BEFORE THE SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20423

ALLIED ERECTING AND DISMANTLING, INC. and ALLIED INDUSTRIAL DEVELOPMENT CORPORATION, Petitioners, v. OHIO CENTRAL RAILROAD, INC., OHIO & PENNSYLVANIA RAILROAD COMPANY, THE WARREN & TRUMBULL RAILROAD COMPANY, YOUNGSTOWN & AUSTINTOWN RAILROAD, INC., THE YOUNGSTOWN BELT RAILROAD COMPANY, THE MAHONING VALLEY RAILWAY COMPANY, and SUMMIT VIEW, INC., collectively d/b/a The Ohio Central Railroad System, and GENESEE & WYOMING, INC., Respondents.	:	STB Docket No. FD 35316

PETITIONERS' OPENING STATEMENT

Petitioners, Allied Erecting & Dismantling, Inc. and Allied Industrial Development Corporation, by their attorneys, respectfully submit this Opening Statement pursuant to the Surface Transportation Board's (the "Board") Decision dated June 23, 2010.

I. Introduction.

The instant Petition arises out of an action which is presently pending in the Court of Common Pleas of Mahoning County, Ohio at civil action no. 2006-cv-00181 (the "State Court

Action").[1] The State Court Action is presently stayed pending the resolution of certain issues which have been referred to the Board for resolution. As discussed below, it is Allied's position that the Board should issue a declaratory order delineating the state law issues from the State Court Action that should be adjudicated in the Court of Common Pleas of Mahoning County, Ohio, rather than by the Board. However, the merits of all of the issues in the State Court Action have also been briefed in the event that the Board determines that it has jurisdiction to rule on the merits of any of these issues.

II. The Parties.

Allied Erecting & Dismantling, Inc. ("Allied Erecting") and Allied Industrial Development Corporation ("Allied Industrial," and collectively "Allied") are corporations organized and existing under the laws of the State of Ohio, with a principal place of business at 2100 Poland Avenue, Youngstown, Ohio 44502. John Ramun Dep. 1, p. 5.[2]

The Ohio Central Railroad System is an unincorporated and unregistered association of eleven railroads that operate throughout east central and northeastern Ohio and in the Pittsburgh, Pennsylvania area. William Strawn Dep. 1, p. 8.[3] Respondents Ohio Central Railroad, Inc., Ohio & Pennsylvania Railroad Company, The Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc., The Youngstown Belt Railroad Company, and The Mahoning Valley Railway Company (collectively "Ohio Central") are six of the eleven railroads

[1] A copy of Allied's Amended Complaint in the State Court Action is attached to the Appendix as Exhibit A. In the event that the Board requires any other pleadings in the State Court Action to resolve this dispute, copies will be provided immediately upon request.

[2] A copy of the cited pages from Mr. John Ramun's deposition dated April 1, 2009 is attached to the accompanying Appendix as Exhibit B. Mr. Ramun is the President of the Petitioners. Ramun Dep. 1, p. 6.

[3] A copy of the cited pages from Mr. William Strawn's deposition dated April 15, 2009 is attached to the Appendix as Exhibit C.

of the Ohio Central Railroad System.[4] Strawn Dep. 1, p. 8. Summit View, Inc. ("Summit View") is the owner and corporate parents of the railroads which operate as the Ohio Central Railroad System, including the "Ohio Central" respondents. David Collins Dep. 2, p. 59.[5] Genesee & Wyoming, Inc. ("Genesee & Wyoming") is the corporate parent of Summit View. Collins Dep. 2, p. 5, 34.

III. Factual Background – The Allied Property and the Easements.

Allied Erecting and Allied Industrial are the owners of parcels of commercial property located in Youngstown, Ohio (collectively the "Allied Property"). The Allied Property is comprised of approximately 196 acres of industrial land. Ramun Dep. 1, p. 109. The western border of Allied Industrial's property is the Center Street Bridge, while the southern border is parallel with the north side of the LE&E Main Track. Ramun Dep. 1, p. 19, 37.[6] The northern border is the Mahoning River and Norfolk Southern's Haselton Yard. Allied Industrial's property is the former location of an LTV Steel Company, Inc. ("LTV") plant, which has been decommissioned and demolished. Various sets of railroad tracks, which were the internal plant lines of the former LTV plant, are located on Allied Industrial's property. Ramun Dep. 1, p. 15.

[4] When this action was initiated in the Court of Common Pleas of Mahoning County, Ohio, the six railroads were named as defendants, in part, because Petitioners lacked knowledge as to which railroads were violating Petitioners' easement rights.

[5] A copy of the cited pages of Mr. Collins' deposition of December 9, 2010 is attached to the accompanying Appendix as Exhibit D. Mr. Collins is presently the President of the railroads which make up the Ohio Central Railroad System. Collins Dep., p. 6. Additionally, Mr. Collins spoke as the Respondents' corporate representative. Id., p. 7-8. The deposition of Mr. Collins taken on December 9, 2010 is identified as "Dep. 2," as opposed to "Dep. 1," because an earlier deposition of Mr. Collins in a related action is also referenced in this Opening Statement. Mr. Terry Feichtenbiner and Mr. William Strawn were also deposed in the related action. Ohio Central has stipulated that the depositions of Mr. Collins, Mr. Terry Feichtenbiner and Mr. William Strawn from the related action may be used in this proceeding.

[6] As discussed below, Allied Industrial also owns property immediately to the west of the Center Street Bridge which abuts the parcels of property upon which the disputed Easements are located, namely Youngstown City Lots No. 62320 and 62188.

The Allied Property also comprises a strip of approximately 1.913 miles of land (running parallel to Poland Avenue) upon which a portion of the former Pittsburgh and Lake Erie Railroad's main line was located. As explained below, Allied Erecting owns the fee simple interest to this portion of the now-defunct Pittsburgh and Lake Erie Railroad's main line. Ramun Dep. 1, p. 16. Allied Erecting's ownership of these tracks runs to the westernmost end of the "LE&E Stub," which is depicted on Ohio Central's map of the Mahoning Valley Railway Territory – West End (the "MVRY Map")[7], and includes the "Center Street Pocket" and most of the "LE&E Lead," which is depicted on the Map. Ramun Dep., p. 19, 22, 47-48, 49. Going east, Allied's ownership of these tracks ends at Norfolk Southern's "CP Graham" interchange, which is depicted on the Map. Ramun Dep. 1., p. 20-21.

This dispute concerns Ohio Central's misuse of railroad tracks on the Allied Property, which are subject to two separate easement agreements (collectively the "Easements"), in violation of both the Easements and Allied's common law property rights.[8] Mr. Ramun testified that Ohio Central's misuses of the Easements has prevented Allied "from setting up operations wherein [Allied] could have used these tracks." Ramun Dep. 1, p. 25. Indeed, due to Ohio Central's stopping, storing and staging of cars on the Easements, Allied cannot "use [its] own lines, because someone else has taken dominion and control over them." Ramun Dep. 1, p. 71. Ohio Central also has failed to pay Allied for any stopping, storing or staging of railcars on Allied's Property in violation of the Easements. The terms of the Easements are set forth below.

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[7] A copy of the MVRY Map is attached to the Appendix as Exhibit E. The MVRY Map – which was prepared by Ohio Central - was used as an exhibit at every deposition in this case. It depicts the railroad tracks at issue in this case and other reference points (interchanges, other railroads' property, etc.) which are relevant to this action. While the MVRY Map is useful in gaining a basic understanding of the layout of the tracks on Allied's property, Allied does not adopt or necessarily agree with the labels of tracks or other indications on the map determined by Ohio Central.

[8] Allied Erecting and Allied Industrial own not just the land upon which the Easements are located, but also the tracks, ties and ballast to which the Easements apply. Ramun Dep. 1, p. 59, 62.

1. The Terms of the LTV Easement.

By easement agreement dated May 10, 1993, Allied Industrial granted, inter alia, a perpetual, non-exclusive railroad easement (the "LTV Easement") to LTV Steel Company, Inc. ("LTV") in connection with Allied's purchase of property from LTV. See LTV Easement, p. 1; Ramun Dep. 1, p. 35-35.[9] At the time that the LTV Easement was granted, LTV was still operating a steel tubing mill which was located to the west of the Allied Property. LTV required the various easements set forth in the LTV Easement, including the railroad easements, in order to continue its operations at the steel tubing mill. (See Appendix Ex. P.)

The LTV Easement provides, in pertinent part, as follows:

> NOW THEREFORE, Allied, its successors and assigns, for valuable consideration hereby grants to LTV, its successors and assigns, perpetual, non-exclusive easements appurtenant to the Allied Property, as follows:
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> II. Railroad Easement
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> 2. An easement to operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property that the Mahoning Valley Railway Company leases from LTV located along the north property line of Parcel "A", along the south shore of the Mahoning River, that extend from the west property line of Parcel "A", easterly to Conrail's Hazelton Yards.[10] These tracks are known as the No. 2 and No. 3 mains.
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> 3. An easement to operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property that the Mahoning Valley Railway Company leases from LTV located along the south property line of Parcel "A", from the west property line of Parcel "A" easterly, and then northeasterly to Conrail's Hazelton Yards. The tracks numbered 220, 239, 240 and No. 4 main, then continue in a southeasterly direction on Conrail's property until they enter upon the easternmost portion of Parcel "B", and continue on Parcel "B" for approximately seven hundred feet (700) to the east property line. The tracks on Parcel "B" are the No. 1 Main and the Heckett track.

[9] The LTV Easement is attached to the Amended Complaint as an exhibit.

[10] The Hazelton Yard (also spelled as "Haselton Yard) is now a Norfolk Southern facility. See MVRY Map; see also Ramun Dep. 1, p. 70.

> The easements granted in numbered paragraphs 2 and 3 above are shown on the drawing attached hereto as Exhibit A and numbered 2 and 3.

LTV Easement, p. 2-3.[11]

2. The Terms of the P&LE Easement.

By easement agreement dated September 17, 1993, Allied Erecting granted to Pittsburgh and Lake Erie Properties, Inc. ("P&LE"), inter alia, "a perpetual, non-exclusive easement over that portion of the main line acquired by the Grantor herein [i.e., Allied Erecting] by Deed bearing the same date as this Easement Agreement, between Survey Station 45+00±[12] to a connection with the former Youngstown & Southern Railway Company in the vicinity of Survey Station 146+00±[13] a distance of approximately 1.913 miles, for the sole purpose of providing railroad operations thereover as a part of the operation of the former Youngstown & Southern Railway system." (the "P&LE Easement").[14] It should be noted that the P&LE Easement expressly applies only to the "main line," and does not grant an easement over the "LE&E Siding" tracks, the "Allied Lead" tracks, the "Center Street Pocket" or the "LE&E Stub" tracks, all of which are located on Allied Erecting's property. Ramun Dep. 1, p. 48-49, 84-86. Thus, any use of the "LE&E Siding" tracks, the "Allied Lead" tracks, the "Center Street Pocket" or the "LE&E Stub" tracks by Ohio Central (or anyone else) constitutes a trespass.

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[11] During his deposition, Mr. William Strawn, the former president of the Ohio Central Railroad System, contended that Ohio Central owned the tracks and ballast which were subject to the LTV Easement. See William Strawn Dep. 3, p. 48. No documents substantiating his contention have ever been produced. Moreover, the LTV Easement's reference to the Mahoning Valley Railway Company as a lessee of the tracks prior to Allied's purchase refutes Mr. Strawn's contention that Ohio Central ever owned these tracks and ballast.

[12] Survey Station 45 is at the Norfolk Southern CP Graham interchange. Ramun Dep. 1, p. 89; see also MVRY Map.

[13] Survey Station 146 is located on the tracks which are identified as the "LE&E Lead." Ramun Dep. 1, p. 90; see also MVRY Map.

[14] The P&LE Easement is attached to the Amended Complaint as an exhibit.

III. The Allegations and Claims in the State Court Action.

Allied's Amended Complaint in the State Court Action alleges, inter alia, that "Ohio Central has continually held, stored and/or otherwise impermissibly stopped rail cars on various railroad tracks on the Allied Property in a manner that: (1) adversely impacts not only Allied's ability to utilize these tracks, but also its current operations and its intended development plans, (2) allows hazardous contents of rail cars containing, inter alia, oil, chemicals and/or untarped construction and demolition debris to contaminate the Allied Property, and (3) creates an attractive nuisance to vagrants and vandals." Amended Complaint, ¶ 15. It is further alleged that "Ohio Central is holding, storing and/or otherwise impermissibly stopping its cars on railroad tracks of Allied upon which it has no easement rights whatsoever and has damaged Allied's rail, bumpers, and other property." Id., ¶ 16. Furthermore, "Ohio Central has wrongfully taken dominion and control of Allied's Property and is using it as a transfer point or switchyard, as if it were Ohio Central's own property." Id., ¶ 17. The Amended Complaint asserts claims for misuse, abuse and overburdening of the Easements (Count I), unreasonable use of the Easements (Count II), unjust enrichment and deprivation of property (Count III), and trespass ab initio (Count IV).

IV. Issues to be Resolved.

The specific issues referred to the Board in the State Court Action are the following:

a) whether the issues regarding Ohio Central stopping or storing cars on the railroad tracks in question, in alleged violation of the easement agreements, fall within the jurisdiction of the Board;

b) whether the easements in question allow Ohio Central to store or stage cars on the tracks covered by those easements; and

c) if Ohio Central has violated the easements, what damages are available to Allied.[15]

In addition to the foregoing issues, Allied requests that the Board declare that Ohio Central, its successors and assigns presently have no operating or other property rights over the railroad tracks which are subject to the P&LE Easement.[16] Allied also asks that the Board declare that the issue of whether Ohio Central's rights under the LTV Easement have been terminated due to Allied's purchase of the adjacent property (under principles of merger by ownership) must be decided in the Court of Common Pleas of Mahoning County, Ohio.

V. The Board's June 23, 2010 Decision.

In its decision dated June 23, 2010 (the "Decision"), the Board stated that "the record contains insufficient information for the Board to determine: (1) if use of the disputed easements falls within the meaning of 'transportation by rail carrier' under the Interstate Commerce Commission Termination Act of 1995 (ICCTA), thus preempting state and local law; and (2) if ICCTA preemption applies, whether Ohio Central's use of the easements is permissible and what relief Allied is entitled to if Ohio Central's use is impermissible." Decision, p. 3. The Decision also states that the record "lacks sufficient information to determine whether Summit View and [Genesee and Wyoming] are proper parties to this proceeding." Id.

The Decision directed Allied and Ohio Central to provide the following to the Board as part of their submissions:

1. Details regarding the physical locations of the track segments subject to the disputed easements, including the following: mileposts (if available); the number of tracks located on each segment; detailed maps depicting the location of each

[15] Per the Board's September 3, 2010 Decision, the Board stated that "the scope of this proceeding does not include the calculation of damages. Therefore, the parties do not need to submit evidence addressing that issue." Accordingly, Allied has not submitted evidence regarding the volume or frequency of railcars on Allied's Property during the relevant time period, as this evidence is germane only to the calculation of damages.

[16] Ohio Central admits that its rights to operate over the P&LE or LE&E main line terminated on December 1, 2006. (See Reply of Respondents, dated November 23, 2009.)

segment; photos (if available); and any other notable characteristics of the segments.

2. Descriptions of the manner in which the segments connect with the interstate rail network, including rail lines owned, leased, or operated by Ohio Central.

3. Descriptions of the nature of the activities that Ohio Central performs or performed on the segments, and the timeframes in which it has performed those activities.

4. Detailed explanations of whether and how Ohio Central's use of the segments relates to its interstate railroad operations.

5. Evidence of any authority issued by the Surface Transportation Board or the Interstate Commerce Commission with respect to the segments and/or easements.

6. Any other evidence in support of or against a Board finding of preemption under 49 U.S.C. §10501(b) with respect to the segments and/or easements.

7. Evidence in support of or against naming Summit View and GWI as respondents in this proceeding.

Decision, p. 3-4.

Allied has set forth evidence in response to these directives below, followed by Allied's legal arguments.

A. The Physical Locations of the Tracks.

1. The Tracks Subject to the LTV Easement.

The tracks which are subject to the LTV Easement (collectively the "LTV Tracks") are located to the east of the Center Street Bridge[17] and are identified on the Map as the "MVRY #1 Main," the "MVRY #3 Main," the "MVRY #4 Main," the "220 Track" and the "MVRY 239 Track." The MVRY #2 Main which is referenced in the LTV Easement runs parallel to the MVRY #3 Main (and the Mahoning River). Feichtenbiner Dep. 3, p. 17-18.[18] However, due to

[17] The MVRY Map's text identifying the Center Street Bride has been partially obscured by writing during the course of the depositions. The middle of the Center Street Bridge is the western border of the property upon which the LTV Tracks are located.

[18] A copy of the cited pages Mr. Terry Feichtenbiner's deposition #3, taken December 10, 2010, is attached to the Appendix as Exhibit F.

an oversight, the MVRY #2 Main is not explicitly identified on the Map. Id. It should be noted that the MVRY #2 Main converges into the MVRY #3 Main just east of the Center Street Bridge, and the tracks are torn up and impassable under the Center Street Bridge. Feichtenbiner Dep. 3, p. 18-19. Therefore, the MVRY #2 Main and the MVRY #3 Main are not physically connected to the tracks which are to the west of the Center Street Bridge. There are no mileposts on these tracks. Feichtenbiner Dep. 3, p. 31.

2. The Tracks Subject to the P&LE Easement.

The tracks which are subject to the P&LE Easement are identified on the Map as the "LE&E Main Track" and the "LE&E Lead" (collectively the "LE&E Tracks"). As mentioned above, the P&LE Easement expressly applies only to the "main line," i.e., the LE&E Main Track and the LE&E Lead, and does not grant an easement over the "LE&E Siding," the "Allied Lead," the "Center Street Pocket" or the "LE&E Stub," all of which are located on the Allied Property.

B. How the Tracks Connect with the Interstate Rail Network, Including Other Tracks Owned by Ohio Central.

1. The Tracks Subject to the LTV Easement.

The tracks which are subject to the LTV Easement are not directly connected to any main lines. Going to the west, the MVRY #239 Track passes under the Center Street Bridge, where it connects to numerous sections of tracks on Youngstown City Lot No. 62188 (which is owned by Allied Industrial).[19] See MVRY Map. The sections of track on Lot No. 62188 converge into the MVRY Tail Track, which interchanges with CSX's main line at the far left hand (or Westerly) side of the Map. Feichtenbiner Dep. 3, p. 33; see also MVRY Map. The MVRY #1 Main converges with the west end of Norfolk Southern's Haselton Yard. Feichtenbiner Dep. 3, p. 32;

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[19] A copy of a map depicting the locations and property line of Youngstown City Lot Nos. 62320, 62188 and 62189 is attached to the Appendix as Exhibit G.

Ramun Dep. 1, p. 83. But for it being impassible due to its poor condition, the MVRY #1 Main would also converge with the LE&E Siding at the east end of the Map. Collins Dep. 2, p. 43; see also MVRY Map. Therefore, in order to reach a main line from the LTV Tracks, a train would have to pass through either other industrial tracks (on other property owned by Allied) or the Norfolk Southern Haselton Yard switchyard.

2. The Tracks Subject to the P&LE Easement.

The west end of the LE&E Main Track is connected to the Youngstown and Southern Railway via the "LE&E Lead" track, as shown on the MVRY Map. The east end of the LE&E Main Track connects with Norfolk Southern's tracks at the "CP Graham" interchange. Terry Feichtenbiner Dep. 3, p. 16, 19; see also MVRY Map. The LE&E Main Track has no direct connection with CSX Railroad, which has a main line (the Chicago to Baltimore line) on the north side of the Mahoning River. Terry Feichtenbiner Dep. 3, p. 19. Thus, the LE&E Main Track and the LE&E Lead are only used to reach the Youngstown and Southern Railway from Norfolk Southern's "CP Graham" interchange. The LE&E Main Track, in effect, is a 1.9 miles section of track which connects the former Youngstown and Southern Railway to the CP Graham interchange.

C. Activities Performed by Ohio Central on the Tracks, Time Frames, and Relation to Interstate Railroad Operations.

1. Ohio Central's Activities Over the LTV Easement.

Ohio Central became the assignee and owner of the LTV Easement in connection with Summit View, Inc.'s March 30, 2001 purchase of the Mahoning Valley Railway Company from The Cuyahoga Valley Railway Company (which was a subsidiary of LTV).[20] Strawn Dep. 1, p.

[20] A copy of the Stock Purchase Agreement between the Mahoning Valley Railway Company, Summit View and The Cuyahoga Valley Railway Company is attached to the Appendix as Exhibit H. By way of background, LTV owned The Cuyahoga Valley Railway Company, and The Cuyahoga Valley Railway Company owned the Mahoning Valley Railway Company. Strawn Dep. 3, p. 53. In this transaction, the ownership of the Mahoning Valley Railway Company, as well as the LTV Easement, were transferred to

14-15, 77; Feichtenbiner Dep. 1, p. 22.[21] Ohio Central has used all of the LTV Tracks for the storage of rail cars, most of which were "waste cars," and effectively prevented passage over the LTV Tracks. Ramun Dep. 1, p. 46; see also Feichtenbiner Dep. 3, p. 33-35 (confirming Ohio Central's use of the LTV Tracks for storing and staging rail cars); Strawn Dep. 1, p. 32. It is worth mentioning that, despite only having an easement to pass over these tracks, Ohio Central earned revenue for the storage of third party rail cars on Allied's tracks. Feichtenbiner Dep. 3, p. 36-37. Thus, Ohio Central was profiting from its misuse of the LTV Easement.

Since late 2008, Ohio Central has used the MVRY 239 Track, the MVRY #4 Main and the 220 Track to move cars between Norfolk Southern's Haselton Yard and the "270 yard," which is to the west of the Center Street Bridge. Collins Dep. 2, p. 12-13. These tracks have also been used to access the Castlo Industrial Park, which is "off the Map" to the east of the Allied Property. Id. at p. 12. In order to access the Castlo Industrial Park, Ohio Central passes through Norfolk Southern's Haselton Yard, rather than passing over the MVRY #1 Main, because the MVRY #1 Main track is in poor condition. Id. at 13, 42-43.

Ohio Central currently does not store or stage rail cars on the LTV Tracks east of the Center Street Bridge, and has no need to do so. Collins Dep. 2, p. 47. Moreover, prohibiting Ohio Central from storing or staging rail cars on the LTV Tracks east of the Center Street Bridge would not interfere with its rail operations. Collins Dep. 2, p. 52. At the present time, Ohio Central has no active customers west of the Center Street Bridge. Collins Dep. 2, p. 73.

2. Ohio Central's Activities Over the P&LE Easement.

Ohio Central's activities over the P&LE Easement may be understood with reference to its former operation of the adjacent Youngstown and Southern Railway. The Youngstown and

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Summit View. Thus, the Mahoning Valley Railway Company became a member of the Ohio Central family of railroads.

[21] A copy of the cited pages of Terry Feichtenbiner's deposition of April 14, 2009 is attached to the Appendix as Exhibit I.

Southern Railway is "a 35.7 mile rail line … extending from milepost 0.0 at Youngstown, Ohio to milepost 35.7 at Darlington, Pennsylvania, with a connecting one-mile segment near Negley, Ohio …" Railroad Ventures, Inc. v. Surface Transportation Board, 299 F.3d 523, 529 (6th Cir. 2002).[22] Milepost 0.0 is "off the MVRY Map" at the western endpoint of the tracks which are identified as the "LE&E Lead." See MVRY Map; see also Feichtenbiner Dep. 3, p. 21-22, 29.

In or around June of 1995 Ohio Central, or more specifically, respondent Ohio and Pennsylvania Railroad, began to operate over the Youngstown and Southern Railway. STB Dep. Ex. 17.[23] Because milepost 0.0 is to the west of the Center Street Bridge, trains must use the P&LE Easement across the LE&E Main Track and the LE&E Lead to access the Youngstown and Southern Railway. Feichtenbiner Dep. 3, p. 21-22. Ohio Central ceased operations over the Youngstown and Southern Railway when its lease with P&LE to operate the line expired on September 14, 1995. STB Dep. Ex. 19.[24]

Despite the foregoing, Ohio and Pennsylvania Railroad briefly resumed service as the operator for Railroad Ventures, Inc., which, without obtaining the necessary authority from the Board, acquired ownership of the line. Ohio and Pennsylvania Railroad ultimately discontinued operations over the Youngstown and Southern Railway pursuant to authority granted by the Board. The Ohio & Pennsylvania Railroad Company--Adverse Discontinuance of Service Exemption--Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana, Counties, OH, and Beaver County, PA, in STB Docket No. AB-555 (Sub-No. 2X), served September 2, 1999. Thereafter, the Columbiana County Port Authority acquired the line

[22] The ownership of and operating rights over the Youngstown and Southern Railway were the subject of protracted litigation before the Board and the federal courts, which culminated in the Sixth Circuit's Railroad Ventures decision. The issues decided in that litigation have no apparent relevance to the instant litigation.

