

EXHIBIT 24

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 30(B)(6) VIDEOTAPED DEPOSITION OF

10 NORFOLK SOUTHERN RAILWAY COMPANY

11 BY AND THROUGH ITS CORPORATE REPRESENTATIVE,

12 CHRISTOPHER REX NEIKIRK

13 Friday, March 1, 2024; 8:11 a.m. EST
14
15
16
17

18 Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR,
19 CCR, CLR, RSA, NYRCR, NYACR, CA CSR 14409, NJ CCR
20 30XI00244600, NJ CRT 30XR00019500, Washington State
21 CSR 23005926, Oregon CSR 230105, TN CSR 998, NM CSR
22 589, TX CSR 12778, Remote Counsel Reporter,
LiveLitigation Authorized Reporter, Notary Public

Job No. 2024-931289

<p style="text-align: right;">Page 2</p> <p>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</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S (Continued): 2 Attorneys for Defendant Norfolk Southern Railway Company: 3 4 WILMER CUTLER PICKERING HALE AND DORR LLP 5 6 DAVINA PUJARI, ESQUIRE 7 8 CHRISTOPHER A. RHEINHEIMER, ESQUIRE 9 10 1 Front Street, Suite 3500 11 12 San Francisco, California 94111 13 14 628.235.1136 15 16 davina.pujari@wilmerhale.com 17 18 chris.rheinheimer@wilmerhale.com 19 20 -and- 21 22 MICHAEL J. AMATO, ESQUIRE 23 24 2100 Pennsylvania Avenue, Northwest 25 26 Washington, D.C. 20037 27 28 202.663.6452 29 30 michael.amato@wilmerhale.com</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 Attorneys for Plaintiffs: 3 GRANT & EISENHOFER P.A. 4 ADAM J. GOMEZ, ESQUIRE 5 CALEY DEGROOTE, ESQUIRE 6 123 Justison Street, 7th Floor 7 Wilmington, Delaware 19801 8 302.622.7107 9 agomez@gelaw.com 10 cdegroote@gelaw.com 11 12 Attorneys for Defendants GATX and General American Marks: 13 14 KIRKLAND & ELLIS LLP 15 16 ROBERT B. ELLIS, P.C., ESQUIRE 17 18 300 North LaSalle 19 20 Chicago, Illinois 60654 21 22 312.862.2309 23 24 robert.ellis@kirkland.com</p>	<p style="text-align: right;">Page 5</p> <p>1 A P P E A R A N C E S (Continued): 2 Attorneys for Defendant Oxy Vinyls, LP: 3 VORYS, SATER, SEYMOUR AND PEASE LLP 4 ALYCIA N. BROZ, ESQUIRE 5 52 East Gay Street 6 Columbus, Ohio 43215 7 614.464.5481 8 anbroz@vorys.com 9 10 Attorneys for Trinity Industries Leasing Companies: 11 BARTLIT BECK LLP 12 NENA V. BENAVIDES, ESQUIRE 13 Courthouse Place 14 54 West Hubbard Street 15 Chicago, Illinois 60654 16 312.494.4416 17 nena.benavides@bartlitbeck.com 18 19 20 21 ALSO PRESENT: 22 DANIEL HOLMSTOCK, Videographer, Document Technician</p>

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<p>1 Norfolk Southern, represented today by</p> <p>2 Mr. Christopher Rex Neikirk.</p> <p>3 All counsel present will be noted</p> <p>4 on the stenographic record for your</p> <p>5 appearances.</p> <p>6 Our court reporter today is</p> <p>7 Cindy Sebo who will now administer the</p> <p>8 oath to the witness.</p> <p>9 --oOo--</p> <p>10 CHRISTOPHER REX NEIKIRK,</p> <p>11 after having been first duly sworn under penalty</p> <p>12 of perjury by the certified stenographer, to tell</p> <p>13 the truth, the whole truth, and nothing but the</p> <p>14 truth, was examined and testified as follows:</p> <p>15 --oOo--</p> <p>16 CERTIFIED STENOGRAPHER: Thank</p> <p>17 you.</p> <p>18 The witness is sworn.</p> <p>19 ///</p> <p>20 ///</p> <p>21 ///</p> <p>22 ///</p>	<p>1 A. No.</p> <p>2 Q. Where are you employed?</p> <p>3 A. Norfolk Southern Corporation.</p> <p>4 Q. What is your title?</p> <p>5 A. Vice president and treasurer.</p> <p>6 Q. How long have you had that title?</p> <p>7 A. Since June of 2020.</p> <p>8 Q. Were you employed at Norfolk</p> <p>9 Southern before then?</p> <p>10 A. I was.</p> <p>11 Q. Okay. And what was your title?</p> <p>12 A. Assistant vice president, finance.</p> <p>13 Q. How long have you been with Norfolk</p> <p>14 Southern?</p> <p>15 A. For over 30 years.</p> <p>16 Q. You understand that you're</p> <p>17 testifying today on behalf of Norfolk Southern as</p> <p>18 a corporate representative, correct?</p> <p>19 A. I do.</p> <p>20 Q. When did you first learn you were</p> <p>21 going to get that assignment?</p> <p>22 A. Maybe three weeks ago or so.</p>
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<p>1 --oOo--</p> <p>2 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>3 GATX AND GENERAL AMERICAN MARKS</p> <p>4 --oOo--</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. Good morning, Mr. Neikirk. My name</p> <p>7 is Rob Ellis. I represent GATX and General</p> <p>8 American Marks.</p> <p>9 You understand you're under</p> <p>10 oath to tell the truth today, right?</p> <p>11 A. I do.</p> <p>12 Q. Okay. I'm going to ask you a</p> <p>13 series of questions.</p> <p>14 If you don't understand any of</p> <p>15 my questions, will you tell me that?</p> <p>16 A. I will.</p> <p>17 Q. If I ask a question and you answer,</p> <p>18 I'm going to assume you understood.</p> <p>19 Is that fair?</p> <p>20 A. Fair.</p> <p>21 Q. Any reason today why you can't give</p> <p>22 your full, complete and accurate testimony?</p>	<p>1 MR. ELLIS: Thank you for passing</p> <p>2 that.</p> <p>3 Mark that. That will be</p> <p>4 Exhibit 1.</p> <p>5 --oOo--</p> <p>6 (Neikirk Deposition Exhibit Number</p> <p>7 1, Defendants and Third-Party</p> <p>8 Defendants GATX Corporation and</p> <p>9 General American Marks Company's</p> <p>10 Second Amended Notice of Rule</p> <p>11 30(B)(6) Deposition of Norfolk</p> <p>12 Southern Railway Company, marked</p> <p>13 for identification, as of this</p> <p>14 date.)</p> <p>15 --oOo--</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. You have it in there in front of</p> <p>18 you -- you've been handed, Mr. Neikirk, what's</p> <p>19 been marked as Neikirk Deposition Exhibit 1.</p> <p>20 You have it in front of you?</p> <p>21 A. I do.</p> <p>22 Q. Sorry. There's a machine --</p>

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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 19

1 Deposition Number 2.
 2 THE WITNESS: All right.
 3 --oOo--
 4 (Neikirk Deposition Exhibit Number
 5 2, Combined GATX & Oxy Vinyls
 6 30(B)(6) Topics — Chris Neikirk
 7 30(B)(6) Deposition, marked for
 8 identification, as of this date.)
 9 --oOo--
 10 CERTIFIED STENOGRAPHER: Thank
 11 you.
 12 There you go, sir.
 13 THE WITNESS: Thank you.
 14 BY MR. ELLIS:
 15 Q. Neikirk Deposition Exhibit 2 is a
 16 document you brought with you today, correct?
 17 A. Correct.
 18 Q. Is that the format that you've seen
 19 Exhibit 1 in?
 20 A. No. There's another document I
 21 believe you have that lists the topics --
 22 Q. Okay.

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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 21

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

<p style="text-align: right;">Page 22</p> <p>1 about on behalf of the Corporation today,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. Were there any others that you're</p> <p>5 prepared to testify about today that are not on</p> <p>6 this list?</p> <p>7 A. Yes, two topics relating to</p> <p>8 Oxy Vinyls.</p> <p>9 Q. Okay. I'm going to leave</p> <p>10 Oxy Vinyls' lawyer to talk to you about those.</p> <p>11 Other than those two additional</p> <p>12 ones, are there any other topics that you're</p> <p>13 prepared to testify about today on behalf of the</p> <p>14 Corporation?</p> <p>15 A. That -- that covers it.</p> <p>16 Q. Okay.</p> <p>17 --oOo--</p> <p>18 (Neikirk Deposition Exhibit Number</p> <p>19 3, Making It Right, 12-Month</p> <p>20 Progress Report on East</p> <p>21 Palestine, Ohio and Surrounding</p> <p>22 Communities, marked for</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I have.</p> <p>2 Q. Have you seen that before?</p> <p>3 A. Not that in depth. I imagine it's</p> <p>4 probably on our website or accessible that way.</p> <p>5 Q. Okay. Is this a document you</p> <p>6 reviewed to prepare for your deposition today?</p> <p>7 A. Not this, specifically.</p> <p>8 Q. Okay. And this document -- the</p> <p>9 cover page says, Making It Right, 12-Month</p> <p>10 Progress Report on East Palestine, Ohio and</p> <p>11 Surrounding Communities.</p> <p>12 Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And before today, have you</p> <p>15 read this document from front to back?</p> <p>16 A. I have not.</p> <p>17 Q. Did you have any involvement in</p> <p>18 creating this document, to your knowledge?</p> <p>19 A. I did not.</p> <p>20 Q. Okay. Do you know who did?</p> <p>21 A. I could speculate, but I -- I can't</p> <p>22 say specifically who -- who put it together.</p>
<p style="text-align: right;">Page 23</p> <p>1 identification, as of this date.)</p> <p>2 --oOo--</p> <p>3 MS. PUJARI: Thank you.</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. Mr. Neikirk, you've been handed</p> <p>6 what's been marked as Neikirk Deposition Exhibit</p> <p>7 Number 3.</p> <p>8 Take a minute and look through</p> <p>9 it. Let me know when you've finished, please.</p> <p>10 (Whereupon, the witness reviews</p> <p>11 the material provided.)</p> <p>12 MS. PUJARI: Do you have another</p> <p>13 copy, Counsel? Are they stopped down</p> <p>14 there?</p> <p>15 Thank you.</p> <p>16 (Whereupon, the witness continues</p> <p>17 to review the material provided.)</p> <p>18 THE WITNESS: Okay.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. You've had a minute to look through</p> <p>21 Neikirk Deposition Exhi- -- Exhibit Number 3; is</p> <p>22 that correct?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. Directing your attention to</p> <p>2 Page 4.</p> <p>3 Mr. Neikirk, while you're</p> <p>4 getting to Page 4, have you seen reports like</p> <p>5 this updating the East Palestine community on</p> <p>6 efforts Norfolk Southern has taken in response to</p> <p>7 the February 3rd derailment?</p> <p>8 A. I have.</p> <p>9 Q. Okay. There was a 6-month report</p> <p>10 like this -- 12-month report that was released by</p> <p>11 Norfolk Southern about 6 months after the</p> <p>12 derailment.</p> <p>13 Did you see that one?</p> <p>14 A. I saw it. I may not have read it</p> <p>15 cover to cover.</p> <p>16 Q. Okay. On Page 4, on the right-hand</p> <p>17 column, at the top, it says, In the six months</p> <p>18 since our last progress report, we have -- and</p> <p>19 then there's several bullet points.</p> <p>20 Do you see that?</p> <p>21 A. Is it the fourth page of the --</p> <p>22 Q. Yeah. I'm sorry. It's actually</p>

<p style="text-align: right;">Page 26</p> <p>1 Page 5 of -- if you look on the right -- Page --</p> <p>2 A. Got it. Okay --</p> <p>3 Q. -- it says Page 4 on --</p> <p>4 A. -- I see it.</p> <p>5 Q. -- the bottom left, but it says</p> <p>6 Page 5 on the right --</p> <p>7 A. Right. Okay.</p> <p>8 Q. -- so it looks like maybe,</p> <p>9 originally, this was a smaller pamphlet folded</p> <p>10 together, but --</p> <p>11 A. I'm -- I'm there.</p> <p>12 Q. Okay. You see, then, where it</p> <p>13 says, In the six months since our last progress</p> <p>14 report, we have: -- and the first bullet is</p> <p>15 Provided a \$500,000 grant for economic</p> <p>16 development.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Are you familiar with that grant?</p> <p>20 A. Not specifically.</p> <p>21 Q. Generally, are you familiar with</p> <p>22 the grant?</p>	<p style="text-align: right;">Page 28</p> <p>1 this case; is that correct?</p> <p>2 MS. PUJARI: Objection --</p> <p>3 THE WITNESS: I don't --</p> <p>4 MS. PUJARI: -- objection: legal</p> <p>5 conclusion.</p> <p>6 BY MR. ELLIS:</p> <p>7 Q. You can -- sorry. Your lawyer</p> <p>8 talked over you --</p> <p>9 A. I'm sorry --</p> <p>10 Q. -- so it's better --</p> <p>11 A. -- I spoke --</p> <p>12 Q. -- for the court reporter if you</p> <p>13 give a clean response --</p> <p>14 A. I do not --</p> <p>15 Q. -- okay.</p> <p>16 A. -- I do not know. I have not seen</p> <p>17 the list.</p> <p>18 Q. Okay. And I take it you didn't do</p> <p>19 anything to prepare today to testify about</p> <p>20 whether this \$500,000 grant listed in Exhibit 3</p> <p>21 is something that Norfolk Southern seeks as</p> <p>22 damages from the three Third-Party Defendants in</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Generally, I would say. I know</p> <p>2 we've been providing a lot of assistance to the</p> <p>3 community.</p> <p>4 Q. Okay. And the -- the 500,000 grant</p> <p>5 for economic development that's listed in this</p> <p>6 Norfolk Southern document issued to the community</p> <p>7 in East Palestine -- that's something that</p> <p>8 Norfolk Southern voluntarily undertook in</p> <p>9 response to the derailment, correct?</p> <p>10 A. I believe it was voluntary.</p> <p>11 Q. Okay. And is that \$500,000 grant</p> <p>12 something that Norfolk Southern is seeking as</p> <p>13 damages from the three Third-Party Defendants in</p> <p>14 this case?</p> <p>15 MS. PUJARI: Objection: calls for</p> <p>16 a legal conclusion.</p> <p>17 THE WITNESS: I -- I don't know.</p> <p>18 BY MR. ELLIS:</p> <p>19 Q. Okay. As you sit here today, you</p> <p>20 can't tell me whether or not that \$500,000 grant</p> <p>21 is something that Norfolk Southern seeks as</p> <p>22 damages from the three Third-Party Defendants in</p>	<p style="text-align: right;">Page 29</p> <p>1 this case; is that correct?</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 THE WITNESS: Which is Exhibit 3?</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. Exhibit 3 is the one you're --</p> <p>6 you -- this -- it's this document we're looking</p> <p>7 at.</p> <p>8 A. Okay. Right, right, right.</p> <p>9 Q. This Exhibit 3 and, specifically,</p> <p>10 the first bullet on -- I guess it's Page 5 that</p> <p>11 says, Provided a \$500,000 grant for economic</p> <p>12 development -- my question was: Did you do</p> <p>13 anything to prepare today to tell us whether or</p> <p>14 not that's an item that Norfolk Southern seeks as</p> <p>15 damages in this case?</p> <p>16 A. I --</p> <p>17 MS. PUJARI: Objection: form.</p> <p>18 THE WITNESS: -- I have not.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. Okay. The next bullet says,</p> <p>21 Pledged nearly \$4.3 million to support upgrades</p> <p>22 to drinking water infrastructure.</p>

<p style="text-align: right;">Page 30</p> <p>1 Are you familiar with that</p> <p>2 \$4.3 million expenditure by Norfolk Southern to</p> <p>3 support upgrades to drinking water</p> <p>4 infrastructure?</p> <p>5 A. I am familiar with it --</p> <p>6 Q. Okay.</p> <p>7 A. -- I couldn't have told you the</p> <p>8 amount, but . . .</p> <p>9 Q. Okay. Is that the first time</p> <p>10 you're seeing the amount listed here?</p> <p>11 A. I receive a lot of updates. I -- I</p> <p>12 don't commit those to memory. I may have seen it</p> <p>13 but might not recall exactly what the dollar</p> <p>14 amount was.</p> <p>15 Q. Okay. Is that -- and that</p> <p>16 \$4.3 million pledge for upgrades to the drinking</p> <p>17 water infrastructure -- is that referring to the</p> <p>18 drinking water infrastructure in East Palestine,</p> <p>19 Ohio?</p> <p>20 A. I believe it covers</p> <p>21 East Palestine --</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 didn't do anything to prepare today to testify</p> <p>2 about whether or not that \$4.3 million listed</p> <p>3 here in the second bullet is something that</p> <p>4 Norfolk Southern seeks as damages against the</p> <p>5 three Third-Party Defendants in this case; is</p> <p>6 that correct?</p> <p>7 MS. PUJARI: Objection: form.</p> <p>8 THE WITNESS: I did not.</p> <p>9 BY MR. ELLIS:</p> <p>10 Q. Okay. The third bullet says, Broke</p> <p>11 ground in East Palestine on the First Responder</p> <p>12 Training Center -- which will be a regional asset.</p> <p>13 Do you see that?</p> <p>14 A. I see that.</p> <p>15 Q. And that East Palestine First</p> <p>16 Repon- -- Responder Training Center -- that's</p> <p>17 something that Norfolk Southern voluntarily</p> <p>18 undertook in response to the derailment; is that</p> <p>19 correct?</p> <p>20 MS. PUJARI: Objection: form;</p> <p>21 beyond the scope.</p> <p>22 THE WITNESS: I believe that to</p>
<p style="text-align: right;">Page 31</p> <p>1 A. -- I don't know if it extends</p> <p>2 beyond or not.</p> <p>3 Q. Okay. That 4.3 million -- that</p> <p>4 \$4.3 million pledge -- that's something that</p> <p>5 Norfolk Southern voluntarily undertook in</p> <p>6 response to the February derailment, correct?</p> <p>7 A. I don't know if that was voluntary</p> <p>8 or not.</p> <p>9 Q. Is that \$4.3 million pledge to</p> <p>10 support upgrades to the drinking water</p> <p>11 infrastructure something that Norfolk Southern</p> <p>12 seeks as damages against the three Third-Party</p> <p>13 Defendants in this case?</p> <p>14 MS. PUJARI: Objection. I'm</p> <p>15 going to object based on beyond the</p> <p>16 scope -- witness not -- not designated.</p> <p>17 It's not part of Topic 12 -- and also</p> <p>18 form.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. You can answer.</p> <p>21 A. I don't know.</p> <p>22 Q. You didn't do anything today -- you</p>	<p style="text-align: right;">Page 33</p> <p>1 be voluntary.</p> <p>2 BY MR. ELLIS:</p> <p>3 Q. Okay. Is that something -- the</p> <p>4 costs associated with that First Responder</p> <p>5 Training Center something that Norfolk Southern</p> <p>6 seeks as damages from the three Third-Party</p> <p>7 Defendants in this case?</p> <p>8 MS. PUJARI: Objection: beyond</p> <p>9 the scope; form.</p> <p>10 THE WITNESS: Again, I don't</p> <p>11 know.</p> <p>12 BY MR. ELLIS:</p> <p>13 Q. Didn't do anything to prepare to</p> <p>14 testify about whether or not that First Responder</p> <p>15 Training Center and the costs associated with it</p> <p>16 that Norfolk Southern voluntarily undertook is</p> <p>17 something that Norfolk Southern seeks as damages</p> <p>18 in this case?</p> <p>19 MS. PUJARI: Objection: form;</p> <p>20 facts not in evidence.</p> <p>21 THE WITNESS: I did not.</p> <p>22</p>

