not.

16 BY MR. ELLIS:

17 Q. Did anybody who works at Norfolk
18 Southern write those dates for you?

19 A. That, I don't know.

20 Q. You don't know who wrote these out?

21 A. I do not.

22 Q. Did you ask?

1 A. I did not.

2 Q. And underneath that, it says, in
3 this bullet point, Source.

4 And then there's another bullet
5 and a reference to a document, right?

6 A. That's correct.

7 Q. Okay. Who gave you that document?

8 A. WilmerHale.

9 Q. Okay. When you received the dates
10 here, you said you asked for the dates to be made
11 in a more presentable way; is that correct?

12 A. That's correct.

13 Q. Okay. What did you ask?

14 A. They were in a paragraph that ran
15 line by line. It wasn't easy to see. And this
16 organized it in a way that's easier to see.

17 Q. Got it.

18 So someone wrote a paragraph,
19 and you asked them to break it out in bullets?

20 A. Correct.

21 Q. Okay. Did you ask for any
22 additional information from the lawyers in

1 connection with those bullets?

2 A. Generally related, there's a
3 document that I did not bring in here that I
4 believe you got that is a table of the cars and
5 the owners and the lessees.

6 I asked for that --

7 Q. Okay.

8 A. -- as well.

9 Q. So you asked someone to prepare a
10 document that's a table of cars and owners and
11 lessees?

12 A. Yes.

13 Q. Okay. Other than that, did you ask
14 anybody to prepare anything else for you?

15 A. I did not.

16 Q. And other than the -- the
17 rearranging or reformatting of the dates from a
18 paragraph format to bullets, did you ask for any
19 other changes to this document, Exhibit 6?

20 A. I did not.

21 Q. Okay. Did you ask anybody who
22 prepared each portion of this?

1 A. No.

2 Q. I take it you walked through this
3 document on your third call?

4 A. Yes.

5 Q. Okay. Did you do anything with
6 this document other than go through it with the
7 lawyers on the third call?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: No.

10 BY MR. ELLIS:

11 Q. Okay. Did you ask any questions
12 about the facts that were given to you in this
13 document?

14 A. We -- we reviewed it again
15 yesterday.

16 Q. Okay. In person?

17 A. In person.

18 Q. Okay. So I just want to talk about
19 the third call, and then we'll talk about the
20 in-person meeting yesterday.

21 So in the third call, you got
22 this document. You asked for some changes to the

1 formatting of some of the dates.

2 Did you ask any other questions
3 about any of the other facts referenced in this
4 document?

5 A. No.

6 And the formatting changes were
7 asked for yesterday, not on the third call.

8 Q. Okay. Got it.

9 On the third call, then, you
10 didn't ask for any changes?

11 A. Not that I can recall.

12 Q. Okay. Did you ask for any
13 additional facts on the third call?

14 A. I did not.

15 Q. Did you ask to review any of the
16 documents that underlie this on the third -- on,
17 you know, the -- Exhibit 6, any of the underlying
18 documents for this (indicating)?

19 A. I did not.

20 Q. Okay. The binder that you got is
21 those -- are those documents you asked for?

22 A. No.

1 Q. Those were documents that were
2 given to you by the lawyers?

3 A. They were.

4 Q. Okay. When -- when did you get
5 those?

6 A. Yesterday.

7 Q. Okay. And yesterday -- so was
8 yesterday the first time that you saw the
9 documents that were given to you by the lawyers
10 in the bind -- in the binder?

11 A. In the binder, yes --

12 Q. Okay.

13 A. -- but there were some documents in
14 the binder including, like our 10-K, which I've
15 seen before.

16 Q. Got it.

17 Other than the 10-K, are there
18 documents in the binder that you'd seen before?

19 A. I can't say for sure. I'd have to
20 -- have to review it again.

21 Q. Okay. So yesterday, you asked for
22 changes to this one bullet, to break the dates

1 that were in a paragraph out into bullet points.

2 Did you ask for any other
3 changes?

4 MS. PUJARI: Objection: asked and
5 answered; form.

6 THE WITNESS: I don't believe so.

7 I think the -- the other -- only
8 other request was that table that listed
9 the cars.

10 BY MR. ELLIS:

11 Q. Okay. And that's -- that's this
12 guy (indicating), right?

13 A. That's correct.

14 Q. Okay. Can you hand that one to the
15 court reporter? And we'll get that marked out of
16 the way.

17 A. Actually, I did not bring that with
18 me.

19 Q. Okay. Something tells me that
20 somewhere, there's going to be another one of
21 those in the room.

22 MS. PUJARI: That's going to be

1 7?

2 CERTIFIED STENOGRAPHER: Yes.

3 --oOo--

4 (Neikirk Deposition Exhibit Number
5 7, In Re East Palestine
6 Litigation, 30(B)(6) Rail Cars,
7 marked for identification, as of
8 this date.)

9 --oOo--

10 BY MR. ELLIS:

11 Q. Okay. You've been handed,
12 Mr. Neikirk, what's been marked as Deposition
13 Exhibit Number 7. And this is the list of cars
14 -- take a step back.

15 What -- when you asked for what
16 is now Exhibit 7, what did you ask for?

17 A. Just to organize the cars in this
18 fashion so that they're easier to reference.

19 Q. Okay. And did you ask them -- did
20 you ask your lawyers to prepare a chart that's
21 car number, line, reporting mark, shipper, owner,
22 and contents?

1 A. I did not ask for these specific
2 columns, but most of the information is there.
3 Just the shipper, owner -- some of it didn't make
4 it, but -- like the lessee, and whatnot -- but
5 just something to organize this so that when the
6 questions come, I'm able to easily see what car
7 we're talking about.

8 Q. Got it.

9 Okay. So you asked for some
10 information. This is what you got back. It's
11 some of what you asked for but not everything.

12 MS. PUJARI: Objection: form.

13 THE WITNESS: That's -- that's
14 correct --

15 BY MR. ELLIS:

16 Q. Okay.

17 A. -- but I deem it sufficient.

18 Q. I understand. I'm not suggesting
19 you were disappointed by what you got back.

20 But, for example, you wanted to
21 know who the lessee was, and you didn't get that?

22 A. Correct --

1 Q. Okay.

2 A. -- it's -- it's -- it's -- some of
3 this information is in the --

4 Q. Okay.

5 A. -- the exhibit.

6 Q. Okay. And other than asking for --
7 asking the lawyers to prepare this for you and
8 asking for the bullets to be rearranged -- or the
9 paragraph to be rearranged and the bullet, what
10 was -- did you ask for? Anything else?

11 A. No, not -- not in terms of amending
12 the -- the points here.

13 Q. Okay. Did you ask for any
14 additional facts?

15 A. I did not.

16 Q. Okay. Did you ask whether the
17 information you'd been given was complete?

18 MS. PUJARI: Objection: vague;
19 form.

20 THE WITNESS: I did not ask that
21 specific question.
22

1 BY MR. ELLIS:

2 Q. Okay. Did you ask whether the
3 folks who gave you this information were holding
4 information back from you?

5 MS. PUJARI: Objection: form.

6 THE WITNESS: I did not ask that
7 specific question.

8 BY MR. ELLIS:

9 Q. Okay. Did you ask a question like
10 that?

11 MS. PUJARI: Objection: vague;
12 form.

13 BY MR. ELLIS:

14 Q. Well, you said "that specific
15 question."

16 That leads me to ask, Did you
17 ask a general question like that?

18 A. I don't believe --

19 MS. PUJARI: Objection: form.

20 THE WITNESS: -- I don't believe
21 I've even asked that generally.
22

1 BY MR. ELLIS:

2 Q. Okay. You assume that they had
3 given you all of the relevant facts, right?

4 MS. PUJARI: Objection: form.

5 THE WITNESS: I do.

6 BY MR. ELLIS:

7 Q. Okay. Looking back at Exhibit 6.

8 And one more question: Not
9 only did you assume that you had been given all
10 the relevant facts, but you expected that you'd
11 be given all the relevant facts, right?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: I did.

14 BY MR. ELLIS:

15 Q. Okay. Looking back at Exhibit 6,
16 three -- it's -- one, two, three, four, five --
17 six bullets down, Over 3.6 million in business
18 support, including over 2 million in advances,
19 1 million in access agreements, and over 675,000
20 in settlements paid.

21 Do you know what the breakdown
22 for any of that is?

1 MS. PUJARI: Objection: form.

2 THE WITNESS: I don't.

3 BY MR. ELLIS:

4 Q. The 600 and -- I'm sorry -- the
5 3.6 million in business support -- that's
6 something Norfolk Southern voluntarily undertook
7 in response to the derailment, right?

8 MS. PUJARI: Objection: form;
9 assumes facts.

10 THE WITNESS: Yeah. I don't know
11 the details of that.

12 BY MR. ELLIS:

13 Q. You haven't done anything to talk
14 about any of the 3.6 million in business support
15 or what that included as part of your deposition
16 today?

17 MS. PUJARI: Objection: form.

18 THE WITNESS: I did not.

19 BY MR. ELLIS:

20 Q. Okay. And when you were given this
21 information here by Mr. Harden, did you discuss
22 any of the specific items with him?

1 A. I did not.

2 Q. Okay. Did you ask him for any
3 information about the specific items?

4 A. I did not ask.

5 Q. Okay. Was there any follow-up
6 between you and Mr. Harden or anybody else about
7 the bullets here, the subbullets in the
8 103 million in community funds -- any follow-up
9 at all between you and anyone else about any of
10 the items listed here?

11 MS. PUJARI: Objection: form.

12 THE WITNESS: I thanked him for
13 the information.

14 BY MR. ELLIS:

15 Q. Okay. Other than thanking him for
16 the information, any other follow-up?

17 A. No.

18 Q. No discussion about what's this
19 include, what do we do it for, those kinds of
20 things?

21 MS. PUJARI: Objection: form;
22 asked and answered.

1 THE WITNESS: I did not ask.

2 BY MR. ELLIS:

3 Q. Okay. They gave you the
4 information, you thanked them, and that was it?

5 A. That's correct.

6 Q. Okay. So --

7 MS. PUJARI: Counsel -- Counsel,
8 I'm sorry to interrupt. We've been going
9 for an hour and a half. I actually
10 believe that exhausts counsel for GATX's
11 time.

12 And we'd like to take a break at
13 this point --

14 MR. ELLIS: We can take a
15 break --

16 MS. PUJARI: -- we've been going
17 for an hour --

18 MR. ELLIS: -- it doesn't exhaust
19 our time, though, because we have time
20 from other parts of the deposition. But
21 we can talk about that.

22 MS. PUJARI: We can. We can talk

1 about the math and how that breaks down
2 amongst the other depositions. On our
3 calculation, your time is exhausted.

4 But if we could take a break.

5 MR. ELLIS: Okay.

6 THE VIDEOGRAPHER: The time is
7 9:42 a.m., and we're going off the
8 record.

9 --oOo--

10 (Whereupon, a recess was taken from
11 9:42 a.m. EST to 10:08 a.m. EST.)

12 --oOo--

13 --oOo--

14 (Neikirk Deposition Exhibit Number
15 8, Binder of Documents, marked
16 for identification, as of this
17 date.)

18 --oOo--

19 THE VIDEOGRAPHER: The time is
20 10:08 a.m., and we're back on the record.

21 BY MR. ELLIS:

22 Q. Okay. Mr. Neikirk, we took about a

1 20-some-minute break.

2 Did you talk about the
3 substance of your testimony during the break?

4 A. I was looking for the calendar item
5 most of the time.

6 Q. Okay. Did you talk about the
7 substance of your testimony during the break?

8 A. Not much.

9 Q. Any?

10 A. Asked how am I doing --

11 Q. Okay.

12 A. -- basically.

13 Q. Okay. Did you get any facts during
14 the break from the lawyers?

15 A. No.

16 Q. Okay. You checked your calendar?

17 A. I did.

18 Q. Okay. And so what did you learn?

19 A. I found the last meeting on Monday.

20 Q. So there -- you said "meeting," but
21 you mean call?

22 A. Calls, yes --

1 Q. Okay.

2 A. -- Teams meeting.

3 Q. Got it -- got it.

4 They were Teams meetings --
5 video Teams meetings?

6 A. This one was.

7 Q. Okay.

8 Okay. So you found the Teams
9 meeting on Monday.

10 Is that -- was that the third
11 -- what you referred to earlier in your
12 deposition as the third cal?

13 A. That was the third call.

14 Q. Okay. What about the second call?
15 So that was Monday -- I'm sorry. I don't have a
16 calendar with me --

17 A. The 26th of February.

18 Q. 26th. Thank you.

19 February 26th was -- you had
20 the Teams meeting on February 26th.

21 And that was the meeting that
22 you referred to earlier in your deposition as

1 "the third call," correct?

2 A. That is correct.

3 Q. Okay. Did you find the date of --
4 how long did that Teams meeting last?

5 A. I believe it was two hours.

6 Q. Two hours.

7 Okay. And did you go through
8 Exhibit 6 during that Teams meeting?

9 A. I believe we went through something
10 like Exhibit 6.

11 Q. Okay. When you say, "something
12 like Exhibit 6," what do you mean?

13 A. You know, it -- it -- it may have
14 been very similar to it, or it may have been
15 slightly different. I -- I don't know.