[23] A copy of this document is attached to the Appendix as Exhibit J.

[24] A copy of this document is attached to the Appendix as Exhibit K.

pursuant to an OFA filed in Railroad Ventures, Inc.--Abandonment Exemption-- Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana, Counties, OH, and Beaver County, PA, in STB Docket No. AB-556 (Sub-No. 2X), served September 2, 1999.

Subsequently the Port Authority leased the line to Central Columbiana & Pennsylvania Railway, Inc. Central Columbiana & Pennsylvania Railway, Inc.--Lease and Operation Exemption--Columbiana County Port Authority, STB Finance Docket No. 33818, served December 23, 1999. In its Order authorizing Central Columbiana & Pennsylvania Railway, Inc. to operate the line, the Board noted that Central Columbiana & Pennsylvania Railway would be required to operate over an easement granted by Allied Erecting and Dismantling Company, Inc. over the portion of the line that it owned and that it would be negotiating an agreement with Allied in the near future.

Ohio & Pennsylvania Railroad briefly recommenced operations over the Youngstown and Southern Railway in or around December of 2004, following the Central Columbiana & Pennsylvania Railway, Inc.'s filing for reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101-11532, on June 14, 2004. Feichtenbiner Dep. 3, p. 21. The Ohio & Pennsylvania Railroad operated over this line pursuant to an Interim Operating Agreement with the Trustee of the Central Columbiana & Pennsylvania Railway in the bankruptcy proceeding, Case No. 04-BK-16887T, U.S. Bankruptcy Court, E.D. Arkansas. It received interim operating authority from the Board in Finance Docket No. 34632, The Ohio and Pennsylvania Railroad--Acquisition and Operation Exemption--Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA, served December 21, 2004.[25] Pursuant to a subsequent order of the Bankruptcy Court, the

[25] See also The Ohio and Pennsylvania Railroad – Acquisition and Operation Exemption – Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH and Beaver County, PA,

Interim Operating Agreement terminated upon the effective date of Verified Notice of Exemption filed by Eastern States Railroad, LLC in Finance Docket No. 34934, Eastern States Railroad, LLC--Exemption for Purchase of Lease, Agreement to Acquire Leased Line, and Assignments of Operating Rights--Central Columbiana & Pennsylvania Railway, Inc. and Columbiana County Port Authority.[26] As such, Ohio Central ceased operating the Youngstown and Southern Railway on or about November 30, 2006, and Ohio Central is not presently using the LE&E Main Track to access the Youngstown and Southern Railway. Feichtenbiner Dep. 3, p. 21, Collins Dep. 2, p. 10-11. The Youngstown and Southeastern Railway Company is the current operator of the former line of the Youngstown and Southern Railway pursuant to a sub-lease with Eastern States Railroad, LLC. *See,* Youngstown & Southeastern Railway Company--Lease and Operation Exemption--Lines of Eastern States Railroad, LLC, STB Finance Docket No. 34962, served Dec. 21, 2006.

Notwithstanding Ohio Central's brief periods of operations over the Youngstown and Southern Railway, Allied has seen no documentation establishing that Ohio Central was ever an assignee or lessee of the P&LE Easement. Thus, Allied's position is that Ohio Central's use of the LE&E Main Line and the LE&E Lead has been an unauthorized trespass on the Allied Property. Ohio Central has never produced a document or other evidence of any authority to pass over the LE&E Main Line. Moreover, in the event that Ohio Central ever possessed any rights under the P&LE Easement, Allied's position is that Ohio Central's stopping, storing and staging of cars has been a violation of the P&LE Easement, which amounts to a trespass under Ohio law. See infra. Finally, because the P&LE Easement only grants access over the LE&E

STB Finance Docket No. 34632 (Served Dec. 21, 2004 and available at 2004 WL 2944122). A copy of this document is attached to the Appendix as Exhibit L.

[26] A copy of this document is attached to the Appendix as Exhibit M.

Main Line and the LE&E Lead, Ohio Central's uses of the other "LE&E" tracks and siding has been a trespass regardless of whether it had any rights under the P&LE Easement.

With respect to Ohio Central's actual use of the LE&E Tracks, Ohio Central "stage[d] customer traffic at various locations on the LE&E trackage." Feichtenbiner Dep. 3., p. 25; Strawn Dep. 1, p. 45. In connection with its staging of rail cars, Mr. Feichtenbiner testified that Ohio Central primarily used the LE&E Siding, and "at times used the Allied lead, and to a much lesser degree the Center Street pocket." Id.[27] Ohio Central used the LE&E Stub "for staging empty equipment on its return to Youngstown … for movement to Norfolk Southern and CSX." Id., p. 26. Mr. Feichtenbiner testified that "there were times when the tracks would be used [for storage] perhaps for several days consecutively," depending on the volume of rail cars which needed to be delivered. Feichtenbiner Dep. 3., p. 27. Furthermore, Ohio Central stored cars on the LE&E Main Track, and would use the LE&E Siding, over which it has no rights, as the main line. Ramun Dep. 1, p. 48, 84-85.

It is significant to note that the relief Allied seeks would have no effect on Ohio Central's operation. Indeed, Mr. Collins confirmed that precluding Ohio Central from stopping, staging or storing rail cars on the LE&E Tracks would have no negative impact on its rail operations. Collins Dep. 2, p. 55.

D. Authority Issued by the Board or the ICC Regarding the Tracks.

1. ICC or Board Authority Regarding the LTV Easement.

Allied is unaware of any authority issued by the Interstate Commerce Commission ("ICC") or the Board which permits Ohio Central to operate over the LTV Easement. Mr. Collins, testifying as the corporate representative of the Respondents, was likewise unaware of

[27] Additionally, Ohio Central damaged the tracks of the Center Street Pocket by placing overloaded cars containing construction and demolition debris on those tracks. Feichtenbiner Dep. 3, p. 25-26. These damages to Allied's tracks have never been repaired.

any authority issued by the ICC or the Board which permits Ohio Central to operate over the LTV Easement. Collins Dep. 2, p. 35-37.

Although a document has been produced in this litigation which pertains to a common carrier license issued to The Mahoning Valley Railway in 1981 (STB Exhibit 27),[28] nothing indicates that this document, or any other document of which Allied is aware, authorizes Ohio Central to operate over the LTV Easement. In other words, besides the LTV Easement, Ohio Central has no known authority - legal, contractual, regulatory or otherwise - to operate over the LTV Easement.

2. ICC or Board Authority Regarding the P&LE Easement.

As with the LTV Tracks, Allied is not aware of any authority issued by the Interstate Commerce Commission or the Board which permits or permitted Ohio Central to operate over the LE&E Tracks/P&LE Easement.

As mentioned above, filings with the Board reflect that the P&LE Easement is now owned by Eastern States Railroad, LLC, which in turn has engaged intervenor Youngstown & Southeastern Railway Company, LLC to operate the line. See Verified Notice of Exemption of Eastern States Railroad, LLC Pursuant to 49 C.F.R. §1150.31, STB Finance Docket No. 34934 (dated Nov. 21, 2006).[29] It is undisputed that Ohio Central presently has no rights to operate over the P&LE Easement. See Reply of Respondents, filed Nov. 23, 2009, p. 6, ¶ 36 ("Admitted that the rights of [Ohio and Pennsylvania Railroad over the P&LE tracks] terminated as of December 1, 2006.").

[28] A copy of this document is attached to the Appendix as Exhibit N.

[29] The recent transfers and assignments of the P&LE Easement are chronicled in this document.

E. Summit View and Genesee and Wyoming are Proper Parties.

As stated above, Summit View is the corporate parent of the Ohio Central railroads, and Genesee and Wyoming is the corporate parent of Summit View. Although the individual railroads which are named as respondents are the entities which actually operate over the disputed Easements, Summit View and Genesee and Wyoming were properly named as parties to ensure that any declaratory order by the Board applies not only to the Ohio Central railroads, but also to their corporate parents. Thus, when this action is resolved, Summit View and Genesee and Wyoming will be bound to any declaratory order under principles of collateral estoppel and/or res judicata, and will be unable to avoid any declaratory order by using other third party railroads which they control. Furthermore, Allied is unaware of any legal authority which prohibits naming Summit View and Genesee and Wyoming as parties to this declaratory order proceeding. Therefore, the Board should find that both Summit View and Genesee and Wyoming are proper parties to this proceeding.

VI. The Issues Raised in the Amended Complaint are Outside the Board's Jurisdiction.

It is Allied's position that the Board does not have jurisdiction over the claims which are set forth in the Amended Complaint, i.e., the enforcement of the private property rights created by the Easements – which are voluntary agreements entered into by the railroads.

Numerous decisions make it clear that the Board does not have jurisdiction over the subject matter of this action. For example, in PCS Phosphate Company, Inc. v. Norfolk Southern Corp., 559 F.3d 212 (4th Cir. 2009), the United States Court of Appeals for the Fourth Circuit held that judicial enforcement of an easement granted by a landowner to the predecessors in interest of the railroad is not preempted by the ICCTA "because it is not the sort of rail 'regulation' contemplated by the statute and, as a voluntary agreement, does not 'unreasonably interfere' with rail transportation." PCS Phosphate, 559 F.3d at 214. In that case, prior owners

of a phosphate mine granted an easement to a predecessor railroad to construct a rail line over the mine property. Id. at 215. The easement contained a covenant whereby the railroad agreed to relocate the rail line, at its expense, if the mine owners deemed relocation to be necessary to mine operations. Id. Many years later, the mine owners determined that mining under the rail line was necessary, and requested the railroad to relocate the rail line pursuant to the easement. Id. at 216. After the railroad refused to relocate the rail line, the mine owners relocated the line at their own expense and sued the railroad to recover their expenses. Id.

On appeal, the U.S. Court of Appeals held (as did the district court) that the enforcement of the easement was not preempted by the ICCTA, and rejected an overly broad construction of the ICCTA preemption clause. First, the court observed that ICCTA's preemption clause "focuses specifically on regulation," and that "Congress narrowly tailored the ICCTA preemption provision to displace only regulation, i.e., those state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation." Id. at 218. The court's further analysis is instructive on what is and is not preempted by the ICCTA:

> Voluntary agreements between private parties, however, are not presumptively regulatory acts, and we are doubtful that most private contracts constitute the sort of "regulation" expressly preempted by [ICCTA]. If contracts were by definition "regulation," then enforcement of every contract with "rail transportation" as its subject would be preempted as a state law remedy "with respect to regulation of rail transportation." 49 U.S.C. §10501(b). Given the statutory definition of "transportation," this would include all voluntary agreements about "equipment of any kind related to the movement of passengers and property, or both, by rail." See 49 U.S.C. §10102(9) (defining "transportation"). **If enforcement of these agreements were preempted, the contracting parties' only recourse would be the "exclusive" ICCTA remedies. But the ICCTA does not include a general contract remedy.** Such a broad reading of the preemption clause would make it virtually impossible to conduct business, and

> Congress surely would have spoken more clearly, and not used the word "regulation," if it intended that result.

Id. at 218-19 (emphasis added).

The court went on to review the legislative history of the ICCTA, which makes clear that the intent of Congress was simply to preempt "State economic regulation of railroads," not to preempt enforcement of "all voluntary agreements about rail transportation." Id. at 220 (emphasis in original). As the court observed, "[t]he STB itself has emphasized that courts, not the STB, are the proper forum for contract disputes, even when those contracts cover subjects that seem to fit within the definition of 'rail transportation.'" Id. (citing The N.Y., Susquehanna & W. Ry. Corp. – Discontinuance of Service Exemption, 2008 WL 4415853 (STB Sept. 30, 2008)).

Additionally, the Board has held that a party to a contract involving real estate cannot escape its voluntary contractual commitments by invoking the preemptive effect of §10501 of the ICCTA. Township of Woodbridge v. Consolidated Rail Corp., STB Docket No. 42053 (STB served December 1, 2000), clarified (STB served March 23, 2001), and available at 2000 STB LEXIS 709, 2000 WL 1771044 and 2001 STB LEXIS 299, 2001 WL 283507, respectively. In Woodbridge, a railroad company entered into a valid and enforceable agreement curtailing the "idling of locomotives and switching of rail cars . . . between 10:00 p.m. and 6 a.m." as part of a settlement of a lawsuit filed by the Township of Woodbridge (the "Township"). 2000 WL 1771044, *1. The Township later filed an action with the Board seeking a declaration that the railroad company was bound by the settlement agreement, and that the settlement agreement could be enforced in federal or state courts. Id. The Board agreed with the Township. Id. at *3-4. In declining to rule on the merits of the contract disputes, the Board noted that while regulatory action that affected railroad operations was preempted, commitments entered into by way of voluntary contracts are not. Id. at *3. The Board further declined to consider preemption

issues that "would have been involved" if the case were one of legislative regulation. Id. Such voluntary agreements, the Board indicated, could be seen as indicating the railroad's own "determination and admission that the agreements would not unreasonably interfere with interstate commerce." Id.

Similarly, in Pejepscot Industrial Park, Inc. v. Maine Central Railroad Co., the United States District Court for the District of Maine explained:

> In its initial decision, the STB concluded that a rail carrier that voluntarily enters into an otherwise valid and enforceable agreement cannot use the preemptive effect of section 10501(b) to shield it from its own commitments, provided that the agreement does not unreasonably interfere with interstate commerce. In clarifying that earlier decision, the STB subsequently noted that a rail carrier that enters into such agreements is not precluded from arguing "as a matter of contract interpretation that: (1) unreasonable interference with interstate commerce would result if these voluntary agreements are interpreted [in the manner sought by the plaintiff], and (2) in considering enforcement, the court should give due regard to the impact on interstate commerce."

297 F.Supp.2d 326, 330, 332-33 (D. Me. 2003) (internal citations omitted).

The court in Pejepscot held that the plaintiff's breach of contract claim was not preempted by the ICCTA and, therefore, would not be dismissed. Id. at 333. See also Pejepscot Industrial Park, Inc. – Petition for Declaratory Order, STB Finance Docket No. 33989, 2003 STB LEXIS 253 (STB served May 15, 2003) ("[W]e in the past determined that a carrier cannot invoke the preemption provisions of 49 U.S.C. §10501(b) to avoid its obligations under a presumably valid and otherwise enforceable agreement that it has entered into voluntarily, where enforcement of the agreement would not unreasonably interfere with interstate commerce."); see also CSX Transportation, Inc. – Petition for Declaratory Order, STB Finance Docket No. 34662 n. 14, 2005 STB LEXIS 134 n. 14 (STB served March 14, 2005). Based upon the foregoing authorities, the claims set forth in the Amended Complaint are outside of the Board's jurisdiction.

In this regard, the testimony of David Collins, president of the Ohio Central Railroad system could not be more determinative. Originally, in order to force a referral to the STB from the state court, Ohio Central turned in the affidavit of Mr. Collins in which he stated that there was a need to store railcars on the tracks in question and that prohibiting such use would "greatly interfere with [Ohio Central's] interstate rail operations." (Appendix Ex. D, at 37-52.) However, Mr. Collins now readily admits that, due to the low volume of traffic and lack of any active customers along the subject tracks, stopping or storing railcars on the tracks on Allied's property is not necessary, and prohibiting such activities would not interfere with Ohio Central's interstate rail operations. (Appendix Ex. D, at 14, 26, 47, 52 55.) Mr. Collins also admitted that Ohio Central could serve its customers in Castlo Industrial Park (just "off the MVRY Map" to the East) without ever having to pass over the tracks on Allied's property; the connections from CSX to the East could be made by using CSX and/or Norfolk Southern tracks (thereby bypassing Allied's property), but Mr. Collins said Ohio Central would not take such routes simply because of the economics involved. (Appendix Ex, D, at 19-25; see also Appendix Ex. F, Feichtenbiner 12/17/10 Dep., at 40-41 (citing "the charges that would be involved" as precluding alternative routes)). The bottom line is that Ohio Central believed it could take advantage of a smaller, private landowner by using Allied's land as a switchyard and avoiding the charges it would have to pay someone else. This case is designed to remedy that basic injustice that went on for well over twelve years.

If, as Respondents will contend, the claims set forth in the Amended Complaint are completely preempted by the ICCTA, then as a practical matter all railroad easements will be effectively meaningless because the landowner would have no recourse whatsoever against a railroad for violating the easement. In other words, once a railroad obtained an easement, it would be able to ignore the terms of the easement because any attempt to enforce the easement's

terms would be preempted by ICCTA. However, as explained above, the scope of ICCTA preemption does not extend so far as to render railroad easements meaningless.[30] Therefore, the Board should issue a declaratory order stating that the Easements are fully enforceable in the Court of Common Pleas of Mahoning County, Ohio.

VII. The LTV and P&LE Easements Do Not Allow Respondents to Store or Stage Cars on the Tracks Covered by The Easements.

The legal analysis set forth below is included in the event that the Board determines that it has jurisdiction to determine whether the Easements have been violated.

Under the plain language of the Easements, Ohio Central is not permitted to stop, store or stage rail cars on the tracks which are subject to the Easements. As stated above, the LTV Easement provides a "non-exclusive" easement to "operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property …" Similarly, the P&LE Easement provides "a perpetual, non-exclusive easement over that portion of the main line acquired by the Grantor herein [i.e., Allied Erecting] … for the sole purpose of providing railroad operations thereover as a part of the operation of the former Youngstown & Southern Railway system."[31]

The term "non-exclusive" is expressly used in both Easements. This language demonstrates that the holders of the Easements are not the only entity with the right to operate over the LTV Tracks. Nothing restricts Allied's ability to make use of the tracks which are

[30] If the enforcement of railroad easements were completely preempted by the ICCTA, landowners would have no incentive to grant such easements due to the complete lack of an enforcement mechanism. A railroad easement would, as a practical matter, operate as a conveyance of the real estate, which is an absurd result and cannot be the intent of Congress in enacting the ICCTA.

[31] As mentioned above, the P&LE Easement expressly applies only to the "main line," and does not grant an easement over the "LE&E Siding" tracks, the "Allied Lead" tracks or the "LE&E Stub" tracks, all of which are located on the Allied Property. Thus, any use of the "LE&E Siding" tracks, the "Allied Lead" tracks or the "LE&E Stub" tracks by Ohio Central (or anyone else) was a trespass.

subject to the Easements (aside from Ohio Central's misuses of the tracks), or to grant another easement over these tracks to a third party.

By constantly and intentionally blocking the LTV Tracks through the stopping, storing and staging of rail cars, Ohio Central has greatly exceeded the scope and intent of the LTV Easement. Similarly, to the extent that Ohio Central ever enjoyed any rights over the P&LE Easement, its rights were likewise limited to passing over the LE&E Main Track. The stopping, storing and staging of cars on the LE&E Main Track was a violation of the P&LE Easement. Furthermore, the fact that the P&LE Easement applies to travel over a former main line further demonstrates that Ohio Central's stopping, storing and staging of rail cars thereon was a violation of the P&LE Easement. See, e.g., Collins Dep. 2, p. 46-47 (characterizing the practice of parking rail cars on a main line as a "disaster").

Ohio Central's document entitled "The Ohio Central Railroad System, Youngstown Division, Operations Bulletin No. 1" (the "Operations Bulletin")[32] clearly shows Ohio Central's understanding that the Easements were non-exclusive, and that it was not permitted to stop, store or stage cars on the Easements. With respect to the LE&E Main Track, the Operations Bulletin provides as follows:

> The section of the former Lake Erie & Eastern Railway (LE&E) track extending between the Darlington Junction Switch and its connection to the NS CP 61 is not owned nor controlled by the Ohio Central Railroad System (OCRS). The owning entity [i.e., Allied Erecting] has provided written authority to multiple entities for use of this section of the former LE&E as a thoroughfare and such use must be considered to be on a "first-come, first-served" basis only. Use of any trackage appurtenant to this section of track is prohibited. Any OCRS use of this track must be performed at a speed which will allow stopping within one-half the range of vision not exceeding 10 MPH.

[32] A copy of this document is attached to the Appendix as Exhibit O.

Operations Bulletin, p. 13.[33] Similarly, with respect to the LTV Tracks, the Operations Bulletin provides that "[t]he following MVRY tracks must not be used for holding any cars, locomotives or on-track-equipment: No. 220, No. 1 Main, No. 2 & No. 3 Main east of the Center Street Bridge; No. 4 Main Pocket." Therefore, Ohio Central's own internal documents demonstrate that its uses of the LTV Tracks and the LE&E tracks were in violation of the Easements.

Ohio Central's limited rights to operate over the LTV Easement are further limited by its Stock Purchase Agreement and the accompanying Transportation Services Agreement with LTV.[34] At the time of the creation of the LTV Easement, LTV owned other real property adjacent to, and in the vicinity of, the property it conveyed to Allied Industrial, namely the LTV "Copperweld" facility. Strawn Dep. 3, p. 57-58; Transportation Services Agreement, p. 1 (unnumbered).[35] In connection with the sale of the Mahoning Valley Railway Company to Summit View, LTV and the Mahoning Valley Railway Company entered into the Transportation Services Agreement in order for the Mahoning Valley Railway Company to provide "transportation services at its LTV Copperweld facilities …" Transportation Services Agreement, p. 1 (unnumbered). The Stock Purchase Agreement provides the following limitation on Mahoning Valley Railway Company's right to operate: "following the Closing, the [Mahoning Valley Railway Company] will not have the right to operate within the Youngstown Facilities (except to the extent expressly provided in Transportation Services Agreement appended hereto as Exhibit E)." Stock Purchase Agreement, p. 9, ¶ 3.2.5(a). The Transportation Services Agreement, in turn, defines the "Youngstown Facilities" as the "LTV Copperweld facilities at Youngstown, Ohio, and/or at new facilities that may be built on the real property

[33] Mr. Feichtenbiner confirmed that this language refers to the tracks to which the P&LE Easement applies. Feichtenbiner Dep. 3, p. 83.

[34] A copy of the Transportation Services Agreement is attached to the Appendix as Exhibit P.

[35] As explained below, Allied Industrial now owns the LTV Copperweld facility.

occupied by LTV Copperweld in Youngstown, Ohio (together, the 'Youngstown Facilities,' a map of which is attached hereto as Exhibit A)." See Transportation Services Agreement, p. 1. The map attached at Exhibit A covers numerous large parcels of industrial land along the Mahoning River, including (on unnumbered page 4 of the map) the tracks which are subject to the LTV easement. Because the Mahoning Valley Railway Company is not providing services to the LTV Copperweld facility (which, as explained below, is now owned by Allied), its rights over the LTV Easement are limited to merely passing across the LTV Tracks.

Based upon Ohio Central's own admissions and the limitations on its ability to operate over the LTV Easement imposed by the Transportation Services Agreement, the Board should issue a declaratory order finding that Ohio Central violated the terms of the Easements.

VIII. Allied Is Entitled to Damages Due to Respondents' Trespass.

The legal analysis set forth below is included in the event that the Board determines that it has jurisdiction to determine what damages Allied is entitled to in the State Court Action.[36]

The Board should declare that Allied is entitled to damages under Ohio's common law of trespass due to Respondents' violations of the Easements and/or Allied's property rights where no valid easement even existed. Under Ohio law, "[t]o use the land beyond the proper scope of an easement is a violation of the property rights of the owner of the fee." 36 Ohio Jur. 3d Easements and Licenses § 52; see also McKenzie v. Neville, 40 N.E.2d 185, 191-192 (Ohio App. 5, 1941) (granting an individual the right to close off an easement against trespassing freight trucks of a company that had impermissibly enlarged the original scope of the easement grant); Bayes v. Toledo Edison Co., Nos. L-03-1177, L-03-1194, 2004 WL 2426234 (Ohio App. 6, Oct.

[36] As set forth in Ohio Central's letter to the Board dated August 26, 2010, "[t]he parties understand that … the Board will not perform any calculation of damages or determine the amount of Allied's damages, if any. Accordingly, … the parties will not be submitting any evidence or expert reports to the Board on the amount of damages." Consistent with this letter, no evidence regarding the type or amount of Allied's damages, including issues regarding contamination of the Allied property or damages to Allied's tracks, has been submitted. These issues regarding damages will be decided in the Court of Common Pleas of Mahoning County, Ohio.

29, 2004) at *8-9 (noting that if an individual operates beyond the scope of the easement, a trespass action may be maintained); Gibbs v. Secrest, No. 2004-L-058, 2005 WL 1940305 (Ohio App. 11, Aug 12, 2005) at *4 (noting that when the "letter of the easement" is violated, a trespass occurs).