<p style="text-align: right;">Page 34</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. The next bullet says, Completed the</p> <p>3 initial intensive phase of environmental</p> <p>4 remediation.</p> <p>5 Are you familiar with the</p> <p>6 initial intensive phase of environmental</p> <p>7 relief -- remediation that's identified here in</p> <p>8 Exhibit 3?</p> <p>9 MS. PUJARI: Objection: beyond</p> <p>10 the scope; form.</p> <p>11 THE WITNESS: I'm familiar with</p> <p>12 the environmental re -- remediation.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. Okay. Are the costs associated</p> <p>15 with that environmental remediation something</p> <p>16 that Norfolk Southern seeks as damages against</p> <p>17 the -- from the three Third-Party Defendants in</p> <p>18 this case?</p> <p>19 MS. PUJARI: Objection: beyond</p> <p>20 the scope.</p> <p>21 THE WITNESS: I do not know.</p> <p>22</p>	<p style="text-align: right;">Page 36</p> <p>1 that Norfolk Southern seeks against the three</p> <p>2 Third-Party Defendants in this case?</p> <p>3 MS. PUJARI: Objection: beyond</p> <p>4 the scope; form.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 BY MR. ELLIS:</p> <p>7 Q. Did you do anything to prepare</p> <p>8 today to testify about whether or not the funds</p> <p>9 associated with the next phase of the Community</p> <p>10 Assistance Program referenced here in Exhibit 3</p> <p>11 were damages sought against the three Third-Party</p> <p>12 Defendants in this case?</p> <p>13 MS. PUJARI: Objection: form.</p> <p>14 THE WITNESS: I did not.</p> <p>15 BY MR. ELLIS:</p> <p>16 Q. The next bullet point says that</p> <p>17 Norfolk Southern began implementing changes based</p> <p>18 on the independent review by Atkins Nuclear</p> <p>19 Secured (ANS).</p> <p>20 Do you see that?</p> <p>21 A. I see that.</p> <p>22 Q. Are you familiar with Atkins</p>
<p style="text-align: right;">Page 35</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. The next bullet says, Announced the</p> <p>3 next phase of our Community Assistance Program.</p> <p>4 Are you familiar with the</p> <p>5 Community Assistance Program that Norfolk</p> <p>6 Southern voluntarily undertook in response to the</p> <p>7 derailment for the folks of East Palestine?</p> <p>8 A. I'm aware of it.</p> <p>9 Q. Do you know what the costs</p> <p>10 associated with that Community Assistance Program</p> <p>11 mentioned here in the fifth bullet on Exhibit 3,</p> <p>12 Page 5 -- do you know what those costs associated</p> <p>13 with -- with that were?</p> <p>14 A. I'm aware that over \$21 million</p> <p>15 went to the families who visited the Facility</p> <p>16 Assistance Center.</p> <p>17 Q. Okay. And is that \$21 million the</p> <p>18 Community Assistance Program referenced in this</p> <p>19 bullet?</p> <p>20 A. I believe it's related. I can't</p> <p>21 say for certain it is.</p> <p>22 Q. Okay. Is that \$21 million damages</p>	<p style="text-align: right;">Page 37</p> <p>1 Nuclear Secured?</p> <p>2 A. I'm familiar with that program.</p> <p>3 Q. Okay. Are the costs associated</p> <p>4 with that program referenced here in the Making</p> <p>5 It Right brochure something that Norfolk Southern</p> <p>6 seeks as damages against Third-Party Defendants</p> <p>7 in this case?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: I do not know.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. You didn't do anything to prepare</p> <p>12 today to testify about whether the costs</p> <p>13 associated with that independent review were</p> <p>14 something that Norfolk Southern sought -- seeks</p> <p>15 as damages against the three Third-Party</p> <p>16 Defendants in this case?</p> <p>17 MS. PUJARI: Objection: form.</p> <p>18 THE WITNESS: I did not.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. The last bullet there says, Made</p> <p>21 significant progress on the Six-Point Action Plan</p> <p>22 for Safety.</p>

<p style="text-align: right;">Page 38</p> <p>1 Are you familiar with the</p> <p>2 six-point action plan for safety identified here</p> <p>3 in Exhibit 3?</p> <p>4 A. I'm familiar with it.</p> <p>5 Q. Do you know the costs associated</p> <p>6 with the Six-Point Action Plan for Safety</p> <p>7 referenced in that last bullet?</p> <p>8 A. I do not know the cost.</p> <p>9 Q. Are the costs associated with the</p> <p>10 six-point action plan for safety something that</p> <p>11 Norfolk Southern seeks as damages against</p> <p>12 Third-Party Defendants in this case?</p> <p>13 MS. PUJARI: Objection: beyond</p> <p>14 the scope; form.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Then in the column immediately to</p> <p>18 the right, there's some blue lettering that</p> <p>19 highlights To date, Norfolk Southern has</p> <p>20 committed more than 103 million to East Palestine</p> <p>21 and the surrounding areas in Ohio and</p> <p>22 Pennsylvania.</p>	<p style="text-align: right;">Page 40</p> <p>1 bottom right, is numbered Page 7.</p> <p>2 A. I'm there.</p> <p>3 Q. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And here, Norfolk Southern is</p> <p>6 highlighting for the folks in East Palestine who</p> <p>7 received this that there were notable actions and</p> <p>8 accomplishments Norfolk Southern has achieved as</p> <p>9 of the date of this 12-month update, right?</p> <p>10 A. Are you referencing the highlights?</p> <p>11 Q. Yes.</p> <p>12 A. Okay. Yes.</p> <p>13 Q. You see where Norfolk Southern is</p> <p>14 highlighting for the community some of the</p> <p>15 notable actions and accomplishments we've</p> <p>16 achieved to date, "we" being Norfolk Southern,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. And the first one is \$300,000 to</p> <p>20 district academics, athletics and</p> <p>21 extracurriculars.</p> <p>22 Are you familiar with that</p>
<p style="text-align: right;">Page 39</p> <p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. Is that 103 million to</p> <p>4 East Palestine and the surrounding areas in Ohio</p> <p>5 and Pennsylvania damages that Norfolk Southern</p> <p>6 seeks from the Third-Party Defendants in this</p> <p>7 case?</p> <p>8 MS. PUJARI: Objection: beyond</p> <p>9 the scope of the 30(b)(6) and form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 BY MR. ELLIS:</p> <p>12 Q. I take it you didn't do anything to</p> <p>13 prepare today to testify about whether that</p> <p>14 amount was something that Norfolk -- Norfolk</p> <p>15 Southern seeks as damages from the Third-Party</p> <p>16 Defendants in this case?</p> <p>17 A. I didn't --</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: -- I did not.</p> <p>20 BY MR. ELLIS:</p> <p>21 Q. Okay. If you turn the page of this</p> <p>22 exhibit and look at the right side, which, at the</p>	<p style="text-align: right;">Page 41</p> <p>1 \$300,000 commitment to the district academics,</p> <p>2 athletics and extracurriculars?</p> <p>3 A. I'm familiar with it.</p> <p>4 Q. Okay. Is that something that</p> <p>5 Norfolk Southern seeks as damages from the</p> <p>6 Third-Party Defendants in this case?</p> <p>7 MS. PUJARI: Objection: beyond</p> <p>8 the scope; form.</p> <p>9 THE WITNESS: I do not know.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. For all of these items highlighted</p> <p>12 here -- \$220,000 to East Palestine Fire</p> <p>13 Department for SCBA Air-Paks, 103 million plus</p> <p>14 donated to support the East Palestine community,</p> <p>15 \$500,000 committed to East Palestine's economic</p> <p>16 development -- all of these items highlighted</p> <p>17 here are items that Norfolk Southern voluntarily</p> <p>18 undertook in response to the February derailment,</p> <p>19 correct?</p> <p>20 MS. PUJARI: Objection: form;</p> <p>21 compound.</p> <p>22 THE WITNESS: I do not know if</p>

<p style="text-align: right;">Page 42</p> <p>1 they're all voluntary.</p> <p>2 BY MR. ELLIS:</p> <p>3 Q. Okay. The \$300,000 commitment to</p> <p>4 the district academics, athletics and ex- --</p> <p>5 extracurriculars -- is that something that</p> <p>6 Norfolk vol- -- Norfolk Southern voluntarily</p> <p>7 undertook in response to the derailment?</p> <p>8 A. I believe that is voluntary.</p> <p>9 Q. Okay. What about the</p> <p>10 East Palestine Fire Department SCBA Air-Paks?</p> <p>11 MS. PUJARI: Objection: vague.</p> <p>12 THE WITNESS: I believe that</p> <p>13 would be voluntary, too.</p> <p>14 BY MR. ELLIS:</p> <p>15 Q. Okay. The 103 million plus donated</p> <p>16 to support the East Palestine community -- that</p> <p>17 was something that Norfolk Southern voluntarily</p> <p>18 undertook in response to the East Palestine</p> <p>19 derailment, right?</p> <p>20 MS. PUJARI: Objection: form;</p> <p>21 compound.</p> <p>22 THE WITNESS: That looks</p>	<p style="text-align: right;">Page 44</p> <p>1 the community to support the community, right?</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 THE WITNESS: Yeah. I -- I don't</p> <p>4 know the breakdown on that one, what --</p> <p>5 what all it entails.</p> <p>6 BY MR. ELLIS:</p> <p>7 Q. That's -- the \$9.1 million</p> <p>8 referenced here -- that's not something you</p> <p>9 reviewed or prepared to testify about today; is</p> <p>10 that right?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: It -- I do have</p> <p>13 something that reconciles to \$9 million</p> <p>14 for Pennsylvania.</p> <p>15 BY MR. ELLIS:</p> <p>16 Q. Okay. And when you say I have</p> <p>17 something, you're looking at a list that was</p> <p>18 prepared for you to testify for today, right?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. Okay. Looking back, though, at</p>
<p style="text-align: right;">Page 43</p> <p>1 voluntary.</p> <p>2 BY MR. ELLIS:</p> <p>3 Q. And the 500,000 committed to</p> <p>4 East Palestine's economic development -- that</p> <p>5 also was a voluntary effort Norfolk Southern</p> <p>6 undertook in response to the derailment, correct?</p> <p>7 MS. PUJARI: Objection: form.</p> <p>8 THE WITNESS: I believe that</p> <p>9 would be voluntary as well.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. Okay. Underneath that, the</p> <p>12 9.1 million to Pennsylvania community support --</p> <p>13 that also was something Norfolk Southern</p> <p>14 voluntarily undertook in response to the</p> <p>15 derailment, correct?</p> <p>16 MS. PUJARI: Objection: form.</p> <p>17 THE WITNESS: I believe it was</p> <p>18 in -- in response.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. And that's something Norfolk</p> <p>21 Southern voluntarily undertook in response to the</p> <p>22 derailment for the folks in Pennsylvania -- in</p>	<p style="text-align: right;">Page 45</p> <p>1 Exhibit 3, this 9.1 million referenced here, is</p> <p>2 the 9.1 million referenced here something that's</p> <p>3 on the sheet that you have that was prepared for</p> <p>4 you today?</p> <p>5 A. It reconciles very close to that</p> <p>6 number.</p> <p>7 Q. Okay. Do you know whether or not</p> <p>8 it's the same effort, the number that you're</p> <p>9 looking there on your -- at on your sheet and the</p> <p>10 9.1 million to Pennsylvania community support</p> <p>11 referenced on Exhibit 3 -- are those two the same</p> <p>12 thing?</p> <p>13 A. They appear to be.</p> <p>14 Q. Okay. Is that something that</p> <p>15 Norfolk Southern voluntarily undertook to help</p> <p>16 the folks in Pennsylvania as part of its</p> <p>17 community support?</p> <p>18 MS. PUJARI: Objection: form;</p> <p>19 vague.</p> <p>20 THE WITNESS: They look to be</p> <p>21 voluntary.</p> <p>22</p>

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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

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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

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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.

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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

<p style="text-align: right;">Page 50</p> <p>1 work with the East Palestine community leaders.</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Are you familiar with that effort?</p> <p>5 A. Not very, but it's here in the</p> <p>6 documentation, so --</p> <p>7 Q. Okay. That -- is that the first</p> <p>8 time you saw it, reading this documentation?</p> <p>9 A. It may be --</p> <p>10 Q. Okay.</p> <p>11 A. -- I can't say for sure.</p> <p>12 Q. Is that \$500,000 commitment to</p> <p>13 economic development something that's on your</p> <p>14 list there in front of you?</p> <p>15 (Whereupon, the witness reviews</p> <p>16 the material provided.)</p> <p>17 THE WITNESS: Yeah. I do not see</p> <p>18 it specifically --</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. Okay.</p> <p>21 A. -- that dollar amount.</p> <p>22 Q. Is that \$500,000 something that</p>	<p style="text-align: right;">Page 52</p> <p>1 2023 Earnings Call, January 26,</p> <p>2 2024, marked for identification,</p> <p>3 as of this date.)</p> <p>4 --oOo--</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. All right. Going back to this</p> <p>7 Exhibit 3 for just a minute, Mr. Neikirk, these</p> <p>8 items, for example, at Page 7, the highlighted</p> <p>9 items -- \$300,000 to the district for academics,</p> <p>10 athletics and extracurriculars; the 220,000 to</p> <p>11 East Palestine Fire Department for the SCBA</p> <p>12 Air-Paks -- all these items that Norfolk Southern</p> <p>13 voluntarily undertook for the community -- are</p> <p>14 those items that you think Norfolk Southern</p> <p>15 should be seeking as damages in response to the</p> <p>16 derailment from the Third-Party Defendants?</p> <p>17 MS. PUJARI: Objection: assumes</p> <p>18 facts; calls for speculation; legal</p> <p>19 conclusion; and form.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. Do you think it would be right for</p>
<p style="text-align: right;">Page 51</p> <p>1 Norfolk Southern seeks as damages against</p> <p>2 Third-Party Defendants in this case?</p> <p>3 MS. PUJARI: Objection: beyond</p> <p>4 the scope; form.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 BY MR. ELLIS:</p> <p>7 Q. Do you know whether any of the</p> <p>8 items referenced in this Making It Right pamphlet</p> <p>9 entitled Making It Right, 12-Month Progress</p> <p>10 Report on East Palestine and Surrounding</p> <p>11 Communities -- all of the efforts and the costs</p> <p>12 associated with this -- are you prepared today to</p> <p>13 talk about whether any of them are amounts that</p> <p>14 Norfolk Southern seeks as damages against</p> <p>15 Third-Party Defendants in this case?</p> <p>16 MS. PUJARI: Objection: beyond</p> <p>17 the scope; form.</p> <p>18 THE WITNESS: Yeah.</p> <p>19 I'm not prepared.</p> <p>20 --oOo--</p> <p>21 (Neikirk Deposition Exhibit Number</p> <p>22 4, PowerPoint presentation, Q4</p>	<p style="text-align: right;">Page 53</p> <p>1 Norfolk Southern to seek those items as damages</p> <p>2 after telling the community that Norfolk Southern</p> <p>3 was undertaking those things --</p> <p>4 MS. PUJARI: Object --</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. -- for the community?</p> <p>7 MS. PUJARI: -- objection:</p> <p>8 assumes facts and form.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. Exhibit 4 I think you've now got in</p> <p>12 front of you.</p> <p>13 I take it you've seen Exhibit 4</p> <p>14 before?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did you help prepare</p> <p>17 Exhibit 4?</p> <p>18 A. I was involved in the process.</p> <p>19 Q. Okay. Exhibit 4 is the -- or a</p> <p>20 deck prepared and associated with the Q4 2023</p> <p>21 earnings call from Norfolk Southern, correct?</p> <p>22 A. That is correct.</p>

<p style="text-align: right;">Page 54</p> <p>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</p>	<p style="text-align: right;">Page 56</p> <p>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</p>
<p style="text-align: right;">Page 55</p> <p>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?</p>	<p style="text-align: right;">Page 57</p> <p>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.</p>

<p style="text-align: right;">Page 58</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. The paid in 2023 number, 517-, I</p> <p>3 think you -- you mentioned 515 before.</p> <p>4 Is that the number you have,</p> <p>5 515-, not 517-?</p> <p>6 A. I have 515- in my remarks. That</p> <p>7 could be due to rounding.</p> <p>8 Q. Okay. But in your remarks, you</p> <p>9 mean in the document that someone prepared for</p> <p>10 you today, right?</p> <p>11 A. A prepared document, correct.</p> <p>12 Q. Okay. You didn't prepare the</p> <p>13 remarks, did you?</p> <p>14 A. Correct; I did not.</p> <p>15 Q. Okay. Who did?</p> <p>16 A. For these specific cost breakdown,</p> <p>17 it was Kristin Hoffman.</p> <p>18 Q. Who's Kristin Hoffman?</p> <p>19 A. She's assistant vice president of</p> <p>20 corporate accounting.</p> <p>21 Q. Did you ask her to prepare that?</p> <p>22 A. I did not.</p>	<p style="text-align: right;">Page 60</p> <p>1 here in the Q3 -- sorry -- Q4 2023 earnings call</p> <p>2 deck, Legal and other costs. And there's, for</p> <p>3 the nine months, 292 million and then, for Q4,</p> <p>4 89 million for a total of legal and other costs</p> <p>5 of 381 million in 2023, right?</p> <p>6 A. I see that.</p> <p>7 Q. And are those numbers correct?</p> <p>8 A. I believe they are.</p> <p>9 Q. Okay. And then of that, 236 had</p> <p>10 been paid as of the creation of this deck,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Do you know the breakdown of</p> <p>14 the 292 million?</p> <p>15 A. I do not.</p> <p>16 Q. What about the 89 million? Do you</p> <p>17 know the breakdown to that?</p> <p>18 A. I don't know that either.</p> <p>19 Q. Okay. And the 236 million -- do</p> <p>20 you know the breakdown for that?</p> <p>21 A. I don't know.</p> <p>22 Q. Those aren't items that you</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Who did?</p> <p>2 A. I believe our counsel requested it</p> <p>3 in -- in working with our law department.</p> <p>4 Q. Okay. Who from the law department?</p> <p>5 A. Nate's last name.</p> <p>6 Q. Smith?</p> <p>7 A. Nate Smith, I believe, is involved.</p> <p>8 Q. Anybody else other than Nate Smith?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. And that 517 -- 517 million</p> <p>11 identified there in this document, and I</p> <p>12 understand it's 2 million off from the number you</p> <p>13 have, you think maybe because of rounding</p> <p>14 errors -- can you tell me today whether or not</p> <p>15 that's an amount that Norfolk Southern seeks as</p> <p>16 damages from the three Third-Party Defendants in</p> <p>17 this case?</p> <p>18 MS. PUJARI: Objection: assumes</p> <p>19 facts; beyond the scope.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. And underneath, there's an item</p>	<p style="text-align: right;">Page 61</p> <p>1 prepared to testify about today?</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 THE WITNESS: I did not.</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. And I take it that you can't tell</p> <p>6 me whether or not any of those amounts -- 292-,</p> <p>7 89-, 381- -- any of those legal and other costs,</p> <p>8 including the amount paid of 236 million as of</p> <p>9 the date of this deck, are amounts that Norfolk</p> <p>10 Southern seeks as damages against Third-Party</p> <p>11 Defendants in this case.</p> <p>12 You're not prepared to do that</p> <p>13 today, are you?</p> <p>14 MS. PUJARI: Objection: beyond</p> <p>15 the scope of the 30(b)(6) and form.</p> <p>16 THE WITNESS: I am not.</p> <p>17 BY MR. ELLIS:</p> <p>18 Q. And you can't tell me the breakdown</p> <p>19 of those numbers either in terms of who was</p> <p>20 responsible for those various costs, which</p> <p>21 entities represented those numbers, correct?</p> <p>22 MS. PUJARI: Objection: asked and</p>