16 Q. Okay. Did you get a copy of that?

17 A. I don't believe I had a physical
18 copy of that.

19 Q. Okay. And it was -- that was
20 something that was shown to you on the screen by
21 somebody, correct?

22 A. Or -- or being referenced to.

1 Q. What do you mean by "being
2 referenced to"?

3 A. When -- in -- in our discussions as
4 we were getting more familiar with the case.

5 Q. Okay. Did you see the Exhibit 6 or
6 something like that on the screen?

7 A. I think it may have come up. I
8 think it may have been shared at some point.
9 I -- I can't say for certain.

10 Q. Okay. When -- when you say "it may
11 have come up," what do you mean?

12 A. Like, someone shared the
13 document --

14 Q. On the screen?

15 A. -- on -- on the screen.

16 Q. Okay.

17 All right. Who was that
18 someone?

19 A. One of the participants. I don't
20 know. I can't see exactly who was sharing.

21 Q. One of the lawyers -- well, let me
22 ask you this: Did anybody other than you from

1 Norfolk Southern or a lawyer from Norfolk

2 Southern participate?

3 A. I think Nate Smith was -- was on
4 the call --

5 Q. Okay.

6 A. -- it's -- I think so.

7 Q. Mr. Smith's a lawyer.

8 Did you know that?

9 A. Yes.

10 Q. Yeah, yeah, yeah --

11 A. Okay.

12 Q. -- any non-Norfolk Southern --
13 nonlawyers on the call other than yourself?

14 A. I think I was the only nonlawyer.

15 Q. Okay.

16 Okay. So something like
17 Exhibit 6 was shown to you during that meeting,
18 right?

19 A. I believe so.

20 Q. Okay. Did you ask for any changes
21 to what you saw?

22 A. Not that I can recall.

1 Q. Did you ask for any follow-up
2 information?

3 A. Not that I can recall.

4 Q. And then I -- the second call that
5 you referenced earlier in your deposition -- when
6 did that one occur?

7 A. I could not find that on the
8 calendar --

9 Q. Okay.

10 A. -- it will require me a little more
11 time to figure out when that was.

12 Q. Okay. And what about the first
13 call? Same thing?

14 A. The same thing --

15 Q. Okay.

16 A. -- yeah. That -- that one, I'm
17 probably sure, was not on the calendar. I think
18 that was -- the original call was kind of out of
19 the blue.

20 Q. Okay. Did you happen to look for
21 other versions of what is Exhibit 6?

22 A. No.

1 Q. Okay. Did you get those by e-mail?

2 A. No; in paper form.

3 Q. Were they -- so -- oh, so someone
4 handed you a paper?

5 A. Yes.

6 Q. Okay. Who was that?

7 A. Michael, I believe -- yeah, what we
8 went over yesterday in -- in prep.

9 Q. Okay. Is that -- yesterday the
10 first time you got what is Exhibit 6?

11 A. A physical copy of it, yes.

12 Q. Okay. And what about an electronic
13 copy? Did you ever get any electronic copies of
14 what is Exhibit 6, or something like it?

15 A. I don't believe so.

16 Q. Okay.

17 Okay. Going to Exhibit 6 for a
18 minute -- oh, I forgot. Exhibit 8 has been
19 marked, and it's the binder sitting in front of
20 you --

21 A. Yes.

22 Q. -- that's the binder that was

1 provided to you by the lawyers to help you

2 testify for today, right?

3 A. Yes.

4 Q. Okay. When did you get that?

5 A. That was yesterday as well.

6 Q. Okay. That -- the documents in
7 that binder -- would you mind looking through and
8 tell me if there are any in that doc -- in that
9 binder you saw before yesterday?

10 I know the 10-K is, but --

11 A. 10-K, so --

12 Q. -- but for purposes of
13 completeness, let's just call out the tab and
14 tell me if you -- you've seen that before.

15 Is Tab 1 the 10-K?

16 A. One's the 10-K --

17 Q. Okay.

18 A. -- and yes for 1 --

19 Q. Okay.

20 A. -- no for 2.

21 No for 3.

22 No for 4.

123

1 No for 5.
2 No for 6.
3 No for 7.
4 No for 8.
5 No for 9.
6 No for 10.
7 No for 11.
8 No for 12.
9 No for 13.
10 No for 14.
11 No for 15.
12 No for 16.
13 No for 17.
14 No for 18.
15 No for 19.
16 No for 20.
17 No for 21.
18 No for 22.
19 No for 23.
20 No for 24.
21 No for 25.
22 No for 26.

1 No for 27.

2 No for 28.

3 No for 29.

4 No for 30.

5 No for 31.

6 No for 32.

7 No for 33.

8 No for 34.

9 And no for 35.

10 Q. Okay. So the only document that
11 you saw before yesterday that is in the binder
12 the lawyers gave you is the Norfolk Southern
13 10-K, right?

14 A. That's correct.

15 Q. Okay. And then looking back at
16 Exhibit 6, the first two pages -- the first two
17 bullet points under -- well, all of the bullet
18 points under Topic 12.

19 Those were items given to you
20 by Ms. Hoffman and Mr. Harden.

21 And you didn't ask any
22 additional information about any of those

1 bullets, right?

2 MS. PUJARI: Objection: form;
3 asked and answered.

4 THE WITNESS: That's correct.

5 BY MR. ELLIS:

6 Q. And you don't have the ability
7 today to talk to me about any of the breakdown
8 for any of those bullets, correct?

9 MS. PUJARI: Objection: form;
10 asked and answered.

11 THE WITNESS: That's correct.

12 BY MR. ELLIS:

13 Q. Okay. Are you aware of a company
14 called SPSI?

15 A. I don't believe so.

16 Q. Okay. Are you aware of an
17 expenditure by Norfolk Southern of \$157 million
18 from SPSI?

19 A. No.

20 Q. Are you aware of any amounts
21 charged to Norfolk Southern by SPSI?

22 A. I am not.

1 Q. I take it, then, that you don't
2 have the ability to talk with me today about any
3 charges SPSI made to Norfolk Southern in
4 connection with the derailment, right?

5 MS. PUJARI: Objection: form.

6 THE WITNESS: That's correct.

7 MR. ELLIS: Okay.

8 --oOo--

9 (Neikirk Deposition Exhibit Number
10 9, Third-Party Complaint, marked
11 for identification, as of this
12 date.)

13 --oOo--

14 CERTIFIED STENOGRAPHER:

15 Exhibit 9.

16 BY MR. ELLIS:

17 Q. Okay. You've been handed what's
18 been marked as Exhibit 9.

19 Have you seen Exhibit 9 before?

20 A. I'm not positive it's part of this
21 binder or not.

22 Q. Okay. Do you want to check?

1 I would check for you, but we
2 only have one binder --

3 A. Yeah.

4 Q. -- so if you -- I can -- you can
5 hand it to me or you can look, whatever you like.

6 I don't --

7 A. I think I saw it --

8 Q. -- mean to ask you --

9 A. -- at the very end or somewhere
10 near the end.

11 Q. It's probably in there.

12 A. Yeah. I know it's not 1.

13 Let's see. Where was it?

14 Q. It is not the one document you've
15 seen in the binder; we know that.

16 A. Yes. Here it is.

17 It's Number 35.

18 Q. Okay. So first time you saw this,
19 then, Exhibit 9, Tab 35 in your binder, was
20 yesterday?

21 A. That is correct.

22 Q. Okay. Would you turn to Page 23 of

1 Exhibit 9?

2 Paragraph 108 on Page 23 -- do
3 you see that?

4 A. I do.

5 Q. Okay. Would you read that to the
6 folks in the jury watching your testimony?

7 A. Industry practice is to prevent
8 railcars from sitting stationary for long periods
9 because grease separation may occur, which
10 reduces the amount of lubrication around the
11 bearings and may impact functionality.

12 Q. Okay. Do you know whether or not
13 that's true?

14 A. There is a part of the testimony --
15 I believe this was by two professors in the
16 NTSB -- testimony made the claim to the effect
17 that stationary railcars for long periods of time
18 can cause grease separation.

19 MS. PUJARI: Counsel, I just want
20 to point out for you and for the record
21 that Tab 35 of the binder is not, in
22 fact, the Third-Party Complaint, is --

1 got the case caption on it, but it is the
2 video deposition of one of the deponents
3 in this case.

4 MR. ELLIS: Okay.

5 THE WITNESS: All right. Do you
6 want me to go back and look --

7 BY MR. ELLIS:

8 Q. You're bad --

9 A. -- it has the same --

10 Q. -- start again.

11 A. -- it has the same numbers on it.

12 Q. I don't have your binder, so I
13 wouldn't -- I wouldn't have let you say that if I
14 had the copy of the binder and could see that it
15 wasn't. I just had to, you know, take your word
16 for it --

17 MS. PUJARI: I can represent to
18 you that the Complaint is not in the
19 binder.

20 MR. ELLIS: Ah. Okay.

21 THE WITNESS: Okay. So it's not.
22

1 BY MR. ELLIS:

2 Q. All right. So you've never seen
3 the Complaint before today?

4 A. That's correct.

5 Q. Okay. First time reading this?

6 A. Yes.

7 Q. Okay. Paragraph -- so
8 Paragraph 108 says, Industry practice is to
9 prevent railcars from sitting stationary for long
10 periods because grease separation may occur,
11 which reduces the amount of lubrication around
12 the bearings and may impact functionality.

13 My question to you is, Do you
14 know whether that's true?

15 A. I don't know whether that's true.
16 I -- that's outside of my area of expertise.

17 Q. Okay. Do you know that Norfolk
18 Southern doesn't have a practice for preventing
19 railcars from sitting stationary for long
20 periods?

21 MS. PUJARI: Objection: form.

22 THE WITNESS: I don't know that.

1 BY MR. ELLIS:

2 Q. Okay. No one gave you those facts?

3 A. No.

4 MS. PUJARI: Objection: form.

5 BY MR. ELLIS:

6 Q. Paragraph 109 says Car 23.

7 Do you know what Car 23 is?

8 A. I do.

9 Q. Okay. You learned that yesterday?

10 A. I've heard it referred to as Car 23
11 before yesterday.

12 Q. Okay. During your calls with the
13 lawyers?

14 A. Yes.

15 Q. Okay. And Car 23 is GPLX 75465,
16 right?

17 A. That's correct.

18 Q. Okay. Were you -- what were you
19 looking at? Oh, you were looking at the
20 Complaint?

21 A. My -- my list of cars.

22 Q. Ah. You were looking at your list

1 of cars.

2 Okay. That was Exhibit --

3 A. Seven.

4 Q. -- 7. Okay.

5 So GPLX 75465, it says,
6 operated out of the Gulf States with shipments
7 from New Orleans and other locations along the
8 Gulf Coast.

9 Do you see that?

10 A. I do.

11 Q. Okay. Do you know whether that's
12 true?

13 A. What is the Gulf States region? I
14 don't know what the Gulf States region is.

15 Q. I don't either.

16 A. If it -- if it includes Texas, I
17 believe we have information that the car was in
18 Texas.

19 Q. Okay. Do you know whether it
20 always operated out of Texas?

21 A. I'm not sure where all it operated
22 out of.

1 Q. Okay. Then Paragraph 111 says,
2 Upon information and belief, Car 23 was twice
3 stationary for longer than six months, first for
4 565 days ending in August 2018 and again for 206
5 days ending in May 2019.

6 Do you see that?

7 A. I do.

8 Q. That's not true, is it?

9 A. From what I've seen in the data,
10 it -- it appears that the car did move within the
11 plant.

12 Q. Okay. So that's not a true
13 statement, correct?

14 A. That's correct.

15 Q. Paragraph 113 says, Under -- under
16 the AAR Interchange Rules, car owners must
17 inspect and, if necessary, repair or replace
18 railcars or components at any time after the car
19 is partially or fully submerged in water.

20 Do you see that?

21 A. I do see that.

22 Q. A GPLX 75465 was never partially or

1 fully submerged in water; isn't that right?

2 A. I don't know whether that's true or
3 not.

4 Q. Okay. So as you sit here today,
5 you can't tell me whether GPLX 75465 ever was
6 partially or fully submerged, right?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: I can't say that.

9 BY MR. ELLIS:

10 Q. Okay. Norfolk Southern has no
11 evidence that GPLX 75465 was ever partially
12 submerged, right?

13 MS. PUJARI: Objection: form.

14 THE WITNESS: I believe that to
15 be true.

16 BY MR. ELLIS:

17 Q. Norfolk Southern has no evidence
18 that GPLX 75465 was ever fully submerged in
19 water, correct?

20 MS. PUJARI: Objection: form.

21 THE WITNESS: I believe we don't
22 have evidence to that effect.

1 BY MR. ELLIS:

2 Q. And, in fact, Norfolk Southern has
3 testimony specifically saying that it wasn't,
4 right?

5 MS. PUJARI: Objection: form.

6 THE WITNESS: Not from Norfolk
7 Southern people.

8 BY MR. ELLIS:

9 Q. From other people?

10 A. From other people, correct.

11 Q. So, in other words, Norfolk
12 Southern has testimony from the lessee of
13 GPLX 75465 specifically stating that GPLX 75465
14 was not never partially or fully submerged,
15 right?

16 MS. PUJARI: Objection: form.

17 THE WITNESS: I -- I saw an
18 e-mail to that effect.

19 BY MR. ELLIS:

20 Q. Okay. You saw an e-mail to that
21 effect.

22 What e-mail did you see?

1 A. There was e-mails between GATX and
2 Braskem regarding the railcars impacted by
3 Harvey. The e-mail said, quote, Do you know if
4 any of your GATX cars were impacted by
5 Hurricane Harvey, question mark; were there any
6 cars in floodwaters, question mark; please let me
7 know -- and received the response: We haven't
8 heard -- quote, We have not heard of any GATX
9 cars yet, so, hopefully, we are in the clear.
10 Thanks for checking, exclamation point, quotation
11 -- end quotation.

12 Q. Okay. But there's also sworn
13 testimony from two corporate representatives of
14 Braskem, folks who sat for a deposition, like
15 you're sitting today, on behalf of their
16 corporation, Braskem, who swore under oath that
17 GPLX 75465 was never partially or fully
18 submerged; isn't that true?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: That -- that -- I
21 don't know.

22

1 BY MR. ELLIS:

2 Q. You didn't get that --

3 MS. PUJARI: Objection --

4 BY MR. ELLIS:

5 Q. -- you didn't get that testimony?

6 A. Can you -- can you say who the --

7 who the tes- -- testimony -- who gave that

8 testimony?

9 Q. Sure.

10 Have you ever heard of a guy

11 named Chris Bland?

12 A. No.

13 Q. What about William Mercer? Ever

14 heard of him?

15 A. I don't believe so.

16 Q. Your lawyers didn't give you their

17 testimony, did they?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: I don't know. If

20 they did, I have not seen it.