The foregoing authorities make it clear that under Ohio law, an easement holder who has exceeded the scope of the easement is a trespasser and is liable to the easement holder for damages.[37] Therefore, the Board should declare that Respondents' violations of the Easements entitles Allied to recover any and all damages which are available under Ohio law in a trespass action.

IX. Whether Ohio Central's Rights Under the LTV Easement Agreement Have Terminated Should be Determined in the Court of Common Pleas of Mahoning County, Ohio.[38]

As discussed above, at the time of the creation of the LTV Easement, LTV owned other real property adjacent to, and in the vicinity of, the property it conveyed to Allied Industrial, namely the LTV "Copperweld" facility. Strawn Dep. 3, p. 57-58. LTV's continued ownership of the "Copperweld" facility necessitated that LTV retain the right to access its facility over the industrial and/or spur lines at issue herein. The "Copperweld" facility is located on parcels of

[37] Ohio law is consistent with the common law of numerous other states on this issue. See, e.g., Sanders v. City of Seattle, 156 P.3d 874, 883 (Wash. S.C. 2007) ("Trespass occurs upon the misuse or overburdening of an easement."). See also, Koeppen v. Bolich, 79 P.3d 1100, 1110 (Mont. 2003) ("If the owner of an easement exceeds his rights either in the manner or the extent of its use, or if he enters upon or uses the land of the servient estate for any unauthorized purposes, he is guilty of a trespass and the servient owner may maintain such action.").

[38] Allied's position is that the Board does not have jurisdiction to determine this issue of state property law. However, Allied has raised this issue so that the Board can determine whether it is within the Board's jurisdiction to decide it. Also, the ownership of Lot No. 62188 is in dispute in a separate lawsuit between Allied and Ohio Central which is pending before the Court of Common Pleas of Mahoning County, Ohio at civil action no. 2009-cv-2835. In short, Ohio Central contends that Mahoning Valley Railway Company still owns Lot No. 62188, and that the transfers of Lot No. 62188 from Mahoning Valley Railway Company to Gearmar Properties, Inc., and in turn to Allied Industrial, were invalid for various reasons. This case has been stayed pending the resolution of various issues which have been referred to the Board for resolution, and a separate Petition for Declaratory Order will be filed by Allied Industrial (the sole plaintiff) shortly.

property which are now known as Youngstown City Lot Nos. 62320 and 62188. See Appendix Ex. G.

By Purchase Agreement dated March 26, 2009, Allied Industrial purchased Youngstown City Lot Nos. 62320 and 62188, as well as all appurtenances pertaining to the property, all improvements pertaining to the property, certain personal property located on or about the property, and all other property rights from Gearmar Properties, Inc. ("Gearmar").[39] Thus, Allied Industrial now owns the property which the LTV Easement is intended to serve, as well as the property upon which the LTV Easement is located. Under Ohio law, the doctrine of "merger by ownership" provides that "a servitude may not be impressed upon an estate of another estate when both estates are owned by the same person." Shah v. Smith, 908 N.E.2d 983, 986 (Oh. App. 2009). "Thus, an easement is extinguished by merger when the dominant and servient tenements come into the ownership of the same party." Shah, 908 N.E.2d at 986.

It is Allied's position that Ohio Central's rights under the LTV Easement have been terminated, under the "merger by ownership" doctrine, by Allied Industrial's purchase of Youngstown City Lot Nos. 62320 and 62188. Allied believes that Ohio Central will contend, as it has with nearly every other issue regarding Allied's property, that the issue of merger of the LTV Easement should be decided by the Board. However, as discussed above, the Board has made it clear that it does not decide issues regarding state law property rights, which would include whether an easement has been extinguished under the doctrine of "merger by ownership." See, e.g, Central Kansas Railway, LLC – Abandonment Exemption, Marion and McPherson Counties, KS, STB Finance Docket AB-406 (Sub – No. 6X)(Served May 8, 2001), 2001 WL 489991.) Therefore, the Board should declare that the Court of Common Pleas of Mahoning County is the proper forum to decide whether Ohio Central's rights under the LTV

[39] A copy of the Purchase Agreement is attached to the Appendix as Exhibit Q.

Easement were extinguished by Allied's purchase of Youngstown City Lot Nos. 62320 and 62188.

X. Conclusion

Based upon all of the foregoing reasons and authorities, Petitioners respectfully request a declaration that the issues raised by Allied's Amended Complaint do not fall within the Board's jurisdiction, and that this action should be remanded to the Court of Common Pleas of Mahoning County, Ohio for the resolution of all issues raised therein.

In the alternative, Petitioners respectfully request a declaration that the Easements do not allow Ohio Central to stop, store or stage cars on the tracks covered by the Easements, and that Allied is entitled to damages due to Ohio Central's violations of the Easements and/or Allied's common law property rights. Petitioners also request a declaration that Ohio Central, its successors and assigns presently have no operating or other property rights over the railroad tracks which are related to the P&LE Easement, and the siding and other tracks for which neither Ohio Central nor any other railroad company ever had any easement whatsoever (i.e., LE&E Siding, Allied Lead, Center Street Pocket, and LE&E Stub). Finally, Petitioners request a declaration that the issue of whether the rights created by the LTV Easement have been extinguished by virtue of Allied's purchase of adjacent properties should be decided in the Court of Common Pleas of Mahoning County, Ohio.

Respectfully submitted,

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Dated: January 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petitioners' Opening Statement was served upon the following counsel by first class United States mail, this 10th day of January, 2010.

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BEFORE THE SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20423

ALLIED ERECTING AND DISMANTLING, INC. and ALLIED INDUSTRIAL DEVELOPMENT CORPORATION,	:	
Petitioners,	:	STB Docket No. FD 35316
v.	:	
OHIO CENTRAL RAILROAD, INC., OHIO & PENNSYLVANIA RAILROAD COMPANY, THE WARREN & TRUMBULL RAILROAD COMPANY, YOUNGSTOWN & AUSTINTOWN RAILROAD, INC., THE YOUNGSTOWN BELT RAILROAD COMPANY, THE MAHONING VALLEY RAILWAY COMPANY, and SUMMIT VIEW, INC., collectively d/b/a The Ohio Central Railroad System, and GENESEE & WYOMING, INC.,	:	
Respondents.	:	

PETITIONERS' APPENDIX IN SUPPORT OF OPENING STATEMENT

Exhibit	**Description**
A.	Allied's Amended Complaint in the State Court Action
B.	John Ramun's April 1, 2009 Deposition
C.	Excerpts from William Strawn's April 15, 2009 Deposition
D.	Excerpts from David Collins' December 9, 2010 Deposition
E.	Map of Mahoning Valley Railway Territory – West End
F.	Excerpts from Terry Feichtenbiner's December 17, 2010 Deposition

G. Replat of Youngtstown City Lot No. 62188 and 62320

H. Stock Purchase Agreement regarding Mahoning Valley Railway Company, dated March 30, 2001

I. Excerpts from Terry Feichtenbiner's April 14, 2009 Deposition

J. News Release dated June 26, 1995

K. Letter dated November 15, 1996 from J.P. Hartman to William Strawn

L. Ohio and Pennsylvania Railroad – Acquisition and Operation Exemption – Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH and Beaver County, PA, STB Finance Docket No. 34632

M. Verified Notice of Exemption of Eastern States Railroad, LLC, STB Finance Docket No. 34934 (dated November 21, 2006)

N. ICC Finance Docket No. 29658, dated August 6, 1981

O. Ohio Central Operations Bulletin No. 01, dated January 1, 2007

P. Transportation Services Agreement regarding Mahoning Valley Railway Company, dated May 3, 2001

Q. Purchase Agreement dated March 26, 2009 between Allied Industrial Development Corporation and Gearmar Properties, Inc.

Respectfully submitted,

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Dated: January 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petitioners' Appendix in Support of Opening Statement was served upon the following counsel by First Class United States mail, this 10th day of January, 2011.

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(J1476414.; dox)

CLERK OF COURTS
MAHONING COUNTY, OHIO
FEB 0 6 2006
FILED
ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

ALLIED ERECTING AND DISMANTLING COMPANY, INC.
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and

ALLIED INDUSTRIAL DEVELOPMENT CORPORATION
2100 Poland Avenue
Youngstown, OH 44502

Plaintiffs,

v.

OHIO CENTRAL RAILROAD, INC., Individually and d/b/a The Ohio Central Railroad System, an unincorporated and unregistered association
c/o William A. Strawn II, Statutory Agent
47849 Papermill Road
Coshocton, OH 43812

and

OHIO & PENNSYLVANIA RAILROADCOMPANY, Individually and d/b/a The Ohio Central Railroad System, an unincorporated and unregistered association
c/o William A. Strawn II, Statutory Agent
47849 Papermill Road
Coshocton, OH 43812

and

THE WARREN & TRUMBULL RAILROAD COMPANY, Individually and d/b/a The Ohio Central Railroad System, an unincorporated and unregistered association
c/o William A. Strawn II, Statutory Agent
47849 Papermill Road
Coshocton, OH 43812

Case No. 2006-CV-00181

JUDGE MAUREEN A. SWEENEY

FIRST AMENDED COMPLAINT UNDER CIV. R. 14(A)

COUNT I: MISUSE/ABUSE/OVER-BURDENING OF NONEXCLUSIVE RAILROAD EASEMENTS (Other Civil);

COUNT II: UNREASONABLE USE OF EASEMENTS (Other Civil);

COUNT III: UNJUST ENRICHMENT AND DEPRIVATION OF PROPERTY (Other Civil); and

COUNT IV: TREPASS AB INITIO (Other Tort)

WITH JURY DEMAND ENDORSED HEREON

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EXHIBIT
tabbies
A

organized and existing under the laws of the State of Ohio, with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

8. Allied is informed, believes and therefore avers that Youngstown Belt Railroad Company, one of the ten railroads within The Ohio Central Railroad System, is a corporation organized with a registered agent at 47849 Papermill Road, Coshocton, Ohio 43812.

9. Allied is informed, believes and therefore avers that The Mahoning Valley Railroad Company, one of the ten railroads within The Ohio Central Railroad System, is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 47849 Papermill Road, Coshocton, Ohio 43812.

THE LTV EASEMENT

10. By easement agreement dated May 6, 1993 (the "LTV Easement Agreement"), Allied Industrial granted, inter alia, a perpetual, non-exclusive railroad easement to LTV Steel Company, Inc. ("LTV") in connection with certain real property LTV conveyed to Allied Industrial because LTV owned other real property adjacent to, and in the vicinity of, the property it conveyed to Allied Industrial. The LTV Easement Agreement is attached hereto as Exhibit 1 and is incorporated herein by reference.

11. The Railroad Easement set forth in the LTV Easement Agreement allowed LTV to "operate, use, maintain, repair, restore, replace, and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment" for the intended purpose of running rail cars on various specifically identified tracks located on the Allied Property.

12. Allied is informed, believes and therefore avers that LTV subsequently conveyed all of its right, title and interest in the LTV Easement Agreement to Ohio Central and, therefore, Ohio Central is now the successor-in-interest to, and/or assignee of, LTV and, as such, is entitled

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to only those limited rights and privileges as LTV possessed arising from the LTV Easement Agreement.

THE P&LE EASEMENT

13. By Easement Agreement dated September 17, 1993 (the "P&LE Easement Agreement"), Allied Erecting granted, inter alia, a perpetual non-exclusive easement to Pittsburgh Lake Erie Properties, Inc. ("P&LE") for "railroad operations" in connection with certain real property P&LE conveyed to Allied Erecting (P&LE's main line, including land between Survey Station 45+00± in the City of Struthers, Survey Station 153+00± in the city of Youngstown). The P&LE Easement Agreement is attached hereto as Exhibit 2 and is incorporated by reference.

14. Allied is informed, believes and therefore avers that Ohio Central is an assignee and/or successor-in-interest by and through P&LE of certain limited railroad easement rights arising from the P&LE Easement Agreement.

VIOLATIONS OF THE LTV AND P&LE EASEMENTS

15. In violation of the limited and non-exclusive LTV Easement Agreement and the P&LE Easement Agreement, Ohio Central has continually held, stored, and/or otherwise impermissibly stopped rail cars on various railroad tracks on the Allied Property in a manner that: (1) adversely impacts not only Allied's ability to utilize these tracks, but also its current operations and its intended development plans, (2) allows hazardous contents of rail cars containing, inter alia, oil, chemicals and/or untarped construction and demolition debris to contaminate the Allied Property, and (3) creates an attractive nuisance to vagrants and vandals.

16. Further, Ohio Central is holding, storing and/or otherwise impermissibly stopping its cars on railroad tracks of Allied upon which it has no easement rights whatsoever and has damaged Allied's rail, bumpers, and other property.

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17. In fact, contrary to the limited easement right it possesses, Ohio Central has wrongfully taken dominion and control of Allied's Property and is using it as a transfer point or switchyard, as if it were Ohio Central's own property.

18. Allied has repeatedly requested Ohio Central to cease holding, storing and/or otherwise impermissibly stopping rail cars on the Allied Property pursuant to the non-exclusive LTV Easement Agreement and the P&LE Easement Agreement, but Ohio Central has continually neglected, failed, and refused to cease such activities on the Allied Property.

19. In particular, and most recently by letter dated August 9, 2005 issued by its counsel, Allied demanded that Ohio Central's blatant continued and unjustified breach of the easement agreements - and willful trespass – cease immediately. This letter, like its earlier requests, was ignored by Ohio Central. A true and correct copy of Allied's August 9, 2005 letter is attached hereto as Exhibit 3.

20. Allied has performed all required conditions precedent to bringing this lawsuit.

COUNT I

MISUSE/ABUSE/OVERBURDENING OF NON-EXCLUSIVE RAILROAD EASEMENTS

21. All of the foregoing averments are incorporated by reference herein as if set forth in full.

22. Ohio Central, without right, authorization or justification, has continually held, stored, and/or otherwise impermissibly stopped rail cars on various rail lines on the Allied Property, without Allied's permission or authority, and directly contrary to its repeated requests to cease and desist.

23. Ohio Central's continued misuse, abuse, and overburdening of the easement rights bestowed by the LTV Easement Agreement and the P&LE Easement Agreement have caused,

and will continue to cause, Allied to endure: (1) significant adverse impacts on its ability to utilize its own rail lines, as well as to its operations and its intended development plans for the property; (2) contamination of the Allied Property caused by the contents of impermissibly parked and/or stored rail cars; (3) damage and potential liability caused by the attractive nuisance created thereby; and (4) damage to Allied's rail, bumpers, and other property.

24. Unless Ohio Central's misuse, abuse, and over burdening of the LTV Easement Agreement and the P&LE Easement Agreement is enjoined by this Court, Ohio Central will continue to cause irreparable harm to Allied for which there is no adequate remedy at law.

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request that this Honorable Court grant a preliminary and permanent injunction ordering Ohio Central to cease and desist holding, storing and/or otherwise impermissibly stopping rail cars on the rail lines on the Allied Property, so as to permit Allied to fully utilize its rail lines, perform its operations and proceed with its development plans without undue interference, and utilize and enjoy its property free from both the contamination and the attractive nuisance caused by Ohio Central's wrongful and unjustified conduct.

COUNT II

UNREASONABLE USE OF EASEMENTS

25. All of the foregoing averments of this First Amended Complaint are incorporated herein by reference as if set forth in full.

26. Ohio Central has unreasonably held, stored and/or otherwise impermissibly stopped rail cars on the railroad tracks on the Allied Property in violation of the LTV Easement Agreement and the P&LE Easement Agreement.

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27. Ohio Central's conduct unreasonably exceeds the proper and authorized scope of the easement agreements and is inconsistent with their purpose and character.

28. Ohio Central's activities have caused injury to the Allied Property and have interfered with Allied's use and enjoyment of its property and have damaged Allied's property.

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request judgment in their favor and against Ohio Central in a currently undetermined amount, plus interest, costs and such other and further relief as this Court deems just and appropriate.

COUNT III

UNJUST ENRICHMENT & DEPRIVATION OF PROPERTY

29. All of the foregoing averments of this First Amended Complaint are incorporated herein by reference as if set forth in full.

30. Ohio Central, without right, authorization, or justification, has continually stopped, held and/or stored rail cars on various rail lines on the Allied Property, including rail lines over which it has no easement rights and has damaged Allied's property.

31. Ohio Central's conduct and wrongful exercise of dominion and control over Allied's Property has caused Allied to be deprived of the beneficial use and enjoyment of its own property.

32. Ohio Central has not (1) paid Allied for the right to hold or store rail cars on the Allied Property, (2) disgorged the amounts it has received from third parties for such activities, or (3) otherwise reimbursed Allied for the deprivation of the beneficial use and enjoyment of its property.

33. Ohio Central's wrongful and unjustified conduct has permitted it to be unjustly enriched, to Allied's detriment.

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WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request judgment in their favor and against Ohio Central in an amount to be determined at trial, plus interest, costs and such other and further relief as this Court deems just and appropriate.

COUNT IV

TRESPASS AB INITIO

34. All of the foregoing averments of this First Amended Complaint are incorporated herein by reference as if set forth in full.

35. Ohio Central has continually entered upon the Allied Property for the purpose of holding, storing and/or impermissibly stopping rail cars on rail lines on the Allied Property, including rail lines over which it has no easement rights, without Allied's consent and against Allied's will, and has damaged Allied's property.

36. Such use of the Allied Property is not a right conferred upon Ohio Central by the LTV Easement Agreement or the P&LE Easement Agreement and, as such, constitutes a trespass on the Allied Property.

37. Ohio Central has also stored and/or maintained hazardous, toxic and/or regulated substances and materials on the Allied Property in such a manner as to contaminate the Allied Property, without Allied's consent and against Allied's will.

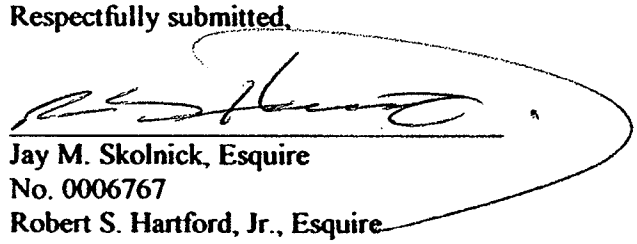
38. Storage of substances and materials on the Allied Property is not a right conferred upon Ohio Central by the LTV Easement Agreement or the P&LE Easement Agreement and, as such, constitutes a trespass on the Allied Property.

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39. Ohio Central's repeated and wrongful trespasses have caused damage to the Allied Property and have deprived Allied of the beneficial use and enjoyment of its property.

WHEREFORE, Plaintiffs, Allied Erecting and Dismantling Company, Inc. and Allied Industrial Development Corporation, respectfully request judgment in their favor and against Ohio Central in an amount to be determined at trial, plus interest, costs and such other and further relief as this Court deems just and appropriate.

Respectfully submitted,



Jay M. Skolnick, Esquire
No. 0006767
Robert S. Hartford, Jr., Esquire
No. 0020067

Nadler Nadler & Burdman Co., LPA
20 Federal Plaza West, Suite 600
Youngstown, OH 44503- 1423
Telephone No.: (330) 744-0247
Fax No.: (330) 744-8690
E-mails: jmskolnick@nnblaw.com and
rsh2@nnblaw.com

Attorneys for Plaintiffs
Allied Erecting and Dismantling Company, Inc.
and Allied Industrial Development Corporation

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JURY DEMAND

Plaintiffs demand that this case be tried by a jury.

Jay M. Skolnick, Esquire (#0006767)
Robert S. Hartford, Esquire (#0020067)
Nadler Nadler & Burdman Co., L.P.A.
Attorneys for Plaintiffs

REQUEST FOR SERVICE

TO THE CLERK:

Please serve Summons and a copy of the First Amended Complaint upon each of the Defendants at the addresses listed for them in the caption of the First Amended Complaint by certified United States mail, return receipt requested, as provided for in the Ohio Rules of Civil Procedure.

Jay M. Skolnick, Esquire (#0006767)
Robert S. Hartford, Esquire (#0020067)
Nadler Nadler & Burdman Co., L.P.A.
Attorneys for Plaintiffs

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EXHIBIT 1

EASEMENT AGREEMENT

LTV STEEL COMPANY, INC. ("LTV"), a New Jersey corporation, and ALLIED INDUSTRIAL DEVELOPMENT CORPORATION ("ALLIED"), an Ohio corporation are parties to a Sale And Purchase Agreement dated June 25, 1992 ("Agreement"), and this Easement Agreement is made and entered into pursuant thereto.

WITNESSETH

WHEREAS, LTV conveyed to Allied certain real property (the "ALLIED PROPERTY") located in Youngstown, Mahoning County, Ohio, by deed recorded in Volume ___, page ____ of the Deed Records of Mahoning County, Ohio; and

WHEREAS, LTV owns real property adjacent to and in the vicinity of the Allied Property (the "LTV PROPERTY"); and

WHEREAS, the Agreement provides that LTV and ALLIED shall provide for certain easements for the purposes and upon the terms set forth below.

NOW THEREFORE, Allied, its successors and assigns, for valuable consideration hereby grants to LTV, its successors and assigns, perpetual, non-exclusive easements appurtenant to the Allied Property as follows:

I. ACCESS EASEMENT

1. An easement on, over and across Allied Property, from the existing twenty foot (20') Drive Easement (recorded at Volume 182, Page 442 located on Parcel "B" at LTV Stop #7, extending easterly, then northeasterly across the eastern

most portion of Parcel "A" to the Conrail Hazelton Yards) to access railroad tracks, electrical lines, sanitary sewer lines, the lift station, water lines and telephone lines, all in conformity with the easements hereinafter granted, for the operation, use, maintenance, repair, restoration, replacement and abandonment of such equipment and materials located within the hereinafter granted easements.

II. RAILROAD EASEMENT

2. An easement to operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property that the Mahoning Valley Railway Company leases from LTV located along the north property line of Parcel "A", along the south shore of the Mahoning River, that extend from the west property line of Parcel "A", easterly to Conrail's Hazelton Yards. These tracks are known as the No. 2 and No. 3 Mains.

3. An easement to operate, use, maintain, repair, restore, replace and abandon (at LTV's sole cost and expense) the railroad tracks and related equipment located on the property that the Mahoning Valley Railway Company leases from LTV located along the south property line of Parcel "A", from the west property line of Parcel "A" easterly, and then northeasterly to Conrail's Hazelton Yards. The tracks numbered 220, 239, 240 and No. 4 Main, then continue in a

southeasterly direction on Conrail's property until they enter upon the easternmost portion of Parcel "B", and continue on Parcel "B" for approximately seven hundred feet (700) to the east property line. The tracks on Parcel "B" are the No. 1 Main and the Heckett track.

The easement granted in numbered paragraphs 2 and 3 above are shown on the drawing attached hereto as Exhibit A and numbered 2 and 3.

III. ELECTRICAL EASEMENT

4. An easement on, over and across Allied Property for the operation, use, maintenance, repair, restoration, replacement and abandonment (at LTV's sole cost and expense) of the electrical wires and poles that provide electricity to service the lift station located in the southwest corner of Parcel "A". The electrical wires and poles run from the west property line of Parcel "A" easterly approximately one hundred fifty feet (150') to the lift station.

The easement granted above is shown on Exhibit A and is numbered 4.

IV. SANITARY SEWERS AND LIFT STATION

5. An easement on, over, across and under Allied Property for the operation, use, maintenance, repair, restoration, replacement and abandonment (at LTV's sole cost and expense) of the lift station and related sewer lines and equipment located in the southwest corner of Parcel "A".

The easement granted above is shown on Exhibit A and is numbered 5.

V. OHIO WATER SERVICE LINE

6. An easement, on, over, across and under Allied Property for the operation, use, maintenance, repair, restoration, replacement and abandonment (at LTV's sole cost and expense) of the Ohio Water Service Line that is located underground on Parcel "A", beginning approximately half way between LTV Stop #7 and Power's Run on the northerly side of the Mahoning Valley Railway Company's Tracks numbered 220, 239, 24 and No. 4 Main and continuing westerly to the west property line of Parcel "A".

The easement granted above is shown on Exhibit A and is numbered 6.

VI. FUTURE EASEMENTS

7. LTV, its successor and assigns hereby reserves from Allied, its successors and assigns;

a.) an easement for roadway access that will provide ingress and egress from the new Center Street Bridge, as it will be located upon its completion, to LTV Property which abuts Parcel "A" to the west; and

b.) an easement for rail or roadway purposes to provide access to the east end of an abandoned railroad bridge, if the bridge is ever put back into service as either a railroad bridge or if it is converted to accommodate vehicular traffic. The easement would be approximately thirty-six feet (36') wide measured from the north property line of Parcel "A" and would begin at the east end of the abandoned bridge and continue southeasterly to the east property line of Parcel "A".