<p style="text-align: right;">Page 62</p> <p>1 answered; form.</p> <p>2 THE WITNESS: I cannot.</p> <p>3 --oOo--</p> <p>4 (Neikirk Deposition Exhibit Number</p> <p>5 5, Norfolk Southern 2023 10-K,</p> <p>6 marked for identification, as of</p> <p>7 this date.)</p> <p>8 --oOo--</p> <p>9 MR. ELLIS: If you want another</p> <p>10 one, there's another one for anyone who's</p> <p>11 interested.</p> <p>12 CERTIFIED STENOGRAPHER: This is</p> <p>13 Exhibit 5.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 MR. ELLIS: Thank you. You read</p> <p>16 my mind.</p> <p>17 BY MR. ELLIS:</p> <p>18 Q. Okay. Mr. Neikirk, Exhibit 5 --</p> <p>19 that is definitely one you've seen before?</p> <p>20 A. I have seen it.</p> <p>21 Q. Okay. I was hoping that was the</p> <p>22 case.</p>	<p style="text-align: right;">Page 64</p> <p>1 accounting was certainly involved, but I'm not</p> <p>2 exactly sure who.</p> <p>3 Q. Okay. The -- at Page 117, under</p> <p>4 Financial Impact, it reads, Although we cannot</p> <p>5 predict the final outcome or estimate, the</p> <p>6 response will -- the response -- the reasonably</p> <p>7 possible -- sorry -- range of loss with</p> <p>8 certainty, we recognized 1.1 billion of expense</p> <p>9 in 2023 for costs direct -- directly attributable</p> <p>10 to the incidents.</p> <p>11 Do you see that?</p> <p>12 A. I see that.</p> <p>13 Q. Okay. Is that 1.1 billion</p> <p>14 reflected in the document you have there, your</p> <p>15 remarks?</p> <p>16 A. No, it is not.</p> <p>17 Q. Okay. Do you know whether some or</p> <p>18 all of that 1.1 billion are costs that Norfolk</p> <p>19 Southern seeks as damages against Third-Party</p> <p>20 Defendants in this case?</p> <p>21 MS. PUJARI: Objection: beyond</p> <p>22 the scope; form.</p>
<p style="text-align: right;">Page 63</p> <p>1 That's your 10-K issued just</p> <p>2 this past February, right, for Norfolk Southern?</p> <p>3 MS. PUJARI: Objection: form.</p> <p>4 THE WITNESS: It looks like it.</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. Okay. You have involvement in</p> <p>7 preparing this, right?</p> <p>8 A. Some, yes.</p> <p>9 Q. Okay. What about -- directing your</p> <p>10 attention to Page 117 -- no. I'm sorry. Start</p> <p>11 at 115 of 153 at the bottom right.</p> <p>12 There's Note 17, specifically</p> <p>13 the Eastern Ohio Incident.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Did you have involvement in</p> <p>17 preparing this particular note?</p> <p>18 A. I was not involved in this note.</p> <p>19 Q. Not involved at all in this?</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you know who was?</p> <p>22 A. I don't know. It would be --</p>	<p style="text-align: right;">Page 65</p> <p>1 THE WITNESS: Yeah.</p> <p>2 I -- I don't know.</p> <p>3 BY MR. ELLIS:</p> <p>4 Q. That's not something you prepared</p> <p>5 to testify about today; is that right?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: I'm not prepared.</p> <p>8 BY MR. ELLIS:</p> <p>9 Q. There's a reference here to</p> <p>10 101 million in insurance recoveries received in</p> <p>11 2023 from claims made under Norfolk Southern's</p> <p>12 insurance policies, right?</p> <p>13 A. I see that.</p> <p>14 Q. Okay. And any costs associated</p> <p>15 with the derailment for which Norfolk Southern</p> <p>16 received insurance -- that wouldn't be something</p> <p>17 that Norfolk Southern sought as damages against</p> <p>18 Third-Party Defendants in this case, right?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I -- I don't know</p> <p>21 the answer.</p> <p>22</p>

<p style="text-align: right;">Page 66</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. It says in the next sentence,</p> <p>3 During 2023, our cash expenditures attributable</p> <p>4 to the incident net of insurance proceeds</p> <p>5 received were 652 million, which are presented in</p> <p>6 net cash provided by operating activities.</p> <p>7 Do you see that?</p> <p>8 A. I see it.</p> <p>9 Q. Are you familiar with that</p> <p>10 \$652 million amount?</p> <p>11 A. I'm familiar with the total number.</p> <p>12 Q. Okay. And is that 652 million</p> <p>13 broken down in your -- the document you referred</p> <p>14 to earlier as your remarks?</p> <p>15 A. It is not.</p> <p>16 Q. That's not something you're</p> <p>17 prepared to testify about today?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. ELLIS:</p> <p>21 Q. And if you look at Page 119, about</p> <p>22 a third of the way down the page, it says, In</p>	<p style="text-align: right;">Page 68</p> <p>1 case, right?</p> <p>2 A. I don't know --</p> <p>3 MS. PUJARI: Objection: beyond</p> <p>4 the form; scope -- scope -- I'm sorry --</p> <p>5 beyond the scope and form.</p> <p>6 Sorry about that.</p> <p>7 CERTIFIED STENOGRAPHER: What was</p> <p>8 your answer?</p> <p>9 THE WITNESS: "I don't know."</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. Then further down the page on 119,</p> <p>12 in the first bullet point that's entitled Legal</p> <p>13 Proceedings and Claims (Non-Environmental) -- in</p> <p>14 that paragraph, there's a sentence that says, In</p> <p>15 accordance with FASB ASC 450, Contingencies, we</p> <p>16 recognize a \$116 million loss during 2023 with</p> <p>17 respect to the incident lawsuits and related</p> <p>18 contingencies of which 34 million have been paid.</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Are you familiar with that 116</p> <p>22 number?</p>
<p style="text-align: right;">Page 67</p> <p>1 connection with the foregoing items, we</p> <p>2 recognized 836 million of expense during 2023 of</p> <p>3 which 517 million was paid during 2023 related to</p> <p>4 the probable obligations that are reasonably</p> <p>5 estimable in accordance with FASB, et cetera.</p> <p>6 That 836 million of which 517</p> <p>7 was paid -- is that broken down in your -- the</p> <p>8 document you referred to earlier as your remarks?</p> <p>9 MS. PUJARI: Objection: form.</p> <p>10 THE WITNESS: Not -- not</p> <p>11 specifically to the 836, just the</p> <p>12 amount -- the 517 we broke down earlier.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. Okay. So the 517 referenced here</p> <p>15 on Page 119 of your 10-K -- those are broken down</p> <p>16 in this (indicating) document that you</p> <p>17 prepared -- or that was prepared for you today?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And I take it you can't tell</p> <p>20 me whether that 517 are -- all or a portion of it</p> <p>21 are amounts that Norfolk Southern seeks as</p> <p>22 damages against Third-Party Defendants in this</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I'm familiar with the total.</p> <p>2 Q. You are?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And do you know the</p> <p>5 breakdown of it?</p> <p>6 A. I do not.</p> <p>7 Q. That's not something you prepared</p> <p>8 to testify about today?</p> <p>9 MS. PUJARI: Objection: form.</p> <p>10 THE WITNESS: I'm not.</p> <p>11 BY MR. ELLIS:</p> <p>12 Q. Mr. Neikirk, when you sat down to</p> <p>13 -- so you said you learned three weeks ago that</p> <p>14 you were going to have the fun of testifying</p> <p>15 today as corporate representative, right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And when you were told that</p> <p>18 you were the corporate representative for today,</p> <p>19 what were you told your job would be?</p> <p>20 MS. PUJARI: Objection to the</p> <p>21 extent it calls for privileged</p> <p>22 information.</p>

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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

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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.

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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

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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?

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

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

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?

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.

<p style="text-align: right;">Page 78</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. Okay. Were those details you knew?</p> <p>3 A. Not all of them, no.</p> <p>4 Q. And then -- and in between those</p> <p>5 time -- in between that first and second call,</p> <p>6 other than getting facts from your lawyers, did</p> <p>7 you do anything else to prepare? Did you ask,</p> <p>8 for example, any of the folks that report to you</p> <p>9 to assemble items or get data for you?</p> <p>10 MS. PUJARI: Objection: form;</p> <p>11 assumes facts.</p> <p>12 THE WITNESS: I did not.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. Then when was the second call?</p> <p>15 A. Maybe two weeks ago.</p> <p>16 Q. Two weeks ago.</p> <p>17 During that -- who participated</p> <p>18 in the second call?</p> <p>19 A. I'll have to look --</p> <p>20 Q. Okay.</p> <p>21 A. -- I don't recall directly, but --</p> <p>22 Q. Do you remember anybody?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yeah.</p> <p>2 Q. Anybody else?</p> <p>3 A. Possibly Jason Morris -- I don't</p> <p>4 know --</p> <p>5 Q. Okay.</p> <p>6 A. -- might have been on one.</p> <p>7 Q. Okay. How many calls did you have?</p> <p>8 A. I believe there were three.</p> <p>9 Q. And during that second call, did</p> <p>10 anybody give you facts?</p> <p>11 MS. PUJARI: Objection: form; and</p> <p>12 calls for privileged information.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. You can answer.</p> <p>15 A. Yeah. We -- we -- like I said, we</p> <p>16 went over details about the case.</p> <p>17 Q. I just want to know if -- if folks</p> <p>18 gave you facts about the case.</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I consider what I</p> <p>21 learned to be facts.</p> <p>22</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I believe Chris was on the call and</p> <p>2 Mike and --</p> <p>3 Q. They won't feel bad. Don't worry.</p> <p>4 A. Yeah. No. It's escaping -- his</p> <p>5 name, the British-speaking gentleman.</p> <p>6 Andrew, maybe.</p> <p>7 Yeah. All right.</p> <p>8 Q. Okay. So any in-house lawyers on</p> <p>9 the call?</p> <p>10 A. I believe there were.</p> <p>11 Q. Who?</p> <p>12 A. Nate, Martin --</p> <p>13 Q. Nate and Martin are two different</p> <p>14 people.</p> <p>15 A. Or Nate --</p> <p>16 Q. Nate Smith?</p> <p>17 A. Nate Smith. I'm sorry. Yeah,</p> <p>18 Nate.</p> <p>19 Q. We won't tell Nate.</p> <p>20 A. Yeah.</p> <p>21 Q. And so Nate Smith, Chris, the</p> <p>22 British-speaking fellow?</p>	<p style="text-align: right;">Page 81</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. Okay. And what facts did you get</p> <p>3 in that second call?</p> <p>4 A. Information about the incident, the</p> <p>5 cars involved, a few details around the topics</p> <p>6 that we went over originally.</p> <p>7 Q. Did you ask anybody to provide you</p> <p>8 with information after you received those facts?</p> <p>9 A. I did not.</p> <p>10 Q. Okay. Did -- did you ask for any</p> <p>11 facts to prepare for your deposition today?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I did not.</p> <p>14 BY MR. ELLIS:</p> <p>15 Q. Okay. This was a situation where</p> <p>16 folks were giving you facts and you were</p> <p>17 absorbing?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. ELLIS:</p> <p>21 Q. Okay. I take it a lot of the facts</p> <p>22 you were getting were facts that you did not</p>

<p style="text-align: right;">Page 82</p> <p>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</p>	<p style="text-align: right;">Page 84</p> <p>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</p>
<p style="text-align: right;">Page 83</p> <p>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,</p>	<p style="text-align: right;">Page 85</p> <p>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</p>

<p style="text-align: right;">Page 86</p> <p>1 top --</p> <p>2 Q. Okay.</p> <p>3 A. -- with her listed as a source.</p> <p>4 Q. So the first bullet reads, Norfolk</p> <p>5 Southern has recognized more than 836 million in</p> <p>6 environmental response costs. It includes 15 --</p> <p>7 sorry -- 515 million paid.</p> <p>8 And then there's a breakdown of</p> <p>9 that. It says, Sources: Kristin Hoffman and the</p> <p>10 Norfolk Southern 10-K.</p> <p>11 Right?</p> <p>12 A. Correct.</p> <p>13 Q. Is that the piece Kristin Hoffman</p> <p>14 gave you?</p> <p>15 A. That is the piece she gave us.</p> <p>16 Q. Okay. Anything else on here that</p> <p>17 Kristin Hoffman gave you?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Okay. And then can you identify</p> <p>20 the part that Will Harden gave you?</p> <p>21 A. Yes. That's the second bullet</p> <p>22 point on the first page and all subbullet</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. So 25 million for East Palestine</p> <p>2 park revitalization (committed, not fully</p> <p>3 paid) -- that's an effort that Norfolk Southern</p> <p>4 voluntarily undertook for the folks in</p> <p>5 East Palestine as a result of the derailment,</p> <p>6 right?</p> <p>7 MS. PUJARI: Objection: form.</p> <p>8 THE WITNESS: That appears</p> <p>9 voluntary to me.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. Okay. That's something you</p> <p>12 consider as voluntary?</p> <p>13 A. Yes.</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 BY MR. ELLIS:</p> <p>16 Q. And 25 million for the first</p> <p>17 responder training center (committed, not fully</p> <p>18 paid) -- that also is something Norfolk Southern</p> <p>19 voluntarily undertook for the folks of</p> <p>20 East Palestine and the first responders there in</p> <p>21 response to the derailment, right?</p> <p>22 MS. PUJARI: Objection: form.</p>
<p style="text-align: right;">Page 87</p> <p>1 information.</p> <p>2 Q. Okay. So it's NS has committed</p> <p>3 more than 103 million in community funds and</p> <p>4 payments. This includes park revitalization,</p> <p>5 first responder training, Family Assistance</p> <p>6 Center, drinking water system updates, and the EP</p> <p>7 community fund and others.</p> <p>8 And then there's a breakdown of</p> <p>9 those, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. These are all items</p> <p>12 following on the second page ending with a bullet</p> <p>13 that says Source: Will Harden, Norfolk Southern.</p> <p>14 I take it that from the</p> <p>15 beginning of the second bullet until the Source:</p> <p>16 Will Harden, Norfolk Southern, those are all</p> <p>17 items that Mr. Harden gave you?</p> <p>18 A. That's correct.</p> <p>19 Q. The first point there, 25 million</p> <p>20 for EP -- I take it that's a reference to</p> <p>21 East Palestine?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">Page 89</p> <p>1 THE WITNESS: That appears</p> <p>2 voluntary.</p> <p>3 BY MR. ELLIS:</p> <p>4 Q. Certainly something you consider</p> <p>5 voluntary, right?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: I consider it</p> <p>8 voluntary.</p> <p>9 BY MR. ELLIS:</p> <p>10 Q. Okay. And the 21 million -- more</p> <p>11 than 4,500 families in East Palestine who visited</p> <p>12 the Family Assistance Center more than 11,700</p> <p>13 times -- I think we saw that in that -- in that</p> <p>14 Making It Right document we looked at.</p> <p>15 That also was something Norfolk</p> <p>16 Southern voluntarily undertook for the folks of</p> <p>17 East Palestine, right?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: I don't know if the</p> <p>20 whole amount is voluntary.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. Do you know how much of that you'd</p>

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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.

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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.

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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?

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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

<p style="text-align: right;">Page 94</p> <p>1 first call.</p> <p>2 Q. How about before the second call?</p> <p>3 A. I don't think I got it before the</p> <p>4 second call either.</p> <p>5 Q. Okay. So you got it between the</p> <p>6 second call and the third call?</p> <p>7 A. I think that to be true. I'm not</p> <p>8 100 percent certain.</p> <p>9 Q. Okay. And the second call -- do</p> <p>10 you know what month that occurred in?</p> <p>11 A. It would have been February, I</p> <p>12 believe.</p> <p>13 Q. Okay.</p> <p>14 Okay. So when you got the</p> <p>15 first draft of this, you asked for some changes.</p> <p>16 And the changes you asked for</p> <p>17 were not with respect to this Topic 12 but with</p> <p>18 respect to some of the other topics, right?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. Okay. And you said -- I think that</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yeah. So it's the --</p> <p>2 Q. -- can you count in --</p> <p>3 A. -- three --</p> <p>4 Q. -- and tell me which one you're</p> <p>5 looking at?</p> <p>6 A. -- two, four -- fifth page back --</p> <p>7 Q. Okay.</p> <p>8 A. -- the second bullet from the</p> <p>9 bottom.</p> <p>10 Q. Ah. The second bullet that says,</p> <p>11 The car stats -- sat stationary for</p> <p>12 multiple-months-long periods at the La Porte</p> <p>13 facility -- that one?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. You didn't write that, did</p> <p>16 you?</p> <p>17 A. I did not write that.</p> <p>18 Q. The lawyers wrote that for you,</p> <p>19 right?</p> <p>20 A. I did not write that.</p> <p>21 Q. The lawyers wrote it for you,</p> <p>22 right?</p>
<p style="text-align: right;">Page 95</p> <p>1 you asked for some changes about -- that related</p> <p>2 to dates?</p> <p>3 MS. PUJARI: Objection: form;</p> <p>4 mischaracterizes testimony.</p> <p>5 THE WITNESS: Yes, the way the</p> <p>6 dates were presented --</p> <p>7 BY MR. ELLIS:</p> <p>8 Q. Okay.</p> <p>9 A. -- so that they were easier to</p> <p>10 reference.</p> <p>11 Q. Okay. Which dates are you</p> <p>12 referring to?</p> <p>13 (Whereupon, the witness reviews</p> <p>14 the material provided.)</p> <p>15 THE WITNESS: So they would be</p> <p>16 for Topic 13.</p> <p>17 BY MR. ELLIS:</p> <p>18 Q. Okay. Topic 13, your document here</p> <p>19 that's Exhibit 6, isn't numbered --</p> <p>20 A. Yeah.</p> <p>21 Q. -- but it's -- the pages aren't</p> <p>22 numbered, but --</p>	<p style="text-align: right;">Page 97</p> <p>1 MS. PUJARI: Objection --</p> <p>2 objection.</p> <p>3 I'm going to instruct not to</p> <p>4 answer.</p> <p>5 MR. ELLIS: You're going to</p> <p>6 instruct him not to answer as to how he</p> <p>7 got the facts in this bullet.</p> <p>8 Is that what you're saying?</p> <p>9 MS. PUJARI: Counsel, can you</p> <p>10 tell me what page we're on, please?</p> <p>11 MR. ELLIS: I think Mr. Neikirk</p> <p>12 can tell you.</p> <p>13 THE WITNESS: I think it's on the</p> <p>14 fifth page back. I think that's right.</p> <p>15 MS. PUJARI: Four?</p> <p>16 Can you repeat the question,</p> <p>17 please?</p> <p>18 MR. ELLIS: You can read him the</p> <p>19 question.</p> <p>20 --oOo--</p> <p>21 (Whereupon, the certified</p> <p>22 stenographer read back the</p>