21 BY MR. ELLIS:

22 Q. So if Braskem had two folks

1 swearing under oath, like you are today, on
2 behalf of their corporation specifically stating
3 that GPLX 75465 was never partially or fully
4 submerged, is that something you would have
5 wanted to know?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: I can't say.

8 BY MR. ELLIS:

9 Q. You can't say whether you would
10 have wanted to know that?

11 MS. PUJARI: Objection: asked and
12 answered; form.

13 THE WITNESS: Can't say.

14 BY MR. ELLIS:

15 Q. Isn't that something that would be
16 useful to you in testifying about GPLX 75465 and
17 whether it had been partially or fully submerged,
18 as alleged in Paragraph 113 under the heading H.
19 Car 23 Was Improperly Maintained?

20 MS. PUJARI: Objection: form.

21 THE WITNESS: It would have been
22 another data point to consider.

1 BY MR. ELLIS:

2 Q. But you didn't get that, did you?

3 MS. PUJARI: Objection: form;

4 asked and answered.

5 THE WITNESS: I responded that I

6 -- I don't recall seeing it.

7 --oOo--

8 (Neikirk Deposition Exhibit Number

9 10, Objections by Non-Party

10 Braskem to Norfolk Southern's

11 Subpoena, marked for

12 identification, as of this date.)

13 --oOo--

14 MR. ELLIS: Ten?

15 CERTIFIED STENOGRAPHER: Ten.

16 MR. ELLIS: Thank you.

17 BY MR. ELLIS:

18 Q. Mr. Neikirk, you've been handed

19 what's been marked as Neikirk Deposition Exhibit

20 Number 10.

21 Take a look at it for a minute,

22 but my bet is that you've never seen this before.

1 But that's going to be my first question.

2 (Whereupon, the witness reviews
3 the material provided.)

4 THE WITNESS: Yeah. I don't
5 recall seeing it.

6 BY MR. ELLIS:

7 Q. Okay. That's not something that
8 the lawyers gave you to prepare for your deposit
9 -- testimony in your deposition today on behalf
10 of the Corporation, right?

11 MS. PUJARI: Objection: form.

12 THE WITNESS: Yeah. I don't -- I
13 don't recall seeing it.

14 BY MR. ELLIS:

15 Q. Okay. And if you -- directing your
16 attention to the fourth paragraph, do you see
17 where it says, Braskem previously advised Norfolk
18 Southern's counsel, and the documents that
19 Braskem produced confirm, that Railcar GPLX 75465
20 was moved at least once at least every six months
21 during the time period which is the subject of
22 this litigation, February 2017 to August 2018,

1 and October 2018 to May 2019?

2 Do you see that?

3 A. I do see that.

4 Q. And then it goes on to say that
5 Braskem had advised Norfolk Southern's counsel
6 that Braskem's La Porte, Texas railyard facility
7 was not flooded and GPLX 075465 was not submerged
8 during Hurricane Harvey.

9 Do you see that?

10 A. I do see that.

11 Q. That's not something that you were
12 given to prepare for your testimony today, right?

13 A. I don't recall seeing it.

14 Q. Okay. And it's not in your binder,
15 right?

16 A. We can take another flip through if
17 you'd like.

18 Q. If you'd like to, go ahead.

19 But I think we both know it's
20 not in there, don't we?

21 MS. PUJARI: Objection: form;
22 argumentative.

1 THE WITNESS: I don't know that
2 for certain.

3 BY MR. ELLIS:

4 Q. Okay. Take a look.

5 (Whereupon, the witness reviews
6 the material provided.)

7 THE WITNESS: I do not see it.

8 BY MR. ELLIS:

9 Q. Okay. Does that surprise you that
10 this document that specifically says that Braskem
11 had told Norfolk Southern's lawyers that
12 GPLX 75465 was never submerged during Hurricane
13 Harvey -- that that was not given to you to
14 prepare for your deposition today?

15 MS. PUJARI: Objection: form.

16 THE WITNESS: I can't say.

17 BY MR. ELLIS:

18 Q. Isn't that something you would have
19 liked to have had for your deposition today --

20 MS. PUJARI: Object --

21 BY MR. ELLIS:

22 Q. -- as another data point?

1 MS. PUJARI: -- objection: form.

2 THE WITNESS: It -- it would have
3 been another data point, yes.

4 BY MR. ELLIS:

5 Q. Okay. It would have been a helpful
6 data point, right?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: Yes.

9 --oOo--

10 (Neikirk Deposition Exhibit Number
11 11, Transcript of William Mercer,
12 Corporate Designee, February 1,
13 2024, marked for identification,
14 as of this date.)

15 --oOo--

16 CERTIFIED STENOGRAPHER: This is
17 11.

18 (Whereupon, the witness reviews
19 the material provided.)

20 BY MR. ELLIS:

21 Q. Mr. Neikirk, you've been handed
22 what's been marked as Neikirk Deposition 11.

1 This is sworn testimony of William Mercer, who
2 sat for a deposition as a corporate
3 representative like you're sitting today as a
4 corporate representative for Norfolk Southern.

5 I'd like you to -- I'd like to
6 direct your attention to Page 78.

7 Let me ask you this: I think
8 you know the answer, but that's not -- this
9 deposition wasn't given to you to prepare for
10 your deposition today, right?

11 A. I don't remember seeing it on the
12 flip-through.

13 Q. Okay. And it's not in the binder,
14 right?

15 A. That's what -- that's what I was
16 referring to, flip through the binder --

17 Q. At the flip-through?

18 A. -- yes, right.

19 Q. You've never seen this testimony
20 before right now, right?

21 A. I don't believe so.

22 Q. Looking at Page 80 and 81.

1 And I think we talked about
2 Paragraph 108 of the Complaint, Mr. Neikirk,
3 which is Exhibit 9.

4 And Paragraph 108 stating that
5 Industry practice is to prevent railcars from
6 sitting stationary -- do you see that?

7 A. I do see that.

8 Q. And I think you said -- I don't --
9 you haven't gotten any facts in connection with
10 your testimony that tells you whether or not
11 that's true, okay, right?

12 MS. PUJARI: Objection:
13 mischaracterizes testimony.

14 THE WITNESS: Facts?

15 BY MR. ELLIS:

16 Q. Yeah.

17 A. No.

18 Q. You don't have any facts to say
19 that that's true, right?

20 A. No.

21 Q. And Mr. Mercer from Braskem was
22 asked -- Page 80 -- about whether it's industry

1 practice to move railcars at least one car length
2 every six months, starting at Line 21 and going
3 through Line 25 of Page 80, right?

4 (Whereupon, the witness reviews
5 the material provided.)

6 THE WITNESS: Okay.

7 BY MR. ELLIS:

8 Q. And specifically, Mr. Mercer was
9 asked at the -- his time at Braskem -- and I'll
10 tell you he spent 30 years there -- has he ever
11 heard of a requirement in the industry that a
12 railcar should be moved at least one car length
13 every six months to exercise the rolling
14 bearings, and he said he'd never heard of that.

15 Right?

16 A. Correct.

17 Q. And if you look at Page 82, he was
18 specifically asked the question:

19 "Question: You -- being
20 Braskem -- have no practice or policy --
21 Braskem -- of ensuring the cars are
22 moved one car length every six months?"

1 And he says:

2 "Answer: That's correct."

3 Right?

4 A. Correct.

5 MS. PUJARI: Objection.

6 BY MR. ELLIS:

7 Q. And you were never given this
8 testimony to prepare for the dep- -- deposition
9 today, right?

10 A. Yeah. I don't -- I don't recall
11 seeing this.

12 Q. And then later, at Page 84,
13 Mr. Mercer is asked whether Braskem's La Porte
14 facility -- and I think you testified earlier
15 today, Mr. Neikirk, that part of what the lawyers
16 told you to prepare for today was that GPLX 75465
17 was in La Porte, Texas for some period of time,
18 right?

19 A. That's correct.

20 Q. And you saw -- you were shown some
21 documents by the lawyers about interplant
22 movements of 75465 within Braskem's La Porte

1 facility during a period of time, right?

2 A. That's correct.

3 Q. Okay. And here, Mr. Mercer was
4 asked, not by Norfolk Southern's lawyers but by
5 us:

6 "Question: Are you aware of
7 Braskem America's La Porte facility ever
8 experiencing flooding in any of its rail
9 track areas?"

10 And his answer is:

11 "Answer: I'm not familiar with
12 it flooding at all."

13 Do you see that?

14 A. I see that.

15 Q. You weren't given those facts as
16 part of your preparation today, were you?

17 MS. PUJARI: Objection: form.

18 THE WITNESS: I don't recall
19 seeing it.

20 BY MR. ELLIS:

21 Q. And nobody gave you those facts,
22 did they?

1 MS. PUJARI: Objection: form.

2 THE WITNESS: I don't recall
3 seeing it.

4 BY MR. ELLIS:

5 Q. Nobody told you about his testimony
6 to that effect, right?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: I don't recall
9 hearing about it.

10 --oOo--

11 (Neikirk Deposition Exhibit Number
12 12, Transcript of Videotaped
13 Deposition of Jamie Williams,
14 February 1, 2024, marked for
15 identification, as of this date.)

16 --oOo--

17 CERTIFIED STENOGRAPHER: This is
18 12.

19 MR. ELLIS: Thank you.

20 BY MR. ELLIS:

21 Q. Mr. Neikirk, you've been handed
22 what's been marked as Neikirk Deposition Exhibit

1 12.

2 You know who Jamie Williams is,
3 right?

4 A. I . . .

5 Q. Your colleague at Norfolk Southern?

6 A. I -- I don't -- can't tell you
7 exactly what he does, but --

8 Q. Okay. Have you ever heard his name
9 before?

10 A. I've heard -- I've heard the name.

11 Q. Okay. Have you ever met him?

12 A. Probably.

13 Q. Do you remember meeting him?

14 A. I don't.

15 Q. Okay. Well, Mr. Williams testified
16 in this case both as a individual fact witness
17 and as somebody who, like you, is designated to
18 testify on behalf of the Corporation.

19 Did you know that?

20 A. I -- I don't know who all has
21 provided testimony.

22 Q. Okay. And so I -- I assume, then,

1 you didn't know that Mr. Williams gave testimony
2 both as an individual and as a corporate
3 representative in this case?

4 A. I did not know that.

5 Q. And, again, we were looking earlier
6 at Exhibit 9 and, specifically, Paragraph 108
7 that said, Industry practice is to prevent
8 railcars from sitting stationary for long periods
9 of time. Did you know that Mr. Williams had
10 testified about that?

11 MS. PUJARI: Objection: vague.

12 In what capacity?

13 THE WITNESS: Yeah. I did -- did
14 not know that.

15 BY MR. ELLIS:

16 Q. Okay. And specifically, if you
17 look at Page 86 of his deposition -- and this
18 deposition -- you were given a deposition as part
19 of your binder to prepare for this case from
20 Mr. Schoendorfer, right?

21 A. That's correct.

22 Q. Okay. You looked at that one,

1 right?

2 A. Yes.

3 Q. Okay. Did you -- you weren't given
4 Mr. Williams' testimony, were you?

5 MS. PUJARI: Objection: vague.

6 THE WITNESS: I don't recall
7 seeing it.

8 BY MR. ELLIS:

9 Q. Okay. It's not in your binder, is
10 it?

11 A. I don't recall seeing it when I did
12 my flip-through.

13 Q. And at Page 86, Mr. Williams was
14 asked about whether there's an industry practice
15 for moving cars one car length every six months,
16 and he testified he's never heard of that, didn't
17 he?

18 MS. PUJARI: Objection: vague as
19 to capacity and beyond the scope; witness
20 not designated.

21 THE WITNESS: That's what he
22 states in the testimony.

1 BY MR. ELLIS:

2 Q. Okay. So in Paragraph -- in
3 Paragraph 108 of Norfolk Southern's Complaint, it
4 talks about an industry practice that Norfolk
5 Southern itself doesn't have, right --

6 MS. PUJARI: Objection as to
7 form.

8 BY MR. ELLIS:

9 Q. -- according to Mr. Williams?

10 MS. PUJARI: Objection: form and
11 vague.

12 THE WITNESS: Yeah, according to
13 Mr. Williams.

14 BY MR. ELLIS:

15 Q. Is Norfolk Southern aware of any
16 railroad that has that practice?

17 MS. PUJARI: Objection: vague --
18 I'm sorry -- objection: form and beyond
19 the scope of the 30(b)(6).

20 THE WITNESS: Yeah. I don't
21 know. It's not my area of expertise.

22

1 --oOo--

2 (Neikirk Deposition Exhibit Number
3 13, Transcript of Videotaped
4 Deposition of Norfolk Southern
5 Railway Company, Jamie Williams,
6 Representative, February 1, 2024,
7 marked for identification, as of
8 this date.)

9 --oOo--

10 CERTIFIED STENOGRAPHER: This is

11 13. Thirteen.

12 BY MR. ELLIS:

13 Q. Now, Mr. Neikirk, you've been
14 handed what's been marked as Neikirk Exhibit 13.

15 This is another deposition that
16 Mr. Williams gave, this time as corporate
17 representative, like you're testifying on behalf
18 of the Corporation today.

19 You've never seen that one either,
20 right?

21 MS. PUJARI: Objection: form.

22 THE WITNESS: I don't believe

1 I've seen it.

2 BY MR. ELLIS:

3 Q. Okay. That's not one that the
4 lawyers gave you as part of your preparation
5 today, was it?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: I don't believe
8 it's in the binder.

9 BY MR. ELLIS:

10 Q. And I think you testified earlier
11 today that you counted on the lawyers to give you
12 everything you needed to know to testify today,
13 right?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I said they -- I
16 relied on them to prepare me for the
17 deposition.

18 BY MR. ELLIS:

19 Q. Okay. And to give you all the
20 facts that you needed to know to testify today,
21 right, on behalf of Norfolk Southern?

22 MS. PUJARI: Objection: form.

1 THE WITNESS: To prepare me with
2 the information needed for the dep- --
3 deposition.

4 BY MR. ELLIS:

5 Q. Including the facts you needed to
6 testify about the Corporation's knowledge, right?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: Including what
9 facts there are.