The easements granted above are shown on Exhibit A and numbered 7-A and 7-B.

FUTURE COOPERATION

LTV and Allied agree to relocate (or vacate if appropriate) any of the aforegranted easements to facilitate the development of either LTV Property or Allied Property, provided any such

relocation or vacation will not adversely interfere with either parties' then existing operations or access to their properties.

The easements granted herein shall be binding upon and enforceable against and shall inure to the benefit of LTV and Allied and to each of its successors and assigns.

TO HAVE AND TO HOLD each of the above granted easements, for the purposes expressed herein.

IN WITNESS WHEREOF, LTV STEEL COMPANY, INC. and ALLIED INDUSTRIAL DEVELOPMENT CORPORATION by their duly authorized representatives, have signed this Easement Agreement the 6th day of May, 1993.

Signed and acknowledged
in the presence of:

Kenneth R. Yantek

Neil A. Fleenor

LTV STEEL COMPANY, INC.

By: C. Kurch

Title: Vice President

ALLIED INDUSTRIAL DEVELOPMENT CORPORATIO

By: [illegible]

Title: President

ACKNOWLEDGEMENTS

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared T. C. SKUREK, Vice President, of LTV STEEL COMPANY, INC., who acknowledged that he did sign the foregoing Easement Agreement as the duly authorized officer of said corporation and that the same was its free corporate act and deed and his free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 6th day of MAY, 1993.

Kenneth R. Yantek
Notary Public

(Notarial Seal)

My commission expires: N/A

KENNETH R. YANTEK, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R. C.

STATE OF OHIO)
) SS:
COUNTY OF MAHONING)

BEFORE ME, a Notary Public in and for said County and State, personally appeared JOHN R. RAMUNI, PRESIDENT of ALLIED INDUSTRIAL DEVELOPMENT CORPORATION, who acknowledged that he did sign the foregoing Easement Agreement as the duly authorized representative of said corporation and that the same was its free act and deed and his free act and deed individually and as such representative.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 10th day of May, 1993.

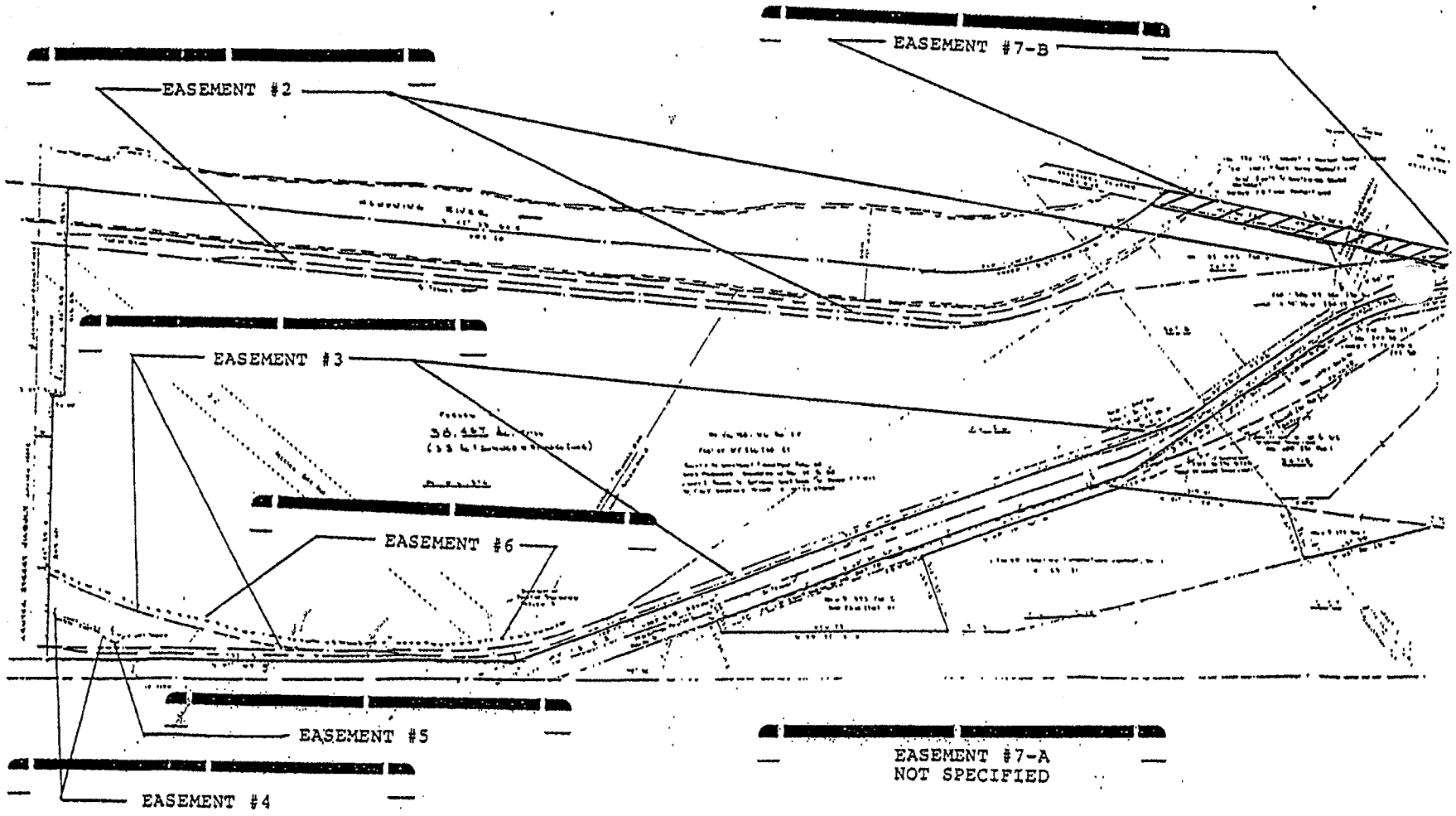
Sandra S. Tremayne
Notary Public.

SANDRA S. TREMAYNE, Notary P
State of Ohio
My Commission Expires Feb. 21, 199

(Notarial Seal)

My commission expires:

EXHIBIT A


EASEMENT #2
EASEMENT #7-B
EASEMENT #3
EASEMENT #6
EASEMENT #5
EASEMENT #4
EASEMENT #7-A
NOT SPECIFIED

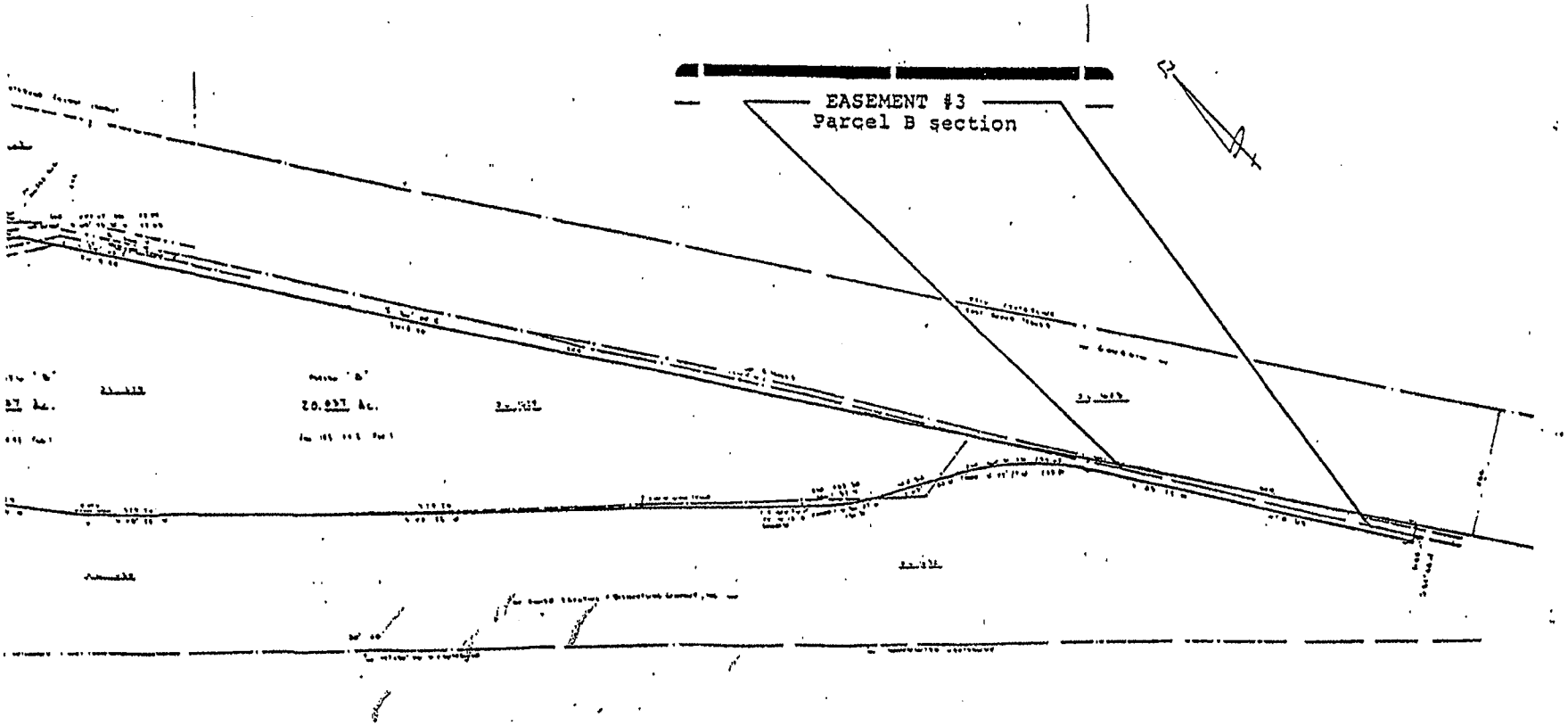

EASEMENT #3
Parcel B section

EXHIBIT 2

COPY

EASEMENT AGREEMENT

This EASEMENT AGREEMENT, made this 17 day of SEPTEMBER, 1993, between the ALLIED ERECTING AND DISMANTLING COMPANY, INC., an Ohio Corporation, hereinafter referred to as "Grantor", and PITTSBURGH & LAKE ERIE PROPERTIES, INC., formerly known as The Pittsburgh and Lake Erie Railroad Company, a Delaware Corporation, hereinafter referred to as "Grantee".

NOW THEREFORE, for and in consideration of TEN DOLLARS ($10.00), payable the first day of each year, does hereby, insofar as Grantor's title permits, grant bargain and convey unto Grantee, its successors and assigns, a perpetual, non-exclusive easement over that portion of the main line acquired by the Grantor herein by Deed bearing the same date as this Easement Agreement, between Survey Station 45+00± to a connection with the former Youngstown & Southern Railway Company in the vicinity of Survey Station 146+00± a distance of approximately 1.913 miles, for the sole purpose of providing railroad operations thereover as a part of the operation of the former Youngstown & Southern Railway system.

The aforesaid easement is granted, delivered and accepted, however, upon the following terms and conditions which, are mutually agreed to by the parties hereto:

1. Railroad operations over and upon the easement shall be conducted by such corporate party or parties to whom Grantee has or may assign the operation of The Youngstown and Southern Railway pursuant to authority granted by the Interstate Commerce Commission. As of the date hereof, said operations are and will be conducted in accordance with the applicable terms of that certain LEASE dated April 19, 1993, between Grantor, The Youngstown and Southern Railway Company and PL&W Railroad, Inc.

2. In the event any conditions exists upon Grantor's property or Grantor's operations adjacent to the easement which adversely affect safe and normal railroad operations over the easement, Grantor shall take steps, after verbal notification followed by written confirmation, with due diligence to make such changes in its property or operations as are necessary to permit safe and normal railroad operations to continue.

3. In the event that Grantor desires to occupy all or any portion of the easement area with its own facilities and/or operations, Grantor shall, give Grantee written notice of the such event, and shall, at Grantor's expense, provide a substitute comparable route and

tracks satisfactory to Grantee and its assigns, at another location upon and over Grantor's property, for the continued operation of a railroad between the beginning and ending points of the easement granted hereinabove. Upon the provision of a substitute easement, the provisions of the aforesaid Lease of April 19, 1993 shall apply to continued railroad operations thereover.

4. Upon any future abandonment of railroad operations over the easement pursuant to authority granted by the Interstate Commerce Commission or other applicable authority, the easement granted herein and this Easement Agreement shall be terminated.

5. The terms and conditions of this Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors and assigns.

6. Grantee agrees to pay all costs and fees in conjunction with filing or recording of this instrument in the office of Public Records of Mahoning County, Ohio.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to be legally bound, have caused this instrument to be duly executed the day and year first above written.

ALLIED ERECTING AND DISMANTLING COMPANY, INC.

By John R. Ramun
President

ATTEST:

Louise V. Ramun
Secretary

PITTSBURGH & LAKE ERIE PROPERTIES, INC.

By Gordon C. Stevenschwonke
President

ATTEST:

Nancy L. Jemencik
Secretary

STATE OF PENNSYLVANIA)
) SS.
COUNTY OF ALLEGHENY)

On this 17 day of September 1993, before me, the undersigned officer, a Notary Public, personally appeared, John R. Ramun, who acknowledged himself to be _____ President of ALLIED ERECTING AND DISMANTLING COMPANY, INC., and that he, being authorized to do so, executed the foregoing instrument on behalf of the said ALLIED ERECTING AND DISMANTLING COMPANY, INC., for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17th of September, 1993.

Gloria J. Hardy
Notary Public

My Commission expires: _____

Notarial Seal
Gloria J. Hardy, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Dec. 18, 1993
Member, Pennsylvania Association of Notaries

STATE OF PENNSYLVANIA)
) SS.
COUNTY OF ALLEGHENY)

On this 17 day of September 1993, before me, the undersigned officer, a Notary Public, personally appeared, Gordon E. Neuenschwander, who acknowledged himself to be President of PITTSBURGH & LAKE ERIE PROPERTIES, INC., and that he, being authorized to do so, executed the foregoing instrument on behalf of the said PITTSBURGH & LAKE ERIE PROPERTIES, INC., for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 17 of September, 1993.

Gloria J. Hardy
Notary Public

My Commission expires: _____

Notarial Seal
Gloria J. Hardy, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Dec. 18, 1993
Member, Pennsylvania Association of Notaries

EXHIBIT 3

ECKERT SEAMANS

Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

TEL 412 566 6000
FAX 412 566 6099
www.eckertseamans.com

Christopher R. Opalinski
412-566-5963
copalinski@eckertseamans.com

Fax: 330-744-9095

August 9, 2005

Mr. Terry Feichtenbiner
General Manager, Northern Lines Division
The Ohio Central Railroad System
1290 Poland Avenue
Youngstown, OH 44502

Re: Allied Erecting and Dismantling Company, Inc.;
Ohio Central Non-Exclusive Easement

Dear Mr. Feichtenbiner:

Please be advised that our firm represents Allied Erecting and Dismantling Company, Inc. ("Allied") and that Allied has consulted with us regarding Ohio Central's blatant and continued refusal to cease parking and/or storing rail cars on Allied's property at 2100 Poland Avenue in Youngstown, Ohio.

As you are aware, Ohio Central has a non-exclusive easement to run cars over the rail lines on Allied's property. However, it cannot store or park cars on these lines, use these lines as a transfer point or switchyard, or otherwise use Allied's property as if it were Ohio Central's own property. Nevertheless, in violation of the limited easement rights its possesses, Ohio Central has been storing and parking cars on Allied's property, adversely impacting both Allied's ability to utilize these lines, its operations, and its development plans for the property. Moreover, certain of the cars stored in Allied's property are oil or chemical tanker cars, or cars containing untarped construction and demolition debris, the run-off of which is contaminating Allied's property. The storage of these cars on Allied's property also constitutes an attractive nuisance to vagrants and vandals.

Allied and its President, Mr. John Ramun, have repeatedly advised various representatives of Ohio Central to cease storing cars on these lines, consistent with the non-exclusive easement rights you possess. Ohio Central evidently has chosen to intentionally ignore Allied's reasonable requests. Allied will no longer tolerate Ohio Central's blatant disregard of its limited easement rights and its desire to use Allied's property without permission or payment.

You are hereby advised that Allied has authorized our firm to immediately commence appropriate legal proceedings to both enjoin Ohio Central from continuing to trespass on its property, as well as to recover damages for its tortious conduct and/or an accounting of all rent, fees or other revenues collected while improperly using Allied's property. While Allied hopes it

will not be forced to take such action, we intend to promptly and aggressively pursue these actions on Allied's behalf in the event Ohio Central refuses to comply with Allied's request.

Because Ohio Central has previously disregarded Allied's informal attempts to amicably resolve this matter, I would request that you, or your counsel, confirm in writing within ten (10) days of the date of this letter your intention to cease any further unauthorized storage or parking of cars on Allied's property.

I will await you prompt response.

Very truly yours,

Christopher R. Opalinski

CRO/bjm
cc: Tracy V. Drake (Columbiana County Port Authority) (Fax: 330-386-1122)
Mr. John Ramun

STATE OF OHIO)
) SS IN THE COURT OF COMMON PLEAS
MAHONING COUNTY)

CASE NO. 2006 CV 00181

ALLIED ERECTING AND DISMANTLING CO., INC., ET AL.,
Plaintiffs
vs
THE OHIO CENTRAL RAILROAD, INC., ET AL.,
Defendants

DEPOSITION OF MR. JOHN RAMUN

DEPOSITION taken before me, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, on the 1st day of April, A.D., 2009, pursuant to agreement, and at the time and place therein specified, to be read in evidence on behalf of the Defendants in the aforesaid cause of action, pending in the Court of Common Pleas within and for the County of Mahoning, in the State of Ohio.

APPEARANCES

F. TIMOTHY GRIECO, ESQ.,
On Behalf of Plaintiffs

THOMAS P. LIPKA, ESQ.,
On Behalf of Defendants

INDEX

Caption and Appearance 1
Stipulations 3
Reporter's Certificate 114
Notary Certificate 115

- - -

Witness	Exam	Attorney	Page
John Ramun	Cross	Mr. Ramun	4

- - -

DEFENDANT'S EXHIBITS

1 - Easement agreement between LTV Steel Company and Allied Industrial Development Corporation
2 - Easement agreement between Allied Erecting and Dismantling Company and Pittsburgh & Lake Erie Properties
3 - 1/14/06 letter to John Ramon from James V. Marter
4 - Google Earth map

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Reported and Transcribed by:
Cynthia M. Nibert
Registered Professional Reporter

STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that this deposition may be taken at this time, 10:00 a.m., at the offices of Manchester, Bennett, Powers & Ullman, Attorneys at Law, Youngstown, Ohio, without the usual Notice to Take Deposition having been served, service of the same being waived.

It is further stipulated and agreed that the deposition may be written in stenotype by Cynthia M. Nibert, a Notary Public within and for the State of Ohio, and a Registered Professional Reporter, and by her transcribed; that the transcript be made available to the witness for signature, and that the witness shall read the same and subscribe thereto, and that the deposition may thereupon be used on behalf of the Defendants in the aforesaid cause of action.

* * *

WHEREUPON,

MR. JOHN RAMUN

of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes and says as follows:

CROSS EXAMINATION

By Mr. Lipka

10:04:51 Q Mr. Ramun, my name is Tom Lipka. I think we met
10:04:56 before, but we just met before this deposition. There is
10:05:00 water and coffee, you know, whatever you need. Let me ask
10:05:04 you this. Have you been deposed before?
10:05:05 A **Yes.**
10:05:06 Q Okay. How many times have you been deposed?
10:05:08 A **I don't know.**
10:05:09 Q Okay. I mean, more than once? More than ten?
10:05:12 A **Yes, yes.**
10:05:13 Q Yes, yes, okay. Well, then you understand the
10:05:16 ground rules. If you want to take a break, we can take a
10:05:19 break. If you want to use the rest room, you can use the
10:05:22 rest room. Just let me finish my question so we're not
10:05:25 talking over each other on the record.
10:05:27 If you give an answer, just say it out loud as
10:05:31 opposed to nodding your head or doing anything along those
10:05:34 lines so that the court reporter can take it down.

EXHIBIT
tabbies
B

10:05:37 Mr. Ramun, can you just state your name for the
10:05:40 record.
10:05:40 **A** **John Richard Ramun, R-a-m-u-n.**
10:05:46 Q And, Mr. Ramun, what's your business address?
10:05:49 **A** **2100 Poland Avenue.**
10:05:51 Q And what business is located at 2100 Poland
10:05:55 Avenue?
10:05:55 **A** **Allied Consolidated Industries and its**
10:06:00 **subsidiaries.**
10:06:01 Q I'm sorry. Allied Consolidated Industries?
10:06:05 **A** **Yes.**
10:06:06 Q Mr. Ramun, there are two Plaintiffs to this
10:06:10 lawsuit. One of them is Allied Erecting and Dismantling.
10:06:15 MR. GRIECO: I'm sorry. Can we go off the
10:06:17 record?
10:06:17 (Whereupon, a discussion was held off the
10:06:20 record.)
10:11:01 Q Mr. Ramun, we were, I think where we were at is
10:11:04 that Allied Consolidated Industries has a business address
10:11:08 of 2100 Poland Avenue, and there were some subsidiaries.
10:11:11 And I was asking that Allied Erecting and Dismantling
10:11:16 Company, Inc., was that one of those subsidiaries?
10:11:19 **A** **Yes.**
10:11:19 Q And how about Allied Industrial Development

10:11:22 Corporation?
10:11:22 **A** **Yes.**
10:11:22 Q And let me ask it this -- it might not be the
10:11:31 best way to ask this question. But are any of the other
10:11:35 subsidiaries, would they be involved with moving rail on any
10:11:37 of the tracks that are at issue in this lawsuit?
10:11:40 **A** **I don't understand the question.**
10:11:41 Q Okay. Well, I will tell you what. We will get
10:11:45 to that later. I will come back to that.
10:11:47 What is your position with the Plaintiffs in this
10:11:52 case, which is Allied Erecting -- I will just call them
10:11:55 that -- and then Allied Industrial Development? Are you the
10:11:58 president? Are you the CEO? Or what's your position?
10:12:02 **A** **President.**
10:12:02 Q Of both companies?
10:12:04 **A** **Yes.**
10:12:04 Q In your discovery responses, you listed two other
10:12:12 names of people who might have information relevant to this
10:12:15 lawsuit. One of them was a Michael Ramun. Is he a relation
10:12:19 of yours?
10:12:22 **A** **I, there -- the other Michael Ramun would be my**
10:12:28 **son, who is currently with, with the business, Michael**
10:12:36 **Richard Ramun.**
10:12:37 Q Michael Richard Ramun?

10:12:39 **A** **Yeah.**
10:12:39 Q And then there was a -- I should have written
10:12:42 this down -- a Tom Peluso? Tom Peluso?
10:12:46 **A** **Peluso.**
10:12:48 Q How do you spell that?
10:12:48 **A** **P-e-l-u-s-o.**
10:12:50 Q And what knowledge or familiarity with, let's
10:12:57 start with your son I guess, would Michael Ramun have about
10:13:00 this lawsuit?
10:13:01 **A** **I think Michael took a lot of pictures of the C**
10:13:07 **and D cars that Ohio Central was -- had stored on our**
10:13:21 **property, wherein they had principally taken dominion and**
10:13:27 **control over our land and trackage.**
10:13:33 Q So Michael would take photos. Is there anything
10:13:36 else, any other knowledge that he would have that, that you
10:13:39 would not?
10:13:41 **A** **He took photos. He, he -- we looked at the type**
10:13:49 **of materials that was in the car, and there observed leakage**
10:13:54 **of materials on our property, some slimy stuff coming out of**
10:14:06 **the cars.**
10:14:07 Q You're saying that you and Michael both saw this?
10:14:09 **A** **Yes.**
10:14:09 Q Okay. And, Mr. Ramun, here is why I'm asking,
10:14:19 about as straightforward as you're going to get. I mean, I

10:14:22 need to figure out who else, if anyone, I need to depose in
10:14:25 this case. So that's why I'm asking what Michael knows as
10:14:28 opposed to anyone else. I mean, if there is something out
10:14:30 there that he is later going to testify about that he has
10:14:33 knowledge of that maybe you don't, then I will probably take
10:14:38 his deposition.
10:14:38 **A** **I don't know everything he knows.**
10:14:40 Q Fair enough. What about Tom Peluso, why did you
10:14:42 list him as having some knowledge relevant to this case?
10:14:45 **A** **Tom handles all of our truck, truck and car**
10:14:50 **movements, and Tom is aware also of Ohio Central's storage,**
10:15:08 **and taking dominion and control over our property and rail.**
10:15:13 Q Okay. Are you aware of whether Tom Peluso
10:15:16 noticed any leakage or contamination issues?
10:15:19 **A** **I believe so.**
10:15:19 Q On a side note, Mr. Ramun, there is coffee and
10:15:39 water there. If you want some pop for whatever reason, I
10:15:50 can get that for you, just so you know.
10:15:50 Mr. Ramun, could you just describe what type of
10:15:50 business Allied Erecting and Dismantling does? I mean, what
10:15:53 line of business is it in?
10:15:57 **A** **Industrial contracting, industrial dismantling,**
10:16:07 **construction of facilities, and development of property that**
10:16:23 **it owns and that other, that Allied Industrial Development**

10:16:28 **also owns.**
10:16:33 Q Let me ask the same questions for Allied
10:16:36 Industrial Development Corporation. What does it do?
10:16:39 **A It, it owns property and is part of property that**
10:16:48 **is being developed and modified to future utilization by the**
10:16:59 **Allied companies.**
10:17:01 Q Okay.
10:17:02 **A Allied Consolidating being the parent.**
10:17:06 Q When you say that both Allied Erecting and Allied
10:17:10 Industrial are involved in development of property, what do
10:17:13 you mean by that? When I think of property development,
10:17:15 just being an outsider looking in, I think of building
10:17:19 residential homes on a subdivision somewhere. What type of
10:17:19 development?
10:17:20 **A Industrial development.**
10:17:23 Q Locally, or all over the country?
10:17:26 **A It, it can do it anywhere.**
10:17:29 Q Okay. Let me be a little more specific, I guess.
10:17:35 Why, why would either Allied Industrial Development or
10:17:39 Allied Erecting need the rail lines that are I guess at
10:17:46 issue in this lawsuit?
10:17:50 **A Further utilization.**
10:17:54 Q I just -- what does that mean, "further
10:17:58 utilization"?