<p style="text-align: right;">Page 98</p> <p>1 pertinent part of the record.)</p> <p>2 --oOo--</p> <p>3 MS. PUJARI: Yeah. I'm</p> <p>4 instructing.</p> <p>5 Can we move on?</p> <p>6 MR. ELLIS: You're instructing</p> <p>7 him not to answer that question?</p> <p>8 Yes? You're instructing him not</p> <p>9 to --</p> <p>10 MS. PUJARI: Yes. I've done it</p> <p>11 twice now, yes.</p> <p>12 MR. ELLIS: Okay.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. Who gave you the facts here in this</p> <p>15 bullet point?</p> <p>16 A. It was part of this document that I</p> <p>17 received from WilmerHale.</p> <p>18 Q. Okay. Who gave you the facts in</p> <p>19 this bullet point, that the car sat stationary</p> <p>20 for multiple-months-long periods at the La Porte</p> <p>21 facility?</p> <p>22 MS. PUJARI: Objection: asked and</p>	<p style="text-align: right;">Page 100</p> <p>1 A. I did not.</p> <p>2 Q. And underneath that, it says, in</p> <p>3 this bullet point, Source.</p> <p>4 And then there's another bullet</p> <p>5 and a reference to a document, right?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Who gave you that document?</p> <p>8 A. WilmerHale.</p> <p>9 Q. Okay. When you received the dates</p> <p>10 here, you said you asked for the dates to be made</p> <p>11 in a more presentable way; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. What did you ask?</p> <p>14 A. They were in a paragraph that ran</p> <p>15 line by line. It wasn't easy to see. And this</p> <p>16 organized it in a way that's easier to see.</p> <p>17 Q. Got it.</p> <p>18 So someone wrote a paragraph,</p> <p>19 and you asked them to break it out in bullets?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. Did you ask for any</p> <p>22 additional information from the lawyers in</p>
<p style="text-align: right;">Page 99</p> <p>1 answered.</p> <p>2 THE WITNESS: The -- the data is</p> <p>3 contained in the binder in car location</p> <p>4 movement data.</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. Okay. Who gave you that?</p> <p>7 A. That was provided by WilmerHale.</p> <p>8 Q. Okay. The lawyers, right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And did you write these</p> <p>11 bullets -- the car cat -- sat stationary for</p> <p>12 multiple-months-long periods at the La Porte</p> <p>13 facility -- and then did you write these dates?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I did not.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Did anybody who works at Norfolk</p> <p>18 Southern write those dates for you?</p> <p>19 A. That, I don't know.</p> <p>20 Q. You don't know who wrote these out?</p> <p>21 A. I do not.</p> <p>22 Q. Did you ask?</p>	<p style="text-align: right;">Page 101</p> <p>1 connection with those bullets?</p> <p>2 A. Generally related, there's a</p> <p>3 document that I did not bring in here that I</p> <p>4 believe you got that is a table of the cars and</p> <p>5 the owners and the lessees.</p> <p>6 I asked for that --</p> <p>7 Q. Okay.</p> <p>8 A. -- as well.</p> <p>9 Q. So you asked someone to prepare a</p> <p>10 document that's a table of cars and owners and</p> <p>11 lessees?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Other than that, did you ask</p> <p>14 anybody to prepare anything else for you?</p> <p>15 A. I did not.</p> <p>16 Q. And other than the -- the</p> <p>17 rearranging or reformatting of the dates from a</p> <p>18 paragraph format to bullets, did you ask for any</p> <p>19 other changes to this document, Exhibit 6?</p> <p>20 A. I did not.</p> <p>21 Q. Okay. Did you ask anybody who</p> <p>22 prepared each portion of this?</p>

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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

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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.

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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

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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

<p style="text-align: right;">Page 106</p> <p>1 7?</p> <p>2 CERTIFIED STENOGRAPHER: Yes.</p> <p>3 --oOo--</p> <p>4 (Neikirk Deposition Exhibit Number</p> <p>5 7, In Re East Palestine</p> <p>6 Litigation, 30(B)(6) Rail Cars,</p> <p>7 marked for identification, as of</p> <p>8 this date.)</p> <p>9 --oOo--</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. Okay. You've been handed,</p> <p>12 Mr. Neikirk, what's been marked as Deposition</p> <p>13 Exhibit Number 7. And this is the list of cars</p> <p>14 -- take a step back.</p> <p>15 What -- when you asked for what</p> <p>16 is now Exhibit 7, what did you ask for?</p> <p>17 A. Just to organize the cars in this</p> <p>18 fashion so that they're easier to reference.</p> <p>19 Q. Okay. And did you ask them -- did</p> <p>20 you ask your lawyers to prepare a chart that's</p> <p>21 car number, line, reporting mark, shipper, owner,</p> <p>22 and contents?</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay.</p> <p>2 A. -- it's -- it's -- it's -- some of</p> <p>3 this information is in the --</p> <p>4 Q. Okay.</p> <p>5 A. -- the exhibit.</p> <p>6 Q. Okay. And other than asking for --</p> <p>7 asking the lawyers to prepare this for you and</p> <p>8 asking for the bullets to be rearranged -- or the</p> <p>9 paragraph to be rearranged and the bullet, what</p> <p>10 was -- did you ask for? Anything else?</p> <p>11 A. No, not -- not in terms of amending</p> <p>12 the -- the points here.</p> <p>13 Q. Okay. Did you ask for any</p> <p>14 additional facts?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. Did you ask whether the</p> <p>17 information you'd been given was complete?</p> <p>18 MS. PUJARI: Objection: vague;</p> <p>19 form.</p> <p>20 THE WITNESS: I did not ask that</p> <p>21 specific question.</p> <p>22</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I did not ask for these specific</p> <p>2 columns, but most of the information is there.</p> <p>3 Just the shipper, owner -- some of it didn't make</p> <p>4 it, but -- like the lessee, and whatnot -- but</p> <p>5 just something to organize this so that when the</p> <p>6 questions come, I'm able to easily see what car</p> <p>7 we're talking about.</p> <p>8 Q. Got it.</p> <p>9 Okay. So you asked for some</p> <p>10 information. This is what you got back. It's</p> <p>11 some of what you asked for but not everything.</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: That's -- that's</p> <p>14 correct --</p> <p>15 BY MR. ELLIS:</p> <p>16 Q. Okay.</p> <p>17 A. -- but I deem it sufficient.</p> <p>18 Q. I understand. I'm not suggesting</p> <p>19 you were disappointed by what you got back.</p> <p>20 But, for example, you wanted to</p> <p>21 know who the lessee was, and you didn't get that?</p> <p>22 A. Correct --</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. Okay. Did you ask whether the</p> <p>3 folks who gave you this information were holding</p> <p>4 information back from you?</p> <p>5 MS. PUJARI: Objection: form.</p> <p>6 THE WITNESS: I did not ask that</p> <p>7 specific question.</p> <p>8 BY MR. ELLIS:</p> <p>9 Q. Okay. Did you ask a question like</p> <p>10 that?</p> <p>11 MS. PUJARI: Objection: vague;</p> <p>12 form.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. Well, you said "that specific</p> <p>15 question."</p> <p>16 That leads me to ask, Did you</p> <p>17 ask a general question like that?</p> <p>18 A. I don't believe --</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: -- I don't believe</p> <p>21 I've even asked that generally.</p> <p>22</p>

<p style="text-align: right;">Page 110</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. Okay. You assume that they had</p> <p>3 given you all of the relevant facts, right?</p> <p>4 MS. PUJARI: Objection: form.</p> <p>5 THE WITNESS: I do.</p> <p>6 BY MR. ELLIS:</p> <p>7 Q. Okay. Looking back at Exhibit 6.</p> <p>8 And one more question: Not</p> <p>9 only did you assume that you had been given all</p> <p>10 the relevant facts, but you expected that you'd</p> <p>11 be given all the relevant facts, right?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I did.</p> <p>14 BY MR. ELLIS:</p> <p>15 Q. Okay. Looking back at Exhibit 6,</p> <p>16 three -- it's -- one, two, three, four, five --</p> <p>17 six bullets down, Over 3.6 million in business</p> <p>18 support, including over 2 million in advances,</p> <p>19 1 million in access agreements, and over 675,000</p> <p>20 in settlements paid.</p> <p>21 Do you know what the breakdown</p> <p>22 for any of that is?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I did not.</p> <p>2 Q. Okay. Did you ask him for any</p> <p>3 information about the specific items?</p> <p>4 A. I did not ask.</p> <p>5 Q. Okay. Was there any follow-up</p> <p>6 between you and Mr. Harden or anybody else about</p> <p>7 the bullets here, the subbullets in the</p> <p>8 103 million in community funds -- any follow-up</p> <p>9 at all between you and anyone else about any of</p> <p>10 the items listed here?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: I thanked him for</p> <p>13 the information.</p> <p>14 BY MR. ELLIS:</p> <p>15 Q. Okay. Other than thanking him for</p> <p>16 the information, any other follow-up?</p> <p>17 A. No.</p> <p>18 Q. No discussion about what's this</p> <p>19 include, what do we do it for, those kinds of</p> <p>20 things?</p> <p>21 MS. PUJARI: Objection: form;</p> <p>22 asked and answered.</p>
<p style="text-align: right;">Page 111</p> <p>1 MS. PUJARI: Objection: form.</p> <p>2 THE WITNESS: I don't.</p> <p>3 BY MR. ELLIS:</p> <p>4 Q. The 600 and -- I'm sorry -- the</p> <p>5 3.6 million in business support -- that's</p> <p>6 something Norfolk Southern voluntarily undertook</p> <p>7 in response to the derailment, right?</p> <p>8 MS. PUJARI: Objection: form;</p> <p>9 assumes facts.</p> <p>10 THE WITNESS: Yeah. I don't know</p> <p>11 the details of that.</p> <p>12 BY MR. ELLIS:</p> <p>13 Q. You haven't done anything to talk</p> <p>14 about any of the 3.6 million in business support</p> <p>15 or what that included as part of your deposition</p> <p>16 today?</p> <p>17 MS. PUJARI: Objection: form.</p> <p>18 THE WITNESS: I did not.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. Okay. And when you were given this</p> <p>21 information here by Mr. Harden, did you discuss</p> <p>22 any of the specific items with him?</p>	<p style="text-align: right;">Page 113</p> <p>1 THE WITNESS: I did not ask.</p> <p>2 BY MR. ELLIS:</p> <p>3 Q. Okay. They gave you the</p> <p>4 information, you thanked them, and that was it?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. So --</p> <p>7 MS. PUJARI: Counsel -- Counsel,</p> <p>8 I'm sorry to interrupt. We've been going</p> <p>9 for an hour and a half. I actually</p> <p>10 believe that exhausts counsel for GATX's</p> <p>11 time.</p> <p>12 And we'd like to take a break at</p> <p>13 this point --</p> <p>14 MR. ELLIS: We can take a</p> <p>15 break --</p> <p>16 MS. PUJARI: -- we've been going</p> <p>17 for an hour --</p> <p>18 MR. ELLIS: -- it doesn't exhaust</p> <p>19 our time, though, because we have time</p> <p>20 from other parts of the deposition. But</p> <p>21 we can talk about that.</p> <p>22 MS. PUJARI: We can. We can talk</p>

<p style="text-align: right;">Page 114</p> <p>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</p>	<p style="text-align: right;">Page 116</p> <p>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 call? 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</p>
<p style="text-align: right;">Page 115</p> <p>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 --</p>	<p style="text-align: right;">Page 117</p> <p>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.</p>

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

<p style="text-align: right;">Page 122</p> <p>1 provided to you by the lawyers to help you</p> <p>2 testify for today, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. When did you get that?</p> <p>5 A. That was yesterday as well.</p> <p>6 Q. Okay. That -- the documents in</p> <p>7 that binder -- would you mind looking through and</p> <p>8 tell me if there are any in that doc -- in that</p> <p>9 binder you saw before yesterday?</p> <p>10 I know the 10-K is, but --</p> <p>11 A. 10-K, so --</p> <p>12 Q. -- but for purposes of</p> <p>13 completeness, let's just call out the tab and</p> <p>14 tell me if you -- you've seen that before.</p> <p>15 Is Tab 1 the 10-K?</p> <p>16 A. One's the 10-K --</p> <p>17 Q. Okay.</p> <p>18 A. -- and yes for 1 --</p> <p>19 Q. Okay.</p> <p>20 A. -- no for 2.</p> <p>21 No for 3.</p> <p>22 No for 4.</p>	<p style="text-align: right;">Page 124</p> <p>1 No for 27.</p> <p>2 No for 28.</p> <p>3 No for 29.</p> <p>4 No for 30.</p> <p>5 No for 31.</p> <p>6 No for 32.</p> <p>7 No for 33.</p> <p>8 No for 34.</p> <p>9 And no for 35.</p> <p>10 Q. Okay. So the only document that</p> <p>11 you saw before yesterday that is in the binder</p> <p>12 the lawyers gave you is the Norfolk Southern</p> <p>13 10-K, right?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And then looking back at</p> <p>16 Exhibit 6, the first two pages -- the first two</p> <p>17 bullet points under -- well, all of the bullet</p> <p>18 points under Topic 12.</p> <p>19 Those were items given to you</p> <p>20 by Ms. Hoffman and Mr. Harden.</p> <p>21 And you didn't ask any</p> <p>22 additional information about any of those</p>
<p style="text-align: right;">Page 123</p> <p>1 No for 5.</p> <p>2 No for 6.</p> <p>3 No for 7.</p> <p>4 No for 8.</p> <p>5 No for 9.</p> <p>6 No for 10.</p> <p>7 No for 11.</p> <p>8 No for 12.</p> <p>9 No for 13.</p> <p>10 No for 14.</p> <p>11 No for 15.</p> <p>12 No for 16.</p> <p>13 No for 17.</p> <p>14 No for 18.</p> <p>15 No for 19.</p> <p>16 No for 20.</p> <p>17 No for 21.</p> <p>18 No for 22.</p> <p>19 No for 23.</p> <p>20 No for 24.</p> <p>21 No for 25.</p> <p>22 No for 26.</p>	<p style="text-align: right;">Page 125</p> <p>1 bullets, right?</p> <p>2 MS. PUJARI: Objection: form;</p> <p>3 asked and answered.</p> <p>4 THE WITNESS: That's correct.</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. And you don't have the ability</p> <p>7 today to talk to me about any of the breakdown</p> <p>8 for any of those bullets, correct?</p> <p>9 MS. PUJARI: Objection: form;</p> <p>10 asked and answered.</p> <p>11 THE WITNESS: That's correct.</p> <p>12 BY MR. ELLIS:</p> <p>13 Q. Okay. Are you aware of a company</p> <p>14 called SPSI?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Okay. Are you aware of an</p> <p>17 expenditure by Norfolk Southern of \$157 million</p> <p>18 from SPSI?</p> <p>19 A. No.</p> <p>20 Q. Are you aware of any amounts</p> <p>21 charged to Norfolk Southern by SPSI?</p> <p>22 A. I am not.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. I take it, then, that you don't</p> <p>2 have the ability to talk with me today about any</p> <p>3 charges SPSI made to Norfolk Southern in</p> <p>4 connection with the derailment, right?</p> <p>5 MS. PUJARI: Objection: form.</p> <p>6 THE WITNESS: That's correct.</p> <p>7 MR. ELLIS: Okay.</p> <p>8 --oOo--</p> <p>9 (Neikirk Deposition Exhibit Number</p> <p>10 9, Third-Party Complaint, marked</p> <p>11 for identification, as of this</p> <p>12 date.)</p> <p>13 --oOo--</p> <p>14 CERTIFIED STENOGRAPHER:</p> <p>15 Exhibit 9.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Okay. You've been handed what's</p> <p>18 been marked as Exhibit 9.</p> <p>19 Have you seen Exhibit 9 before?</p> <p>20 A. I'm not positive it's part of this</p> <p>21 binder or not.</p> <p>22 Q. Okay. Do you want to check?</p>	<p style="text-align: right;">Page 128</p> <p>1 Exhibit 9?</p> <p>2 Paragraph 108 on Page 23 -- do</p> <p>3 you see that?</p> <p>4 A. I do.</p> <p>5 Q. Okay. Would you read that to the</p> <p>6 folks in the jury watching your testimony?</p> <p>7 A. Industry practice is to prevent</p> <p>8 railcars from sitting stationary for long periods</p> <p>9 because grease separation may occur, which</p> <p>10 reduces the amount of lubrication around the</p> <p>11 bearings and may impact functionality.</p> <p>12 Q. Okay. Do you know whether or not</p> <p>13 that's true?</p> <p>14 A. There is a part of the testimony --</p> <p>15 I believe this was by two professors in the</p> <p>16 NTSB -- testimony made the claim to the effect</p> <p>17 that stationary railcars for long periods of time</p> <p>18 can cause grease separation.</p> <p>19 MS. PUJARI: Counsel, I just want</p> <p>20 to point out for you and for the record</p> <p>21 that Tab 35 of the binder is not, in</p> <p>22 fact, the Third-Party Complaint, is --</p>
<p style="text-align: right;">Page 127</p> <p>1 I would check for you, but we</p> <p>2 only have one binder --</p> <p>3 A. Yeah.</p> <p>4 Q. -- so if you -- I can -- you can</p> <p>5 hand it to me or you can look, whatever you like.</p> <p>6 I don't --</p> <p>7 A. I think I saw it --</p> <p>8 Q. -- mean to ask you --</p> <p>9 A. -- at the very end or somewhere</p> <p>10 near the end.</p> <p>11 Q. It's probably in there.</p> <p>12 A. Yeah. I know it's not 1.</p> <p>13 Let's see. Where was it?</p> <p>14 Q. It is not the one document you've</p> <p>15 seen in the binder; we know that.</p> <p>16 A. Yes. Here it is.</p> <p>17 It's Number 35.</p> <p>18 Q. Okay. So first time you saw this,</p> <p>19 then, Exhibit 9, Tab 35 in your binder, was</p> <p>20 yesterday?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. Would you turn to Page 23 of</p>	<p style="text-align: right;">Page 129</p> <p>1 got the case caption on it, but it is the</p> <p>2 video deposition of one of the deponents</p> <p>3 in this case.</p> <p>4 MR. ELLIS: Okay.</p> <p>5 THE WITNESS: All right. Do you</p> <p>6 want me to go back and look --</p> <p>7 BY MR. ELLIS:</p> <p>8 Q. You're bad --</p> <p>9 A. -- it has the same --</p> <p>10 Q. -- start again.</p> <p>11 A. -- it has the same numbers on it.</p> <p>12 Q. I don't have your binder, so I</p> <p>13 wouldn't -- I wouldn't have let you say that if I</p> <p>14 had the copy of the binder and could see that it</p> <p>15 wasn't. I just had to, you know, take your word</p> <p>16 for it --</p> <p>17 MS. PUJARI: I can represent to</p> <p>18 you that the Complaint is not in the</p> <p>19 binder.</p> <p>20 MR. ELLIS: Ah. Okay.</p> <p>21 THE WITNESS: Okay. So it's not.</p> <p>22</p>

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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.