10 BY MR. ELLIS:

11 Q. And at Page 107 of Mr. Williams'
12 deposition on behalf of the Corporation --

13 Would you turn there and let me
14 know when you're there?

15 A. Okay. I'm here.

16 Q. -- he was asked:

17 "Question: Norfolk Southern's
18 own policy -- this is at Line 8 --
19 Norfolk Southern's own policy is if a
20 car is sitting in a yard and it's been
21 sitting for six months or greater, there
22 is no written policy to perform an

1 inspection of the wheel bearing beyond
2 the visual inspection that's required
3 under 215 for predeparture, correct?"

4 And he answers Yes.

5 Correct?

6 A. He does.

7 Q. As far as you know, that is Norfolk
8 Southern's policy, right?

9 MS. PUJARI: Objection: form;
10 lack of foundation.

11 THE WITNESS: Yeah. I don't -- I
12 don't know the policy.

13 BY MR. ELLIS:

14 Q. This wasn't testimony you were
15 given to prepare for today, was it?

16 MS. PUJARI: Objection: form;
17 asked and answered.

18 THE WITNESS: I don't recall
19 seeing it.

20 BY MR. ELLIS:

21 Q. I'm looking back at Exhibit 12.
22 That's the other deposition that Mr. Williams

1 gave in this case.

2 On Page 90, he was asked some
3 questions about Norfolk Southern's policies for
4 dealing with -- let me ask you this: You are
5 aware that Norfolk Southern owns railcars, right?

6 A. Yes.

7 Q. Okay. And, in fact, Norfolk
8 Southern owns quite a few covered hopper cars,
9 like GPLX 75465, right?

10 A. We own covered hopper cars, yes.

11 Q. Okay. You have thousands of them,
12 right?

13 MS. PUJARI: Objection: beyond
14 the scope of the 30(b)(6).

15 THE WITNESS: I don't know the
16 exact number.

17 BY MR. ELLIS:

18 Q. But it's in the thousands, isn't
19 it?

20 MS. PUJARI: Objection: beyond
21 the scope.

22 THE WITNESS: Under our

1 ownership, I'm not positive.

2 (Whereupon, the witness reviews
3 the material provided.)

4 BY MR. ELLIS:

5 Q. All right. We can find that
6 information in your 10-K, can't we?

7 MS. PUJARI: Objection: form.

8 THE WITNESS: I don't know if
9 there's a register of all of our owned
10 railcars.

11 BY MR. ELLIS:

12 Q. Bear with me.

13 (Whereupon, counsel reviews the
14 material provided.).

15 BY MR. ELLIS:

16 Q. All right. We'll come back to the
17 number.

18 A. Okay.

19 Q. But I think we established Norfolk
20 Southern owns quite a few covered hopper cars,
21 right?

22 MS. PUJARI: Objection: form;

1 misstates testimony; beyond the scope.

2 THE WITNESS: I agree we own a
3 number of covered hopper cars.

4 BY MR. ELLIS:

5 Q. Okay. And Norfolk Southern --
6 Mr. Williams testified here at Page 90 that when
7 a car is in weather but not submerged in water,
8 Norfolk Southern's policy is not to pull those
9 cars in for inspection unless -- and
10 reconditioning of the bearing unless they're
11 submerged.

12 Right?

13 MS. PUJARI: Objection: form;
14 beyond the scope.

15 (Whereupon, the witness continues
16 to review the material provided.)

17 THE WITNESS: Where -- where are
18 you?

19 BY MR. ELLIS:

20 Q. If you go to Page 90 of Exhibit --

21 A. Yes.

22 Q. -- 12 --

1 A. Yeah.

2 Q. -- do you see that?

3 A. I do.

4 Q. Do you see the question:

5 "Question: Okay. And in the
6 event that a car isn't moved out of that
7 event -- I mean out of the area but is
8 not submerged in water, there's a
9 weather event that comes through, but it
10 doesn't submerge your cars."

11 "Are you with me so far?"

12 Do you see that?

13 And he says:

14 "Answer: I'm with you."

15 A. Right.

16 Q. Questioner asked:

17 "Question: Do you pull those
18 cars in for inspections?"

19 And he says:

20 "Answer: If they're not
21 submerged, no."

22 Do you see that?

1 A. I see that.

2 Q. Okay. Mr. Williams' testimony was
3 that Norfolk Southern doesn't pull its covered
4 hopper cars in for inspection unless they're
5 submerged, right?

6 MS. PUJARI: Objection: form.

7 Objection: misstates document.

8 THE WITNESS: That's what the
9 document says. That's what the testimony
10 says.

11 BY MR. ELLIS:

12 Q. Okay. And you've got no reason to
13 question that testimony, right?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I -- I don't know.

16 BY MR. ELLIS:

17 Q. And that wasn't testimony that was
18 given to you to prepare for today, was it?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I don't recall
21 seeing this.

22

1 BY MR. ELLIS:

2 Q. Okay. It's not in your binder,
3 right?

4 A. I don't believe it's in the binder.

5 Q. And then he's asked:

6 "Question: If cars aren't
7 submerged, do you send the bearing for
8 reconditioning?"

9 And he says:

10 "Answer: No."

11 Right?

12 A. He does.

13 Q. Okay. And you, as the corporate
14 representative, don't have any reason to question
15 that, right?

16 MS. PUJARI: Objection: form.

17 THE WITNESS: I don't have any
18 reason to question it.

19 BY MR. ELLIS:

20 Q. And you know -- you know nothing
21 differently in terms of Norfolk Southern policy
22 or procedures, right?

1 MS. PUJARI: Objection: form.

2 THE WITNESS: I don't.

3 --oOo--

4 (Neikirk Deposition Exhibit Number

5 14, Transcript of Christopher

6 Bland, Corporate Designee,

7 February 2, 2024, marked for

8 identification, as of this date.)

9 --oOo--

10 CERTIFIED STENOGRAPHER:

11 Fourteen.

12 MR. ELLIS: Thank you.

13 BY MR. ELLIS:

14 Q. You've been handed, Mr. Neikirk,

15 what's been marked as Neikirk Deposition

16 Exhibit 14.

17 I bet you've never seen that

18 before today, right?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I don't recall

21 seeing it.

22

1 BY MR. ELLIS:

2 Q. That's the deposition of
3 Chris Bland, who works for Braskem.

4 And I think, on your chart,
5 Exhibit 7, the chart you asked to put together
6 for GPLX 75465, that identifies the shipper as
7 Braskem, right?

8 A. Correct.

9 Q. Okay. So Braskem was -- you've
10 learned, I guess yesterday, that Braskem was the
11 company that leased GPLX 75465 from GATX, and it
12 was in La Porte, Texas for some period of time in
13 2017-'18, right?

14 MS. PUJARI: Objection: form;
15 compound.

16 THE WITNESS: I did learn that.
17 It may have been before yesterday, too.

18 BY MR. ELLIS:

19 Q. Oh. You did learn that?

20 A. Yes, yes.

21 Q. And you may have learned it before
22 yesterday?

1 A. Correct.

2 Q. You didn't know it before you were
3 told you had to give this deposition, though,
4 right?

5 A. The -- this specific car and
6 information, I didn't know that.

7 Q. Yeah.

8 And you didn't -- you didn't
9 know Braskem was the lessee of the car before you
10 had to -- to gather all the information to
11 testify today, right?

12 A. If I --

13 MS. PUJARI: Objection: form.

14 THE WITNESS: -- if I heard it in
15 the past, I didn't -- it's seeped out of
16 memory.

17 BY MR. ELLIS:

18 Q. Okay. And Mr. Bland, who works for
19 -- who works for Braskem -- I'm looking for my
20 version of it, but I don't -- Mr. Bland, who
21 works for Braskem -- he gave some testimony as a
22 corporate representative, like you're giving

1 testimony today as a corporate representative.

2 That's not something you knew
3 before just now, right?

4 THE WITNESS: No. I -- I don't
5 recall seeing this before.

6 BY MR. ELLIS:

7 Q. Okay. And directing your attention
8 to Page 93.

9 Do you see, starting at Line 8,
10 he's asked:

11 "Question: Norfolk -- counsel
12 for Norfolk Southern didn't ask you this
13 straight out, so I'm going to ask you.
14 Did GPLX 75465 ever experience any
15 components that were partially or
16 totally submerged in Hurricane Harvey?"

17 And he says:

18 "Answer: No."

19 Right?

20 A. Yes.

21 Q. Okay. That's not -- was that
22 something you were told before today, just now,

1 as part of your deposition preparation or at all?

2 MS. PUJARI: Objection: form.

3 THE WITNESS: Yeah. I don't

4 recall seeing this.

5 BY MR. ELLIS:

6 Q. Okay. So nobody told you before
7 today that 75456 had never been in any kind of
8 flooding, right?

9 MS. PUJARI: Objection: form.

10 THE WITNESS: I don't recall.

11 BY MR. ELLIS:

12 Q. You don't recall anybody telling
13 you, or you know that nobody told you that?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I don't recall
16 anyone telling me that.

17 BY MR. ELLIS:

18 Q. Okay. No one told you that
19 yesterday, right?

20 MS. PUJARI: Objection: form;
21 asked and answered.

22 THE WITNESS: That's correct.

1 BY MR. ELLIS:

2 Q. Nobody told you that on any of your
3 preparation calls, did they?

4 MS. PUJARI: Objection: form;
5 asked and answered.

6 THE WITNESS: I don't recall
7 hearing it.

8 BY MR. ELLIS:

9 Q. Isn't that something you would have
10 wanted to know --

11 MS. PUJARI: Objection: form.

12 BY MR. ELLIS:

13 Q. -- that the person -- that the
14 company that had this car in its possession had
15 specifically testified that the car was never
16 submerged, partially or totally, in any weather
17 event?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: That would have
20 been additional information to consider.

21 BY MR. ELLIS:

22 Q. You weren't given that opportunity,

1 though, were you --

2 MS. PUJARI: Objection --

3 BY MR. ELLIS:

4 Q. -- till just now?

5 MS. PUJARI: -- objection: form.

6 THE WITNESS: Yeah. I've not
7 seen this before.

8 BY MR. ELLIS:

9 Q. Look at Page 105 of that testimony.

10 Mr. Rheinheimer, who's sitting
11 here today, your lawyer -- he asked Mr. Bland
12 some questions about four weather events and
13 flooding or lack of flooding at the Braskem
14 facility in La Porte, Texas during that time.

15 Do you see that?

16 A. Is it 105?

17 Q. It's at the start of 105:15: You
18 said that no rail tracks at La Porte facility
19 were flooded during Hurricane Nicholas, right?

20 You see that?

21 A. I see that.

22 Q. Okay. Mr. Bland -- how does he

1 answer?

2 A. He answers "Yes."

3 Q. And then during Tropical Storm

4 Beta, no flooding there either, right?

5 A. The answer is Yes again.

6 Q. To no -- to the question, No rail

7 tracks were flooded, he says Yes, right?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: Correct.

10 BY MR. ELLIS:

11 Q. And, in fact, Mr. Bland testified

12 that rail tracks weren't flooded at all during

13 Harvey, Nicholas, Beta or Imelda, right?

14 MS. PUJARI: Objection: form;

15 misstates the document.

16 THE WITNESS: I see yes to

17 Nicholas, Beta and Imelda in the

18 transcript.

19 BY MR. ELLIS:

20 Q. And we just looked at testimony

21 about Harvey, didn't we?

22 MS. PUJARI: Objection: form.

1 THE WITNESS: We did.

2 BY MR. ELLIS:

3 Q. Okay. So it's accurate that
4 Braskem's corporate representative testified
5 under oath that there was no flooding at the
6 facility during Harvey, Beta, Imelda or Nicholas,
7 right?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: That's what it
10 says.

11 BY MR. ELLIS:

12 Q. You've got no reason to doubt that,
13 right?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I don't.

16 BY MR. ELLIS:

17 Q. Norfolk Southern has no evidence to
18 the contrary, does it?

19 A. I have not seen evidence of
20 flooding and submerged cars.

21 Q. During any of those weather events,
22 right?

1 A. That's correct.

2 MR. ELLIS: Can we take about a
3 five-minute break?

4 MR. RHEINHEIMER: Yeah.

5 MS. PUJARI: Yeah. And when we
6 come back -- it's 11:05 now. I just want
7 to note that you've got three minutes
8 left of your hour that was ceded to you
9 by Plaintiff's counsel.

10 MR. ELLIS: Okay.

11 THE VIDEOGRAPHER: The time is
12 11:06 a.m., and we're going off the
13 record.

14 --oOo--

15 (Whereupon, a recess was taken from
16 11:06 a.m. EST to 11:21 a.m. EST.)

17 --oOo--

18 THE VIDEOGRAPHER: The time is
19 11:21 a.m., and we are back on the
20 record.

21 BY MR. ELLIS:

22 Q. Earnings Call Deck.

1 A. Okay.

2 MS. PUJARI: What exhibit are we
3 on, Counsel?

4 BY MR. ELLIS:

5 Q. We're going to start with
6 Exhibit 4, Mr. Neikirk, which is the Q4 2023
7 earnings call deck.

8 A. Yes.

9 Q. On Page 7 -- directing your
10 attention to Page 7 at the bottom, there's a
11 note. It begins, Eastern Ohio Incident and
12 Response.

13 Let me know when you're there.

14 A. I'm here.

15 Q. Okay. The last sentence of that
16 says, No amounts have been recorded related to
17 potential third-party recoveries which may reduce
18 amounts payable to our insurers under applicable
19 insurance coverage.

20 Do you see that?

21 MS. PUJARI: Objection: form;
22 read incorrectly.

1 THE WITNESS: I see that -- I --

2 I see part of that.

3 Can you read it again?

4 BY MR. ELLIS:

5 Q. Sure.

6 Well, the way I read it, it
7 says, No -- that last sentence says, No amounts
8 have been recorded related to potential
9 third-party recoveries.