10:17:58 **A Further uses of railroad operation.**
10:18:01 Q I mean, I guess, do you haul materials in, haul
10:18:08 materials out?
10:18:08 **A Yes.**
10:18:08 Q What type of materials would that be?
10:18:11 **A Commodities, could be anything. Could be**
10:18:15 **anything you can put on a railroad car.**
10:18:20 Q Okay. Where --
10:18:21 MR. LIPKA: I guess we can look at the map for a
10:18:23 second, Tim, if you don't mind.
10:18:28 Q Mr. Ramun, I'm putting in front of you what I
10:18:31 will just represent to you is a, I believe it's a Google
10:18:35 Earth photo that was put together by my clients, Ohio
10:18:40 Central, which is my understanding covers all the, all the
10:18:42 property in question, and they have put some highlighted
10:18:47 overlays of the tracks in question.
10:18:51 Take a minute to look at that just to, you know,
10:18:54 familiarize yourself with it and, you know, see if you
10:18:57 recognize relevant landmarks.
10:19:09 **A I recognize the, I recognize the Google Earth**
10:19:15 **picture. But the markings that are on it may or may not be**
10:19:23 **relevant, or may or may not be correct.**
10:19:30 Q All right. That's fine. I mean, that's fine.
10:19:33 Where, even if it's on this map, and it might not be, where

10:19:37 is the 2100 Poland Avenue located? Does it appear anywhere
10:19:41 on this map, or is it somewhere else?
10:19:43 **A Yes.**
10:19:44 Q Where would it be, if you can just point it out
10:19:46 to me?
10:19:47 **A Basically the 2100, 2100 Poland Avenue covers all**
10:19:55 **of Allied's properties as far as a mailing address.**
10:19:59 Q Okay.
10:20:00 **A And there is about 250 acres involved.**
10:20:04 Q Okay. Let me ask this. Your corporate
10:20:09 headquarters, your actual office where you sit in your
10:20:12 chair, where would that be?
10:20:15 **A Where would it be?**
10:20:19 Q Right. I mean, is it on this map, this Google
10:20:22 Earth map? If not --
10:20:24 **A You mean my, my office chair? It's not on this**
10:20:27 **map.**
10:20:27 Q Okay. So where would it be in relation to the
10:20:30 map?
10:20:30 **A Be right here.**
10:20:33 Q Okay. Well, it wasn't a fair question, I
10:20:36 suppose. I mean, I'm staring at, on the Google Earth map,
10:20:40 the place where the Center Street Bridge meets Poland
10:20:44 Avenue.

10:20:44 **A Yes.**
10:20:45 Q You can't quite see that, but you know, take me
10:20:47 to your office from that reference point.
10:20:51 **A My office is the whole 250 acres.**
10:20:54 Q Okay.
10:20:56 **A I, I work at, I work on that site, and my, my**
10:21:01 **office at this point is in the main office, which is**
10:21:05 **actually located across the road. And if you would look at**
10:21:09 **it on a land map, it would be called 1999; however, there is**
10:21:16 **all kind of numbers all over. But --**
10:21:18 Q Sure.
10:21:18 **A We have a compilation of property that has been**
10:21:22 **accumulated since 1973, that started out with about four and**
10:21:30 **a half acres, and now is about 250 acres. So there is a lot**
10:21:33 **of pieces of property involved.**
10:21:34 Q All right. So your current office you're saying
10:21:38 is located on the other side of Poland Avenue from the
10:21:42 property that we're looking at today?
10:21:44 **A Yes.**
10:21:44 Q And would be on the Struthers side of Center
10:21:49 Street Bridge?
10:21:49 **A Yes.**
10:21:50 MR. GRIECO: The south side of Poland Avenue?
10:21:52 **A Yes.**

10:21:53 Q All right. Fair enough.
10:21:55 A **But not on the --**
10:21:56 MR. GRIECO: This map.
10:21:57 A **-- on the Struthers side as in Struthers.**
10:21:59 Q No, correct.
10:22:01 A **All of our, the majority of our property is in**
10:22:04 **the City of Youngstown.**
10:22:05 MR. GRIECO: Just for the record, so this map
10:22:06 primarily shows, almost exclusively shows the north side of
10:22:10 Poland Avenue?
10:22:11 A **Yes.**
10:22:12 MR. GRIECO: Okay.
10:22:12 Q Okay. And it, I mean, again, just it shows
10:22:22 predominantly the north side of Poland Avenue, all right,
10:22:22 south of the Mahoning River I guess would be the primary
10:22:23 focus.
10:22:30 Mr. Ramun, how long have you operated Allied
10:22:34 Erecting and Dismantling?
10:22:35 A **Since 1973.**
10:22:37 Q Okay. How about Allied Industrial Development?
10:22:40 A **I'm going to say back in the early '80s or**
10:22:50 **earlier.**
10:22:52 Q Okay. And Allied Consolidated Industries and/or
10:22:57 its various subsidiaries owns 250 acres?

10:23:01 A **Yes.**
10:23:01 Q Okay. And you're saying that all of those are in
10:23:04 the City of Youngstown?
10:23:05 A **Yes.**
10:23:06 Q Okay. The use of the rail tracks, and I guess
10:23:19 for purposes today, Mr. Ramun, assume that the yellow
10:23:23 overlays located on this Google Earth map -- I understand
10:23:28 you have already testified you're not sure if those are
10:23:30 correct -- but just assume for the purposes today that they
10:23:33 do correctly identify these tracks.
10:23:37 Which of these tracks would you use in the course
10:23:40 of operating your businesses?
10:23:43 A **I'm not going to make any assumptions, first of**
10:23:50 **all. So you, you're going to have to rephrase your**
10:23:53 **question.**
10:23:54 Q All right. Fair enough. It looks to me like
10:23:58 there is a rail track which on here is labeled MVRY #3 Main.
10:24:05 Do you see that one?
10:24:05 A **Yes.**
10:24:07 Q Is it clear to you that there is a rail line
10:24:10 located along that, that space?
10:24:13 A **Yes.**
10:24:13 Q I mean, you're intimately familiar with this
10:24:16 property, correct?

10:24:16 A **Yes.**
10:24:17 Q And in fact, you own most of this property,
10:24:19 correct?
10:24:19 A **Yes.**
10:24:20 Q Okay. So you are intimately familiar with the
10:24:24 locations of the various rail lines on this property?
10:24:26 A **Yes.**
10:24:27 Q Based on that intimate knowledge, is there
10:24:29 anything shown on this map as far as the yellow overlays
10:24:32 that you doubt or question?
10:24:35 A **That, the way they're tagged.**
10:24:37 Q Okay. What's your disagreement with the way
10:24:39 they're tagged?
10:24:40 A **Well, you call, you have a tag there MVRY #3**
10:24:49 **Main.**
10:24:49 Q Okay.
10:24:49 A **All the MVR designations, those are LTV lines.**
10:24:57 **Former LTV owned those lines prior to selling the property**
10:25:01 **to Allied.**
10:25:04 Q Okay. So conceptually, just so I understand,
10:25:07 you're not disagreeing with the placement of these yellow
10:25:10 overlays, that they represent rail lines; you're just
10:25:13 disagreeing perhaps with the characterization what those
10:25:16 lines are called?

10:25:16 A **Yes. And the LE&E Main that they designate,**
10:25:21 **those are Allied tracks within our property, within our**
10:25:26 **property lines.**
10:25:28 Q Okay. Just for example, the one that's labeled
10:25:31 here MVRY #3 Main, what do you call that line?
10:25:35 A **We would call that line Allied's track. We**
10:25:48 **haven't designated any number to it.**
10:25:51 Q Okay.
10:25:51 A **And you might look at an old map and, and look at**
10:25:56 **a number on it. But --**
10:25:59 Q Okay. Well, let's just, I mean, setting --
10:26:02 A **But as far as LE&E Main track, LE&E Main track,**
10:26:08 **that was the P&LE Main prior to Allied purchasing it, and it**
10:26:12 **became Allied's main track.**
10:26:16 Q All right. Well --
10:26:18 MR. GRIECO: I mean, let me suggest something,
10:26:21 Tom. We didn't create this.
10:26:21 MR. LIPKA: No. I understand.
10:26:23 MR. GRIECO: We don't want to get tied into
10:26:26 validating. I mean, maybe as you go over the different
10:26:27 lines, if you want to know where we claim things are used,
10:26:29 or this or that, you can just say, do you know of a line in
10:26:32 this area that, that, a track that's approximately in this
10:26:36 area. I mean, you know what I'm saying?

10:26:38 MR. LIPKA: Sure.
10:26:40 MR. GRIECO: Obviously he's been on the property,
10:26:42 and you can say, do you know what you would deem to be a
10:26:44 former LTV track that is approximately in the area of what
10:26:48 is shown as the MVRY #3 Main, you know, something like that.
10:26:52 MR. LIPKA: That's fine.
10:26:53 Q I mean, Mr. Ramun, I think we have agreed that,
10:26:57 you know, these yellow overlays do represent railroad
10:27:02 tracks. So setting aside the designations that were put on
10:27:05 this by the Ohio Central Railroad, which of these yellow
10:27:07 overlays representing the rail lines do you use in the
10:27:10 course of your business?
10:27:11 **A I, I would say your question is not right. The**
10:27:16 **yellow lines don't represent railroad lines. They represent**
10:27:20 **highlighted railroad tracks that are within our property.**
10:27:24 **Some of them are in our property, current property, and some**
10:27:27 **of them are not in our property. Some of them extend beyond**
10:27:31 **it.**
10:27:32 Q All right. Well, I don't disagree with your
10:27:34 characterization. I guess all I'm trying --
10:27:36 **A I disagree with yours.**
10:27:38 Q Okay. Well, I will accept your characterization,
10:27:40 Mr. Ramun.
10:27:41 **A All right.**

10:27:41 Q I'm just doing nothing more than trying to shave
10:27:44 four hours off of what we're doing here today.
10:27:48 **A I can be here all day.**
10:27:50 Q Mr. Ramun, I'm not trying to be difficult. I
10:27:53 have just got a map here, which I think conceptually will
10:28:04 make this process a lot easier. You have got some
10:28:04 disagreements as to characterization, which is fine. I
10:28:04 don't care about the characterizations.
10:28:04 I'm just trying to get to the heart of the
10:28:06 matter, which is which of these rail lines shown on this map
10:28:09 you use during the course of your business. I mean, is that
10:28:13 a question you can answer?
10:28:13 **A All of them on our property.**
10:28:15 Q All right. Well, let's take a step back then.
10:28:17 Where does this map in front of you, as best you can tell,
10:28:25 which of this property is owned by either Allied
10:28:30 Consolidated Industries or any of its subsidiaries?
10:28:32 **A You don't have any property lines on here, so to,**
10:28:36 **to show you a line would be -- to show you a point, I can, I**
10:28:46 **will say on the Struthers side --**
10:28:48 Q Okay.
10:28:49 **A -- where it says "CP Graham," that line ties**
10:28:57 **into, you will see where it goes into that green circle.**
10:29:01 Q Sure.

10:29:01 **A There is a point within that green that, where**
10:29:06 **Allied's property ends.**
10:29:08 Q Okay.
10:29:09 **A At the Center Street Bridge, the property line is**
10:29:12 **about in the center of the bridge. When you look at #3**
10:29:19 **Main, or 239 track or, or 4 Main, right about in the center**
10:29:29 **of the bridge, when you get to the LE&E, or the main track**
10:29:36 **that has your designations of LE&E on it, --**
10:29:40 Q Okay.
10:29:41 **A -- that runs up to the end of this one line where**
10:29:50 **it says "Stub." And somewhere around where this says the,**
10:30:03 **there is a, there is a piece of that line that belongs to, I**
10:30:08 **think ownership of the line is Columbiana Port Authority**
10:30:12 **from that point out.**
10:30:14 Q Okay.
10:30:14 **A But, but as far as the stub line, we own that**
10:30:18 **property.**
10:30:24 Q Okay.
10:30:25 **A And then we own a lot of properties, you know,**
10:30:30 **toward Poland Avenue. And there is, there is a variety of**
10:30:33 **lines there.**
10:30:36 Q All right. That's okay. So somewhere in the
10:30:41 green area that we have shaded CP Graham, there is a point
10:30:46 at which Allied's ownership begins, and then that

10:30:50 encompasses everything --
10:30:51 **A I think it would, it would end the -- it**
10:30:59 **includes, I believe, the switch that would allow you to get**
10:31:02 **on the main that belongs to NS.**
10:31:06 Q Okay.
10:31:07 **A The main that belongs to NS, if you look at your**
10:31:10 **green slot on, to the Struthers side in the Youngstown side**
10:31:17 **of that slot, that main line is NS's main. So we can hook**
10:31:24 **in to NS's main at that point.**
10:31:29 Q Okay. And that would flow -- and when you say
10:31:32 you own the property, you mean everything between Poland
10:31:35 Avenue and the Mahoning River? I mean, is that an easy way
10:31:39 to --
10:31:39 **A No, it's not. Our property line is -- does not**
10:31:44 **include the Haselton Yard or the mains going down to Graham**
10:31:53 **Crossing.**
10:31:56 But our property does go from where it says LE&E
10:32:03 Main track, it goes from there to Poland Avenue.
10:32:07 Q Gotcha, okay.
10:32:08 **A All the way up.**
10:32:09 Q So is it -- and I understand you didn't do the
10:32:12 shading. I mean, that's perfectly recognized. But the area
10:32:16 that's shaded green that has a designation of NS Haselton
10:32:22 Yard, that's property that Allied does not own?

10:32:24 A **That's not true. I said we intersect in that**
10:32:27 **main, which is in the middle of it. So there is a chunk of**
10:32:30 **that that is in that property.**
10:32:31 Q I think we're talking about two things. You're
10:32:33 looking at the CP Graham green shaded area?
10:32:35 A **Yeah.**
10:32:36 Q That's what you did testify. I'm sorry. I was
10:32:38 asking about the NS Haselton Yard green shaded area.
10:32:41 A **I'm not sure the NS Haselton Yard are good**
10:32:48 **property designations there. I can't confirm that at this**
10:32:51 **point.**
10:32:51 Q Okay. Let me ask it this way, just so I know
10:33:14 that -- the rail line that I guess we had designated the
10:33:22 LE&E Main track, the property that's on where it leaves the
10:33:31 green area shaded CP Graham --
10:33:34 A **Not where it leaves it.**
10:33:35 Q Where it --
10:33:36 A **Where it intersects the main.**
10:33:38 Q Okay.
10:33:39 A **The NS Main, or the former ConRail Main.**
10:33:42 Q Okay. So with that --
10:33:46 A **I think it's Station 40, 45.**
10:33:51 Q Okay. So between Station 45 --
10:33:54 A **Station 154.**

10:33:56 Q -- and Station 154, where would Station 154 be,
10:34:00 just as best you can eyeball it?
10:34:02 A **I think it's right in this area here, under where**
10:34:06 **it says LE&E stub.**
10:34:11 Q Okay. The property underneath that Allied would
10:34:15 own, underneath the LE&E Main track between 45 and 153 you
10:34:22 said?
10:34:22 A **153, 154, something like that.**
10:34:25 Q Okay. And then the property underneath the lines
10:34:29 that, again, we have designated MVRY 1 --
10:34:43 A **That's just from memory. I mean, there is**
10:34:43 **documents that speak for them self.**
10:34:43 Q I appreciate that, Mr. Ramun. You don't have
10:34:43 deeds and property descriptions in front of you. I'm just
10:34:43 trying to eyeball it to get a ball park estimate.
10:34:45 The property that's under all the rail lines that
10:34:49 are designated MVRY, so there is a #1 Main, a #3 Main, up to
10:34:54 the Center Street Bridge, that property is all owned by
10:34:57 Allied?
10:34:58 A **Yes.**
10:35:01 Q Okay. And likewise, you know, again, there is
10:35:08 some designations here of MVRY 239 track and 220 track.
10:35:14 That's owned by Allied as well?
10:35:22 I'm sorry. I can point it out. That's not fair.

10:35:24 220 track, I was looking at that, and 239, I was looking
10:35:28 there.
10:35:28 A **#4 Main, yeah.**
10:35:30 Q Okay.
10:35:31 A **Yes, we own that.**
10:35:32 Q Up to the Center Street Bridge?
10:35:34 A **Up to the center of it, yes.**
10:35:36 Q Okay. Now, I asked -- before we get into this,
10:36:01 you had said that every single track on Allied's property is
10:36:04 used in Allied's business. That was your testimony?
10:36:08 A **Yes.**
10:36:08 Q Is there one particular track that's used more
10:36:11 than others?
10:36:12 A **No.**
10:36:14 Q Is there a piece of track -- let me put it this
10:36:18 way. Is there a piece of track that we have just discussed
10:36:21 here that's been used by your businesses within the last 24
10:36:23 hours?
10:36:26 A **I, I couldn't tell you that. I haven't been**
10:36:32 **there. I haven't been out there.**
10:36:34 Q Let me ask you this. Which of these tracks can
10:36:38 you point out to me that's been used by your businesses
10:36:40 within the last six months?
10:36:41 A **These tracks are in our property. They're part**

10:36:46 **of the development site. They're, they are -- their use is**
10:36:50 **part of the development, and they are, they are our tracks**
10:36:55 **and for our full utilization.**
10:37:01 Q Okay. I --
10:37:02 A **And in fact are -- we have been, we have, we**
10:37:05 **have, we have been frustrated from going forward with plans**
10:37:09 **to utilize these tracks due to Ohio Central's breaches.**
10:37:14 Q Okay. I mean, I think what you're saying, Mr.
10:37:16 Ramun, correct me if I'm wrong, is that these are your
10:37:19 tracks, and you should be able to do with them whatever you
10:37:22 want? I mean, is that a fair characterization?
10:37:24 A **With the exception of allowing them to pass**
10:37:27 **through, yes.**
10:37:27 Q And I guess --
10:37:28 A **And not dump their environmental crap on my**
10:37:31 **property.**
10:37:32 Q We will certainly get to that. But my question
10:37:34 is: How have you used these tracks in the last six months?
10:37:37 A **We have been substantially prevented from being**
10:37:41 **able to utilize the tracks due to this litigation and the**
10:37:46 **things that led up to it.**
10:37:48 Q So is your answer to that --
10:37:50 A **That, that will continue until this is over.**
10:37:53 Q Is it your testimony that you haven't used these

10:37:56 tracks while the litigation has been pending?
10:37:59 **A We have been preventing -- prevented from setting**
10:38:03 **up operations wherein we could have used these tracks. I**
10:38:06 **think we used them for a small demonstration of our shear**
10:38:12 **products where we brought some -- allowed a, a customer of**
10:38:16 **ours to bring some rail in where we staged derailment, cut**
10:38:21 **the cars up.**
10:38:22 Q What track would that demonstration have occurred
10:38:24 on?
10:38:24 **A I think it was the LE&E siding track, it -- your**
10:38:32 **designation LE&E siding.**
10:38:35 Q Okay. So other than the demonstration on the
10:38:41 LE&E siding, which is our designation, I mean, have any of
10:38:46 your companies used any of these tracks since the start of
10:38:51 the onset of this litigation?
10:38:53 **A I, I can't answer that question.**
10:38:55 Q Why?
10:38:56 MR. GRIECO: Can I pose an objection, Tom?
10:38:59 MR. LIPKA: Sure.
10:39:00 MR. GRIECO: Maybe object to the word "use." And
10:39:02 could you be more specific as to what you mean? I mean,
10:39:06 moving rail cars across? Or --
10:39:08 Q Okay. Other than this demonstration that you
10:39:11 just testified about, have any of your companies moved any

10:39:15 rail cars across these lines in the last six months?
10:39:18 **A Yes.**
10:39:18 Q Okay. Which lines?
10:39:20 **A I just -- that was part of my previous answer.**
10:39:24 **And we have been prevented from being able to use the tracks**
10:39:29 **that we own the way we want to use them because of, because**
10:39:33 **of the claims that are cited in this, in this litigation.**
10:39:39 Q You said it was part of your previous answer?
10:39:41 **A We cannot commit to anyone at this point to be**
10:39:47 **able to go in with an operation and use our tracks because,**
10:39:52 **because of what the Ohio Central has done and continues to**
10:39:58 **do.**
10:39:58 Q Do any of your companies keep internal records as
10:40:04 to when these tracks were used, or have been used?
10:40:07 **A If, if we had, if we had internal records on car**
10:40:14 **movements, if we had movements by car, yes, they would be.**
10:40:19 But again, we have been substantially prevented
10:40:23 from carrying forward our plans relative to our development
10:40:29 and the utilization of these tracks by Ohio Central's
10:40:46 positioning, positions, and, and they say they're not on our
10:40:46 track, and then their cars appear on our track. I mean,
10:40:46 it's just one thing after another with these guys.
10:40:46 Q Okay. So the answer to my question is that you
10:40:49 do have --

10:40:49 **A Would you do me a favor?**
10:40:51 Q Sure.
10:40:51 **A Tell Mr. Funkenbiner down there --**
10:40:55 Q It's Feichtenbiner.
10:40:57 **A -- to quit making faces and laughing at me.**
10:41:05 Q All right.
10:41:05 **A Because I don't, I don't need to sit here and see**
10:41:11 **him do that.**
10:41:12 Q All right.
10:41:12 **A Tell him to be a gentleman.**
10:41:14 Q That's fine, Mr. --
10:41:15 **A Instead of a clown. Okay?**
10:41:20 Q Okay. I certainly haven't heard any laughter.
10:41:23 MR. LIPKA: But I guess I will ask Terry, to the
10:41:25 extent he has done anything that you complained of, to
10:41:28 please cease.
10:41:29 Q In the meantime, back to the topic at hand. You
10:41:35 would keep internal records of any cars that have moved over
10:41:39 these tracks; is that correct?
10:41:40 **A Yes.**
10:41:41 Q Okay.
10:41:42 **A If we would have been able to use them, yes, we**
10:41:45 **would, we would have those records. We have not been able**
10:41:47 **to use these tracks the way we wanted to.**

10:41:51 Q Okay. So other than the, the --
10:41:53 **A I don't know how to, I don't know how to answer**
10:41:55 **that any better than that.**
10:41:56 Q To be honest, Mr. Ramun, yeah. I mean, what I
10:41:59 want to know is how often these tracks have been used within
10:42:02 the past six months, or even since the onset of the
10:42:04 litigation.
10:42:05 **A Since the onset of this litigation, we have been**
10:42:08 **substantially prevented from carrying out any plans to**
10:42:11 **utilize these tracks by Ohio Central's actions.**
10:42:17 Q Okay. And when you say "plans to utilize these
10:42:22 tracks," do you just mean moving cars in and over them, or
10:42:26 do you have some other type of development plans for them?
10:42:28 **A We have, we have many development plans to**
10:42:34 **utilize this. This is a very important piece of property,**
10:42:38 **as far as its relationship between the rail, and the**
10:42:42 **property, and its location in the Youngstown area for**
10:42:45 **Allied.**
10:42:46 Q Okay. Can you describe any particular
10:42:49 development plan that has been thwarted due to the actions
10:42:52 of Ohio Central Railroad?
10:42:56 **A I have been describing it.**
10:43:00 Q I just, I must be a little slow, Mr. Ramun. My
10:43:04 understanding of your testimony -- and I don't want to