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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

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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.

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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

<p style="text-align: right;">Page 134</p> <p>1 fully submerged in water; isn't that right?</p> <p>2 A. I don't know whether that's true or</p> <p>3 not.</p> <p>4 Q. Okay. So as you sit here today,</p> <p>5 you can't tell me whether GPLX 75465 ever was</p> <p>6 partially or fully submerged, right?</p> <p>7 MS. PUJARI: Objection: form.</p> <p>8 THE WITNESS: I can't say that.</p> <p>9 BY MR. ELLIS:</p> <p>10 Q. Okay. Norfolk Southern has no</p> <p>11 evidence that GPLX 75465 was ever partially</p> <p>12 submerged, right?</p> <p>13 MS. PUJARI: Objection: form.</p> <p>14 THE WITNESS: I believe that to</p> <p>15 be true.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Norfolk Southern has no evidence</p> <p>18 that GPLX 75465 was ever fully submerged in</p> <p>19 water, correct?</p> <p>20 MS. PUJARI: Objection: form.</p> <p>21 THE WITNESS: I believe we don't</p> <p>22 have evidence to that effect.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. There was e-mails between GATX and</p> <p>2 Braskem regarding the railcars impacted by</p> <p>3 Harvey. The e-mail said, quote, Do you know if</p> <p>4 any of your GATX cars were impacted by</p> <p>5 Hurricane Harvey, question mark; were there any</p> <p>6 cars in floodwaters, question mark; please let me</p> <p>7 know -- and received the response: We haven't</p> <p>8 heard -- quote, We have not heard of any GATX</p> <p>9 cars yet, so, hopefully, we are in the clear.</p> <p>10 Thanks for checking, exclamation point, quotation</p> <p>11 -- end quotation.</p> <p>12 Q. Okay. But there's also sworn</p> <p>13 testimony from two corporate representatives of</p> <p>14 Braskem, folks who sat for a deposition, like</p> <p>15 you're sitting today, on behalf of their</p> <p>16 corporation, Braskem, who swore under oath that</p> <p>17 GPLX 75465 was never partially or fully</p> <p>18 submerged; isn't that true?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: That -- that -- I</p> <p>21 don't know.</p> <p>22</p>
<p style="text-align: right;">Page 135</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. And, in fact, Norfolk Southern has</p> <p>3 testimony specifically saying that it wasn't,</p> <p>4 right?</p> <p>5 MS. PUJARI: Objection: form.</p> <p>6 THE WITNESS: Not from Norfolk</p> <p>7 Southernpeople.</p> <p>8 BY MR. ELLIS:</p> <p>9 Q. From other people?</p> <p>10 A. From other people, correct.</p> <p>11 Q. So, in other words, Norfolk</p> <p>12 Southern has testimony from the lessee of</p> <p>13 GPLX 75465 specifically stating that GPLX 75465</p> <p>14 was not never partially or fully submerged,</p> <p>15 right?</p> <p>16 MS. PUJARI: Objection: form.</p> <p>17 THE WITNESS: I -- I saw an</p> <p>18 e-mail to that effect.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. Okay. You saw an e-mail to that</p> <p>21 effect.</p> <p>22 What e-mail did you see?</p>	<p style="text-align: right;">Page 137</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. You didn't get that --</p> <p>3 MS. PUJARI: Objection --</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. -- you didn't get that testimony?</p> <p>6 A. Can you -- can you say who the --</p> <p>7 who the tes- -- testimony -- who gave that</p> <p>8 testimony?</p> <p>9 Q. Sure.</p> <p>10 Have you ever heard of a guy</p> <p>11 named Chris Bland?</p> <p>12 A. No.</p> <p>13 Q. What about William Mercer? Ever</p> <p>14 heard of him?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Your lawyers didn't give you their</p> <p>17 testimony, did they?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: I don't know. If</p> <p>20 they did, I have not seen it.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. So if Braskem had two folks</p>

<p style="text-align: right;">Page 138</p> <p>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.</p>	<p style="text-align: right;">Page 140</p> <p>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,</p>
<p style="text-align: right;">Page 139</p> <p>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.</p>	<p style="text-align: right;">Page 141</p> <p>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.</p>

<p style="text-align: right;">Page 142</p> <p>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?</p>	<p style="text-align: right;">Page 144</p> <p>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.</p>
<p style="text-align: right;">Page 143</p> <p>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.</p>	<p style="text-align: right;">Page 145</p> <p>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</p>

<p style="text-align: right;">Page 146</p> <p>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?"</p>	<p style="text-align: right;">Page 148</p> <p>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?</p>
<p style="text-align: right;">Page 147</p> <p>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</p>	<p style="text-align: right;">Page 149</p> <p>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</p>

<p style="text-align: right;">Page 150</p> <p>1 12.</p> <p>2 You know who Jamie Williams is,</p> <p>3 right?</p> <p>4 A. I . . .</p> <p>5 Q. Your colleague at Norfolk Southern?</p> <p>6 A. I -- I don't -- can't tell you</p> <p>7 exactly what he does, but --</p> <p>8 Q. Okay. Have you ever heard his name</p> <p>9 before?</p> <p>10 A. I've heard -- I've heard the name.</p> <p>11 Q. Okay. Have you ever met him?</p> <p>12 A. Probably.</p> <p>13 Q. Do you remember meeting him?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. Well, Mr. Williams testified</p> <p>16 in this case both as a individual fact witness</p> <p>17 and as somebody who, like you, is designated to</p> <p>18 testify on behalf of the Corporation.</p> <p>19 Did you know that?</p> <p>20 A. I -- I don't know who all has</p> <p>21 provided testimony.</p> <p>22 Q. Okay. And so I -- I assume, then,</p>	<p style="text-align: right;">Page 152</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you -- you weren't given</p> <p>4 Mr. Williams' testimony, were you?</p> <p>5 MS. PUJARI: Objection: vague.</p> <p>6 THE WITNESS: I don't recall</p> <p>7 seeing it.</p> <p>8 BY MR. ELLIS:</p> <p>9 Q. Okay. It's not in your binder, is</p> <p>10 it?</p> <p>11 A. I don't recall seeing it when I did</p> <p>12 my flip-through.</p> <p>13 Q. And at Page 86, Mr. Williams was</p> <p>14 asked about whether there's an industry practice</p> <p>15 for moving cars one car length every six months,</p> <p>16 and he testified he's never heard of that, didn't</p> <p>17 he?</p> <p>18 MS. PUJARI: Objection: vague as</p> <p>19 to capacity and beyond the scope; witness</p> <p>20 not designated.</p> <p>21 THE WITNESS: That's what he</p> <p>22 states in the testimony.</p>
<p style="text-align: right;">Page 151</p> <p>1 you didn't know that Mr. Williams gave testimony</p> <p>2 both as an individual and as a corporate</p> <p>3 representative in this case?</p> <p>4 A. I did not know that.</p> <p>5 Q. And, again, we were looking earlier</p> <p>6 at Exhibit 9 and, specifically, Paragraph 108</p> <p>7 that said, Industry practice is to prevent</p> <p>8 railcars from sitting stationary for long periods</p> <p>9 of time. Did you know that Mr. Williams had</p> <p>10 testified about that?</p> <p>11 MS. PUJARI: Objection: vague.</p> <p>12 In what capacity?</p> <p>13 THE WITNESS: Yeah. I did -- did</p> <p>14 not know that.</p> <p>15 BY MR. ELLIS:</p> <p>16 Q. Okay. And specifically, if you</p> <p>17 look at Page 86 of his deposition -- and this</p> <p>18 deposition -- you were given a deposition as part</p> <p>19 of your binder to prepare for this case from</p> <p>20 Mr. Schoendorfer, right?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. You looked at that one,</p>	<p style="text-align: right;">Page 153</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. Okay. So in Paragraph -- in</p> <p>3 Paragraph 108 of Norfolk Southern's Complaint, it</p> <p>4 talks about an industry practice that Norfolk</p> <p>5 Southern itself doesn't have, right --</p> <p>6 MS. PUJARI: Objection as to</p> <p>7 form.</p> <p>8 BY MR. ELLIS:</p> <p>9 Q. -- according to Mr. Williams?</p> <p>10 MS. PUJARI: Objection: form and</p> <p>11 vague.</p> <p>12 THE WITNESS: Yeah, according to</p> <p>13 Mr. Williams.</p> <p>14 BY MR. ELLIS:</p> <p>15 Q. Is Norfolk Southern aware of any</p> <p>16 railroad that has that practice?</p> <p>17 MS. PUJARI: Objection: vague --</p> <p>18 I'm sorry -- objection: form and beyond</p> <p>19 the scope of the 30(b)(6).</p> <p>20 THE WITNESS: Yeah. I don't</p> <p>21 know. It's not my area of expertise.</p> <p>22</p>

<p style="text-align: right;">Page 154</p> <p>1 --oOo--</p> <p>2 (Neikirk Deposition Exhibit Number</p> <p>3 13, Transcript of Videotaped</p> <p>4 Deposition of Norfolk Southern</p> <p>5 Railway Company, Jamie Williams,</p> <p>6 Representative, February 1, 2024,</p> <p>7 marked for identification, as of</p> <p>8 this date.)</p> <p>9 --oOo--</p> <p>10 CERTIFIED STENOGRAPHER: This is</p> <p>11 13. Thirteen.</p> <p>12 BY MR. ELLIS:</p> <p>13 Q. Now, Mr. Neikirk, you've been</p> <p>14 handed what's been marked as Neikirk Exhibit 13.</p> <p>15 This is another deposition that</p> <p>16 Mr. Williams gave, this time as corporate</p> <p>17 representative, like you're testifying on behalf</p> <p>18 of the Corporation today.</p> <p>19 You've never seen that one either,</p> <p>20 right?</p> <p>21 MS. PUJARI: Objection: form.</p> <p>22 THE WITNESS: I don't believe</p>	<p style="text-align: right;">Page 156</p> <p>1 THE WITNESS: To prepare me with</p> <p>2 the information needed for the dep- --</p> <p>3 deposition.</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. Including the facts you needed to</p> <p>6 testify about the Corporation's knowledge, right?</p> <p>7 MS. PUJARI: Objection: form.</p> <p>8 THE WITNESS: Including what</p> <p>9 facts there are.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. And at Page 107 of Mr. Williams'</p> <p>12 deposition on behalf of the Corporation --</p> <p>13 Would you turn there and let me</p> <p>14 know when you're there?</p> <p>15 A. Okay. I'm here.</p> <p>16 Q. -- he was asked:</p> <p>17 "Question: Norfolk Southern's</p> <p>18 own policy -- this is at Line 8 --</p> <p>19 Norfolk Southern's own policy is if a</p> <p>20 car is sitting in a yard and it's been</p> <p>21 sitting for six months or greater, there</p> <p>22 is no written policy to perform an</p>
<p style="text-align: right;">Page 155</p> <p>1 I've seen it.</p> <p>2 BY MR. ELLIS:</p> <p>3 Q. Okay. That's not one that the</p> <p>4 lawyers gave you as part of your preparation</p> <p>5 today, was it?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: I don't believe</p> <p>8 it's in the binder.</p> <p>9 BY MR. ELLIS:</p> <p>10 Q. And I think you testified earlier</p> <p>11 today that you counted on the lawyers to give you</p> <p>12 everything you needed to know to testify today,</p> <p>13 right?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I said they -- I</p> <p>16 relied on them to prepare me for the</p> <p>17 deposition.</p> <p>18 BY MR. ELLIS:</p> <p>19 Q. Okay. And to give you all the</p> <p>20 facts that you needed to know to testify today,</p> <p>21 right, on behalf of Norfolk Southern?</p> <p>22 MS. PUJARI: Objection: form.</p>	<p style="text-align: right;">Page 157</p> <p>1 inspection of the wheel bearing beyond</p> <p>2 the visual inspection that's required</p> <p>3 under 215 for predeparture, correct?"</p> <p>4 And he answers Yes.</p> <p>5 Correct?</p> <p>6 A. He does.</p> <p>7 Q. As far as you know, that is Norfolk</p> <p>8 Southern's policy, right?</p> <p>9 MS. PUJARI: Objection: form;</p> <p>10 lack of foundation.</p> <p>11 THE WITNESS: Yeah. I don't -- I</p> <p>12 don't know the policy.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. This wasn't testimony you were</p> <p>15 given to prepare for today, was it?</p> <p>16 MS. PUJARI: Objection: form;</p> <p>17 asked and answered.</p> <p>18 THE WITNESS: I don't recall</p> <p>19 seeing it.</p> <p>20 BY MR. ELLIS:</p> <p>21 Q. I'm looking back at Exhibit 12.</p> <p>22 That's the other deposition that Mr. Williams</p>

<p style="text-align: right;">Page 158</p> <p>1 gave in this case.</p> <p>2 On Page 90, he was asked some</p> <p>3 questions about Norfolk Southern's policies for</p> <p>4 dealing with -- let me ask you this: You are</p> <p>5 aware that Norfolk Southern owns railcars, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And, in fact, Norfolk</p> <p>8 Southern owns quite a few covered hopper cars,</p> <p>9 like GPLX 75465, right?</p> <p>10 A. We own covered hopper cars, yes.</p> <p>11 Q. Okay. You have thousands of them,</p> <p>12 right?</p> <p>13 MS. PUJARI: Objection: beyond</p> <p>14 the scope of the 30(b)(6).</p> <p>15 THE WITNESS: I don't know the</p> <p>16 exact number.</p> <p>17 BY MR. ELLIS:</p> <p>18 Q. But it's in the thousands, isn't</p> <p>19 it?</p> <p>20 MS. PUJARI: Objection: beyond</p> <p>21 the scope.</p> <p>22 THE WITNESS: Under our</p>	<p style="text-align: right;">Page 160</p> <p>1 misstates testimony; beyond the scope.</p> <p>2 THE WITNESS: I agree we own a</p> <p>3 number of covered hopper cars.</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. Okay. And Norfolk Southern --</p> <p>6 Mr. Williams testified here at Page 90 that when</p> <p>7 a car is in weather but not submerged in water,</p> <p>8 Norfolk Southern's policy is not to pull those</p> <p>9 cars in for inspection unless -- and</p> <p>10 reconditioning of the bearing unless they're</p> <p>11 submerged.</p> <p>12 Right?</p> <p>13 MS. PUJARI: Objection: form;</p> <p>14 beyond the scope.</p> <p>15 (Whereupon, the witness continues</p> <p>16 to review the material provided.)</p> <p>17 THE WITNESS: Where -- where are</p> <p>18 you?</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. If you go to Page 90 of Exhibit --</p> <p>21 A. Yes.</p> <p>22 Q. -- 12 --</p>
<p style="text-align: right;">Page 159</p> <p>1 ownership, I'm not positive.</p> <p>2 (Whereupon, the witness reviews</p> <p>3 the material provided.)</p> <p>4 BY MR. ELLIS:</p> <p>5 Q. All right. We can find that</p> <p>6 information in your 10-K, can't we?</p> <p>7 MS. PUJARI: Objection: form.</p> <p>8 THE WITNESS: I don't know if</p> <p>9 there's a register of all of our owned</p> <p>10 railcars.</p> <p>11 BY MR. ELLIS:</p> <p>12 Q. Bear with me.</p> <p>13 (Whereupon, counsel reviews the</p> <p>14 material provided.).</p> <p>15 BY MR. ELLIS:</p> <p>16 Q. All right. We'll come back to the</p> <p>17 number.</p> <p>18 A. Okay.</p> <p>19 Q. But I think we established Norfolk</p> <p>20 Southern owns quite a few covered hopper cars,</p> <p>21 right?</p> <p>22 MS. PUJARI: Objection: form;</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Yeah.</p> <p>2 Q. -- do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Do you see the question:</p> <p>5 "Question: Okay. And in the</p> <p>6 event that a car isn't moved out of that</p> <p>7 event -- I mean out of the area but is</p> <p>8 not submerged in water, there's a</p> <p>9 weather event that comes through, but it</p> <p>10 doesn't submerge your cars."</p> <p>11 "Are you with me so far?"</p> <p>12 Do you see that?</p> <p>13 And he says:</p> <p>14 "Answer: I'm with you."</p> <p>15 A. Right.</p> <p>16 Q. Questioner asked:</p> <p>17 "Question: Do you pull those</p> <p>18 cars in for inspections?"</p> <p>19 And he says:</p> <p>20 "Answer: If they're not</p> <p>21 submerged, no."</p> <p>22 Do you see that?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. I see that.</p> <p>2 Q. Okay. Mr. Williams' testimony was</p> <p>3 that Norfolk Southern doesn't pull its covered</p> <p>4 hopper cars in for inspection unless they're</p> <p>5 submerged, right?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 Objection: misstates document.</p> <p>8 THE WITNESS: That's what the</p> <p>9 document says. That's what the testimony</p> <p>10 says.</p> <p>11 BY MR. ELLIS:</p> <p>12 Q. Okay. And you've got no reason to</p> <p>13 question that testimony, right?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I -- I don't know.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. And that wasn't testimony that was</p> <p>18 given to you to prepare for today, was it?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I don't recall</p> <p>21 seeing this.</p> <p>22</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. PUJARI: Objection: form.</p> <p>2 THE WITNESS: I don't.</p> <p>3 --oOo--</p> <p>4 (Neikirk Deposition Exhibit Number</p> <p>5 14, Transcript of Christopher</p> <p>6 Bland, Corporate Designee,</p> <p>7 February 2, 2024, marked for</p> <p>8 identification, as of this date.)</p> <p>9 --oOo--</p> <p>10 CERTIFIED STENOGRAPHER:</p> <p>11 Fourteen.</p> <p>12 MR. ELLIS: Thank you.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. You've been handed, Mr. Neikirk,</p> <p>15 what's been marked as Neikirk Deposition</p> <p>16 Exhibit 14.</p> <p>17 I bet you've never seen that</p> <p>18 before today, right?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I don't recall</p> <p>21 seeing it.</p> <p>22</p>
<p style="text-align: right;">Page 163</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. Okay. It's not in your binder,</p> <p>3 right?</p> <p>4 A. I don't believe it's in the binder.</p> <p>5 Q. And then he's asked:</p> <p>6 "Question: If cars aren't</p> <p>7 submerged, do you send the bearing for</p> <p>8 reconditioning?"</p> <p>9 And he says:</p> <p>10 "Answer: No."</p> <p>11 Right?</p> <p>12 A. He does.</p> <p>13 Q. Okay. And you, as the corporate</p> <p>14 representative, don't have any reason to question</p> <p>15 that, right?</p> <p>16 MS. PUJARI: Objection: form.</p> <p>17 THE WITNESS: I don't have any</p> <p>18 reason to question it.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. And you know -- you know nothing</p> <p>21 differently in terms of Norfolk Southern policy</p> <p>22 or procedures, right?</p>	<p style="text-align: right;">Page 165</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. That's the deposition of</p> <p>3 Chris Bland, who works for Braskem.</p> <p>4 And I think, on your chart,</p> <p>5 Exhibit 7, the chart you asked to put together</p> <p>6 for GPLX 75465, that identifies the shipper as</p> <p>7 Braskem, right?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. So Braskem was -- you've</p> <p>10 learned, I guess yesterday, that Braskem was the</p> <p>11 company that leased GPLX 75465 from GATX, and it</p> <p>12 was in La Porte, Texas for some period of time in</p> <p>13 2017-'18, right?</p> <p>14 MS. PUJARI: Objection: form;</p> <p>15 compound.</p> <p>16 THE WITNESS: I did learn that.</p> <p>17 It may have been before yesterday, too.</p> <p>18 BY MR. ELLIS:</p> <p>19 Q. Oh. You did learn that?</p> <p>20 A. Yes, yes.</p> <p>21 Q. And you may have learned it before</p> <p>22 yesterday?</p>

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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

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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,

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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.