10 Do you see that?

11 A. I do.

12 Q. Page 7, last sentence of that note,
13 right?

14 A. I -- I see it.

15 Q. Did I read that correctly?

16 A. That was verbatim, yes.

17 Q. Okay. Thank you. I thought so,
18 but . . .

19 And then it says, Which may
20 reduce amounts payable by our insurers under
21 applicable insurance coverage.

22 Correct?

1 A. Correct.

2 Q. Okay. Read that verbatim, too,
3 right?

4 A. You did.

5 Q. Okay. Thank you.

6 Now, the third-party
7 recoveries -- do you know that -- what that
8 refers to?

9 A. I believe that's referring to this
10 case --

11 Q. Okay.

12 A. -- or at least a portion of it
13 refers to this case.

14 Q. Okay. And do you know which
15 portion of what's here on Page 7 refers to the
16 third-party recoveries or potential third-party
17 recoveries?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: I do not.

20 BY MR. ELLIS:

21 Q. Okay. That's not something you
22 prepared to testify about, right?

1 MS. PUJARI: Objection: form.

2 THE WITNESS: That's correct.

3 BY MR. ELLIS:

4 Q. Okay. Now I'd like to ask you some
5 questions about Exhibit 6, which are the points
6 that were prepared for you by the lawyers to
7 testify today.

8 MS. PUJARI: Objection: form.

9 BY MR. ELLIS:

10 Q. That's right, right? These were
11 prepared for you by the lawyers to testify today,
12 right?

13 A. I received a copy from the lawyers.

14 Q. Okay. And they were prepared for
15 -- by the lawyers, as far as you know, to help
16 you testify today, right?

17 MS. PUJARI: Objection: form.

18 THE WITNESS: As far as I know,
19 or with assistance of the other folks
20 noted here on the --

21 BY MR. ELLIS:

22 Q. Okay --

1 A. -- the document.

2 Q. -- and specifically, on the --
3 let's see. They're not numbered, so let me count
4 from the back. One, two, three, four -- fifth
5 page -- all of the bullets on the fifth page,
6 none of these bullets were prepared by
7 Kristin Hoffman or Will Harden, right?

8 A. The fifth page from the front or
9 the back?

10 Q. From the front.

11 A. All right.

12 Okay. Which -- which bullets?

13 Q. And so I'm looking at a list of
14 billet -- bullets on the fifth page. The first
15 one on this page is GATX asked Braskem by e-mail.

16 Do you see that?

17 A. I see that, yes.

18 Q. Okay. So we're on the same page,
19 right, this page, which is the fifth page from
20 the front, right?

21 A. Correct.

22 Q. Okay. And all of the bullets on

1 this page -- these were prepared by the lawyers

2 for you, right?

3 MS. PUJARI: Objection: form.

4 I'm sorry. I'm -- could you

5 give -- okay.

6 BY MR. ELLIS:

7 Q. Do you have my question, Mr. --

8 A. I do have your question. I'm

9 looking at the bullets.

10 Q. Okay. Sorry. Just --

11 MS. PUJARI: Do you have another

12 copy of 6, Michael?

13 THE WITNESS: Yeah. To my

14 knowledge, it looks like this probably

15 came from WilmerHale.

16 BY MR. ELLIS:

17 Q. Okay. "WilmerHale" being the

18 lawyers, right?

19 A. The lawyers.

20 Q. Okay. One, two, three, four --

21 fifth bullet down begins, After likely water

22 damage from Hurricane Harvey.

1 Do you see that?

2 A. I see that.

3 Q. Okay. And that likely water
4 damage -- that's something that the lawyers told
5 you, right?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: It's here on the
8 page.

9 BY MR. ELLIS:

10 Q. Okay. Where did you get those
11 facts, likely water damage to GPLX 75465?

12 A. That's speculative. It -- it
13 doesn't -- that's not a fact to me.

14 Q. Okay. You -- Norfolk Southern has
15 no facts that there was likely water damage to
16 GPLX 75465, right?

17 MS. PUJARI: Objection: form.

18 THE WITNESS: We have no evidence
19 that the -- that wheel was submerged.

20 BY MR. ELLIS:

21 Q. And you have no evidence that there
22 was likely water damage to GPLX 75465, right?

1 MS. PUJARI: Objection: form.

2 THE WITNESS: It -- it --

3 wind-driven rain in an event like this

4 could possibly create water damage.

5 BY MR. ELLIS:

6 Q. Who told you that?

7 A. That is in the testimony of . . .

8 (Whereupon, the witness reviews

9 the material provided.)

10 THE WITNESS: A couple bullet

11 points down, [as read] the NTSB Palestine

12 Investigative Hearing Day Two,

13 Professors Tarawneh and Iwand: Roller

14 bearing -- roller bearings that sit for a

15 long period of time, especially in poor

16 weather (rain, heat, cold, extreme

17 weather) have grease separation that

18 degrades the bearing. This has been

19 documented by the STB and various

20 industry ex -- experts.

21 BY MR. ELLIS:

22 Q. Okay. My question was -- well, is

1 that report that you're referring to -- the first
2 time you saw that report was yesterday, right?

3 MS. PUJARI: Objection: form.

4 THE WITNESS: Yes, the --

5 BY MR. ELLIS:

6 Q. Okay.

7 A. -- full report.

8 Q. The full report?

9 A. Yeah.

10 Q. The first time you saw it was
11 yesterday.

12 That report's not referring to
13 GPLX 75465, is it?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I'm not positive.

16 BY MR. ELLIS:

17 Q. Okay. Do you have any evidence
18 that that report is referring to GPLX 75465?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I believe they're
21 talking about railcars in general.
22

1 BY MR. ELLIS:

2 Q. My question was: Do you have any
3 evidence that it's talking about GPLX 75465,
4 specifically?

5 MS. PUJARI: Objection: form;
6 vague.

7 THE WITNESS: Specifically, I
8 don't believe so.

9 BY MR. ELLIS:

10 Q. Okay. And does Norfolk Southern
11 have any evidence that there was likely water
12 damage from Hurricane Harvey to GPLX 75465?

13 MS. PUJARI: Objection: form;
14 calls for expert testimony.

15 THE WITNESS: Yeah. This is --
16 that's outside my jurisdiction.

17 BY MR. ELLIS:

18 Q. Why is that outside of your
19 jurisdiction?

20 My question is, Does Norfolk
21 Southern have any facts showing that there was
22 water damage to GPLX 75465?

1 MS. PUJARI: Objection: form.

2 THE WITNESS: I know that we have
3 no visual evidence that the wheels were
4 submerged.

5 BY MR. ELLIS:

6 Q. Does Norfolk Southern have any
7 facts showing that there was water damage to
8 GPLX 75465?

9 MS. PUJARI: Objection: form;
10 asked and answered.

11 THE WITNESS: I'm not aware we
12 have any facts.

13 BY MR. ELLIS:

14 Q. Okay. Thank you.

15 MR. ELLIS: I don't have any
16 further questions.

17 MS. BROZ: Go off the record
18 really quickly so we can switch.

19 THE VIDEOGRAPHER: They want to
20 go off?

21 Okay. The time is 11:29 a.m.
22 We're going off the record.

--oOo--

(Whereupon, a recess was taken from
11:29 a.m. EST to 11:36 a.m. EST.)

--oOo--

--oOo--

(Neikirk Deposition Exhibit Number
15, Defendant and Third-Party
Defendant Oxy Vinyls LP's Amended
Notice of Rule 30(B)(6)
Videotaped Deposition of Norfolk
Southern Railway Company, marked
for identification, as of this
date.)

--oOo--

THE VIDEOGRAPHER: The time is
11:36 a.m., and we are back on the
record.

///

///

///

///

--oOo--

EXAMINATION BY COUNSEL FOR DEFENDANT

OXY VINYLs, LP

--oOo--

BY MS. BROZ:

Q. Good morning, Mr. Neikirk. My name is Alycia Broz, and I represent Oxy Vinyls. And I'm going to be asking you some questions today.

A. All right.

Good morning.

Q. Good morning.

I've handed you what we've marked as Deposition Exhibit 15, and I ask you to take a look at that, please.

A. Okay.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MS. BROZ:

Q. Have you had a chance to look at Exhibit 15?

A. Yes.

1 Q. Can you turn to the last page of
2 Exhibit 15, please?

3 A. I'm there.

4 Q. And to Exhibit A?

5 A. I'm there.

6 Q. Are you prepared to testify about
7 the topics listed in Exhibit A of Deposition
8 Exhibit 15?

9 A. I am.

10 Q. And earlier this morning, you
11 talked about what you did to prepare for your
12 deposition today.

13 Did you do anything additional
14 to what we've already discussed in order to
15 prepare to respond about questions on Exhibit A
16 of Deposition Exhibit 15?

17 A. No.

18 Q. Did you speak with anyone to
19 prepare for answering questions about Exhibit A
20 of Deposition Exhibit 15?

21 A. We met yesterday to prepare for
22 them and discussed the topics then.

1 Q. Okay. Did you speak with any
2 Norfolk Southern employees in order to answer
3 questions about Exhibit A of Deposition Exhibit
4 15?

5 A. I did not.

6 Q. Did you review any Norfolk Southern
7 deposition testimony in order to answer questions
8 about Exhibit A of Deposition Exhibit 15?

9 A. It -- it -- David Schoendorfer's
10 testimony is -- I've seen that.

11 Q. Anyone else?

12 A. I know we have statements from
13 people on the scene immediately after the
14 incident that were there as well --

15 Q. And I --

16 A. -- I didn't get their names.

17 Q. That's okay. I apologize. I don't
18 have a copy of your binder.

19 What did we mark that as?

20 A. Oh. That's Exhibit 8.

21 Q. Are those statements and destine --
22 depositions -- let me start that again.

1 Are the depositions and
2 statements in Dep -- what we've marked as
3 Deposition Exhibit 8?

4 A. I believe the last one, the Tab 35,
5 is David Schoendorfer's testimony.

6 Q. Are those statements that you
7 referred to also in the binder we've marked as
8 Deposition Exhibit 8?

9 A. I believe they are.

10 These statements?

11 Q. The statements that you just
12 testified that you reviewed in preparation to
13 answer questions about Exhibit A of Deposition
14 Exhibit 15.

15 A. David Schoendorfer's testimony.

16 I -- I have not reviewed it in
17 great detail.

18 Q. Did you review anything else other
19 than Dan Schoen- -- David Schoendorfer's
20 deposition testimony in preparation to answer
21 questions about the two topics listed in
22 Exhibit A of Deposition Exhibit 15?

1 A. Nothing else.

2 Q. Earlier, you referenced that you
3 reviewed some statements.

4 What statements were you
5 referring to?

6 A. There were e-mails back and forth
7 regarding the potential presence of aluminum.

8 Q. But not statements that were made
9 to the NTSB under oath?

10 A. I don't recall seeing those, no.

11 Q. Did you do -- review any other
12 Norfolk Southern deposition testimony in
13 preparation to answer questions about Exhibit A
14 of Deposition Exhibit 15?

15 A. I did not.

16 Q. Did you speak with Mr. Schoendorfer
17 prior to your testimony today?

18 A. I did not.

19 Q. Did you speak with -- well, let's
20 start again.

21 Did you -- do you know who SRS
22 is?

1 A. I do not.

2 Q. And did you -- I assume, then, you
3 didn't speak with anybody from SRS in preparation
4 for your testimony today?

5 A. I did not.

6 Q. And I believe earlier today, you
7 testified you didn't know who SPSI was; is that
8 correct?

9 A. That's correct.

10 Q. And I take it, then, you didn't
11 speak with anyone from SPSI to prepare for your
12 testimony today?

13 A. I did not.

14 Q. And you didn't review transcripts
15 from representatives of SRS or SPSI in
16 preparation for your testimony today?

17 MS. PUJARI: Objection: vague.

18 THE WITNESS: I don't recall.

19 BY MS. BROZ:

20 Q. Did you review deposition
21 transcripts from representatives of SRS or SPSI
22 in preparation for your deposition testimony

1 today?

2 A. I don't recall reviewing those.

3 Q. Did counsel, in preparing for your
4 deposition today, tell you that representatives
5 of SRS or SPSI were deposed in this case?

6 A. I don't recall that either.

7 Q. Mr. Neikirk, after high school, did
8 you -- were you -- did you receive any education
9 after high school?

10 A. Education? Yes.

11 Q. And what was that?

12 A. A college degree from
13 William & Mary and a Master's of business from
14 University of North Carolina.

15 Q. And was your million --
16 William & Mary degree also in business?

17 A. It was economics. Close.

18 Q. And after graduating with your MBA,
19 did you immediately go to work for Norfolk
20 Southern?

21 A. I did.

22 Q. And can you just briefly run down

1 the jobs that you've had at Norfolk Southern
2 since being hired there?

3 A. I started as a marketing trainee,
4 and I went into our market research and economics
5 group. I spent some time in our properties
6 group. I worked for a coal marketing group. I
7 worked in investor relations, financial planning,
8 treasury and finance pretty much from 2012 on
9 with a five-year stint in the chairman's office
10 as the chief of staff-type role.

11 Q. Where's your office located?

12 A. In Atlanta.

13 Q. And where do you reside?

14 A. That's a good question. Mostly in
15 Atlanta, but I -- I -- my wife lives in
16 Virginia Beach, so I spend a lot of time there,
17 too.

18 Q. And you traveled from Atlanta to
19 Washington, D.C. for your deposition?

20 A. Yes, I did.

21 Q. Given your educational and work
22 history, were you surprised when you were asked

1 to testify today about aluminum components in
2 railcars?

3 MS. PUJARI: Objection: form.

4 THE WITNESS: It's -- it's not my
5 area of expertise.

6 BY MS. BROZ:

7 Q. And were you surprised, given your
8 educational background and your work experience,
9 that you were asked to testify today about
10 Federal Railroad Administration specifications
11 for railcars?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: Again, it's not my
14 area of expertise.

15 BY MS. BROZ:

16 Q. Is it true that what you know about
17 components on railcars you learned yesterday in
18 preparing for this deposition with your counsel?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: Some, yes. I
21 learned some yesterday about that.