10:43:07 mischaracterize it -- is that there were numerous
10:43:10 development plans that you couldn't use or couldn't
10:43:12 implement because of the actions of Ohio Central.
10:43:14 I guess what I'm asking, is there one specific
10:43:16 that you can tell me about we wanted to do this, we wanted
10:43:19 to do that, and you couldn't because the cars were on the
10:43:21 lines?
10:43:21 **A When you have, when you have the amount of**
10:43:29 **trackage we have, and you have heavy industrial property,**
10:43:37 **and you want to use it to store scrap, or bulk materials, or**
10:43:42 **transload items, you can't do it with these guys just**
10:43:49 **plugging the cars up.**
10:43:50 There has been, there has been long periods of
10:43:55 time where there was over a hundred cars parked in our
10:43:58 yard --
10:44:00 Q All right. Let me ask this.
10:44:03 **A Full of C and D debris, in all types of weather,**
10:44:07 **not covered, not in a closed container, leaking on our**
10:44:11 **property. And I can't have that.**
10:44:15 And I can't run a business or pursue a business
10:44:19 until this issue is cleared up in court. And that will
10:44:32 come, you know, that will all come out in the wash.
10:44:38 Q Have you done any calculations or put anything
10:44:43 down on paper regarding how much you have been damaged by

10:44:46 the actions of the Ohio Central Railroad?
10:44:49 **A That's in process. We have not, we haven't done**
10:44:57 **that at this point. But we will.**
10:45:00 Q And what's stopped you from doing it up to this
10:45:03 point?
10:45:03 **A Well, we don't have all the discovery from Ohio**
10:45:10 **Central. They owe us a lot of documents. They haven't**
10:45:13 **given them to us. They don't answer questions. They, they**
10:45:19 **act stupid on the environmental, and they know as much about**
10:45:23 **environmental as anybody else. After all, they're this**
10:45:27 **great railroad, and they should do things right.**
10:45:31 But they don't seem to have any environmental
10:45:38 policies. But I do believe they do.
10:45:41 Q Mr. Ramun, the, assuming cars were on these
10:45:46 tracks, you mentioned these internal records. How far back
10:45:49 do you keep those records? I'm sorry. Did you not hear the
10:46:01 question?
10:46:03 **A I'm thinking.**
10:46:04 Q Okay.
10:46:05 **A Any, any records we would have of cars coming and**
10:46:07 **going from our yard we would have, and they would go back**
10:46:13 **substantially. They would be substantial records.**
10:46:18 There was, there was a point in time prior to
10:46:20 Ohio Central doing this where we had a lot of cars coming

10:46:23 and going from Youngstown. And this is when P&LE was moving
10:46:32 them and some of the other guys were moving them, so we do
10:46:36 have some records.
10:46:37 Q I guess that would have been my question. What
10:46:40 carriers would have been moving cars for, for your business?
10:46:42 **A It was the successors P&LE, first of all, and**
10:46:46 **then successors to that, except for Ohio Central. We would**
10:46:52 **not allow them -- we couldn't let them do any movement,**
10:47:03 **because they basically gave us pricing of $240 a car. And**
10:47:06 **I, I wouldn't do that.**
10:47:10 P&LE was reasonable. The other guys were
10:47:12 reasonable. They were all -- they were making moves for us
10:47:15 for $20.
10:47:19 Q Okay.
10:47:19 **A There he goes again.**
10:47:23 Q Well, Mr. Ramun, how about this, how about maybe
10:47:25 if you focus on me and my questions, and then, you know, you
10:47:28 don't need to worry about that.
10:47:30 MR. GRIECO: I guess --
10:47:31 **A I have to be in this room.**
10:47:32 MR. GRIECO: Let's you and I talk.
10:47:33 MR. LIPKA: Sure.
10:47:34 MR. GRIECO: I think he's trying to do that. But
10:47:36 I think we both, I mean, I -- we have to make sure that

10:47:40 emotions taken out -- there shouldn't be, you know, any
10:47:44 emotional expressions and stuff.
10:47:46 Let's just keep to the testimony. I think Mr.
10:47:48 Ramun is doing that. I would ask that you guys do the same.
10:47:51 MR. LIPKA: Fine. Would it help if Terry moved
10:47:54 to that chair down there? Then you wouldn't have to see
10:47:56 him. That might solve all our problems.
10:47:59 Is that possible, Terry, move to the other side
10:48:02 of the table?
10:48:03 MR. FEICHTENBINER: Happy to.
10:48:05 MR. LIPKA: Problem solved.
10:48:06 MR. GRIECO: Thank you.
10:48:06 MR. LIPKA: Sure. Tim, can I ask you, I would
10:48:19 like to get my hands on these internal records that we have
10:48:22 been talking about, which show any movements on any of these
10:48:25 tracks for cars.
10:48:29 MR. GRIECO: Go ahead. Hold on for one second.
10:48:31 Hold on. Go ahead, Tom.
10:48:34 MR. LIPKA: Sure. I think you know what records
10:48:36 I'm looking for. I'm looking for the internal records of
10:48:40 the Plaintiffs, or any of their subsidiaries, that show
10:48:43 which cars were on these tracks that were being used by the
10:48:46 Plaintiff.
10:48:47 MR. GRIECO: And I will look. I mean, the only

10:48:48 thing I'm confused on, and you can ask it again, I wasn't
10:48:51 sure whether we established whether anything necessarily
10:48:54 exists for the relevant time period. But I, I can look.
10:48:59 MR. LIPKA: Well, I mean, I guess for relevant
10:49:01 time period, I would say, you know, 1995 to present, I
10:49:05 suppose.
10:49:07 MR. GRIECO: Okay. Well, I'm not agreeing that
10:49:09 that's the relevant time period necessarily, but I'm not
10:49:14 disagreeing with it, either.
10:49:15 I guess, I mean, if we're going back that far, I
10:49:18 think, from what I have heard, the farther we go back
10:49:20 increases the likelihood of better chance of documentation.
10:49:24 Because from what I have heard, you know, we got to a
10:49:28 certain point it substantially decreased our ability to use
10:49:31 the lines. So you're probably not going to see
10:49:34 documentation.
10:49:35 MR. LIPKA: That's what I'm looking for. If it's
10:49:37 back in 1995 and 1996 -- I'm making these numbers up --
10:49:41 Allied had -- again, I'm making numbers up -- 500 cars a
10:49:44 month going back and forth, and then when Ohio Central
10:49:48 starts the behavior that's alleged here, it drops down to
10:49:51 zero, well, that's information I would like to know.
10:49:54 MR. GRIECO: Just for purposes of the record,
10:49:56 because we're obviously going to have discovery requests

10:49:58 from both sides, of course, as Mr. Ramun has pointed out, we
10:50:02 believe that there is more documentation we need to get from
10:50:05 Ohio Central.
10:50:06 I will agree to cooperate after the deposition,
10:50:09 you know, in writing to deal with these requests. So that's
10:50:15 the most I can commit to. I will consider the request.
10:50:18 MR. LIPKA: Okay.
10:50:57 (Whereupon, a discussion was held off the
10:50:59 record.)
10:51:23 MR. LIPKA: Why don't we take two minutes. I can
10:51:23 run --
10:51:30 MR. GRIECO: No. We're done.
10:51:30 Q Okay. Mr. Ramun, I'm handing you a document. We
10:51:33 can mark it as Defendant's Exhibit 1.
10:51:50 MR. GRIECO: Off the record.
10:51:51 (Whereupon, a discussion was held off the record,
10:51:51 and Defendant's Exhibit No. 1 was marked for identification
10:51:54 purposes by the court reporter.)
10:51:58 Q Mr. Ramun, take a look at that document. I will
10:52:00 tell you it's the LTV easement. But you know, flip through
10:52:05 it. Satisfy yourself as to what it is.
10:57:53 MR. LIPKA: Let me suggest this. Let's take
10:57:55 maybe a two-minute break while Mr. Ramun reviews the
10:57:59 document.

10:58:00 MR. GRIECO: Do you need more time?
10:58:02 MR. RAMUN: Yes.
10:58:03 MR. LIPKA: Back in a few.
10:58:06 (Whereupon, a short break was taken.)
11:09:00 Q Mr. Ramun, I have handed you what was marked as
11:09:04 Defendant's Exhibit 1. Do you recognize that document?
11:09:05 **A Yes.**
11:09:05 Q Can you identify it for me?
11:09:08 **A It's a, an easement agreement.**
11:09:10 Q Okay. Just filling in the blanks, it's an
11:09:15 easement agreement between LTV Steel and Allied Industrial
11:09:20 Development Corporation?
11:09:20 **A Yes.**
11:09:20 Q I mean, can you tell me, just in general terms,
11:09:24 the circumstances around which this easement agreement was
11:09:27 created?
11:09:34 **A Don't understand the question.**
11:09:37 Q Well, let me do this, Mr. Ramun. Let me give you
11:09:40 an answer, and see if you agree with it. This was a
11:09:43 situation in which Allied bought property from LTV, and in
11:09:47 the course of buying the real estate from LTV, Allied
11:09:50 transferred back an easement for rail purposes. I mean, is
11:09:59 that generally what happened?
11:10:01 **A The easement agreement was just part of the**

11:10:05 **purchase. And each item was negotiated by myself and LTV.**
11:10:12 Q I don't doubt that. I guess let me take a step
11:10:15 back. At some point in time did one of your companies --
11:10:18 and I will just refer to your companies collectively as
11:10:21 Allied. Is that okay?
11:10:22 **A That's fine.**
11:10:23 Q At some point in time Allied bought real estate
11:10:26 from LTV; is that correct?
11:10:28 **A Yes.**
11:10:29 Q Would that have been right around June of 1992?
11:10:34 The only reason I'm using that date is that that's in the
11:10:37 first paragraph of this easement agreement.
11:10:41 **A Well, I believe this easement was signed on the**
11:10:43 **6th of May '93.**
11:10:45 Q Okay. I'm just reading from the first paragraph
11:10:49 the easement agreement. It says LTV -- I'm paraphrasing --
11:10:52 and Allied are parties to a sale and purchase agreement
11:10:55 dated June 25, 1992.
11:10:57 **A Yes.**
11:10:57 Q Okay. So sometime, so in June, late June 1992,
11:11:03 you purchased some real estate from LTV, correct?
11:11:07 **A Yes.**
11:11:07 Q Okay. And can you just generally describe, as
11:11:11 best you can, on the, the map that we have been looking at

before, where that property would be? And again, I understand you don't have property descriptions, and stakes and that thing. I'm more looking at a general idea where it's at.

A Well, it's, it would be -- it would not include anything that's marked LE&E.

Q Okay.

A Because that was P&LE. So the extent of it -- and it's going to be difficult for you to get the exact lines. But it's between the P&LE track, and it's at the LTV property line, the center of Center Street Bridge, and it continued toward Struthers, or south.

And at the, at the Pine Hollow Creek, at that point there, it's just off of the track that's marked 220 track, just off of the edge of that, and it wraps around to this area where you see a roadway. There is a juncture of roadways here.

Q I see it.

A Then it goes along this dark area right here.

Q Okay.

A This, being P&LE property on this side. And you can see some containers lined up, building materials there. And there is a concrete wall that runs within here. And it goes up to -- there is a little white dot here.

Q I see it.

A It's generally in that area. And then you will see a, sort of a, a, an arc in the darkness, and then you will see a dotted line where it says NS Haselton Yard.

Q Okay.

A Well, you will see that dotted -- well, that's actually railroad cars.

Q Yeah.

A And you will see one right at, right there at the switch. That is the end of the LTV property.

Q Okay.

A So where he's got the Mahoning Valley Railroad #1 Main, that is not correct.

Q Okay.

A So between where the LE&E, where the LE&E siding is marked there and LE&E Main track, where you see that intersection, intersecting #1 Main, you go back up #1 Main to that point. So the LTV easement does not extend beyond that.

Q Okay. So just -- and again, correct me if I'm wrong.

A We probably should be marking this drawing.

Q Yeah. I thought about that. Well, let's do that then. That's fine. Here.

A If she has got some -- you got any little stickies?

Q Stickies fall off. That's part of the problem. Let me do this. If you could -- well, go ahead. Try it with that. I guess what I'm asking you to do, Mr. Ramun, to the extent you can, you're marking right now in a blue circle --

A I'm putting an X in it, the X. The center of that X should be the general area, and this would be the property, something like that. And if you look at the map in the back --

Q I did. It's so difficult for me to read is the problem.

A Well, if you look at easement number three, the last page, page two in the map.

Q Okay.

A That's, this would be easement number three. And that would be located like that.

Q Okay. So you --

A So this, this would be basically the line.

Q Okay. The --

A This is LTV, and this is P&LE.

Q This part of the track, the track that's marked MVR #1 Main, between your circle and where it intersects the

LE&E Main track?

A That's P&LE line.

Q That's P&LE line?

A Yes, it is.

Q Okay.

A From, from here to this direction is P&LE.

Q Okay.

A See, this whole property in here was P&LE.

Q P&LE.

A Clear up, clear up the 220 track, and right up to Center Street Bridge, and so many feet off of here.

Q Okay.

A So --

Q Okay.

A That's what this shows, also. If you surveyed it, you would see a mark. It would be right about there.

Q Right about there, okay.

A See, they -- you even see, you even see the cars they got. They plugged that interchange right up there. Can't get up there. They also did on the other end, and they -- they're always parking cars right in here.

Q Okay. I will tell you what. Show me what is covered by the LTV easement, which tracks, if you could. And maybe --

11:17:41 **A** **They're shown right on this map.**
11:17:43 **Q** Well, I mean, I will be honest, Mr. Ramun. I just have a hard time reading this map. Maybe it's a fault of mine. It's so much easier for me to read this one.
11:17:52 **A** **That's not my problem. That's yours.**
11:17:53 **Q** I understand. I guess what I'm asking you to do is maybe show me on this map.
11:17:58 **A** **Why don't you get your client to do that.**
11:17:58 **Q** Well, when my client is deposed, maybe your counsel will have him do that. What we're asking today, I just want you to show me which tracks are covered by the LTV easement.
11:18:06 **A** **I explained them before, that the LTV easement would start here, and that would be number, on your, on, on Exhibit A, page two, it's, it's easement number three, parcel B section. See it? That's it right there. So then if you want the other ones, I can give them to you.**
11:18:52 This loop track right here is #6, yeah, loop track, it's called 320. It's called 329.
11:19:01 **Q** 329, I'm sorry, or 239?
11:19:07 **A** **239. And #4 Main is located there, too.**
11:19:12 **Q** Okay.
11:19:12 **A** **So that area is easement number six and easement number three. Then I think four and five is that pump**

11:19:38 **station at the, that lift station on the easement.**
11:19:43 **Q** Well, the --
11:19:45 **A** **They're, they're outlined in here.**
11:19:46 **Q** The 220 track --
11:19:48 **A** **You get electrical easement, which is on, it's on parcel A, and is numbered four, which is this one. That's your electrical pole.**
11:20:01 Easement number five is going to be your lift station. That's your lift station. Then number six.
11:20:08 **Q** Mr. Ramun, let me ask it this way, if I could. The rail line that's been designated here at least as MVRY #3 Main from the Center Street Bridge all the way to where it intersects with #4 Main, is that covered by the LTV easement?
11:21:18 **A** **I don't know about your designation. But --**
11:21:37 **Q** I understand.
11:21:39 **A** **The area you showed me as Center Street Bridge and the river to where, where it says #3 Main --**
11:21:40 **Q** Right.
11:21:44 **A** **-- should be an easement.**
11:21:51 **Q** Okay. And then -- go ahead.
11:21:52 **A** **I will look it up for you.**
11:21:54 **Q** Sure.
11:21:58 **A** **They're, they're referred to as #2 and #3 Mains.**

11:22:04 **Q** Well, it's my understanding --
11:22:14 **A** **#2 is right next to it.**
11:22:18 **Q** Okay.
11:22:20 **A** **And then the next one here is #4 Main.**
11:22:22 **Q** Okay.
11:22:23 **A** **And it goes down and ties into 239.**
11:22:29 **Q** I mean, would it go all the way from Center Street, I guess, #4 Main from Center Street all the way to the intersection with #1?
11:22:35 **A** **Yes.**
11:22:38 **Q** Okay.
11:22:41 **A** **And then 239, or 239 is a little piece of it.**
11:22:42 **But I don't know if it's on here. Yeah, it is. It says 220, 239, 240.**
11:22:43 But there is, those, all those lines aren't in there, because some of them just aren't there.
11:22:44 **Q** Here is a track I guess that we have designated as 220. Is that your understanding of the 220 that's --
11:22:48 **A** **220 is in here. It's Roman Numeral II, railroad easement item, number three.**
11:22:51 **Q** Okay. And then would the LTV easement also cover, I guess where #4 and #3 intersect with 1, and then all the way down to where you have drawn a circle, is that covered by the LTV easement, too?

11:22:53 **A** **Yes.**
11:22:56 **Q** All right.
11:22:59 **A** **As you can see, there is no reference to Mahoning Valley --**
11:23:01 **Q** Okay.
11:23:05 **A** **-- whatsoever.**
11:23:10 **Q** Again, and I don't mean to ask this question over and over, just for me. So the LTV easement covers from where you have drawn the circle, the #1 Main, up to where it intersects with 3 and 4 Main?
11:23:13 **A** **Yes.**
11:23:17 **Q** And then it covers #3 and #2, which we're saying are right there, all the way to the Center Street Bridge, and then it would cover #4 all the way down to the Center Street Bridge?
11:23:20 **A** **Yes.**
11:23:23 **Q** And then it would cover the small area of 239 and track 220?
11:23:25 **A** **Yes.**
11:23:25 **Q** All right.
11:23:29 **A** **As you can see, there is no reference to Mahoning Valley --**
11:23:32 **Q** Okay.
11:23:32 **A** **-- whatsoever.**
11:23:33 **Q** Again, and I don't mean to ask this question over and over, just for me. So the LTV easement covers from where you have drawn the circle, the #1 Main, up to where it intersects with 3 and 4 Main?
11:23:34 **A** **Yes.**
11:23:38 **Q** And then it covers #3 and #2, which we're saying are right there, all the way to the Center Street Bridge, and then it would cover #4 all the way down to the Center Street Bridge?
11:23:42 **A** **Yes.**
11:23:45 **Q** And then it would cover the small area of 239 and track 220?
11:23:47 **A** **Yes.**
11:23:47 **Q** Okay. Actually, Mr. Ramun, again, I'm just looking at the same exhibit that you are, and I guess there is a reference to Mahoning Valley Railway. If you would look at page two, paragraph two under the heading of "Railroad Easement," it looks like it references at least a

lease?
Yep.
Okay.
Yes. I'm sorry.
Just a shot in the dark. Do you have, do you happen to have a copy of the lease that is referenced here between the Mahoning Valley Railway and LTV?
Do I have a copy of it?
Yes.
I, I haven't looked at any of this stuff. I may or may not. I don't know.
I mean, I don't. And I just noticed it this morning, to be honest. And I --
MR. GRIECO: We can look for it.
MR. LIPKA: If you could, thank you.
MR. GRIECO: So the lease between Mahoning Valley Railway and LTV?
MR. LIPKA: Correct.
Mr. Ramun, I think the timing is correct that you were operating Allied at the time that the Mahoning Valley Railway would have been leasing the tracks that we called the LTV tracks?
I don't know what Mahoning Valley Railroad did.
Okay. Prior to Ohio Central Railroad storing the

cars on the lines that you have alleged in the complaint, were there any other carriers prior to that who would store cars on those lines?
Not to my knowledge.
Okay. After you purchased the LTV property in, I think we said it was June of 1992, how many carriers have operated on those lines?
I don't know.
Do you know of any for sure that have operated on those lines?
I do. But I can't remember their names.
Okay. Where on the, what we have come to conclude are the LTV lines -- that's what I'm calling them, I guess. Where on the LTV lines was Ohio Central Railroad storing cars?
All over them.
I mean, in every space on all of the lines?
The effect of their storage, yes. They dominated the, the lines. They used it as a, some sort of a -- they just park cars on it.
Okay.
Most, most of them were them waste cars.
Okay. Would they, I mean, I think the point you have just made is that, if you park a single car at a nexus

point, you can't get past it; it doesn't matter if you park cars on the rest of the line. I think that is the point you were just making?
That is the point.
And then my question was: Did they literally park cars all up and down the line, or was there a particular --
They dominated the line.
MR. GRIECO: Let him finish his question.
I understand. I guess it's my understanding of the word "dominate."
But the question I'm asking is: Where on the LTV tracks, the X number of yards or miles of the LTV easement tracks, were they storing cars?
Well, just some examples are the cars that are on the tracks that you can see in this picture.
Okay. I mean, let me be a little more specific. Were they storing cars on the track that's been designated 220 track here on this map?
They, they at one time or another stored cars on all the tracks.
Okay.
And they would move them to -- so that they could get through, or however they wanted to do. Then they would

just keep locking them up. They had, they had cars stored clear down, clear down to the Walton Bridge at times.
And I'm, I don't know where -- where is the Walton Bridge?
And they actually got on this -- see where it says LE&E siding?
Yes, I do.
And there isn't any easement for P&LE for the LE&E siding at all. And they, they, they actually used that as the main. They weren't even allowed on that. They used that as main, and stored tracks on the other one, on the, on the main track.
MR. GRIECO: Cars?
Cars, yeah, stored cars on the main track, and vice versa. And up on, in this other area here, the Center Street part, they tore all that rail out, but they stored cars on that, also, and they stored cars on the, on, on what's called the stub, LE&E stub on this map.
But it was the P&LE line that actually went, it went to Briar Hill, but clear to the end. And they blew the bumper off the end of it, smashed the bumper off it.
All right. This is jumping back a little bit. The track that's marked Center Street pocket, I think it was your testimony earlier that that's property owned by Allied?

11:30:19 **A** **Yes.**
11:30:19 **Q** And that the Allied property goes all the way to where this LE&E stub ends?
11:30:19 **A** **Yes. Except for a little part. There is a portion of this LE&E lead probably down, down to the -- some, some portion here. Because there was another track that, there was another trackage that went in a loop toward Center Street Bridge here, and it was called the Canfield Branch.**
11:30:44 **Q** Okay.
11:30:45 **A** **And that was owned by ConRail. We purchased that from ConRail. And it actually went down and went across the back side of, of the property. And we -- that was a rail that we basically took out.**
11:31:02 **Q** Okay.
11:31:04 **A** **I mean, there is a lot of different property purchases in here. This is almost like a jigsaw puzzle.**
11:31:16 **Q** Boy, you're right about that. You said this before, too. The LE&E lead that we're talking about right by the Center Street pocket, I guess the LE&E lead between the Center Street pocket and Poland Avenue, how much of that property does Allied own?
11:31:35 **A** **Most of it.**
11:31:36 **Q** Okay.