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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,

<p style="text-align: right;">Page 170</p> <p>1 though, were you --</p> <p>2 MS. PUJARI: Objection --</p> <p>3 BY MR. ELLIS:</p> <p>4 Q. -- till just now?</p> <p>5 MS. PUJARI: -- objection: form.</p> <p>6 THE WITNESS: Yeah. I've not</p> <p>7 seen this before.</p> <p>8 BY MR. ELLIS:</p> <p>9 Q. Look at Page 105 of that testimony.</p> <p>10 Mr. Rheinheimer, who's sitting</p> <p>11 here today, your lawyer -- he asked Mr. Bland</p> <p>12 some questions about four weather events and</p> <p>13 flooding or lack of flooding at the Braskem</p> <p>14 facility in La Porte, Texas during that time.</p> <p>15 Do you see that?</p> <p>16 A. Is it 105?</p> <p>17 Q. It's at the start of 105:15: You</p> <p>18 said that no rail tracks at La Porte facility</p> <p>19 were flooded during Hurricane Nicholas, right?</p> <p>20 You see that?</p> <p>21 A. I see that.</p> <p>22 Q. Okay. Mr. Bland -- how does he</p>	<p style="text-align: right;">Page 172</p> <p>1 THE WITNESS: We did.</p> <p>2 BY MR. ELLIS:</p> <p>3 Q. Okay. So it's accurate that</p> <p>4 Braskem's corporate representative testified</p> <p>5 under oath that there was no flooding at the</p> <p>6 facility during Harvey, Beta, Imelda or Nicholas,</p> <p>7 right?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: That's what it</p> <p>10 says.</p> <p>11 BY MR. ELLIS:</p> <p>12 Q. You've got no reason to doubt that,</p> <p>13 right?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I don't.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Norfolk Southern has no evidence to</p> <p>18 the contrary, does it?</p> <p>19 A. I have not seen evidence of</p> <p>20 flooding and submerged cars.</p> <p>21 Q. During any of those weather events,</p> <p>22 right?</p>
<p style="text-align: right;">Page 171</p> <p>1 answer?</p> <p>2 A. He answers "Yes."</p> <p>3 Q. And then during Tropical Storm</p> <p>4 Beta, no flooding there either, right?</p> <p>5 A. The answer is Yes again.</p> <p>6 Q. To no -- to the question, No rail</p> <p>7 tracks were flooded, he says Yes, right?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. ELLIS:</p> <p>11 Q. And, in fact, Mr. Bland testified</p> <p>12 that rail tracks weren't flooded at all during</p> <p>13 Harvey, Nicholas, Beta or Imelda, right?</p> <p>14 MS. PUJARI: Objection: form;</p> <p>15 misstates the document.</p> <p>16 THE WITNESS: I see yes to</p> <p>17 Nicholas, Beta and Imelda in the</p> <p>18 transcript.</p> <p>19 BY MR. ELLIS:</p> <p>20 Q. And we just looked at testimony</p> <p>21 about Harvey, didn't we?</p> <p>22 MS. PUJARI: Objection: form.</p>	<p style="text-align: right;">Page 173</p> <p>1 A. That's correct.</p> <p>2 MR. ELLIS: Can we take about a</p> <p>3 five-minute break?</p> <p>4 MR. RHEINHEIMER: Yeah.</p> <p>5 MS. PUJARI: Yeah. And when we</p> <p>6 come back -- it's 11:05 now. I just want</p> <p>7 to note that you've got three minutes</p> <p>8 left of your hour that was ceded to you</p> <p>9 by Plaintiff's counsel.</p> <p>10 MR. ELLIS: Okay.</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 11:06 a.m., and we're going off the</p> <p>13 record.</p> <p>14 --oOo--</p> <p>15 (Whereupon, a recess was taken from</p> <p>16 11:06 a.m. EST to 11:21 a.m. EST.)</p> <p>17 --oOo--</p> <p>18 THE VIDEOGRAPHER: The time is</p> <p>19 11:21 a.m., and we are back on the</p> <p>20 record.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. Earnings Call Deck.</p>

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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.

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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?

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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?

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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 --

<p style="text-align: right;">Page 178</p> <p>1 A. -- the document.</p> <p>2 Q. -- and specifically, on the --</p> <p>3 let's see. They're not numbered, so let me count</p> <p>4 from the back. One, two, three, four -- fifth</p> <p>5 page -- all of the bullets on the fifth page,</p> <p>6 none of these bullets were prepared by</p> <p>7 Kristin Hoffman or Will Harden, right?</p> <p>8 A. The fifth page from the front or</p> <p>9 the back?</p> <p>10 Q. From the front.</p> <p>11 A. All right.</p> <p>12 Okay. Which -- which bullets?</p> <p>13 Q. And so I'm looking at a list of</p> <p>14 billet -- bullets on the fifth page. The first</p> <p>15 one on this page is GATX asked Braskem by e-mail.</p> <p>16 Do you see that?</p> <p>17 A. I see that, yes.</p> <p>18 Q. Okay. So we're on the same page,</p> <p>19 right, this page, which is the fifth page from</p> <p>20 the front, right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And all of the bullets on</p>	<p style="text-align: right;">Page 180</p> <p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. Okay. And that likely water</p> <p>4 damage -- that's something that the lawyers told</p> <p>5 you, right?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: It's here on the</p> <p>8 page.</p> <p>9 BY MR. ELLIS:</p> <p>10 Q. Okay. Where did you get those</p> <p>11 facts, likely water damage to GPLX 75465?</p> <p>12 A. That's speculative. It -- it</p> <p>13 doesn't -- that's not a fact to me.</p> <p>14 Q. Okay. You -- Norfolk Southern has</p> <p>15 no facts that there was likely water damage to</p> <p>16 GPLX 75465, right?</p> <p>17 MS. PUJARI: Objection: form.</p> <p>18 THE WITNESS: We have no evidence</p> <p>19 that the -- that wheel was submerged.</p> <p>20 BY MR. ELLIS:</p> <p>21 Q. And you have no evidence that there</p> <p>22 was likely water damage to GPLX 75465, right?</p>
<p style="text-align: right;">Page 179</p> <p>1 this page -- these were prepared by the lawyers</p> <p>2 for you, right?</p> <p>3 MS. PUJARI: Objection: form.</p> <p>4 I'm sorry. I'm -- could you</p> <p>5 give -- okay.</p> <p>6 BY MR. ELLIS:</p> <p>7 Q. Do you have my question, Mr. --</p> <p>8 A. I do have your question. I'm</p> <p>9 looking at the bullets.</p> <p>10 Q. Okay. Sorry. Just --</p> <p>11 MS. PUJARI: Do you have another</p> <p>12 copy of 6, Michael?</p> <p>13 THE WITNESS: Yeah. To my</p> <p>14 knowledge, it looks like this probably</p> <p>15 came from WilmerHale.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Okay. "WilmerHale" being the</p> <p>18 lawyers, right?</p> <p>19 A. The lawyers.</p> <p>20 Q. Okay. One, two, three, four --</p> <p>21 fifth bullet down begins, After likely water</p> <p>22 damage from Hurricane Harvey.</p>	<p style="text-align: right;">Page 181</p> <p>1 MS. PUJARI: Objection: form.</p> <p>2 THE WITNESS: It -- it --</p> <p>3 wind-driven rain in an event like this</p> <p>4 could possibly create water damage.</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. Who told you that?</p> <p>7 A. That is in the testimony of . . .</p> <p>8 (Whereupon, the witness reviews</p> <p>9 the material provided.)</p> <p>10 THE WITNESS: A couple bullet</p> <p>11 points down, [as read] the NTSB Palestine</p> <p>12 Investigative Hearing Day Two,</p> <p>13 Professors Tarawneh and Iwand: Roller</p> <p>14 bearing -- roller bearings that sit for a</p> <p>15 long period of time, especially in poor</p> <p>16 weather (rain, heat, cold, extreme</p> <p>17 weather) have grease separation that</p> <p>18 degrades the bearing. This has been</p> <p>19 documented by the STB and various</p> <p>20 industry ex -- experts.</p> <p>21 BY MR. ELLIS:</p> <p>22 Q. Okay. My question was -- well, is</p>

<p style="text-align: right;">Page 182</p> <p>1 that report that you're referring to -- the first</p> <p>2 time you saw that report was yesterday, right?</p> <p>3 MS. PUJARI: Objection: form.</p> <p>4 THE WITNESS: Yes, the --</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. Okay.</p> <p>7 A. -- full report.</p> <p>8 Q. The full report?</p> <p>9 A. Yeah.</p> <p>10 Q. The first time you saw it was</p> <p>11 yesterday.</p> <p>12 That report's not referring to</p> <p>13 GPLX 75465, is it?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I'm not positive.</p> <p>16 BY MR. ELLIS:</p> <p>17 Q. Okay. Do you have any evidence</p> <p>18 that that report is referring to GPLX 75465?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I believe they're</p> <p>21 talking about railcars in general.</p> <p>22</p>	<p style="text-align: right;">Page 184</p> <p>1 MS. PUJARI: Objection: form.</p> <p>2 THE WITNESS: I know that we have</p> <p>3 no visual evidence that the wheels were</p> <p>4 submerged.</p> <p>5 BY MR. ELLIS:</p> <p>6 Q. Does Norfolk Southern have any</p> <p>7 facts showing that there was water damage to</p> <p>8 GPLX 75465?</p> <p>9 MS. PUJARI: Objection: form;</p> <p>10 asked and answered.</p> <p>11 THE WITNESS: I'm not aware we</p> <p>12 have any facts.</p> <p>13 BY MR. ELLIS:</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. ELLIS: I don't have any</p> <p>16 further questions.</p> <p>17 MS. BROZ: Go off the record</p> <p>18 really quickly so we can switch.</p> <p>19 THE VIDEOGRAPHER: They want to</p> <p>20 go off?</p> <p>21 Okay. The time is 11:29 a.m.</p> <p>22 We're going off the record.</p>
<p style="text-align: right;">Page 183</p> <p>1 BY MR. ELLIS:</p> <p>2 Q. My question was: Do you have any</p> <p>3 evidence that it's talking about GPLX 75465,</p> <p>4 specifically?</p> <p>5 MS. PUJARI: Objection: form;</p> <p>6 vague.</p> <p>7 THE WITNESS: Specifically, I</p> <p>8 don't believe so.</p> <p>9 BY MR. ELLIS:</p> <p>10 Q. Okay. And does Norfolk Southern</p> <p>11 have any evidence that there was likely water</p> <p>12 damage from Hurricane Harvey to GPLX 75465?</p> <p>13 MS. PUJARI: Objection: form;</p> <p>14 calls for expert testimony.</p> <p>15 THE WITNESS: Yeah. This is --</p> <p>16 that's outside my jurisdiction.</p> <p>17 BY MR. ELLIS:</p> <p>18 Q. Why is that outside of your</p> <p>19 jurisdiction?</p> <p>20 My question is, Does Norfolk</p> <p>21 Southern have any facts showing that there was</p> <p>22 water damage to GPLX 75465?</p>	<p style="text-align: right;">Page 185</p> <p>1 --oOo--</p> <p>2 (Whereupon, a recess was taken from</p> <p>3 11:29 a.m. EST to 11:36 a.m. EST.)</p> <p>4 --oOo--</p> <p>5 --oOo--</p> <p>6 (Neikirk Deposition Exhibit Number</p> <p>7 15, Defendant and Third-Party</p> <p>8 Defendant Oxy Vinyls LP's Amended</p> <p>9 Notice of Rule 30(B)(6)</p> <p>10 Videotaped Deposition of Norfolk</p> <p>11 Southern Railway Company, marked</p> <p>12 for identification, as of this</p> <p>13 date.)</p> <p>14 --oOo--</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 11:36 a.m., and we are back on the</p> <p>17 record.</p> <p>18 ///</p> <p>19 ///</p> <p>20 ///</p> <p>21 ///</p> <p>22</p>

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

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

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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

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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

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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,

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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.

<p style="text-align: right;">Page 198</p> <p>1 THE WITNESS: I believe that to</p> <p>2 be correct.</p> <p>3 BY MS. BROZ:</p> <p>4 Q. And then Topic 2 references</p> <p>5 Paragraphs 120(b) and 152 of Third-Party</p> <p>6 Complaint; is that correct?</p> <p>7 A. I'm sorry. Topic 2?</p> <p>8 Q. References Paragraphs 120(b) --</p> <p>9 A. Ah, yes, yes, yes.</p> <p>10 Q. Yes.</p> <p>11 Okay. And you have -- you did</p> <p>12 not review that paragraph in the Third-Party</p> <p>13 Complaint in preparation for your deposition</p> <p>14 today, did you?</p> <p>15 MS. PUJARI: Objection: form.</p> <p>16 THE WITNESS: I did not.</p> <p>17 BY MS. BROZ:</p> <p>18 Q. Okay. Let's turn to what we've</p> <p>19 previously marked as Deposition Exhibit 9, if you</p> <p>20 have that in front of you.</p> <p>21 Can you turn to Page 34 of that</p> <p>22 document?</p>	<p style="text-align: right;">Page 200</p> <p>1 the material provided.)</p> <p>2 MS. PUJARI: Objection: form and</p> <p>3 vague.</p> <p>4 All that came up, Alycia, was</p> <p>5 "And any of the other cars."</p> <p>6 MS. BROZ: Right. Question mark.</p> <p>7 (Whereupon, the witness continues</p> <p>8 to review the material provided.)</p> <p>9 THE WITNESS: I don't see it</p> <p>10 referenced in our materials here, but --</p> <p>11 BY MS. BROZ:</p> <p>12 Q. And what are you reading when</p> <p>13 you're saying "referenced in materials here"?</p> <p>14 A. This is Exhibit 6.</p> <p>15 Q. And when did Norfolk Southern learn</p> <p>16 that, allegedly, TI- -- the TILX car contained</p> <p>17 alumin- -- aluminum in the PRD springs?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: Specifically at the</p> <p>20 springs? I -- I don't know the answer to</p> <p>21 that.</p> <p>22</p>
<p style="text-align: right;">Page 199</p> <p>1 A. I'm there.</p> <p>2 Q. Okay. And we'll just read this</p> <p>3 into the record.</p> <p>4 Oxy Vinyl shipped vinyl</p> <p>5 chloride in tank cars with aluminum components</p> <p>6 and the pressure release devices and in other</p> <p>7 components on each of the vinyl chloride tank</p> <p>8 cars. For example, Cars 26, 27, 28 and 29</p> <p>9 contained aluminum in the PRD springs, PRD</p> <p>10 surface or had aluminum used in various valves on</p> <p>11 a tank car. When the PRDs activated -- releasing</p> <p>12 flammable vinyl chloride that ignited -- the vinyl</p> <p>13 chloride mixed with air, sunlight and aluminum.</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Of the five vinyl chloride</p> <p>17 railcars, which one do you allege contained</p> <p>18 aluminum in the PRD springs?</p> <p>19 A. TILX 402025 is listed as having</p> <p>20 aluminum-coated spring.</p> <p>21 Q. And any of the other cars?</p> <p>22 (Whereupon, the witness reviews</p>	<p style="text-align: right;">Page 201</p> <p>1 BY MS. BROZ:</p> <p>2 Q. And which Norfolk Southern</p> <p>3 employees, at some point in time, learned that</p> <p>4 there was allegedly aluminum in the PRD springs</p> <p>5 of the TILX car?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: I don't know who</p> <p>8 that person was for the spring</p> <p>9 specifically.</p> <p>10 BY MS. BROZ:</p> <p>11 Q. And let's go back -- let's look --</p> <p>12 you're looking at Deposition Exhibit 6, so let's</p> <p>13 look at Deposition Exhibit 6 together.</p> <p>14 Can you tell me where you're</p> <p>15 referencing the fact that the TILX car contained</p> <p>16 aluminum in the PRD springs? What are you</p> <p>17 looking at?</p> <p>18 A. So it was three pages back from the</p> <p>19 last page.</p> <p>20 Q. I assume that's Page 9?</p> <p>21 A. Is that, again, with Oxy Vinyls'</p> <p>22 Topic 1?</p>

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<p>1 Q. Yes.</p> <p>2 A. Okay.</p> <p>3 This is Page 9.</p> <p>4 Q. Okay. We're on the same page.</p> <p>5 And what paragraph are you</p> <p>6 referencing?</p> <p>7 A. So I'm looking at Subbullet 1 under</p> <p>8 Bullet 1.</p> <p>9 Q. The one that starts with NTSB Group</p> <p>10 B — Exhibit 10?</p> <p>11 A. Right, Hazardous Materials Group</p> <p>12 Chair's Factual Report.</p> <p>13 Q. At 34?</p> <p>14 A. At 34, yeah.</p> <p>15 Q. Okay. And who provided this</p> <p>16 information to the NTSB?</p> <p>17 MS. PUJARI: Objection: form.</p> <p>18 THE WITNESS: I would have to</p> <p>19 consult this (indicating) binder, I</p> <p>20 believe, to --</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Go ahead.</p>	<p>1 MS. PUJARI: Objection: form.</p> <p>2 (Whereupon, the witness continues</p> <p>3 to review the material provided.)</p> <p>4 THE WITNESS: It doesn't say on</p> <p>5 the reference page. And there's a list</p> <p>6 of people who participated in this, but</p> <p>7 it's not tied to the person.</p> <p>8 BY MS. BROZ:</p> <p>9 Q. And in preparing for your</p> <p>10 deposition today and relying upon NTSB Group</p> <p>11 Exhibit 10, you did not determine who provided</p> <p>12 the information about the alleged aluminum</p> <p>13 components in the PRD springs to the NTSB?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: The specific</p> <p>16 person, I -- I cannot tell right now at</p> <p>17 this time.</p> <p>18 BY MS. BROZ:</p> <p>19 Q. And when did Norfolk Southern learn</p> <p>20 that the P- -- PRD spring in the TILX car</p> <p>21 allegedly contained aluminum components?</p> <p>22 MS. PUJARI: Objection: form;</p>
Page 203	Page 205
<p>1 (Whereupon, the witness reviews</p> <p>2 the material provided.)</p> <p>3 THE WITNESS: Am I able to ask</p> <p>4 for assistance here in --</p> <p>5 BY MS. BROZ:</p> <p>6 Q. No.</p> <p>7 A. -- where that is?</p> <p>8 (Whereupon, the witness continues</p> <p>9 to review the material provided.)</p> <p>10 THE WITNESS: All right. We're</p> <p>11 on Page 61. It says, The spring part,</p> <p>12 and gives a number.</p> <p>13 Do you want that number?</p> <p>14 BY MS. BROZ:</p> <p>15 Q. No.</p> <p>16 And my question was: Who</p> <p>17 provided that information to the NTSB?</p> <p>18 MS. PUJARI: Objection: form.</p> <p>19 THE WITNESS: The -- the NTSB?</p> <p>20 Who provided it to them?</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Correct.</p>	<p>1 asked and answered.</p> <p>2 THE WITNESS: Yeah. I don't know</p> <p>3 when.</p> <p>4 BY MS. BROZ:</p> <p>5 Q. All right. Let's turn back to the</p> <p>6 -- what we've marked as Deposition Exhibit 9.</p> <p>7 Do you have that in front of</p> <p>8 you?</p> <p>9 A. Okay. Yeah.</p> <p>10 Q. Okay. Of the five vinyl chloride</p> <p>11 railcars, which one do you allege contain</p> <p>12 aluminum on the PRD surface?</p> <p>13 (Whereupon, the witness continues</p> <p>14 to review the material provided.)</p> <p>15 THE WITNESS: OCPX 80235 had</p> <p>16 .56 pounds of loose aluminum debris</p> <p>17 inside the PRD top guide discharge port.</p> <p>18 BY MS. BROZ:</p> <p>19 Q. And that's what your evidence is</p> <p>20 that one of the five vinyl chloride railcars</p> <p>21 contained aluminum on the PRD surface?</p> <p>22 MS. PUJARI: Objection: form.</p>