22

1 BY MS. BROZ:

2 Q. Okay. And where -- when did you
3 learn about the components of railcars other than
4 yesterday in preparing for your deposition
5 testimony today?

6 A. Probably a small bit on the third
7 call and the majority of it yesterday.

8 Q. Other than the calls that you've
9 had with your lawyers, did you have any other
10 exposure to railcar components during your work
11 history with Norfolk Southern?

12 A. I went through switchman training
13 school. So we learned to set hand brakes and tie
14 hoses together, and whatnot. But --

15 Q. Okay. And what year was that?

16 A. '93.

17 Q. Any other experience that you've
18 had during the course of your employment at
19 Norfolk Southern with railcar components?

20 A. Other than riding on inspection
21 trainings, no.

22 Q. And when did you ride on inspection

1 trainings?

2 A. Gosh. A lot in 2007 through 2012.

3 Q. Any other experience with railcar
4 components?

5 A. No.

6 Q. And how about with FRA, or
7 Federal Railroad Administration, regulations?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: Not much experience
10 there.

11 BY MS. BROZ:

12 Q. Okay. Can you describe your
13 experience with those regulations?

14 A. It's very little. It's reading
15 about things when events happen when the FRA is
16 involved.

17 Q. Is it fair to say that most of your
18 experience with respect to Federal Railroad
19 Administration regulations came in preparing for
20 your deposition today?

21 MS. PUJARI: Objection: form.

22 THE WITNESS: Some of them did,

1 yes.

2 BY MS. BROZ:

3 Q. Most of it?

4 MS. PUJARI: Objection: form.

5 THE WITNESS: I can't estimate a

6 percentage.

7 BY MS. BROZ:

8 Q. All right.

9 Okay. Let's turn back to what
10 we've marked as Deposition Exhibit 15 and to --
11 Exhibit A we're going to be looking at.

12 A. Okay.

13 Q. Do you have that in front of you?

14 A. I do.

15 Q. Okay. Do you see that Topic 1
16 references Paragraph 167 of the Third-Party
17 Complaint?

18 A. I see it.

19 Q. And your testimony is that you did
20 not see a copy of the Third-Party Complaint until
21 your deposition today; is that correct?

22 MS. PUJARI: Objection: form.

1 THE WITNESS: I believe that to
2 be correct.

3 BY MS. BROZ:

4 Q. And then Topic 2 references
5 Paragraphs 120(b) and 152 of Third-Party
6 Complaint; is that correct?

7 A. I'm sorry. Topic 2?

8 Q. References Paragraphs 120(b) --

9 A. Ah, yes, yes, yes.

10 Q. Yes.

11 Okay. And you have -- you did
12 not review that paragraph in the Third-Party
13 Complaint in preparation for your deposition
14 today, did you?

15 MS. PUJARI: Objection: form.

16 THE WITNESS: I did not.

17 BY MS. BROZ:

18 Q. Okay. Let's turn to what we've
19 previously marked as Deposition Exhibit 9, if you
20 have that in front of you.

21 Can you turn to Page 34 of that
22 document?

1 A. I'm there.

2 Q. Okay. And we'll just read this
3 into the record.

4 Oxy Vinyl shipped vinyl
5 chloride in tank cars with aluminum components
6 and the pressure release devices and in other
7 components on each of the vinyl chloride tank
8 cars. For example, Cars 26, 27, 28 and 29
9 contained aluminum in the PRD springs, PRD
10 surface or had aluminum used in various valves on
11 a tank car. When the PRDs activated – releasing
12 flammable vinyl chloride that ignited – the vinyl
13 chloride mixed with air, sunlight and aluminum.

14 Did I read that correctly?

15 A. Yes.

16 Q. Of the five vinyl chloride
17 railcars, which one do you allege contained
18 aluminum in the PRD springs?

19 A. TILX 402025 is listed as having
20 aluminum-coated spring.

21 Q. And any of the other cars?

22 (Whereupon, the witness reviews

1 the material provided.)

2 MS. PUJARI: Objection: form and
3 vague.

4 All that came up, Alycia, was
5 "And any of the other cars."

6 MS. BROZ: Right. Question mark.
7 (Whereupon, the witness continues
8 to review the material provided.)

9 THE WITNESS: I don't see it
10 referenced in our materials here, but --

11 BY MS. BROZ:

12 Q. And what are you reading when
13 you're saying "referenced in materials here"?

14 A. This is Exhibit 6.

15 Q. And when did Norfolk Southern learn
16 that, allegedly, TI- -- the TILX car contained
17 alumin- -- aluminum in the PRD springs?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: Specifically at the
20 springs? I -- I don't know the answer to
21 that.

22

1 BY MS. BROZ:

2 Q. And which Norfolk Southern
3 employees, at some point in time, learned that
4 there was allegedly aluminum in the PRD springs
5 of the TILX car?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: I don't know who
8 that person was for the spring
9 specifically.

10 BY MS. BROZ:

11 Q. And let's go back -- let's look --
12 you're looking at Deposition Exhibit 6, so let's
13 look at Deposition Exhibit 6 together.

14 Can you tell me where you're
15 referencing the fact that the TILX car contained
16 aluminum in the PRD springs? What are you
17 looking at?

18 A. So it was three pages back from the
19 last page.

20 Q. I assume that's Page 9?

21 A. Is that, again, with Oxy Vinyls'
22 Topic 1?

1 Q. Yes.

2 A. Okay.

3 This is Page 9.

4 Q. Okay. We're on the same page.

5 And what paragraph are you

6 referencing?

7 A. So I'm looking at Subbullet 1 under

8 Bullet 1.

9 Q. The one that starts with NTSB Group

10 B - Exhibit 10?

11 A. Right, Hazardous Materials Group

12 Chair's Factual Report.

13 Q. At 34?

14 A. At 34, yeah.

15 Q. Okay. And who provided this

16 information to the NTSB?

17 MS. PUJARI: Objection: form.

18 THE WITNESS: I would have to

19 consult this (indicating) binder, I

20 believe, to --

21 BY MS. BROZ:

22 Q. Go ahead.

1 (Whereupon, the witness reviews
2 the material provided.)

3 THE WITNESS: Am I able to ask
4 for assistance here in --

5 BY MS. BROZ:

6 Q. No.

7 A. -- where that is?

8 (Whereupon, the witness continues
9 to review the material provided.)

10 THE WITNESS: All right. We're
11 on Page 61. It says, The spring part,
12 and gives a number.

13 Do you want that number?

14 BY MS. BROZ:

15 Q. No.

16 And my question was: Who
17 provided that information to the NTSB?

18 MS. PUJARI: Objection: form.

19 THE WITNESS: The -- the NTSB?
20 Who provided it to them?

21 BY MS. BROZ:

22 Q. Correct.

1 MS. PUJARI: Objection: form.

2 (Whereupon, the witness continues
3 to review the material provided.)

4 THE WITNESS: It doesn't say on
5 the reference page. And there's a list
6 of people who participated in this, but
7 it's not tied to the person.

8 BY MS. BROZ:

9 Q. And in preparing for your
10 deposition today and relying upon NTSB Group
11 Exhibit 10, you did not determine who provided
12 the information about the alleged aluminum
13 components in the PRD springs to the NTSB?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: The specific
16 person, I -- I cannot tell right now at
17 this time.

18 BY MS. BROZ:

19 Q. And when did Norfolk Southern learn
20 that the P- -- PRD spring in the TILX car
21 allegedly contained aluminum components?

22 MS. PUJARI: Objection: form;

1 asked and answered.

2 THE WITNESS: Yeah. I don't know
3 when.

4 BY MS. BROZ:

5 Q. All right. Let's turn back to the
6 -- what we've marked as Deposition Exhibit 9.

7 Do you have that in front of
8 you?

9 A. Okay. Yeah.

10 Q. Okay. Of the five vinyl chloride
11 railcars, which one do you allege contain
12 aluminum on the PRD surface?

13 (Whereupon, the witness continues
14 to review the material provided.)

15 THE WITNESS: OCPX 80235 had
16 .56 pounds of loose aluminum debris
17 inside the PRD top guide discharge port.

18 BY MS. BROZ:

19 Q. And that's what your evidence is
20 that one of the five vinyl chloride railcars
21 contained aluminum on the PRD surface?

22 MS. PUJARI: Objection: form.

1 (Whereupon, the witness continues
2 to review the material provided.)

3 THE WITNESS: That's the only one
4 I'm seeing.

5 BY MS. BROZ:

6 Q. You have no other facts to support
7 the allegation that the five vinyl chloride
8 railcars contained aluminum on the PRD surface?

9 MS. PUJARI: Objection: form.

10 (Whereupon, the witness continues
11 to review the material provided.)

12 THE WITNESS: That -- that's the
13 only one I'm seeing.

14 BY MS. BROZ:

15 Q. When did Norfolk Southern allegedly
16 learn that one of the five vinyl chloride
17 railcars contained aluminum on the PRD surface?

18 MS. PUJARI: Objection: form.

19 (Whereupon, the witness continues
20 to review the material provided.)

21 THE WITNESS: It appears to be
22 around the time of the incident. There

1 is a reference here to responders on the
2 scene -- the scene to be concerned about
3 PRDs had become plugged due to aluminum
4 or other components melting, according to
5 David Schoendorfer's testimony.

6 BY MS. BROZ:

7 Q. Okay. And we'll get to that.

8 Is that the basis for your
9 testimony, that the -- Norfolk Southern learned
10 that the -- the vinyl chloride cars contained
11 aluminum on the PRD surface is the sole quote
12 from David Schoendorfer?

13 MS. PUJARI: Objection: form.

14 THE WITNESS: That's to the best
15 of my knowledge at this point.

16 BY MS. BROZ:

17 Q. And you understand that the topic
18 that you were asked to prepare about and testify
19 to included the date and time that Norfolk
20 Southern learned that the railcars included
21 aluminum components?

22 A. That's a different question than

1 you just asked.

2 Q. I understand it's another question.

3 A. Yes.

4 Q. That was one of the topics you were
5 asked to be prepared about?

6 A. That's correct.

7 Q. Did you ask anybody at Norfolk
8 Southern when they learned that the five
9 vinyl chloride railcars allegedly contained
10 aluminum components?

11 MS. PUJARI: Objection: form.

12 THE WITNESS: I did not ask.

13 BY MS. BROZ:

14 Q. Do you have the date and time at
15 which Norfolk Southern allegedly learned that the
16 five vinyl chloride railcars contained aluminum
17 components written down anywhere on Deposition
18 Exhibit 6?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I do.

21 BY MS. BROZ:

22 Q. Where is that?

1 A. So that is on the following page,
2 third bullet down, first subbullet, second
3 subbullet, e-mail correspondence on February 4th
4 at 12:54 p.m. between Paul Williams of Norfolk
5 Southern and Ron Lawler of Trinity regarding
6 certificates of construction.

7 Q. And have you reviewed the
8 certificates of construction?

9 A. I have not reviewed them
10 specifically.

11 Q. Do you know whether the
12 certificates of construction identify winner --
13 whether any of the railcars had aluminum
14 components?

15 A. To my knowledge, I don't believe
16 they identified components.

17 I believe these were
18 modifications --

19 Q. Okay. And what --

20 A. -- from the original certificate of
21 construction.

22 Q. What were modifications to the

1 original certificate of construction?

2 A. The addition of aluminum
3 components.

4 Q. And did you review those papers
5 showing these alleged modifications to the
6 certificates of construction to include aluminum
7 components on the five vinyl chloride railcars?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: I did not review
10 them.

11 BY MS. BROZ:

12 Q. So what is your basis for testimony
13 today -- for testifying today that the five
14 vinyl chloride railcars included aluminum
15 components because of modifications?

16 MS. PUJARI: Objection: form;
17 assumes facts.

18 THE WITNESS: Beginning with
19 the -- the e-mail correspondence between
20 Paul Williams and Ron Lawler.

21 BY MS. BROZ:

22 Q. Okay. And where is that in

1 Deposition Exhibit 6?

2 A. Those are the two -- two subbullets
3 under Bullet 3 on the second-to-last page, 10, I
4 guess.

5 Q. And are those two e-mails contained
6 in your binder, which we've marked as Deposition
7 Exhibit 8?

8 A. I believe they are.

9 Q. Okay. What tabs are those?
10 (Whereupon, the witness reviews
11 the material provided.)

12 THE WITNESS: Tab 30.

13 BY MS. BROZ:

14 Q. And could you read the Bates number
15 for me, since I don't have a copy of your binder?

16 A. It says, NS-CA-000017054.

17 Q. Okay. Anything else that you
18 relied upon?

19 A. Not -- not to my knowledge.

20 Q. Okay. Of the five vinyl chloride
21 railcars, which one do you allege had aluminum
22 used in the various valves for the tank cars?

1 (Whereupon, the witness reviews
2 the material provided.)

3 THE WITNESS: And the -- just the
4 valves?

5 BY MS. BROZ:

6 Q. Um-hum.

7 A. Okay.

8 TILX 402025 and OCPX 80235 and OCPX
9 80179 had aluminum angle valve handwheels.

10 Q. I don't want to cut you off.

11 Are you finished?

12 A. And OP- -- OCPX 80370 had aluminum
13 angle valve handwheels also.

14 Q. What was that last number?

15 A. OCPX 80370.

16 Q. Anything else?

17 A. That's it.

18 Q. And what are you referring to in
19 answering that question?

20 What were you reading off of
21 when you answered that question?

22 A. Oh. This is Exhibit 6.

1 Q. Okay. And specifically, what pages
2 of Exhibit 6?

3 A. Exhibit -- or Page 9, first bullet,
4 second bullet, third bullet; and Page 10, the
5 second bullet.

6 Q. Anything else?

7 A. That's it.

8 Q. And when did Norfolk Southern learn
9 that the four vinyl chloride railcars allegedly
10 used aluminum in the valves of the tank cars?

11 MS. PUJARI: Objection: form.

12 THE WITNESS: Valves
13 specifically? I -- I can't say if that
14 was covered in that February 4th e-mail.

15 BY MS. BROZ:

16 Q. So is your answer, I don't know?

17 (Whereupon, the witness reviews
18 the material provided.)