11:31:39 **A** **That actually tied into the Canfield Branch. I think P&LE owned that, and went clear out Southern Boulevard.**
11:31:55 **Q** All right. Mr. Ramun, based on your reading of the LTV easement, what would Ohio Central Railroad be allowed to do underneath the easement?
11:32:11 MR. GRIECO: Object to the form of the question; calls for a legal conclusion.
11:32:19 But you can answer, to the extent you understand the question.
11:32:22 **A** **They should have been able to, with cooperation, in a cooperative mode, schedule movements through there without stopping, pass through.**
11:32:37 **Q** Okay. Is it your understanding that they would have had to have notified you in advance of any pass through?
11:32:46 **A** **I, I believe they would have to under a nonexclusive easement.**
11:32:54 **Q** Okay.
11:32:55 **A** **They would have to cooperate. And they never -- and I underline that -- never cooperated with us.**
11:33:04 **Q** Okay. Is there some period of time that they would have been, based on your understanding, that they would have been allowed to stop the cars and still comply

11:33:23 with the easement?
11:33:24 **A** **If they had traffic on one of the side, on the, one of the crossing roads. And they were only supposed to go 10 miles an hour or less. And they, they used to go flying down through there.**
11:33:37 **Q** Okay. Let me jump back, though. You're saying, if there was traffic so that a train had to stop to let the traffic clear, that would be fine?
11:33:45 **A** **Yes.**
11:33:45 **Q** What about, say, overnight storage, would that be fine --
11:33:49 **A** **No.**
11:33:49 **Q** -- in addition?
11:33:55 **A** **They were not to block the tracks.**
11:33:57 **Q** Did they use the LTV easement at times for pass throughs?
11:34:08 MR. GRIECO: Object to the form of the question.
11:34:11 I'm not sure -- if you understand it, you can answer.
11:34:13 **A** **They principally used them to store. They may have passed through at rare points in time. But they principally used them to fill them up, except for the 239 line and #4 where it ties into Haselton. They would leave that open part of the time. But sometimes they would block**

11:34:44 **it, too.**
11:34:44 But the #4 Main they would fill up to where it intersects with 239 and the 220 track. They would fill up.
11:34:49 Or vice versa. One or the other they would, or sometimes both of them.
11:34:53 **Q** When did, when did Ohio Central Railroad begin storing cars?
11:34:58 **A** **Right after they got there.**
11:35:04 **Q** I mean, do you have some type of general time frame for that?
11:35:07 **A** **As soon as they, as soon as they, as soon as they somehow got involved.**
11:35:11 **Q** I mean, is that in '95? 2000? 2005?
11:35:16 **A** **The documents speak for themselves. I don't -- I didn't do any --**
11:35:18 **Q** I'm not even sure what document to look at, Mr. Ramun. Just based on your recollection.
11:35:23 **A** **I don't have a recollection as to any particular time. It was -- I know that when, when they started, and we knew they were there, that's about the time we got their quote. And it just --**
11:35:26 **Q** That's a good reference point, I guess. Do you remember when you would have received their quote?
11:35:31 **A** **I don't, as I sit here today.**

11:35:58 Q Okay. Let me ask this. Are they still storing
11:36:01 cars on these tracks?
11:36:02 **A Yes. Some cars.**
11:36:03 Q I mean, as we --
11:36:04 **A They say they're not. But they are. They show**
11:36:06 **up. They're there. They do what they want. They basically**
11:36:09 **do whatever they want to do, because they are that way.**
11:36:12 Q Okay. What was the last day, yesterday, last
11:36:16 week, whenever, what was the last day that you saw cars
11:36:19 stored on any of the LTV easement lines?
11:36:22 **A Within the last month.**
11:36:28 Q Okay. And which, which line would it be on?
11:36:31 **A They were on the #1 Main.**
11:36:42 Q Okay, #1 Main, gotcha. Mr. Ramun, the #3 Main,
11:36:48 have you torn up any of those tracks? And by "you," I mean
11:36:53 Allied, I guess.
11:36:54 **A No.**
11:36:55 Q How about the #2 Main, have you torn up any of
11:37:00 those tracks?
11:37:01 **A No.**
11:37:01 Q Are there any tracks covered by the LTV easement
11:37:06 that you would have torn up?
11:37:07 **A No. They, they, they have done damage on those**
11:37:10 **tracks, and they have never repaired it.**

11:37:12 Q I mean, are those tracks, to the best of your
11:37:18 knowledge, I'm going to use the word passable? Can you run
11:37:21 cars on these tracks?
11:37:22 **A I don't think they can. Because under the Center**
11:37:26 **Street Bridge they tore them all -- they derailed or**
11:37:29 **something over there, and they have been ripped out. So we**
11:37:34 **can't go through there.**
11:37:34 Q Let me just follow up on that. You're saying
11:37:37 actually physically under the Center Street Bridge?
11:37:40 **A Either under or just beyond it.**
11:37:42 Q Just beyond it on the Struthers side? Or --
11:37:45 **A Youngstown side.**
11:37:46 Q Youngstown side?
11:37:47 **A Some are under, around there.**
11:37:51 Q The tracks have been ripped up?
11:37:52 **A Yeah.**
11:37:53 Q How long of a stretch has been ripped up?
11:37:56 **A You only need --**
11:37:57 Q Well, right, right.
11:37:59 **A You only need two feet. But you know, you're not**
11:38:01 **going to get by it.**
11:38:02 Q I mean, have you seen, seen where it's ripped up?
11:38:05 **A Yeah.**
11:38:05 Q Okay. I mean, is it 25 yards? A hundred yards?

11:38:09 **A Don't know.**
11:38:09 Q Okay. It's more than just two tracks, though?
11:38:13 It's more than just two timbers?
11:38:16 **A Yes.**
11:38:16 Q And do you know why it got ripped up?
11:38:20 **A No.**
11:38:23 Q I mean, you mentioned earlier a derailment.
11:38:26 **A I know the gate is all tore up, and the track is**
11:38:29 **messed up there. So I don't know.**
11:38:30 Q But the reason the track is messed up has nothing
11:38:33 to do with Allied?
11:38:35 **A No.**
11:38:35 Q Has Ohio Central ever been maintaining any of the
11:38:49 tracks covered by the LTV easement?
11:38:51 **A I don't believe they have done any substantial**
11:38:59 **maintenance.**
11:39:03 Q Have you -- have they done any maintenance that
11:39:06 you would consider to be minor?
11:39:07 **A I don't know. I mean, I'm sure -- I mean, I have**
11:39:12 **seen them derail, derail on that as soon -- in the last 45**
11:39:19 **days they derailed right in this area.**
11:39:22 Q I'm sorry. Where are you pointing to?
11:39:24 **A There is a gate located right in here. And I**
11:39:29 **think they derailed in this area.**

11:39:30 Q It's over by the #4 Main and the --
11:39:32 **A Yeah.**
11:39:37 Q That's over by the #4 Main where it meets the 220
11:39:40 track?
11:39:40 **A Yeah. Somewhere in there.**
11:39:41 Q Okay. So you're not aware, as you sit here
11:39:46 today, whether they have done any maintenance on any of
11:39:49 these tracks?
11:39:50 **A I don't believe they have intentions of doing any**
11:39:55 **maintenance on anything.**
11:39:57 Q So just my question, you're saying no, that you
11:40:02 have -- you're not aware of any maintenance that they have
11:40:05 done?
11:40:05 **A I'm not aware of any.**
11:40:06 Q Okay. Are there any other carriers, other than
11:40:10 Ohio Central, who has been using these tracks?
11:40:15 MR. GRIECO: You're talking about the LTV?
11:40:17 Q Correct. When I say "these tracks," I'm talking
11:40:19 about the LTV easement tracks.
11:40:21 **A Not at this point.**
11:40:22 Q What was the last carrier, other than Ohio
11:40:26 Central, that was using those tracks?
11:40:27 **A I can't recall their name. I, I --**
11:40:35 Q How long has it been since that particular

carrier used these tracks?

A **I don't know.**

Q It would have been prior to the onset of this litigation?

A **I'm not sure.**

Q Okay.

A **I don't, I do not think anyone else has been in there, that I know about.**

Q Okay.

A **We're talking about the LTV tracks.**

Q That's correct.

A **Not the P&LE.**

Q Correct.

A **Okay.**

Q All right. Mr. Ramun, in your complaint, you may not have looked at that for a while, you allege that Ohio Central Railroad is the successor or the assignee of the LTV easement. Is that still your understanding today?

A **Pardon?**

MR. GRIECO: Objection. Go ahead.

A **Pardon?**

MR. GRIECO: Go ahead. State your question again.

Q Well, my question is: Is it your understanding

that Ohio Central Railroad is the successor or the assignee of the LTV easement?

MR. GRIECO: Object to the form of the question.

You can answer it, if you understand it.

A **I don't know.**

Q Okay. Do you have any reason to doubt that Ohio Central Railroad is the successor or the assignee of the LTV easement agreement?

MR. GRIECO: Same objection.

A **I have no idea what their status is --**

Q Okay.

A **-- as to LTV.**

Q Right. Here just talking about LTV. Are you aware of any other carrier, other than Ohio Central --

A **And all along these questions are all talking about carriers?**

Q Well, I mean, not -- that's a good question. I will say railroads, if that makes it better.

A **Okay.**

Q Are you aware of any railroads, other than Ohio Central, who you would consider to be a successor or an assignee of the LTV easement agreement?

A **I don't know how to answer that question. Because I don't know -- I, I have not seen the discovery**

that is due, and we have been asking for, for a long time from Ohio Central. So I will be able to answer that when I see it.

Q Mr. Ramun, when did you first complain to anyone at Ohio Central Railroad about the storage of cars on tracks?

A **As soon as they started doing it.**

Q But you don't remember the time frame of that?

A **As I sit here today, no. But I, I know I have, I have some notes and stuff like that that I believe was provided in discovery.**

Q Okay. Do you remember who you spoke with when you complained?

A **Mr. Feichtenbiner --**

Q Anyone else?

A **-- was one. Several people.**

Q Okay. Mr. Ramun, is it, is it your understanding that Allied physically owns the railroad tracks covered by the LTV easement?

A **Absolutely.**

Q Okay. Because at one point in time there was a dispute -- I can haul out the letters if you want me to -- there were letters going back and forth between your counsel and someone at LTV regarding that very issue. Would you

remember those?

A **I, I remember vaguely. And I, I -- it may have been someone unfamiliar with the purchase.**

Q Okay. I mean, again, I will show them to you. I will characterize them as saying that LTV claimed that they sold you the property, but kept ownership of the track.

And Allied claimed that, no, you got it all wrong, we gave you an easement, but we physically own the tracks.

I mean, is that your understanding of the dispute?

A **I don't know there was a dispute. I -- there may have been a position from someone at a point. But they were clearly the owner, fact of the matter, were clearly owner of everything there.**

MR. GRIECO: Tom, in characterizing those letters, just to be clear, you said "LTV giving an easement."

MR. LIPKA: Correct.

MR. GRIECO: Is that what you meant?

MR. LIPKA: I should have -- no. I'm sorry.

MR. GRIECO: Allied purchased the property, and then gave an easement.

MR. LIPKA: Correct. Right. That's what I meant

11:46:29 to say.
11:46:33 **A Remember, this easement was signed before the**
11:46:36 **purchase.**
11:46:37 Q Okay. I guess my, my global question is whether
11:46:42 Allied got any ultimate resolution from LTV conceding the
11:46:49 point.
11:46:50 **A I believe it was conceded.**
11:46:51 Q Okay.
11:46:52 **A If not by letter, by, by actions. And --**
11:46:56 Q I guess that was my question. I hadn't seen --
11:46:58 **A I mean, to the point, you know, Ohio Central has**
11:47:02 **been down in Casey's development ripping out their track and**
11:47:05 **claiming it was their own. I mean, Ohio Central claims**
11:47:07 **everything is theirs.**
11:47:09 Q I'm not familiar with Casey.
11:47:10 **A And they are so reaching and, and wrong, it's**
11:47:14 **unbelievable.**
11:47:14 Q What is Casey's development? I'm not familiar
11:47:17 with that.
11:47:18 **A It's the, it's the former LTV property on the**
11:47:21 **other side of the river.**
11:47:22 Q Okay.
11:47:24 **A I mean, they will go rip a guy's track out and**
11:47:27 **use it to repair some other track they want to repair.**

11:47:30 **That's just the nature of the beast.**
11:47:33 Q All right. Now, just, I'm jumping to the P&LE
11:47:37 tracks, a little bit out of order. Seems like we're on the
11:47:40 topic. Does Allied own the tracks covered by the P&LE
11:47:44 easement?
11:47:44 **A Yes.**
11:47:45 Q Okay. Mr. Ramun, has there ever been a time --
11:48:19 MR. LIPKA: Well, let me, let's go off the record
11:48:21 for a second.
11:48:22 (Whereupon, a discussion was held off the record,
13:04:12 and a lunch break was taken.)
13:04:12 Q Mr. Ramun, I think you testified that you weren't
13:04:19 sure one way or the other whether Ohio Central had done any
13:04:23 maintenance on the LTV tracks. Has Allied done any track
13:04:27 maintenance on those tracks?
13:04:32 **A I would, I would say yes.**
13:04:39 Q Okay. Can you describe that maintenance to me?
13:04:41 **A I think we have at some point in time fixed a few**
13:04:47 **rails that were not in good condition. I know we backfilled**
13:04:56 **them, some materials along the P&LE lines. But on the back**
13:05:03 **side of the, the #1 Main I think we did some work.**
13:05:06 Q Okay. Did you request or --
13:05:09 MR. LIPKA: Well, let me ask it this way.
13:05:11 Q Do you remember when that --

13:05:12 **A No.**
13:05:12 Q -- when that was done?
13:05:13 **A No, I don't know when it was done.**
13:05:15 Q I mean, did you request that Ohio Central perform
13:05:18 that maintenance?
13:05:19 **A I have requested that Ohio Central fix the bumper**
13:05:24 **that they blew off the back of the stub line, and other**
13:05:29 **areas, the tracks down in the, it's called, they got marked**
13:05:36 **here Center Street pocket. They actually were unloading**
13:05:41 **some kind of rock down there or, or ballast, and they**
13:05:45 **were -- they just tore the whole one line right out.**
13:05:48 Q Okay. The rails in the Center Street pocket.
13:05:51 But for the tracks that are covered by the LTV easement, do
13:05:56 you ever remember requesting Ohio Central do any maintenance
13:05:59 on those?
13:05:59 **A I think there was a, an ongoing assumption that**
13:06:04 **they should.**
13:06:06 Q Just based on the language of the easement you
13:06:08 mean?
13:06:08 **A Yes.**
13:06:09 Q Okay. If you don't understand this question,
13:06:25 because I'm probably not going to phrase it very
13:06:28 articulately, but how would -- when rail would come in with
13:06:32 whatever product you needed, where would it ultimately end

13:06:37 up? And let me even preface that by saying your
13:06:42 headquarters, I think we said before, were across Poland
13:06:44 Avenue. Is that where all the rail would ultimately end up,
13:06:48 at the headquarters?
13:06:50 **A No.**
13:06:51 Q Where would it go? I guess I just don't
13:06:53 understand your business well enough to know that. When
13:06:56 you're bringing rail in, let's say over the LTV --
13:06:59 **A What do you mean by "bringing rail in"?**
13:07:01 Q Well, okay. Let me even take a step further
13:07:04 back. Is there ever a time that you would need steel
13:07:07 shipped into your business?
13:07:08 **A Yes.**
13:07:09 Q Okay. And for that particular purpose that you
13:07:12 would need the steel, where would you need it to go?
13:07:14 **A Anywhere I want it to go.**
13:07:17 Q Okay. I mean --
13:07:18 **A And I wanted it to go a lot of different places,**
13:07:21 **but I couldn't use the tracks.**
13:07:22 Q I mean, why would you want it to go on MVR #3
13:07:27 Main?
13:07:27 **A Because that's my right.**
13:07:29 Q Okay. Well, I understand that. But I mean, is
13:07:32 there a business purpose for, for bringing that across that

13:07:34 track?
13:07:35 **A Sure.**
13:07:35 Q Okay. What would that business purpose be?
13:07:38 **A It would be, I have, I have rail that's basically**
13:07:40 **on one grade, and I wouldn't have to go up the slope into**
13:07:47 **our upper yards. And I wanted to establish areas down there**
13:07:52 **to do that kind of work, but I never could because of their,**
13:07:56 **their interference.**
13:08:00 Q Okay. You said your upper yards. Where would
13:08:07 your upper yards be?
13:08:08 **A They are located adjacent to Poland Avenue. And**
13:08:13 **they, they run from -- I will just use a general.**
13:08:20 Q Okay.
13:08:21 **A Where, where I have marked the easement number**
13:08:24 **three, parcel B section, where I made that mark, straight**
13:08:30 **out to Poland Avenue, clear down Center Street Bridge.**
13:08:33 Q On the other side of Poland Avenue you're saying?
13:08:37 **A No. This side of Poland Avenue. See these**
13:08:40 **buildings? And this land? Well, this, this, it says Allied**
13:08:46 **Lead, that lead goes up a steep hill. And it's a pain to, a**
13:08:52 **pain to, to use.**
13:08:55 And I wanted to relocate our scrap operations to
13:08:58 the lower level, but I couldn't use the track . I couldn't
13:09:02 use my tracks, my own tracks.

13:09:05 Q Okay. I see. So there is a designation here
13:09:08 that says LEE siding and then LEE main track. And then
13:09:13 right below that on this map there is some buildings?
13:09:15 **A There is, from that roadway, see this roadway?**
13:09:18 Q Yes.
13:09:19 **A To, to the end of this yard, which is here, that,**
13:09:25 **that's all a slope going up.**
13:09:28 Q Okay.
13:09:30 **A And where the Allied lead is, that really is, in**
13:09:36 **railroad, in the railroad word, it's, it's a, it's a piece**
13:09:42 **of rail that is out of spec as to the new gradations of**
13:09:49 **getting into a yard.**
13:09:50 Q Okay. I mean, just so I guess I understand, the
13:09:55 buildings at sort of the end of Allied lead, you said that's
13:10:01 where you wanted to establish your scrap operations?
13:10:03 **A No.**
13:10:04 Q I misunderstood you.
13:10:05 **A On the whole lower level.**
13:10:06 Q Okay.
13:10:07 **A We, we could have utilized that. You could use**
13:10:20 **it for scrap. You could use it for moving stone in and out.**
13:10:20 **You could use it for any commodity for scrap. You could use**
13:10:22 **it for moving in flats with boxes on them. You could do a,**
13:10:27 **a number of things.**

13:10:29 Q The building --
13:10:29 **A A whole magnitude of things, in fact.**
13:10:32 Q The buildings that I was, I guess I'm pointing
13:10:35 at, the record is not going to reflect it, but at the end of
13:10:38 the Allied lead line, these are buildings that you own?
13:10:42 **A Yes.**
13:10:42 Q What use do you currently have for those
13:10:44 buildings?
13:10:44 **A Those are, those are used as -- there is a scrap**
13:10:49 **operation currently there, with -- and we're not using the**
13:10:52 **rail there, just because of the, the, the access relative to**
13:10:59 **that ramp. And, and we're also doing equipment repair.**
13:11:07 Q I'm pointing right here, just so the record
13:11:10 reflects, it's right where the MVR 4 connects with the MVR
13:11:16 3. It looks like there is a -- are these buildings? Or
13:11:19 what are these things, Mr. Ramun, do you know? I'm
13:11:23 referring to basically everything right here.
13:11:24 **A That's a lay down area for, for stock or, or**
13:11:31 **materials. And we are, we are basically -- it's a**
13:11:40 **marshalling yard for structural steel.**
13:11:42 Q By "lay down," just for me, you mean storage,
13:11:46 just to keep it there?
13:11:48 **A No. We were, we're basically doing fabricating**
13:11:50 **work and modification work to that steel. Steel can be**

13:11:54 **brought in and out by a rail into this yard. But we really**
13:11:58 **can't do it at this point.**
13:11:59 Q Okay. Are there current operations going on in
13:12:03 these buildings?
13:12:04 **A There is no buildings there.**
13:12:05 Q Okay. I'm sorry. The --
13:12:07 **A They're concrete pads. And it's an open area.**
13:12:11 **And we use all portable equipment down there.**
13:12:13 Q Okay. Gotcha. And I mean, are you currently
13:12:17 using this area?
13:12:18 **A Yes, yes.**
13:12:19 Q What are you currently using it for?
13:12:21 **A I just answered that.**
13:12:24 Q Okay. Well, the only reason --
13:12:25 **A Modifying steel. I'm -- we're actually building**
13:12:30 **a, a plant on the other side of the road. So that steel is**
13:12:34 **coming in, and we're marshalling it there.**
13:12:37 Q How do you get the steel in?
13:12:39 **A I got to use trucks --**
13:12:40 Q Okay.
13:12:42 **A -- at this point.**
13:12:43 Q So you haul all the steel in using trucks?
13:12:45 **A Yeah.**
13:12:46 Q And was there ever a point in time where you

would have the steel hauled in using the rail?
A **I could have. But I couldn't -- haven't been able to do it.**
Q How long has it been since you have had steel brought in by rail to this area?
A **I, I have not been able to do it because of, of this situation with Ohio Central.**
Q Okay.
A **Prior to that we, we were -- we're anticipating at some point in time to put a scrap operation in this whole general area, between where you see the Allied lead, this, the roadway is actually going to go straight across --**
Q Okay.
A **-- here. See here where the roadway is coming in?**
Q Yes.
A **It's going to go diagonal to Poland Avenue, and then it will, it will branch off, and there is going to be a large scrap yard down. And the, the advantage of this lower level is, is that it's all basically on one plane. Because it has, where I marked it P&LE here, this whole P&LE property was a switchyard, so it's all flat. And so is the property adjacent to it.**
Q Okay.

A **Where the upper yard is about 20 feet higher, and it's very restricted because of the narrowness of it, and your inability to really get cars in and out well.**
Q The, the area in green that's marked as NS Haselton Yard, is that a ConRail yard?
A **Former ConRail yard. Now it's NS.**
Q NS, okay. Would it be possible to bring rail in to this area we talked about using NS?
A **Yes.**
Q Okay. But you have just chosen not to do that?
A **Pardon? I couldn't.**
Q Well, maybe that's my question. I mean, right now you're bringing in, I'm just going to say steel by a truck. I guess my question is: Could you bring in that same steel using Norfolk and Southern?
A **Well, I could. We own a couple engines. We could use them there, and we can't. We have got small, we have also got some small rail movers.**
Q Okay. Now, why can't you use them? Because of the blockage?
A **Yes.**
Q Okay. But I guess I don't maybe understand the topography and what connects with what.
But could you today call up Norfolk and Southern

and say, I want steel delivered via your lines to, you know, the operation I have going on right here?
A **Not under the conditions with Ohio Central.**
Q Okay. Because Norfolk and Southern would have to use one of the LTV lines that we were talking about, or one of the P&LE lines?
A **Yes.**
Q Okay.
A **I can't use my own lines, because somebody else has taken dominion and control over them.**
Q Would it be less expensive to use rail than trucks to bring in that steel, or to bring in any product?
A **Depends on the product and how much it weighs.**
Q Okay.
A **And when our shop is open across the road, we will be bringing, we will have to bring stuff in by rail that's very, very heavy. We're putting a very large shop up.**
Q Okay. Where is that shop that you're talking about?
A **Off the map.**
Q Okay. And you're currently in the process of building that shop?
A **Yes.**

Q What, what's the estimated completion date?
A **Part of it's going to be done, CNC Machine Shop is going to be done somewhere between July and October this year.**
Q And you're saying that the materials that you need for that operation are heavy, are so heavy that you will need to bring it in by rail?
A **They may be much more economical to bring in by rail, yes.**
Q How would you get them, how would you get materials across Poland Avenue? Is there a line that would do that?
A **No. We have, we have very heavy trailers that can haul, I can gross 258,000 pounds on these, on these big rigs that I can move them from the rail lines up.**
Q Okay. So the materials would come in via some of these rail lines?
A **Yes.**
Q And then they would get to an end point, and load it onto the trucks and truck it over?
A **Yeah. And then I can bring it back, and then spend the time I need to spend tying them down.**
But under the current circumstance, you don't know when they're going to block you, when they're not going

13:17:43 to block you. I mean, they have never cooperated one bit.
13:17:46 They just laugh at you and tell, tell you they are the big,
13:17:55 bad railroad that doesn't need -- doesn't go by any kind of
13:18:00 rules.
13:18:00 **Q** Okay. So we were talking earlier today about
13:18:09 developmental plans that you had that may not come to
13:18:13 fruition because of the actions of Ohio Central. And one of
13:18:16 those plans would be to create the much larger scrap yard
13:18:20 that you were talking about?
13:18:20 **A** **That's one of them.**
13:18:21 **Q** I mean, are there any others that you can think
13:18:24 of?
13:18:24 **A** **I can think of a million of them.**
13:18:26 **Q** I mean, can you throw two or three at me?
13:18:28 **A** **Yes. Transload facility.**
13:18:33 **Q** What's a transload facility?
13:18:35 **A** **It's a facility where you take stuff off of cars**
13:18:37 **and put them on trucks, or you take them off of trucks and**
13:18:41 **put them on cars.**
13:18:43 **Q** Okay. Any others? I'm sorry, Mr. Ramun. Were
13:18:56 there any others?
13:18:57 **A** **Yes.**
13:18:57 **Q** Could I have one more example?
13:19:00 **A** **We can bring in bulk materials and store them.**

13:19:06 **We could use our surface areas for storage and be able to**
13:19:13 **readily load cars and unload cars. We intend to build**
13:19:18 **warehousing down there.**
13:19:20 **Q** Okay. So when you say "storage," you mean
13:19:23 storage for third parties that you would get paid for?
13:19:26 **A** **Yes, uh-huh.**
13:19:27 **Q** Okay. Gotcha. Has anybody approached you, any
13:19:35 third party approached you about storing materials for them?
13:19:38 **A** **There are, there are people that have called and,**
13:19:41 **and are interested in, in working with us.**
13:19:43 **Q** What was the most recent call? How long ago was
13:19:48 that?
13:19:48 **A** **There was one guy bothers me every two or three**
13:19:52 **months. I tell him once we get our, once we get our**
13:19:56 **facility in position where we can, you know, operate**
13:20:02 **correctly, we will, you know, that's when we should be**
13:20:07 **talking.**
13:20:08 **Q** Who is this individual that's calling?
13:20:10 **A** **I don't know his name. Their name. It's a**
13:20:12 **company.**
13:20:12 **Q** What's the name of the company?
13:20:13 **A** **I don't know.**
13:20:14 **Q** Well, do you know the name of the individual that
13:20:17 calls?