<p style="text-align: right;">Page 206</p> <p>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</p>	<p style="text-align: right;">Page 208</p> <p>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?</p>
<p style="text-align: right;">Page 207</p> <p>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</p>	<p style="text-align: right;">Page 209</p> <p>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</p>

<p style="text-align: right;">Page 210</p> <p>1 original certificate of construction?</p> <p>2 A. The addition of aluminum</p> <p>3 components.</p> <p>4 Q. And did you review those papers</p> <p>5 showing these alleged modifications to the</p> <p>6 certificates of construction to include aluminum</p> <p>7 components on the five vinyl chloride railcars?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: I did not review</p> <p>10 them.</p> <p>11 BY MS. BROZ:</p> <p>12 Q. So what is your basis for testimony</p> <p>13 today -- for testifying today that the five</p> <p>14 vinyl chloride railcars included aluminum</p> <p>15 components because of modifications?</p> <p>16 MS. PUJARI: Objection: form;</p> <p>17 assumes facts.</p> <p>18 THE WITNESS: Beginning with</p> <p>19 the -- the e-mail correspondence between</p> <p>20 Paul Williams and Ron Lawler.</p> <p>21 BY MS. BROZ:</p> <p>22 Q. Okay. And where is that in</p>	<p style="text-align: right;">Page 212</p> <p>1 (Whereupon, the witness reviews</p> <p>2 the material provided.)</p> <p>3 THE WITNESS: And the -- just the</p> <p>4 valves?</p> <p>5 BY MS. BROZ:</p> <p>6 Q. Um-hum.</p> <p>7 A. Okay.</p> <p>8 TILX 402025 and OCPX 80235 and OCPX</p> <p>9 80179 had aluminum angle valve handwheels.</p> <p>10 Q. I don't want to cut you off.</p> <p>11 Are you finished?</p> <p>12 A. And OP- -- OCPX 80370 had aluminum</p> <p>13 angle valve handwheels also.</p> <p>14 Q. What was that last number?</p> <p>15 A. OCPX 80370.</p> <p>16 Q. Anything else?</p> <p>17 A. That's it.</p> <p>18 Q. And what are you referring to in</p> <p>19 answering that question?</p> <p>20 What were you reading off of</p> <p>21 when you answered that question?</p> <p>22 A. Oh. This is Exhibit 6.</p>
<p style="text-align: right;">Page 211</p> <p>1 Deposition Exhibit 6?</p> <p>2 A. Those are the two -- two subbullets</p> <p>3 under Bullet 3 on the second-to-last page, 10, I</p> <p>4 guess.</p> <p>5 Q. And are those two e-mails contained</p> <p>6 in your binder, which we've marked as Deposition</p> <p>7 Exhibit 8?</p> <p>8 A. I believe they are.</p> <p>9 Q. Okay. What tabs are those?</p> <p>10 (Whereupon, the witness reviews</p> <p>11 the material provided.)</p> <p>12 THE WITNESS: Tab 30.</p> <p>13 BY MS. BROZ:</p> <p>14 Q. And could you read the Bates number</p> <p>15 for me, since I don't have a copy of your binder?</p> <p>16 A. It says, NS-CA-000017054.</p> <p>17 Q. Okay. Anything else that you</p> <p>18 relied upon?</p> <p>19 A. Not -- not to my knowledge.</p> <p>20 Q. Okay. Of the five vinyl chloride</p> <p>21 railcars, which one do you allege had aluminum</p> <p>22 used in the various valves for the tank cars?</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. Okay. And specifically, what pages</p> <p>2 of Exhibit 6?</p> <p>3 A. Exhibit -- or Page 9, first bullet,</p> <p>4 second bullet, third bullet; and Page 10, the</p> <p>5 second bullet.</p> <p>6 Q. Anything else?</p> <p>7 A. That's it.</p> <p>8 Q. And when did Norfolk Southern learn</p> <p>9 that the four vinyl chloride railcars allegedly</p> <p>10 used aluminum in the valves of the tank cars?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: Valves</p> <p>13 specifically? I -- I can't say if that</p> <p>14 was covered in that February 4th e-mail.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. So is your answer, I don't know?</p> <p>17 (Whereupon, the witness reviews</p> <p>18 the material provided.)</p> <p>19 THE WITNESS: I don't see</p> <p>20 anything specifically in what I have.</p> <p>21 BY MS. BROZ:</p> <p>22 Q. So your answer is you don't know?</p>

<p style="text-align: right;">Page 214</p> <p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 Okay. Let's turn to that</p> <p>4 February 4th e-mail. And, unfortunately, I don't</p> <p>5 have a copy in front of me.</p> <p>6 Can you tell me what tab that</p> <p>7 is in your binder?</p> <p>8 A. It's Tab 30.</p> <p>9 MS. BENAVIDES: Counsel, do you</p> <p>10 have electronic copies of the binders, or</p> <p>11 anything, for the rest of us to look at?</p> <p>12 MS. PUJARI: I don't believe so.</p> <p>13 MS. BENAVIDES: Okay.</p> <p>14 MS. BROZ: Would you be able to</p> <p>15 make a copy if we went off the record?</p> <p>16 MS. BENAVIDES: It would be</p> <p>17 helpful, I think, if we all could have a</p> <p>18 copy.</p> <p>19 MS. PUJARI: Of the entire</p> <p>20 binder?</p> <p>21 MS. BROZ: No; that e-mail.</p> <p>22 MS. PUJARI: Oh, the e-mail?</p>	<p style="text-align: right;">Page 216</p> <p>1 AFTERNOON SESSION</p> <p>2 (12:46 p.m. EST)</p> <p>3 --oOo--</p> <p>4 CHRISTOPHER REX NEIKIRK,</p> <p>5 was called for continued examination and, after</p> <p>6 having been previously duly sworn, was examined</p> <p>7 and testified further as follows:</p> <p>8 --oOo--</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 12:46 p.m., and we are back on the</p> <p>11 record.</p> <p>12 --oOo--</p> <p>13 EXAMINATION (CONTINUED) BY COUNSEL FOR DEFENDANT</p> <p>14 OXY VINYLs, LP</p> <p>15 --oOo--</p> <p>16 BY MS. BROZ:</p> <p>17 Q. Good afternoon, Mr. Neikirk.</p> <p>18 Before our lunch break, we were</p> <p>19 talking about your binder, which is -- we've</p> <p>20 marked as Deposition Exhibit 8. And we were</p> <p>21 specifically talking about Tab 30.</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 215</p> <p>1 MS. BROZ: Yes.</p> <p>2 MS. PUJARI: Sure. Yeah.</p> <p>3 MS. BROZ: Okay. Let's go off</p> <p>4 the record.</p> <p>5 THE VIDEOGRAPHER: Okay. The</p> <p>6 time is 12- --</p> <p>7 MS. PUJARI: Can we --</p> <p>8 THE VIDEOGRAPHER: -- 12:10 p.m.</p> <p>9 -- the time is 12:10 p.m. We're going</p> <p>10 off the record.</p> <p>11 --oOo--</p> <p>12 (Whereupon, at 12:10 p.m. EST, a</p> <p>13 luncheon recess was taken.)</p> <p>14 --oOo--</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. Could you turn to that, please?</p> <p>2 A. Okay.</p> <p>3 Q. Okay. And for the record, what is</p> <p>4 the Bates label on that document?</p> <p>5 A. The Bates label is NS-CA-000017054.</p> <p>6 Q. And just to bring us back to where</p> <p>7 we were before lunch, your testimony that -- was</p> <p>8 that was the evidence that you had that Norfolk</p> <p>9 Southern was aware that there were aluminum</p> <p>10 components in the five vinyl chloride railcars</p> <p>11 prior to February 6th, 2023; is that correct?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: From what I could</p> <p>14 tell, it's the first indication that we</p> <p>15 had that there was aluminum on some of</p> <p>16 the cars.</p> <p>17 BY MS. BROZ:</p> <p>18 Q. Okay.</p> <p>19 MS. BROZ: Let's go ahead and</p> <p>20 mark that, then.</p> <p>21 What number are we on?</p> <p>22 CERTIFIED STENOGRAPHER: Sixteen.</p>

<p style="text-align: right;">Page 218</p> <p>1 --oOo--</p> <p>2 (Neikirk Deposition Exhibit Number</p> <p>3 16, E-mail string, Bates stamped</p> <p>4 NS-CA-000017054 through</p> <p>5 NS-CA-000017059, marked for</p> <p>6 identification, as of this date.)</p> <p>7 --oOo--</p> <p>8 BY MS. BROZ:</p> <p>9 Q. I'll hand you what we've marked as</p> <p>10 Deposition Exhibit 16 and ask you if you</p> <p>11 recognize this.</p> <p>12 A. I do.</p> <p>13 Q. And what is it?</p> <p>14 A. It is an e-mail between</p> <p>15 Paul Williams of Norfolk Southern and Ron Lawler</p> <p>16 of Trinity.</p> <p>17 Q. Okay. And is that the same e-mail</p> <p>18 that's in Tab 30 of your binder, which we've</p> <p>19 marked as Deposition Exhibit 8?</p> <p>20 A. Yes. The date and time are the</p> <p>21 same.</p> <p>22 Q. Is the Bates number the same?</p>	<p style="text-align: right;">Page 220</p> <p>1 vinyl chloride railcars?</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 (Whereupon, the witness reviews</p> <p>4 the material provided.)</p> <p>5 THE WITNESS: Norfolk Southern</p> <p>6 became aware of the aluminum through</p> <p>7 correspondence with the car owners and</p> <p>8 the builders during the derailment</p> <p>9 response.</p> <p>10 BY MS. BROZ:</p> <p>11 Q. Where are you reading?</p> <p>12 A. This is the third bullet on</p> <p>13 Page 10, I believe.</p> <p>14 Q. Okay. And who wrote that bullet on</p> <p>15 Page 10?</p> <p>16 A. This was provided to me by</p> <p>17 WilmerHale.</p> <p>18 Q. WilmerHale wrote that bullet for</p> <p>19 you?</p> <p>20 MS. PUJARI: Objection: form.</p> <p>21 THE WITNESS: I don't know who</p> <p>22 wrote the bullet. It was provided to me</p>
<p style="text-align: right;">Page 219</p> <p>1 A. It is.</p> <p>2 Q. Okay. And can you point to me</p> <p>3 where in this document the word "aluminum"</p> <p>4 appears anywhere?</p> <p>5 (Whereupon, the witness reviews</p> <p>6 the material provided.)</p> <p>7 THE WITNESS: I don't see the</p> <p>8 aluminum referenced in the document.</p> <p>9 BY MS. BROZ:</p> <p>10 Q. And who is Paul Williams?</p> <p>11 A. He's regional manager, hazardous</p> <p>12 materials for Norfolk Southern.</p> <p>13 Q. Was he on the ground in</p> <p>14 East Palestine between February 3rd and</p> <p>15 February 6th, 2023?</p> <p>16 A. I do not know if he was on the</p> <p>17 ground.</p> <p>18 Q. Okay. Do you have any other</p> <p>19 evidence that individuals on the ground in</p> <p>20 East Palestine between February 3rd and</p> <p>21 February 6th, 2023 understood that there were</p> <p>22 aluminum components on any of the five</p>	<p style="text-align: right;">Page 221</p> <p>1 by WilmerHale.</p> <p>2 BY MS. BROZ:</p> <p>3 Q. It was not something you</p> <p>4 investigated on your own?</p> <p>5 A. I did not.</p> <p>6 Q. And you understand the difference</p> <p>7 between a statement provided by counsel and facts</p> <p>8 to support that statement?</p> <p>9 MS. PUJARI: Objection: form.</p> <p>10 THE WITNESS: I do.</p> <p>11 BY MS. BROZ:</p> <p>12 Q. What facts do you have to support</p> <p>13 that statement?</p> <p>14 MS. PUJARI: Objection: form.</p> <p>15 THE WITNESS: I can't validate</p> <p>16 the fact.</p> <p>17 BY MS. BROZ:</p> <p>18 Q. Okay. Do you have any evidence to</p> <p>19 support the fact that Norfolk Southern employees</p> <p>20 on the ground in East Palestine between</p> <p>21 February 3rd and February 6th, 2023 knew that any</p> <p>22 of the five vinyl chloride railcars had aluminum</p>

<p style="text-align: right;">Page 222</p> <p>1 components?</p> <p>2 A. Yeah. I do not know specifically</p> <p>3 who on the ground would have been aware of that.</p> <p>4 Q. Do you know if anyone on the ground</p> <p>5 would have been aware of it?</p> <p>6 A. Not specifically by name.</p> <p>7 Q. Do you have any names of any</p> <p>8 individual on the ground from Norfolk Southern,</p> <p>9 S- -- SRS or SPSI who were aware that the five</p> <p>10 vinyl chloride cars had aluminum components?</p> <p>11 MS. PUJARI: Objection: form.</p> <p>12 THE WITNESS: Yeah.</p> <p>13 I don't know other than this</p> <p>14 e-mail.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. The e-mail that we just referred to</p> <p>17 and marked as Deposition Exhibit 16?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Let's turn to what we</p> <p>20 previously marked as Deposition Exhibit 15 and to</p> <p>21 Exhibit A of Deposition Exhibit 15.</p> <p>22 A. Got it.</p>	<p style="text-align: right;">Page 224</p> <p>1 I'm sorry. What page again?</p> <p>2 Q. Page -- it's Paragraph 152, Page 31</p> <p>3 of Exhibit 9.</p> <p>4 Okay. Go ahead and review that</p> <p>5 paragraph and the Subparagraphs a, b, c for me.</p> <p>6 A. Okay.</p> <p>7 (Whereupon, the witness reviews</p> <p>8 the material provided.)</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MS. BROZ:</p> <p>11 Q. Referring to Paragraph 152 of the</p> <p>12 Third-Party Complaint, which we've marked as</p> <p>13 Deposition Exhibit 9, can you tell me when</p> <p>14 Norfolk Southern became aware of these alleged</p> <p>15 discriminate -- discrepancies between its Federal</p> <p>16 certified and approved certificate of</p> <p>17 construction and the tank cars' actual</p> <p>18 characteristics?</p> <p>19 MS. PUJARI: Objection: beyond</p> <p>20 the scope of the 30(b)(6). The witness</p> <p>21 isn't designated.</p> <p>22 (Whereupon, the witness reviews</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. Do you have that in front of you?</p> <p>2 A. I do.</p> <p>3 Q. We're now going to talk about</p> <p>4 Topic 2.</p> <p>5 A. Okay.</p> <p>6 Q. And for the record, I'll read that.</p> <p>7 It says, The factual basis for</p> <p>8 your contention that, quote, discrepancies . . .</p> <p>9 between the approved documents and the actual</p> <p>10 physical characteristics, closed quote, of TILX</p> <p>11 402025, GATX 95098, OCPX 80235, OCPX 80179 and/or</p> <p>12 OCPX 80370 described in Paragraphs 120(b) and 152</p> <p>13 of the Third-Party Complaint caused Norfolk</p> <p>14 Southern damages.</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Let's go to Paragraph 152 of</p> <p>18 the Third-Party Complaint, which we've previously</p> <p>19 marked as Deposition Exhibit 9.</p> <p>20 A. You said 9?</p> <p>21 Q. Yes.</p> <p>22 A. Okay.</p>	<p style="text-align: right;">Page 225</p> <p>1 the material provided.)</p> <p>2 THE WITNESS: Yeah. I do not</p> <p>3 know when specifically, but they are</p> <p>4 listed in several of the NTSB exhibits:</p> <p>5 Tank car approval, sample summary,</p> <p>6 Hazardous Materials Group Chair's Factual</p> <p>7 Report.</p> <p>8 BY MS. BROZ:</p> <p>9 Q. Can you tell me how Norfolk</p> <p>10 Southern was harmed by these alleged</p> <p>11 discrepancies?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I can't say</p> <p>14 specifically.</p> <p>15 BY MS. BROZ:</p> <p>16 Q. Do you have in generalities how</p> <p>17 Norfolk Southern was harmed by these alleged</p> <p>18 discrepancies?</p> <p>19 MS. PUJARI: Objection: form.</p> <p>20 THE WITNESS: I -- I don't know.</p> <p>21 MS. BROZ: I don't have any</p> <p>22 questions right -- any further questions</p>

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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

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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.