19 THE WITNESS: I don't see
20 anything specifically in what I have.

21 BY MS. BROZ:

22 Q. So your answer is you don't know?

1 A. Correct.

2 Q. Okay.

3 Okay. Let's turn to that
4 February 4th e-mail. And, unfortunately, I don't
5 have a copy in front of me.

6 Can you tell me what tab that
7 is in your binder?

8 A. It's Tab 30.

9 MS. BENAVIDES: Counsel, do you
10 have electronic copies of the binders, or
11 anything, for the rest of us to look at?

12 MS. PUJARI: I don't believe so.

13 MS. BENAVIDES: Okay.

14 MS. BROZ: Would you be able to
15 make a copy if we went off the record?

16 MS. BENAVIDES: It would be
17 helpful, I think, if we all could have a
18 copy.

19 MS. PUJARI: Of the entire
20 binder?

21 MS. BROZ: No; that e-mail.

22 MS. PUJARI: Oh, the e-mail?

1 MS. BROZ: Yes.

2 MS. PUJARI: Sure. Yeah.

3 MS. BROZ: Okay. Let's go off
4 the record.

5 THE VIDEOGRAPHER: Okay. The
6 time is 12- --

7 MS. PUJARI: Can we --

8 THE VIDEOGRAPHER: -- 12:10 p.m.
9 -- the time is 12:10 p.m. We're going
10 off the record.

11 --oOo--

12 (Whereupon, at 12:10 p.m. EST, a
13 luncheon recess was taken.)

14 --oOo--

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A F T E R N O O N S E S S I O N

(12:46 p.m. EST)

--oOo--

CHRISTOPHER REX NEIKIRK,

was called for continued examination and, after
having been previously duly sworn, was examined
and testified further as follows:

--oOo--

THE VIDEOGRAPHER: The time is
12:46 p.m., and we are back on the
record.

--oOo--

EXAMINATION (CONTINUED) BY COUNSEL FOR DEFENDANT

OXY VINYLs, LP

--oOo--

BY MS. BROZ:

Q. Good afternoon, Mr. Neikirk.

Before our lunch break, we were
talking about your binder, which is -- we've
marked as Deposition Exhibit 8. And we were
specifically talking about Tab 30.

A. Yes.

1 Q. Could you turn to that, please?

2 A. Okay.

3 Q. Okay. And for the record, what is
4 the Bates label on that document?

5 A. The Bates label is NS-CA-000017054.

6 Q. And just to bring us back to where
7 we were before lunch, your testimony that -- was
8 that was the evidence that you had that Norfolk
9 Southern was aware that there were aluminum
10 components in the five vinyl chloride railcars
11 prior to February 6th, 2023; is that correct?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: From what I could
14 tell, it's the first indication that we
15 had that there was aluminum on some of
16 the cars.

17 BY MS. BROZ:

18 Q. Okay.

19 MS. BROZ: Let's go ahead and
20 mark that, then.

21 What number are we on?

22 CERTIFIED STENOGRAPHER: Sixteen.

--oOo--

(Neikirk Deposition Exhibit Number
16, E-mail string, Bates stamped
NS-CA-000017054 through
NS-CA-000017059, marked for
identification, as of this date.)

--oOo--

BY MS. BROZ:

Q. I'll hand you what we've marked as
Deposition Exhibit 16 and ask you if you
recognize this.

A. I do.

Q. And what is it?

A. It is an e-mail between
Paul Williams of Norfolk Southern and Ron Lawler
of Trinity.

Q. Okay. And is that the same e-mail
that's in Tab 30 of your binder, which we've
marked as Deposition Exhibit 8?

A. Yes. The date and time are the
same.

Q. Is the Bates number the same?

1 A. It is.

2 Q. Okay. And can you point to me
3 where in this document the word "aluminum"
4 appears anywhere?

5 (Whereupon, the witness reviews
6 the material provided.)

7 THE WITNESS: I don't see the
8 aluminum referenced in the document.

9 BY MS. BROZ:

10 Q. And who is Paul Williams?

11 A. He's regional manager, hazardous
12 materials for Norfolk Southern.

13 Q. Was he on the ground in
14 East Palestine between February 3rd and
15 February 6th, 2023?

16 A. I do not know if he was on the
17 ground.

18 Q. Okay. Do you have any other
19 evidence that individuals on the ground in
20 East Palestine between February 3rd and
21 February 6th, 2023 understood that there were
22 aluminum components on any of the five

1 vinyl chloride railcars?

2 MS. PUJARI: Objection: form.

3 (Whereupon, the witness reviews
4 the material provided.)

5 THE WITNESS: Norfolk Southern
6 became aware of the aluminum through
7 correspondence with the car owners and
8 the builders during the derailment
9 response.

10 BY MS. BROZ:

11 Q. Where are you reading?

12 A. This is the third bullet on
13 Page 10, I believe.

14 Q. Okay. And who wrote that bullet on
15 Page 10?

16 A. This was provided to me by
17 WilmerHale.

18 Q. WilmerHale wrote that bullet for
19 you?

20 MS. PUJARI: Objection: form.

21 THE WITNESS: I don't know who
22 wrote the bullet. It was provided to me

1 by WilmerHale.

2 BY MS. BROZ:

3 Q. It was not something you
4 investigated on your own?

5 A. I did not.

6 Q. And you understand the difference
7 between a statement provided by counsel and facts
8 to support that statement?

9 MS. PUJARI: Objection: form.

10 THE WITNESS: I do.

11 BY MS. BROZ:

12 Q. What facts do you have to support
13 that statement?

14 MS. PUJARI: Objection: form.

15 THE WITNESS: I can't validate
16 the fact.

17 BY MS. BROZ:

18 Q. Okay. Do you have any evidence to
19 support the fact that Norfolk Southern employees
20 on the ground in East Palestine between
21 February 3rd and February 6th, 2023 knew that any
22 of the five vinyl chloride railcars had aluminum

1 components?

2 A. Yeah. I do not know specifically
3 who on the ground would have been aware of that.

4 Q. Do you know if anyone on the ground
5 would have been aware of it?

6 A. Not specifically by name.

7 Q. Do you have any names of any
8 individual on the ground from Norfolk Southern,
9 S- -- SRS or SPSI who were aware that the five
10 vinyl chloride cars had aluminum components?

11 MS. PUJARI: Objection: form.

12 THE WITNESS: Yeah.

13 I don't know other than this

14 e-mail.

15 BY MS. BROZ:

16 Q. The e-mail that we just referred to
17 and marked as Deposition Exhibit 16?

18 A. That's correct.

19 Q. Okay. Let's turn to what we
20 previously marked as Deposition Exhibit 15 and to
21 Exhibit A of Deposition Exhibit 15.

22 A. Got it.

1 Q. Do you have that in front of you?

2 A. I do.

3 Q. We're now going to talk about
4 Topic 2.

5 A. Okay.

6 Q. And for the record, I'll read that.

7 It says, The factual basis for
8 your contention that, quote, discrepancies . . .
9 between the approved documents and the actual
10 physical characteristics, closed quote, of TILX
11 402025, GATX 95098, OCPX 80235, OCPX 80179 and/or
12 OCPX 80370 described in Paragraphs 120(b) and 152
13 of the Third-Party Complaint caused Norfolk
14 Southern damages.

15 Did I read that correctly?

16 A. Yes.

17 Q. Okay. Let's go to Paragraph 152 of
18 the Third-Party Complaint, which we've previously
19 marked as Deposition Exhibit 9.

20 A. You said 9?

21 Q. Yes.

22 A. Okay.

1 I'm sorry. What page again?

2 Q. Page -- it's Paragraph 152, Page 31
3 of Exhibit 9.

4 Okay. Go ahead and review that
5 paragraph and the Subparagraphs a, b, c for me.

6 A. Okay.

7 (Whereupon, the witness reviews
8 the material provided.)

9 THE WITNESS: Okay.

10 BY MS. BROZ:

11 Q. Referring to Paragraph 152 of the
12 Third-Party Complaint, which we've marked as
13 Deposition Exhibit 9, can you tell me when
14 Norfolk Southern became aware of these alleged
15 discriminate -- discrepancies between its Federal
16 certified and approved certificate of
17 construction and the tank cars' actual
18 characteristics?

19 MS. PUJARI: Objection: beyond
20 the scope of the 30(b)(6). The witness
21 isn't designated.

22 (Whereupon, the witness reviews

1 the material provided.)

2 THE WITNESS: Yeah. I do not
3 know when specifically, but they are
4 listed in several of the NTSB exhibits:
5 Tank car approval, sample summary,
6 Hazardous Materials Group Chair's Factual
7 Report.

8 BY MS. BROZ:

9 Q. Can you tell me how Norfolk
10 Southern was harmed by these alleged
11 discrepancies?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: I can't say
14 specifically.

15 BY MS. BROZ:

16 Q. Do you have in generalities how
17 Norfolk Southern was harmed by these alleged
18 discrepancies?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: I -- I don't know.

21 MS. BROZ: I don't have any
22 questions right -- any further questions

1 right now, but I reserve my time.

2 MS. BENAVIDES: Can we do -- can
3 we go off the record?

4 THE VIDEOGRAPHER: Okay. The
5 time is 12:58 p.m., and we're going off
6 the record.

7 --oOo--

8 (Whereupon, a recess was taken from
9 12:58 p.m. EST to 1:01 p.m. EST.)

10 --oOo--

11 THE VIDEOGRAPHER: The time is
12 1:01 p.m., and we're back on the record.

13 --oOo--

14 EXAMINATION BY COUNSEL FOR DEFENDANT
15 TRINITY INDUSTRIES LEASING COMPANIES

16 --oOo--

17 BY MS. BENAVIDES:

18 Q. Good afternoon. My name is
19 Nina Benavides, and I represent Trinity.

20 So I believe throughout your
21 deposition today, you've mentioned a couple times
22 the NTSB's Hazardous Materials Group Chair's

1 Factual Report, correct?

2 A. That's correct.

3 Q. And is that something that you have
4 there in the binder in front of you?

5 A. It is.

6 Q. So it's something that you reviewed
7 in that last session you were discussing in
8 person for -- to prepare for this deposition?

9 MS. PUJARI: Objection: form.

10 THE WITNESS: We were review --
11 reviewed it, yes.

12 BY MS. BENAVIDES:

13 Q. And are you aware that this is a
14 comprehensive report prepared by the NTSB after
15 the NTSB had conducted several interviews of
16 people with roles in the East Palestine
17 derailment, reviewed documents and conducted
18 post-derailment testing and examinations?

19 MS. PUJARI: Objection: form;
20 compound.

21 THE WITNESS: I believe that to
22 be the case.

1 BY MS. BENAVIDES:

2 Q. Great.

3 So I don't think the report has
4 yet been entered as an exhibit.

5 I know you have it there in
6 your binder, but I'll pass it out so that others
7 can have it as well.

8 MS. BENAVIDES: Let's mark this.

9 And I think that would be
10 Exhibit 17.

11 CERTIFIED STENOGRAPHER: That's
12 right.

13 --oOo--

14 (Neikirk Deposition Exhibit Number
15 17, Hazardous Materials Group
16 Chair's Factual Report, Bates
17 stamped NS-CA-000002467 through
18 NS-CA-000002625, marked for
19 identification, as of this date.)

20 --oOo--

21 BY MS. BENAVIDES:

22 Q. I guess stepping back for a minute

1 before you take a look at Exhibit --

2 MS. BENAVIDES: What exhibit?

3 What did you just say?

4 CERTIFIED STENOGRAPHER: Seventee

5 n.

6 MS. BENAVIDES: Seventeen. Thank

7 you.

8 BY MS. BENAVIDES:

9 Q. You're aware that one of the tasks
10 that the NTSB performed was on the pressure
11 relief devices of the five vinyl chloride cars,
12 correct?

13 A. I'm sorry. Say that again.

14 Q. Yeah, of course. I'll start over.

15 Are you familiar with the fact
16 that one of the tests the NTSB performed was on
17 the pressure relief devices of the five
18 vinyl chloride cars?

19 MS. PUJARI: Objection: form.

20 THE WITNESS: Yeah, I believe

21 we -- we covered -- covered that.

22

1 BY MS. BENAVIDES:

2 Q. And the NTSB found that the
3 pressure relief device of the Trinity car
4 functioned properly both during the derailment
5 and even afterwards when tested, correct?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: Yeah. I was -- I
8 was not aware of that.

9 BY MS. BENAVIDES:

10 Q. But you have no reason to doubt the
11 NTSB's testing results on that, do you?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: I have no reason to
14 doubt that.

15 BY MS. BENAVIDES:

16 Q. And are you also aware that no
17 evidence of polymer was detected in the NTSB's
18 examination of the Trinity car's pressure relief
19 device?

20 MS. PUJARI: Objection: form;
21 calls for expert testimony.

22 (Whereupon, the witness reviews

1 the material provided.)

2 BY MS. BENAVIDES:

3 Q. Are you looking at the NTSB's
4 HAZMAT report that I provided?

5 A. No. I'm looking at the summary
6 docs.

7 Q. Exhibit 6?

8 A. Page 6.

9 Q. Oh, sorry. Were you looking at
10 Exhibit 6? I didn't --

11 A. Exhibit 6, oh yeah --

12 Q. -- mean to interrupt you --

13 A. -- yeah --

14 Q. -- but --

15 A. -- that's all right.

16 Q. -- go ahead and, you know, review
17 what you need.

18 (Whereupon, the witness continues
19 to review the material provided.)

20 MS. PUJARI: Counsel, what topic
21 is this?

22 MS. BENAVIDES: This is relating

1 to Oxy's Topic 1 regarding aluminum
2 components.

3 MS. PUJARI: I'm going to object:
4 it's beyond the scope of that topic. And
5 the witness is not designated on this --
6 on this variation of -- it's for a
7 different topic.

8 BY MS. BENAVIDES:

9 Q. If you'd like, I can direct you to
10 the Exhibit 17 that I provided, the Group Chair's
11 Factual Report, if that would be helpful.