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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

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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

<p style="text-align: right;">Page 230</p> <p>1 BY MS. BENAVIDES:</p> <p>2 Q. And the NTSB found that the</p> <p>3 pressure relief device of the Trinity car</p> <p>4 functioned properly both during the derailment</p> <p>5 and even afterwards when tested, correct?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: Yeah. I was -- I</p> <p>8 was not aware of that.</p> <p>9 BY MS. BENAVIDES:</p> <p>10 Q. But you have no reason to doubt the</p> <p>11 NTSB's testing results on that, do you?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I have no reason to</p> <p>14 doubt that.</p> <p>15 BY MS. BENAVIDES:</p> <p>16 Q. And are you also aware that no</p> <p>17 evidence of polymer was detected in the NTSB's</p> <p>18 examination of the Trinity car's pressure relief</p> <p>19 device?</p> <p>20 MS. PUJARI: Objection: form;</p> <p>21 calls for expert testimony.</p> <p>22 (Whereupon, the witness reviews</p>	<p style="text-align: right;">Page 232</p> <p>1 to Oxy's Topic 1 regarding aluminum</p> <p>2 components.</p> <p>3 MS. PUJARI: I'm going to object:</p> <p>4 it's beyond the scope of that topic. And</p> <p>5 the witness is not designated on this --</p> <p>6 on this variation of -- it's for a</p> <p>7 different topic.</p> <p>8 BY MS. BENAVIDES:</p> <p>9 Q. If you'd like, I can direct you to</p> <p>10 the Exhibit 17 that I provided, the Group Chair's</p> <p>11 Factual Report, if that would be helpful.</p> <p>12 A. That's fine. I -- I --</p> <p>13 Q. Great.</p> <p>14 A. -- I was not aware of that, though.</p> <p>15 Q. If you turn to Page 61 of the Group</p> <p>16 Chair's Factual Report, Exhibit 17.</p> <p>17 A. Okay.</p> <p>18 Q. Do you see there the last sentence</p> <p>19 of that first paragraph? It says, Internal</p> <p>20 surfaces of the PRD and angle valves were coated</p> <p>21 with carbon/soot; however, there was no evidence</p> <p>22 of polymer or other contaminated -- contaminants</p>
<p style="text-align: right;">Page 231</p> <p>1 the material provided.)</p> <p>2 BY MS. BENAVIDES:</p> <p>3 Q. Are you looking at the NTSB's</p> <p>4 HAZMAT report that I provided?</p> <p>5 A. No. I'm looking at the summary</p> <p>6 docs.</p> <p>7 Q. Exhibit 6?</p> <p>8 A. Page 6.</p> <p>9 Q. Oh, sorry. Were you looking at</p> <p>10 Exhibit 6? I didn't --</p> <p>11 A. Exhibit 6, oh yeah --</p> <p>12 Q. -- mean to interrupt you --</p> <p>13 A. -- yeah --</p> <p>14 Q. -- but --</p> <p>15 A. -- that's all right.</p> <p>16 Q. -- go ahead and, you know, review</p> <p>17 what you need.</p> <p>18 (Whereupon, the witness continues</p> <p>19 to review the material provided.)</p> <p>20 MS. PUJARI: Counsel, what topic</p> <p>21 is this?</p> <p>22 MS. BENAVIDES: This is relating</p>	<p style="text-align: right;">Page 233</p> <p>1 within the guide tube or other components.</p> <p>2 MS. PUJARI: Objection: beyond</p> <p>3 the scope; form.</p> <p>4 THE WITNESS: I see that.</p> <p>5 BY MS. BENAVIDES:</p> <p>6 Q. And you have no reason to doubt --</p> <p>7 disagree with the NTSB's finding here, correct?</p> <p>8 MS. PUJARI: Objection: beyond</p> <p>9 the scope; calls for expert; and form.</p> <p>10 THE WITNESS: Yeah. This is --</p> <p>11 this is not my area of expertise. I had</p> <p>12 --</p> <p>13 BY MS. BENAVIDES:</p> <p>14 Q. So you have no reason to doubt the</p> <p>15 NTSB's finding, right?</p> <p>16 MS. PUJARI: Same objections:</p> <p>17 form; beyond the scope; calls for expert</p> <p>18 testimony.</p> <p>19 THE WITNESS: Yeah. I don't have</p> <p>20 reason to doubt it.</p> <p>21 BY MS. BENAVIDES:</p> <p>22 Q. And you've testified earlier</p>

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

<p style="text-align: right;">Page 238</p> <p>1 Southern employee or contractor would be aware of</p> <p>2 a specific aluminum-coated spring on the pressure</p> <p>3 relief device of the Trinity car, right?</p> <p>4 MS. PUJARI: Objection: form.</p> <p>5 THE WITNESS: Yeah. I -- I -- I</p> <p>6 see nothing to the contrary.</p> <p>7 BY MS. BENAVIDES:</p> <p>8 Q. Therefore, any coating did not play</p> <p>9 any role in Norfolk Southern's decision-making</p> <p>10 during its response to the derailment, right?</p> <p>11 MS. PUJARI: Objection: form;</p> <p>12 assumes facts.</p> <p>13 THE WITNESS: Yeah. I -- that's</p> <p>14 outside of my area of expertise. I</p> <p>15 don't -- I don't know.</p> <p>16 BY MS. BENAVIDES:</p> <p>17 Q. Well, you did agree that Norfolk</p> <p>18 Southern was not aware of the coating, correct --</p> <p>19 MS. PUJARI: Objection: form;</p> <p>20 asked and answered.</p> <p>21 BY MS. BENAVIDES:</p> <p>22 Q. -- during the time of the vent and</p>	<p style="text-align: right;">Page 240</p> <p>1 assumes facts.</p> <p>2 THE WITNESS: Yeah. I -- I don't</p> <p>3 know the facts around it.</p> <p>4 BY MS. BENAVIDES:</p> <p>5 Q. But you did agree that the coating</p> <p>6 played no role in Norfolk Southern's response,</p> <p>7 right?</p> <p>8 MS. PUJARI: Objection: form.</p> <p>9 THE WITNESS: Unless there was</p> <p>10 someone that we were not aware of that</p> <p>11 knew about it, that's correct.</p> <p>12 BY MS. BENAVIDES:</p> <p>13 Q. I'm sorry. I don't know if I</p> <p>14 understood.</p> <p>15 Someone that Norfolk Southern</p> <p>16 was not aware of?</p> <p>17 A. I believe it says that we -- we</p> <p>18 state and respond that no one was aware of it,</p> <p>19 but I don't know for certain that that was</p> <p>20 comprehensive and accurate. But --</p> <p>21 Q. You're not certain if Norfolk</p> <p>22 Southern's responses in this case were accurate?</p>
<p style="text-align: right;">Page 239</p> <p>1 burn?</p> <p>2 A. I agree that's what it says here.</p> <p>3 Q. So, therefore, there would not be</p> <p>4 any way for something that Norfolk Southern</p> <p>5 didn't know about to have impacted its response</p> <p>6 to the derailment, correct?</p> <p>7 A. If we did not know about it, that's</p> <p>8 correct.</p> <p>9 Q. And ultimately, the Trinity car was</p> <p>10 intentionally blown up in a vent and burn</p> <p>11 operation conducted by Norfolk Southern and its</p> <p>12 contractors on February 6, right?</p> <p>13 MS. PUJARI: Objection: form.</p> <p>14 THE WITNESS: I believe it was</p> <p>15 part of the vent and burn group of cars.</p> <p>16 BY MS. BENAVIDES:</p> <p>17 Q. And nothing about an aluminum</p> <p>18 coating on a spring within the properly</p> <p>19 functioning pressure relief device required</p> <p>20 Norfolk Southern to blow up the stable Trinity</p> <p>21 car, right?</p> <p>22 MS. PUJARI: Objection: form;</p>	<p style="text-align: right;">Page 241</p> <p>1 A. I said --</p> <p>2 MS. PUJARI: Objection: form.</p> <p>3 THE WITNESS: -- comprehensive</p> <p>4 and accurate.</p> <p>5 BY MS. BENAVIDES:</p> <p>6 Q. But you have no reason to disagree</p> <p>7 with Norfolk Southern's responses, right?</p> <p>8 A. I -- I have seen nothing that</p> <p>9 concretely says that somebody was on the ground</p> <p>10 and knew about the presence of aluminum for this</p> <p>11 car.</p> <p>12 Q. And then if we could -- if you</p> <p>13 could please put that to the side.</p> <p>14 And if you can look back to</p> <p>15 Exhibit 17, which was the NTSB's Group Chair's</p> <p>16 Factual Report.</p> <p>17 Do you still have that handy?</p> <p>18 A. Yes.</p> <p>19 Q. And if you could please look to</p> <p>20 Page 34.</p> <p>21 And let me know when you're</p> <p>22 there.</p>

<p style="text-align: right;">Page 242</p> <p>1 A. I'm here.</p> <p>2 Q. Great.</p> <p>3 The last sentence of that</p> <p>4 paragraph, which is discussing the equipment</p> <p>5 details of the Trinity car, notes that the</p> <p>6 protective housing cover was fabricated from</p> <p>7 carbon steel.</p> <p>8 Do you see that?</p> <p>9 A. I do see that.</p> <p>10 Q. You have no reason to disagree with</p> <p>11 the NTSB's finding on that point, right?</p> <p>12 MS. PUJARI: Objection: form.</p> <p>13 THE WITNESS: I have no reason to</p> <p>14 disagree with it.</p> <p>15 BY MS. BENAVIDES:</p> <p>16 Q. Okay. I'm going to hand you now</p> <p>17 what will be marked as Exhibit 19, I believe.</p> <p>18 --oOo--</p> <p>19 (Neikirk Deposition Exhibit Number</p> <p>20 19, Norfolk Southern's Responses</p> <p>21 and Objections to Trinity's First</p> <p>22 Set of Requests for Admission,</p>	<p style="text-align: right;">Page 244</p> <p>1 A. Correct.</p> <p>2 Q. And if you look to Norfolk</p> <p>3 Southern's response, which is on the next page,</p> <p>4 Page 27, starting in the second paragraph, it</p> <p>5 reads, Norfolk Southern admits that it is</p> <p>6 currently unaware --</p> <p>7 Are you with me?</p> <p>8 A. I'm with you.</p> <p>9 Q. Great.</p> <p>10 -- that it's currently unaware</p> <p>11 of any Norfolk Southern employees who were aware,</p> <p>12 between February 3rd, 2023 and the vent and burn</p> <p>13 on February 6th, 2023, of discrepancies between</p> <p>14 the AAR Form 4-2 for TILX 402025 and the tank</p> <p>15 car's actual characteristics.</p> <p>16 Did I read that correctly?</p> <p>17 A. You did.</p> <p>18 Q. And that's an accurate statement,</p> <p>19 right?</p> <p>20 MS. PUJARI: Objection: form.</p> <p>21 THE WITNESS: I have no reason to</p> <p>22 -- to dispute it.</p>
<p style="text-align: right;">Page 243</p> <p>1 marked for identification, as of</p> <p>2 this date.)</p> <p>3 --oOo--</p> <p>4 BY MS. BENAVIDES:</p> <p>5 Q. And this is Norfolk Southern's</p> <p>6 Responses and Objections to Trinity's First Set</p> <p>7 of Requests for Admission.</p> <p>8 Do you see that there on the</p> <p>9 cover page?</p> <p>10 A. I see that.</p> <p>11 Q. And if you could please turn to</p> <p>12 Page 26, which is Request for Admission</p> <p>13 Number 26.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see that it reads, Admit</p> <p>16 that from February 3rd, 2023 to the time of the</p> <p>17 detonation, no Norfolk Southern employee was</p> <p>18 aware of any alleged discrepancies between the</p> <p>19 AAR Form 4-2 for TILX 402025 and the tank car's</p> <p>20 actual characteristics, as alleged in</p> <p>21 Paragraph 152a of the Complaint?</p> <p>22 Right?</p>	<p style="text-align: right;">Page 245</p> <p>1 BY MS. BENAVIDES:</p> <p>2 Q. Great.</p> <p>3 You have not seen any evidence</p> <p>4 in either Exhibit 6 or anything in the binder</p> <p>5 that would dispute that response, right?</p> <p>6 MS. PUJARI: Objection: form.</p> <p>7 THE WITNESS: Correct, although</p> <p>8 I'm unsure of what exactly was seen or</p> <p>9 discussed on that e-mail that was -- had</p> <p>10 been referenced earlier about --</p> <p>11 BY MS. BENAVIDES:</p> <p>12 Q. That e-mail that we looked at --</p> <p>13 A. -- the --</p> <p>14 Q. -- which was -- did we mark that?</p> <p>15 That e-mail that you're</p> <p>16 referencing -- does it mention anything about</p> <p>17 discrepancies?</p> <p>18 A. It does not.</p> <p>19 MS. BENAVIDES: I have no further</p> <p>20 questions at this time. I'll reserve the</p> <p>21 rest of my time.</p> <p>22 Thank you for your time.</p>

<p style="text-align: right;">Page 246</p> <p>1 THE WITNESS: Yes.</p> <p>2 MR. GOMEZ: Plaintiffs have no</p> <p>3 questions.</p> <p>4 MR. ELLIS: Okay.</p> <p>5 THE VIDEOGRAPHER: Off the record</p> <p>6 for the day, or just go off the record?</p> <p>7 MR. ELLIS: As far as I know, off</p> <p>8 the record for today, right?</p> <p>9 MS. PUJARI: Yeah. We'll take</p> <p>10 five minutes to see if we have any</p> <p>11 questions of our own.</p> <p>12 THE VIDEOGRAPHER: Okay. The</p> <p>13 time is 1:17 p.m., and we're going off</p> <p>14 the record.</p> <p>15 --oOo--</p> <p>16 (Whereupon, a recess was taken from</p> <p>17 1:17 p.m. EST to 1:26 p.m. EST.)</p> <p>18 --oOo--</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 1:26 p.m., and we are back on the record.</p> <p>21 MS. PUJARI: Thank you for taking</p> <p>22 a moment.</p>	<p style="text-align: right;">Page 248</p> <p>1 standing order daily for you?</p> <p>2 Thank you.</p> <p>3 Everyone then has standing order</p> <p>4 for daily and Monday delivery?</p> <p>5 MR. RHEINHEIMER: Yes.</p> <p>6 MS. BROZ: Yes.</p> <p>7 MS. BENAVIDES: Yes.</p> <p>8 CERTIFIED STENOGRAPHER: Okay.</p> <p>9 Thanks so much.</p> <p>10</p> <p>11 (Witness excused.)</p> <p>12</p> <p>13 (Deposition concluded at 1:26 p.m.</p> <p>14 EST.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 247</p> <p>1 We do not have any further</p> <p>2 questions and consider the deposition</p> <p>3 closed.</p> <p>4 THE VIDEOGRAPHER: All right.</p> <p>5 Stand by.</p> <p>6 The time is 1:26 p.m. on</p> <p>7 March 1st, 2024. We are going off the</p> <p>8 record, completing today's videorecorded</p> <p>9 session.</p> <p>10 (Whereupon, the following</p> <p>11 discussion was held off the video record</p> <p>12 and on the stenographic record:)</p> <p>13 CERTIFIED STENOGRAPHER: Counsel,</p> <p>14 I understand you want the final on</p> <p>15 Monday; is that right?</p> <p>16 MR. ELLIS: Yes, our standing</p> <p>17 order.</p> <p>18 CERTIFIED STENOGRAPHER: You have</p> <p>19 a standing order for a daily as well?</p> <p>20 MR. GOMEZ: Yes, we have a</p> <p>21 standing order on delivery.</p> <p>22 CERTIFIED STENOGRAPHER: So</p>	<p style="text-align: right;">Page 249</p> <p>1 C E R T I F I C A T E</p> <p>2 I, Cindy L. Sebo, Nationally Certified Court</p> <p>3 Reporter herein, do hereby certify that the foregoing</p> <p>4 deposition of CHRISTOPHER REX NEIKIRK was taken before</p> <p>5 me pursuant to notice at the time and place indicated;</p> <p>6 that said witness duly swore to tell the truth, the</p> <p>7 whole truth, and nothing but the truth under penalties</p> <p>8 of perjury; that said testimony of witness was</p> <p>9 correctly recorded to the best of my abilities in</p> <p>10 machine shorthand, thereafter transcribed under my</p> <p>11 supervision with computer-aided transcription; that</p> <p>12 deposition is a true and accurate record of the</p> <p>13 testimony given by the witness; that I am neither</p> <p>14 counsel, nor kin to any party in said action, nor</p> <p>15 interested in the outcome; and that a copy of this</p> <p>16 transcript obtained from a source other than the court</p> <p>17 reporting firm, including an adversary or co-counsel</p> <p>18 in the matter, is uncertified and may not be used at</p> <p>19 trial.</p> <p>20 CINDY L. SEBO, RMR, CRR, CLR, RPR, CCR, CSR,</p> <p>21 RSA, CA CSR 14409, NJ Certified CR 30XI0024460,</p> <p>22 NJ Certified RT 30XR00019500, NM CSR 589, NY</p> <p>Realtime Court Reporter, NY Association Certified</p> <p>Reporter, OR CSR 230105, TN CSR 998, TX CSR</p> <p>12778, WA CSR 23005926, Notary Public</p>

<div style="text-align: right;">Page 250</div> <p>1 Please read your deposition over</p> <p>2 carefully and make any necessary corrections.</p> <p>3 You should state the reason in the appropriate</p> <p>4 space on the errata sheet for any corrections</p> <p>5 that are made.</p> <p>6 After doing so, please sign the</p> <p>7 errata sheet and date it.</p> <p>8 You are signing same subject to the</p> <p>9 changes you have noted on the errata sheet, which</p> <p>10 will be attached to your deposition.</p> <p>11 It is imperative that you return</p> <p>12 the original errata sheet to the deposing</p> <p>13 attorney within thirty (30) days of receipt of</p> <p>14 the deposition transcript by you. If you fail to</p> <p>15 do so, the deposition transcript may be deemed to</p> <p>16 be accurate and may be used in court.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<div style="text-align: right;">Page 252</div> <p>1 CHRISTOPHER REX NEIKIRK NO. 2024-931289</p> <p>2 E R R A T A S H E E T</p> <p>3 PAGE _____ LINE _____ CHANGE _____</p> <p>4 REASON FOR CHANGE: _____</p> <p>5 _____</p> <p>6 PAGE _____ LINE _____ CHANGE _____</p> <p>7 REASON FOR CHANGE: _____</p> <p>8 PAGE _____ LINE _____ CHANGE _____</p> <p>9 REASON FOR CHANGE: _____</p> <p>10 _____</p> <p>11 PAGE _____ LINE _____ CHANGE _____</p> <p>12 REASON FOR CHANGE: _____</p> <p>13 PAGE _____ LINE _____ CHANGE _____</p> <p>14 REASON FOR CHANGE: _____</p> <p>15 _____</p> <p>16 PAGE _____ LINE _____ CHANGE _____</p> <p>17 REASON FOR CHANGE: _____</p> <p>18 PAGE _____ LINE _____ CHANGE _____</p> <p>19 REASON FOR CHANGE: _____</p> <p>20 _____</p> <p>21 PAGE _____ LINE _____ CHANGE _____</p> <p>22 REASON FOR CHANGE: _____</p>
<div style="text-align: right;">Page 251</div> <p>1 CHRISTOPHER REX NEIKIRK NO. 2024-931289</p> <p>2 E R R A T A S H E E T</p> <p>3 PAGE _____ LINE _____ CHANGE _____</p> <p>4 REASON FOR CHANGE: _____</p> <p>5 _____</p> <p>6 PAGE _____ LINE _____ CHANGE _____</p> <p>7 REASON FOR CHANGE: _____</p> <p>8 PAGE _____ LINE _____ CHANGE _____</p> <p>9 REASON FOR CHANGE: _____</p> <p>10 _____</p> <p>11 PAGE _____ LINE _____ CHANGE _____</p> <p>12 REASON FOR CHANGE: _____</p> <p>13 PAGE _____ LINE _____ CHANGE _____</p> <p>14 REASON FOR CHANGE: _____</p> <p>15 _____</p> <p>16 PAGE _____ LINE _____ CHANGE _____</p> <p>17 REASON FOR CHANGE: _____</p> <p>18 PAGE _____ LINE _____ CHANGE _____</p> <p>19 REASON FOR CHANGE: _____</p> <p>20 _____</p> <p>21 PAGE _____ LINE _____ CHANGE _____</p> <p>22 REASON FOR CHANGE: _____</p>	<div style="text-align: right;">Page 253</div> <p style="text-align: center;">ACKNOWLEDGMENT OF WITNESS</p> <p>1</p> <p>2 I, CHRISTOPHER REX NEIKIRK, do hereby</p> <p>3 certify that I have read the foregoing pages herein,</p> <p>4 and that the same is a correct transcription of the</p> <p>5 answers given by me of the proceedings taken remotely</p> <p>6 to the questions therein propounded under penalty of</p> <p>7 perjury, except for the corrections or changes in form</p> <p>8 or substance, if any, noted in the attached errata</p> <p>9 sheet.</p> <p>10 _____</p> <p>11 DATE SIGNATURE</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Subscribed and sworn to before me</p> <p>16 this _____ day of _____, 20____.</p> <p>17 My Commission expires:</p> <p>18 _____</p> <p>19 _____</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public</p>