12 A. That's fine. I -- I --

13 Q. Great.

14 A. -- I was not aware of that, though.

15 Q. If you turn to Page 61 of the Group
16 Chair's Factual Report, Exhibit 17.

17 A. Okay.

18 Q. Do you see there the last sentence
19 of that first paragraph? It says, Internal
20 surfaces of the PRD and angle valves were coated
21 with carbon/soot; however, there was no evidence
22 of polymer or other contaminated -- contaminants

1 within the guide tube or other components.

2 MS. PUJARI: Objection: beyond
3 the scope; form.

4 THE WITNESS: I see that.

5 BY MS. BENAVIDES:

6 Q. And you have no reason to doubt --
7 disagree with the NTSB's finding here, correct?

8 MS. PUJARI: Objection: beyond
9 the scope; calls for expert; and form.

10 THE WITNESS: Yeah. This is --
11 this is not my area of expertise. I had
12 --

13 BY MS. BENAVIDES:

14 Q. So you have no reason to doubt the
15 NTSB's finding, right?

16 MS. PUJARI: Same objections:
17 form; beyond the scope; calls for expert
18 testimony.

19 THE WITNESS: Yeah. I don't have
20 reason to doubt it.

21 BY MS. BENAVIDES:

22 Q. And you've testified earlier

1 regarding the components that Norfolk Southern
2 has alleged within the Trinity car contained
3 aluminum.

4 Do you recall that testimony?

5 A. I do.

6 Q. I'm going to hand you what will be
7 marked as Exhibit 18 to the deposition.

8 --oOo--

9 (Neikirk Deposition Exhibit Number
10 18, Norfolk Southern's Responses
11 and Objections to Trinity's First
12 Set of Interrogatories, marked
13 for identification, as of this
14 date.)

15 --oOo--

16 THE WITNESS: Thank you.

17 BY MS. BENAVIDES:

18 Q. And these are Norfolk Southern's
19 Responses and Objections to Trinity's First Set
20 of Interrogatories.

21 Do you see that there on the
22 cover page?

1 A. I do.

2 Q. Have you seen this document before?

3 A. If I did, I did not go into it in
4 detail, if it's in this deck or not.

5 Q. And if you could please turn to
6 Page 15, Interrogatory Number 8.

7 It reads that -- Identify every
8 Norfolk Southern employee or contractor who was
9 aware of any supposed aluminum in TILX 402025 --

10 And you understand that's what
11 I've been referring to as the "Trinity car,"
12 right?

13 A. Yes.

14 Q. Great.

15 -- or any of its components
16 (including the spring on the pressure relief
17 device for TILX 402025) and how and when each
18 such individual became aware of the supposed
19 aluminum.

20 Did I read that correctly?

21 A. Yes.

22 Q. And if you could please look to

1 the -- Norfolk Southern's response, which begins
2 around halfway through the second paragraph of
3 Page 16.

4 It reads, Norfolk Southern
5 responds that it is currently unaware --

6 Do you see the sentence I'm
7 reading?

8 A. Yes.

9 Q. Great.

10 -- Norfolk Southern responds
11 that it is currently unaware of any employee or
12 contractor who may have been aware, between
13 February 3rd and the time of the vent and burn on
14 February 6th, that the specific TILX -- specific
15 car, TILX 402025, contained aluminum.

16 That's -- did I read that
17 correctly?

18 A. Yes, yes.

19 Q. And that's an accurate statement,
20 right?

21 MS. PUJARI: Objection: form.

22 THE WITNESS: If it's testimony,

1 I'd probably rely on the testimony -- or
2 response.

3 BY MS. BENAVIDES:

4 Q. Right --

5 A. Yeah --

6 Q. -- you would have --

7 A. -- yeah.

8 Q. -- you wouldn't disagree with
9 Norfolk Southern's written responses in this
10 case, correct?

11 A. I don't have a reason to disagree.

12 Q. So it's true that at the time of
13 the vent and burn on February 6th, no Norfolk
14 Southern employee or contractor was aware of any
15 aluminum in the Trinity car, right?

16 MS. PUJARI: Objection: form;
17 misstates the document.

18 THE WITNESS: I agree that's
19 what's stated here.

20 BY MS. BENAVIDES:

21 Q. And so you would agree, then, that
22 at the time of the vent and burn, no Norfolk

1 Southern employee or contractor would be aware of
2 a specific aluminum-coated spring on the pressure
3 relief device of the Trinity car, right?

4 MS. PUJARI: Objection: form.

5 THE WITNESS: Yeah. I -- I -- I
6 see nothing to the contrary.

7 BY MS. BENAVIDES:

8 Q. Therefore, any coating did not play
9 any role in Norfolk Southern's decision-making
10 during its response to the derailment, right?

11 MS. PUJARI: Objection: form;
12 assumes facts.

13 THE WITNESS: Yeah. I -- that's
14 outside of my area of expertise. I
15 don't -- I don't know.

16 BY MS. BENAVIDES:

17 Q. Well, you did agree that Norfolk
18 Southern was not aware of the coating, correct --

19 MS. PUJARI: Objection: form;
20 asked and answered.

21 BY MS. BENAVIDES:

22 Q. -- during the time of the vent and

1 burn?

2 A. I agree that's what it says here.

3 Q. So, therefore, there would not be
4 any way for something that Norfolk Southern
5 didn't know about to have impacted its response
6 to the derailment, correct?

7 A. If we did not know about it, that's
8 correct.

9 Q. And ultimately, the Trinity car was
10 intentionally blown up in a vent and burn
11 operation conducted by Norfolk Southern and its
12 contractors on February 6, right?

13 MS. PUJARI: Objection: form.

14 THE WITNESS: I believe it was
15 part of the vent and burn group of cars.

16 BY MS. BENAVIDES:

17 Q. And nothing about an aluminum
18 coating on a spring within the properly
19 functioning pressure relief device required
20 Norfolk Southern to blow up the stable Trinity
21 car, right?

22 MS. PUJARI: Objection: form;

1 assumes facts.

2 THE WITNESS: Yeah. I -- I don't
3 know the facts around it.

4 BY MS. BENAVIDES:

5 Q. But you did agree that the coating
6 played no role in Norfolk Southern's response,
7 right?

8 MS. PUJARI: Objection: form.

9 THE WITNESS: Unless there was
10 someone that we were not aware of that
11 knew about it, that's correct.

12 BY MS. BENAVIDES:

13 Q. I'm sorry. I don't know if I
14 understood.

15 Someone that Norfolk Southern
16 was not aware of?

17 A. I believe it says that we -- we
18 state and respond that no one was aware of it,
19 but I don't know for certain that that was
20 comprehensive and accurate. But --

21 Q. You're not certain if Norfolk
22 Southern's responses in this case were accurate?

1 A. I said --

2 MS. PUJARI: Objection: form.

3 THE WITNESS: -- comprehensive
4 and accurate.

5 BY MS. BENAVIDES:

6 Q. But you have no reason to disagree
7 with Norfolk Southern's responses, right?

8 A. I -- I have seen nothing that
9 concretely says that somebody was on the ground
10 and knew about the presence of aluminum for this
11 car.

12 Q. And then if we could -- if you
13 could please put that to the side.

14 And if you can look back to
15 Exhibit 17, which was the NTSB's Group Chair's
16 Factual Report.

17 Do you still have that handy?

18 A. Yes.

19 Q. And if you could please look to
20 Page 34.

21 And let me know when you're
22 there.

1 A. I'm here.

2 Q. Great.

3 The last sentence of that
4 paragraph, which is discussing the equipment
5 details of the Trinity car, notes that the
6 protective housing cover was fabricated from
7 carbon steel.

8 Do you see that?

9 A. I do see that.

10 Q. You have no reason to disagree with
11 the NTSB's finding on that point, right?

12 MS. PUJARI: Objection: form.

13 THE WITNESS: I have no reason to
14 disagree with it.

15 BY MS. BENAVIDES:

16 Q. Okay. I'm going to hand you now
17 what will be marked as Exhibit 19, I believe.

18 --oOo--

19 (Neikirk Deposition Exhibit Number
20 19, Norfolk Southern's Responses
21 and Objections to Trinity's First
22 Set of Requests for Admission,

1 marked for identification, as of
2 this date.)

3 --oOo--

4 BY MS. BENAVIDES:

5 Q. And this is Norfolk Southern's
6 Responses and Objections to Trinity's First Set
7 of Requests for Admission.

8 Do you see that there on the
9 cover page?

10 A. I see that.

11 Q. And if you could please turn to
12 Page 26, which is Request for Admission
13 Number 26.

14 A. Okay.

15 Q. Do you see that it reads, Admit
16 that from February 3rd, 2023 to the time of the
17 detonation, no Norfolk Southern employee was
18 aware of any alleged discrepancies between the
19 AAR Form 4-2 for TILX 402025 and the tank car's
20 actual characteristics, as alleged in
21 Paragraph 152a of the Complaint?

22 Right?

1 A. Correct.

2 Q. And if you look to Norfolk
3 Southern's response, which is on the next page,
4 Page 27, starting in the second paragraph, it
5 reads, Norfolk Southern admits that it is
6 currently unaware --

7 Are you with me?

8 A. I'm with you.

9 Q. Great.

10 -- that it's currently unaware
11 of any Norfolk Southern employees who were aware,
12 between February 3rd, 2023 and the vent and burn
13 on February 6th, 2023, of discrepancies between
14 the AAR Form 4-2 for TILX 402025 and the tank
15 car's actual characteristics.

16 Did I read that correctly?

17 A. You did.

18 Q. And that's an accurate statement,
19 right?

20 MS. PUJARI: Objection: form.

21 THE WITNESS: I have no reason to
22 -- to dispute it.

1 BY MS. BENAVIDES:

2 Q. Great.

3 You have not seen any evidence
4 in either Exhibit 6 or anything in the binder
5 that would dispute that response, right?

6 MS. PUJARI: Objection: form.

7 THE WITNESS: Correct, although
8 I'm unsure of what exactly was seen or
9 discussed on that e-mail that was -- had
10 been referenced earlier about --

11 BY MS. BENAVIDES:

12 Q. That e-mail that we looked at --

13 A. -- the --

14 Q. -- which was -- did we mark that?

15 That e-mail that you're
16 referencing -- does it mention anything about
17 discrepancies?

18 A. It does not.

19 MS. BENAVIDES: I have no further
20 questions at this time. I'll reserve the
21 rest of my time.

22 Thank you for your time.

1 THE WITNESS: Yes.

2 MR. GOMEZ: Plaintiffs have no
3 questions.

4 MR. ELLIS: Okay.

5 THE VIDEOGRAPHER: Off the record
6 for the day, or just go off the record?

7 MR. ELLIS: As far as I know, off
8 the record for today, right?

9 MS. PUJARI: Yeah. We'll take
10 five minutes to see if we have any
11 questions of our own.

12 THE VIDEOGRAPHER: Okay. The
13 time is 1:17 p.m., and we're going off
14 the record.

15 --oOo--

16 (Whereupon, a recess was taken from
17 1:17 p.m. EST to 1:26 p.m. EST.)

18 --oOo--

19 THE VIDEOGRAPHER: The time is
20 1:26 p.m., and we are back on the record.

21 MS. PUJARI: Thank you for taking
22 a moment.

1 We do not have any further
2 questions and consider the deposition
3 closed.

4 THE VIDEOGRAPHER: All right.
5 Stand by.

6 The time is 1:26 p.m. on
7 March 1st, 2024. We are going off the
8 record, completing today's videorecorded
9 session.

10 (Whereupon, the following
11 discussion was held off the video record
12 and on the stenographic record:)

13 CERTIFIED STENOGRAPHER: Counsel,
14 I understand you want the final on
15 Monday; is that right?

16 MR. ELLIS: Yes, our standing
17 order.

18 CERTIFIED STENOGRAPHER: You have
19 a standing order for a daily as well?

20 MR. GOMEZ: Yes, we have a
21 standing order on delivery.

22 CERTIFIED STENOGRAPHER: So

1 standing order daily for you?

2 Thank you.

3 Everyone then has standing order
4 for daily and Monday delivery?

5 MR. RHEINHEIMER: Yes.

6 MS. BROZ: Yes.

7 MS. BENAVIDES: Yes.

8 CERTIFIED STENOGRAPHER: Okay.

9 Thanks so much.

10

11 (Witness excused.)

12

13 (Deposition concluded at 1:26 p.m.

14 EST.)

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C E R T I F I C A T E

I, Cindy L. Sebo, Nationally Certified Court Reporter herein, do hereby certify that the foregoing deposition of CHRISTOPHER REX NEIKIRK was taken before me pursuant to notice at the time and place indicated; that said witness duly swore to tell the truth, the whole truth, and nothing but the truth under penalties of perjury; that said testimony of witness was correctly recorded to the best of my abilities in machine shorthand, thereafter transcribed under my supervision with computer-aided transcription; that deposition is a true and accurate record of the testimony given by the witness; that I am neither counsel, nor kin to any party in said action, nor interested in the outcome; and that a copy of this transcript obtained from a source other than the court reporting firm, including an adversary or co-counsel in the matter, is uncertified and may not be used at trial.



CINDY L. SEBO, RMR, CRR, CLR, RPR, CCR, CSR, RSA, CA CSR 14409, NJ Certified CR 30XI0024460, NJ Certified RT 30XR00019500, NM CSR 589, NY Realtime Court Reporter, NY Association Certified Reporter, OR CSR 230105, TN CSR 998, TX CSR 12778, WA CSR 23005926, Notary Public

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.

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INSTRUCTIONS TO WITNESS

CHRISTOPHER REX NEIKIRK NO. 2024-931289

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ACKNOWLEDGMENT OF WITNESS

I, CHRISTOPHER REX NEIKIRK, do hereby
certify that I have read the foregoing pages herein,
and that the same is a correct transcription of the
answers given by me of the proceedings taken remotely
to the questions therein propounded under penalty of
perjury, except for the corrections or changes in form
or substance, if any, noted in the attached errata
sheet.

DATE

SIGNATURE

Subscribed and sworn to before me
this ____ day of _____, 20____.

My Commission expires:

Notary Public