13:20:18 **A** **No.**
13:20:18 **Q** So he calls you every couple months, and you
13:20:20 don't remember the name of his company or his name?
13:20:22 **A** **That is right.**
13:20:23 **Q** Okay.
13:20:25 **A** **And by the way, I'm not here to do any**
13:20:28 **premarketing job for Ohio Central. So I wouldn't tell you**
13:20:31 **anyway.**
13:20:33 **Q** Okay. So if you remembered, you wouldn't tell
13:20:35 me?
13:20:35 **A** **If I remembered, I wouldn't tell you for that**
13:20:37 **reason, knowing the character of Ohio Central, who is**
13:20:44 **sitting in this room.**
13:21:17 **Q** Mr. Ramun, as part of the discovery responses
13:21:20 that you provided earlier, one of the questions that was
13:21:24 asked was -- if you want to read this you can -- just please
13:21:30 describe the manner in which your activity has been
13:21:32 adversely impacted as far as intended development plans.
13:21:36 And, and the response says, Plaintiffs have
13:21:41 intended to use the rail lines and the property to increase
13:21:44 their shipping and receiving capabilities. Is that what we
13:21:48 have been talking about? Or --
13:21:50 **A** **Yes.**
13:21:50 **Q** -- is there more to that answer? Okay. Mr.

13:22:06 Ramun, I want to jump to -- we're still talking about the
13:22:18 LTV tracks right now, just to focus on the question.
13:22:18 I guess I'm looking for, what evidence do you
13:22:18 have that there has been either an oil, or a chemical, or a
13:22:20 C and D debris contamination of Allied soil?
13:22:25 I mean, you had testified earlier that you, and I
13:22:28 think your son, had seen some green slime, if I'm phrasing
13:22:31 that correctly. But I guess I want to flesh this out.
13:22:34 I mean, you know, what, what evidence do you have
13:22:36 that there has been contamination of your property?
13:22:40 **A** **I believe I said gray.**
13:22:41 **Q** Okay, gray.
13:22:43 **A** **Gray, slimy stuff. We understand that they, they**
13:22:47 **do not tarp or move that material in a closed container.**
13:22:53 **They're moving it in open, they're moving it in all weather**
13:22:57 **conditions. And the type of cars they're using are like a**
13:23:00 **bottom dump hopper, a lot of them, and a lot of them may not**
13:23:06 **be sealed in that they don't hold water.**
13:23:09 And they actually, in some of the discovery that
13:23:18 I saw, they talk about this spray they put on top of it to
13:23:25 keep the dust down; however, that they were going to quit
13:23:29 using it, because it runs all over the place, and it, and
13:23:33 it's very slippery, and people can get injured on it. And
13:23:37 I, I observed it.

13:23:40 C and D demolition debris has asbestos and other
13:23:44 things in it. And our concern is, is that these cars being
13:23:52 parked, many times for weeks on end, and continuous on our
13:23:58 property, is going to or has, potentially has polluted our
13:24:09 property. But Ohio Central don't care.
13:24:15 Q Okay. I mean, I guess you had a two-part answer
13:24:19 there. One was that you're concerned about, you know,
13:24:22 potential contamination?
13:24:25 **A I'm concerned about, that they have already**
13:24:29 **potentially contaminated.**
13:24:31 Q Okay. I guess that's my question. I mean, what,
13:24:34 you know, hard evidence I will put it, do you have that
13:24:36 there has been contamination already?
13:24:38 **A We have watched this material leak, leak out of**
13:24:41 **the cars.**
13:24:41 Q Okay. When you say "this material," do you mean
13:24:45 oil, or some type of chemicals, or C and D debris?
13:24:48 **A C and D debris laying by our tracks, and also**
13:24:52 **this, this gray-looking stuff that comes out of the bottom**
13:24:57 **of the cars.**
13:24:58 Q Okay. And when you say "bottom of the cars," you
13:25:02 mean bottom of the C and D cars?
13:25:04 **A Yeah.**
13:25:04 Q I mean, have you ever noticed anything leaking

13:25:08 out of an oil car, or any type of --
13:25:10 **A Never. I haven't looked at an oil car.**
13:25:14 Q Okay. We have some pictures that we're going to
13:25:17 go over later. But do you know offhand if you have any
13:25:20 pictures of this, I guess gray material, or gray matter
13:25:24 coming out?
13:25:24 **A Just our observations. And you know, these**
13:25:27 **are -- this is controlled material, may not be. And it's a**
13:25:33 **regulated material. What are they doing storing it in my**
13:25:36 **yard? You know, it's subject to special handling, storage**
13:25:42 **and treatment. Why is it in my yard? Why isn't it in Ohio**
13:25:49 **Central's yard?**
13:25:52 Q Okay. Has any, what I will call expert come in?
13:26:02 And by that I mean a chemist or somebody to perform soil
13:26:06 samples to come in to say that there has been pollution?
13:26:12 **A I don't know.**
13:26:16 Q Okay. Well, have you retained anybody or
13:26:18 contacted anybody to do that?
13:26:20 **A No.**
13:26:20 Q Mr. Ramun, during the course of discovery you,
13:26:32 well, your counsel I guess provided photographs of, you
13:26:36 know, various rail cars. And we will go over those.
13:26:39 But do you happen to have any videotapes showing
13:26:41 that the cars were stored on, on your property?

13:26:44 **A I'm not, I'm not sure what type of photography it**
13:26:47 **was. But I know we took pictures.**
13:26:50 Q Okay. Who from your company, or who from Allied
13:26:58 would or could act as a witness to the fact that these cars
13:27:01 were stored on the lines?
13:27:02 **A Michael Ramun, Tommy Peluso, and probably 20**
13:27:07 **other people that worked for Allied.**
13:27:10 Q You're saying pretty much any employee you have?
13:27:13 **A Yeah. We, we do dismantling work, and we have**
13:27:24 **things hauled. And, and by regulation, that stuff has to be**
13:27:29 **covered. And these guys are, I think they're doing**
13:27:37 **something that isn't right.**
13:27:57 Q I think -- you get groggy after a while. I
13:28:00 apologize. You may have testified about this already. But
13:28:03 has the problem stopped? Are they still storing cars on the
13:28:07 line?
13:28:07 **A They still have cars on the line. And some of**
13:28:10 **them are coming from a leased area that they have control**
13:28:14 **of. And they're, they're bringing them in on this curve.**
13:28:18 Q Okay. When you say --
13:28:19 **A Some, some of them cars, they have hazardous**
13:28:23 **waste, actual hazardous waste in them.**
13:28:26 Q Okay. So you're not talking about C and D
13:28:29 debris, you're talking about something else, hazardous

13:28:32 waste?
13:28:32 **A Who knows what they are? They are covered, but**
13:28:43 **they are over there cleaning them and doing things to them.**
13:28:43 **And I actually seen some boxes on the ground where they were**
13:28:45 **evidently taking something out of these cars, and putting**
13:28:47 **them in boxes and tarping what was in the box. They got no**
13:28:52 **business doing that on my property.**
13:28:53 Q And when did you see this occur?
13:28:55 **A Several times. It's over near where Ohio Central**
13:29:00 **was. And I, I asked Ohio Central who was doing it. They**
13:29:03 **said -- I asked NS who was doing it, and they said it was**
13:29:07 **Ohio Central.**
13:29:08 Q Okay. You're saying it's been in the past couple
13:29:12 months, or in the past year?
13:29:13 **A In the past year.**
13:29:14 Q Do you remember who you spoke with at NS about
13:29:20 that?
13:29:21 **A Their trainmaster.**
13:29:25 Q Do you remember his name?
13:29:27 **A No.**
13:29:28 Q Okay.
13:29:29 **A Not at this point.**
13:29:59 Q Your complaint, Mr. Ramun, also lists the fact
13:30:02 that there could be or there has been vagrant or vandal

13:30:06 problems as a result of the cars stored on the tracks. I
13:30:11 guess, what do you mean by that?
13:30:12 **A There, when they, when they store those cars down**
13:30:18 **there, there are people coming in there, and basically**
13:30:25 **looking over the cars, and getting on them and, and things**
13:30:29 **like that.**
13:30:31 Q Okay. When you say "people," you mean people who
13:30:34 are not employees of your company?
13:30:36 **A Yes. It's basically, you know, we, we have even**
13:30:41 **in the past seen where some bearings and stuff was stolen**
13:30:47 **from some cars down there.**
13:30:48 Q Okay. And were these people there on a, or this
13:30:54 category of people, they have been there on a regular
13:30:57 occasion?
13:30:58 **A I wouldn't say regular. But it, it produces**
13:31:02 **liability for us. And I have never seen their, their, any**
13:31:09 **insurance policies that they have given us that they are**
13:31:13 **obligated to give us by their agreement that, that name us**
13:31:17 **as an additional insured.**
13:31:18 Q All right. You just threw me off there. What
13:31:22 agreement are you talking about?
13:31:23 **A Insurance. They, they, for them to be on our**
13:31:26 **property, they have to have Workmen's Comp and general**
13:31:32 **liability, and, and all those types of insurance. And they**

13:31:38 **should have had a hazardous waste insurance policy, also,**
13:31:45 **for doing some of the things they were doing down there.**
13:31:48 Q Okay. And you're saying that they were obligated
13:31:50 to produce those to you for your review?
13:31:53 **A Yeah. I believe in our P&LE agreement, when I**
13:31:58 **had, I had to give P&LE insurance policies. And then when I**
13:32:05 **sold it to them, they gave me -- I think there was insurance**
13:32:08 **requirements back and forth.**
13:32:09 Q Okay.
13:32:10 **A You can't operate on somebody's property without**
13:32:12 **insurance, especially someone like these guys.**
13:32:19 Q All right. There is another allegation and
13:32:42 complaint, Mr. Ramun, that Ohio Central has used the rail
13:32:46 lines, I guess that to be the LTV and the P&LE, as a
13:32:53 transfer point or a switchyard. Is there something more to
13:32:55 that allegation, other than storing the cars that we talked
13:32:57 about?
13:32:58 **A Well, I think, I, I believe that they collected**
13:33:03 **demurrage on cars stored there. I believe they, they used**
13:33:06 **it as a, as a, as a storage facility or switch facility**
13:33:13 **where they put trains and stuff together. And that was**
13:33:18 **never, never -- you know, their easement was nonexclusive,**
13:33:23 **and it was a pass-through easement.**
13:33:25 Q Okay. And by demurrage, I guess maybe that's an

13:33:28 industry term for rental? I mean, is that another way of
13:33:32 characterizing it?
13:33:32 **A Well, they charge people for, for storing their**
13:33:35 **cars. And I believe they, they did charge people to store**
13:33:41 **cars there. And they were operating a, a different business**
13:33:50 **there. And they certainly charged them for double**
13:34:01 **switching.**
13:34:01 Q I'm not familiar with that term. What's "double
13:34:04 switching"?
13:34:04 **A Well, it's just like the, the NS yard there.**
13:34:09 **Ohio Central goes and pushes a bunch of cars in there, and**
13:34:14 **plugs their yard up from time to time. And they have been**
13:34:18 **at least threatened by, or cautioned by NS that they were**
13:34:24 **going to be charged demurrage for being on their land.**
13:34:29 Q And would that be the NS trainmaster who told you
13:34:33 that?
13:34:33 **A Yes.**
13:34:34 Q How would you, how would you connect to the NS
13:34:38 lines from these lines? Where, where is the connecting
13:34:41 point?
13:34:42 **A Right here.**
13:34:44 Q Where the #3 Main and the #4 Main connect to the
13:34:48 #1 Main?
13:34:49 **A Yeah.**

13:34:49 Q Okay. It's not easily visible on this map. But
13:34:58 I will sort of take your word for it there is a connection
13:35:02 there.
13:35:03 **A Also, also, you can go way down to, you can go**
13:35:08 **down to Graham Crossing and get, in, too.**
13:35:16 Q The one that's labeled LE&E Main track connects
13:35:19 with it down at CP Graham?
13:35:24 **A Yeah. So Central, Ohio Central's Struthers lead**
13:35:31 **ends right at Graham on one side of it. Our, our P&LE line**
13:35:39 **is on the other side of it.**
13:35:41 Q Okay.
13:35:50 **A You can't, you can't use that line and get to the**
13:36:03 **LTV line without going over the P&LE line.**
13:36:07 Q Okay.
13:36:07 **A So when they interfered with one line, they**
13:36:11 **interfered with both lines, both easements.**
13:36:17 Q I'm about to get started on the P&LE easement,
13:36:22 but you just answered my question. Ohio Central had stored
13:36:25 cars on, and what's labeled here I guess is the LE&E Main
13:36:30 track?
13:36:31 **A Are you starting onto that subject now?**
13:36:33 Q Yes.
13:36:33 **A Okay. Yes.**
13:36:34 Q Just all over again, or where at?

13:36:35 A **All over.**
13:36:36 Q Okay.
13:36:40 A **They would, they would put them up on the section**
13:36:42 **that goes to Mahoning Valley. They would put them there,**
13:36:49 **they would put them on one or the other lines. And they,**
13:36:51 **they actually used the interim line as a running line, the**
13:36:55 **LE&E siding that they -- it's termed that, but it isn't.**
13:37:00 **It's the P&LE siding.**
13:37:04 And there is no easement at all by Ohio Central,
13:37:10 or P&LE or anyone. That was a sale. That sale occurred,
13:37:18 including that #1, where you see #1 Main from the LE&E Main
13:37:24 up to here, that was a sale that had no easement on it.
13:37:29 Q Okay.
13:37:30 A **That, that trackage belongs to Allied. And there**
13:37:33 **is no easement on that line that was ever given to anyone,**
13:37:38 **that, that inner line. And they were using it as a running**
13:37:41 **track.**
13:37:42 Q I think you just got, you got me confused.
13:37:44 A **It ain't hard.**
13:37:45 Q It's harder for me than you think sometimes.
13:37:48 You're saying that the LE, the track that's labeled LE&E
13:37:53 siding, --
13:37:54 A **Yes.**
13:37:54 Q -- that was a separate?

13:37:55 A **That's not a main line. And the only easement**
13:37:57 **that, on P&LE that, that P&LE had, or Ohio Central, or**
13:38:07 **anyone else to run on that line was on the main track. The**
13:38:10 **siding line, nobody has an easement on it. The Allied lead,**
13:38:15 **nobody has an easement on it.**
13:38:17 So they stored on the siding line or the main
13:38:20 line, and run on the siding line, or they put cars up the
13:38:26 Allied lead, or they would go down and put them in the, the
13:38:30 pocket, the Center Street pocket when that -- when nothing
13:38:34 was happening there. And then they would also take that
13:38:38 whole stub and fill it with cars.
13:38:40 Q Okay.
13:38:44 A **And I'm talking about these trash cars.**
13:38:46 Q Okay.
13:38:46 A **And other cars.**
13:38:50 Q Okay. I didn't ask about that. Because your
13:38:52 complaint alleged that Ohio Central was storing cars on
13:38:55 lines that they didn't have any easement for?
13:38:57 A **At all. That's correct. And they don't, they**
13:38:59 **don't have an easement on the, the pocket lines that were**
13:39:03 **part of that, they were really part of that Canfield Branch.**
13:39:09 Q Okay. So when you reference that in your
13:39:11 complaint, you're talking about the Center Street pocket,
13:39:13 you're talking about the Allied lead, you're talking about

13:39:17 the LE&E siding?
13:39:20 A **Stub, yes.**
13:39:22 Q Okay. It's labeled here as LE&E siding. Is that
13:39:27 what you mean when you say stub?
13:39:28 A **Well, where you at?**
13:39:29 Q I just want to make sure.
13:39:30 A **It says LE&E stub. They had no reason to be on**
13:39:34 **that line, or store cars.**
13:39:37 Q I see what you're saying.
13:39:38 A **Because they didn't go anywhere.**
13:39:39 Q The LE&E stub?
13:39:42 A **On part of the pocket before they tore it all**
13:39:44 **apart.**
13:39:45 Q Okay.
13:39:45 A **And, and that, that lead there --**
13:39:48 Q Okay.
13:39:49 A **The Allied lead and the LE&E, it's marked LE&E**
13:39:59 **siding, but it's all P&LE to me.**
13:40:03 Q All right. I had thought you were talking
13:40:05 about -- maybe you weren't.
13:40:06 A **And the MVR, where it's marked MVR #1 Main. But**
13:40:12 **that is not the MVR #1 Main. It don't start until up where**
13:40:17 **I marked it. They put cars on that, also.**
13:40:19 Q That was my question. Gotcha. Okay. So one,

13:40:22 two, three, four, roughly five separate places where there
13:40:27 was no easement where they stored cars?
13:40:28 A **And then they parked, then they parked their**
13:40:31 **engines down there, too.**
13:40:37 Q Okay. Other than these five, is there any other
13:40:41 place where they don't have an easement that they were
13:40:44 parking cars?
13:40:45 A **I'm talking about railroad cars.**
13:40:46 Q Correct.
13:40:47 A **And sometimes railroad cars with engines on them.**
13:40:50 Q Those five places? I just want to make sure I'm
13:40:54 not missing something.
13:40:55 A **I'm saying that they virtually used every rail in**
13:40:59 **there that was usable.**
13:41:00 Q All right. Mr. Ramun, I'm going to hand you what
13:41:23 we're going to mark as, I guess it's Number 2.
13:41:25 (Whereupon, Defendant's Exhibit No. 2 was marked
13:41:27 for identification purposes by the court reporter.)
13:41:39 Q Sir, take a look at this document, and you know,
13:41:41 I mean, I will represent to you it's a PL&E easement. But
13:41:45 take a look at it.
13:43:34 A **Okay.**
13:43:35 Q All right. Do you recognize that document?
13:43:36 A **Uh-huh.**

13:43:37 Q Can you just tell me --
13:43:38 A **Yes.**
13:43:39 Q Can you just tell me what it is?
13:43:40 A **It's an easement for the P&LE lines.**
13:43:46 Q All right. And just, you know, can you describe
13:43:49 for me why that document was created, and maybe the context
13:43:53 of the transaction?
13:43:54 A **It was to allow a nonexclusive easement for the,**
13:44:04 **for former Y&S Railway Company between Station 45 and**
13:44:13 **Station 146. And it was for the main line only, to allow a**
13:44:27 **pass through.**
13:44:32 Q Okay. Again, let's, let's do this. I think this
13:44:36 will probably be a lot quicker than the LTV one. Can you
13:44:40 just show me on the map what would be covered by that
13:44:42 easement?
13:44:42 A **You would go to Station 45, which is at Graham,**
13:44:46 **and you would go to Station 146, and they could do a pass**
13:45:02 **through on that line.**
13:45:06 Q Station 146, would you just eyeball it for me as
13:45:11 to where you think it would be?
13:45:12 A **It's with, at the end of the plant, up in here.**
13:45:17 Q End of the plant on the LE&E lead, or the stub?
13:45:21 A **It's, it basically, this was the main line , but**
13:45:26 **they really couldn't use that. They would give them access**

13:45:29 **to this line, and this line to where Columbiana County owns**
13:45:37 **it. So they would be able to go up that lead.**
13:45:43 Q A little bit?
13:45:43 A **LE&E lead up to 146, which was wherever our**
13:45:50 **property stopped.**
13:45:50 Q Gotcha, okay.
13:45:52 A **Or 146. Actually, it's back this way.**
13:45:58 Q Okay.
13:46:01 A **And it's a one line. It's not, it's not the**
13:46:03 **siding. It's not Allied's lead. It's --**
13:46:07 Q It's not the Center Street pocket?
13:46:09 A **Yeah. And it's not the, not the Center Street**
13:46:17 **pocket. And there is no capability of even using it for**
13:46:20 **that purpose on the, on the stub. They basically would**
13:46:24 **switch, jump over here, and they get an engine to go up**
13:46:31 **through Southern Boulevard. That was the purpose.**
13:46:34 Q Okay.
13:46:34 A **And the, and the rail was abandoned from where**
13:46:40 **the stub ends to the north side of Youngstown.**
13:46:46 Q Okay. From where the stubs --
13:46:54 A **V and M Star.**
13:47:00 Q All right. So you're saying from where the LE&E
13:47:03 stub ends, which is roughly the Center Street Bridge,
13:47:07 roughly?

13:47:08 A **No.**
13:47:08 Q It's not?
13:47:09 A **The stub ends at the end of these buildings.**
13:47:12 Q I'm sorry. You're right.
13:47:13 A **It's up near where the track crosses the**
13:47:16 **railroad. But they could, they could go up the main line**
13:47:20 **and up the, get access to L&E lead.**
13:47:25 Q I guess what you were saying is, at the beginning
13:47:29 where that bumper was --
13:47:30 A **Yeah. They couldn't use that anyway for a pass**
13:47:33 **through.**
13:47:33 Q You're saying that the whole PL&E Main line all
13:47:37 the way up to the north side of Youngstown was abandoned; is
13:47:40 that your testimony?
13:47:41 A **There was some period of time after this it was**
13:47:42 **abandoned.**
13:47:43 Q Okay.
13:47:44 A **They talk about abandonment in here, also.**
13:47:47 Q So sometime after this, being the easement
13:47:50 agreement of September 17th, 1993, the PL&E Main line or the
13:47:55 LE&E Main line was abandoned. Okay.
13:47:58 Now, what, what, may seem obvious, but what makes
13:48:02 you say it was abandoned?
13:48:03 A **It was ripped out. Actually, we bought the**

13:48:06 **materials. We actually bought the rail materials from there**
13:48:09 **to station, from 146 to 540 or something, which is clear**
13:48:17 **across town.**
13:48:18 Q 146 is the one that's up by CP Graham? Or it's
13:48:22 the one --
13:48:22 A **No. The other one.**
13:48:23 Q Down by the L&E lead?
13:48:26 A **Yeah.**
13:48:26 Q So you're saying from 146 throughout the course
13:48:28 of this whole map, that rail line was actually torn out?
13:48:31 A **No. From there toward VM Star on the north side**
13:48:36 **of Youngstown.**
13:48:37 Q So going --
13:48:38 A **Torn out.**
13:48:39 Q -- the other way? Saying --
13:48:40 A **One of the, one of the reasons was the openings**
13:48:43 **in the Performance Park were accomplished by eliminating the**
13:48:47 **railroad bridges that were over them. And we bought the**
13:48:52 **rail, and ties, and other track material, including ballast;**
13:48:59 **and the City bought the underlying property for Performance**
13:49:02 **Park.**
13:49:02 Q Okay. And that would have been abandoned by
13:49:08 P&LE?
13:49:09 A **No. It was abandoned by the City of Youngstown.**

13:49:12 **Because they owned from 146 on, the underlying property.**
13:49:16 Q All right. Okay. But the, the --
13:49:19 **A What happened was --**
13:49:20 Q Go ahead.
13:49:21 **A We bought the main rail. Then we bought the, the rail materials from 146 to the end of the line. Actually went to Trumbull County.**
13:49:36 Q Okay.
13:49:37 **A And then later on, the City of Youngstown bought the underlying property, and they used it in their development.**
13:49:48 Q Okay. The portion of the track covered by the P&LE easement was never torn up?
13:49:53 **A No.**
13:49:58 Q Okay. Now, did you also consider that portion of the P&LE track covered by the P&LE easement to be abandoned?
13:50:02 **A No.**
13:50:07 Q Okay.
13:50:08 MR. GRIECO: Wait.
13:50:10 **A It was subject to --**
13:50:11 MR. GRIECO: At what time are we -- I mean, you're just --
13:50:14 MR. LIPKA: I thought we were talking about a time frame of after September 1993. But you know, I will

13:50:17 clarify.
13:50:20 Q I mean, there is, the portion of the track, Mr. Ramun, --
13:50:23 MR. GRIECO: I'm sorry, Tom.
13:50:23 MR. LIPKA: Go ahead.
13:50:26 MR. GRIECO: You're talking about the portion of the track from 45 to 146?
13:50:26 MR. LIPKA: Correct. The portion from 45.
13:50:28 **A That was never, that was never demolished, or abandoned or anything like that.**
13:50:30 Q All right.
13:50:32 **A We intended to use that.**
13:50:36 Q That's what happened with --
13:50:37 **A That was an asset to Allied.**
13:50:37 Q Gotcha.
13:50:38 **A The rest of it, we didn't, we didn't want anything but the materials that came over.**
13:50:42 Q All right. The portion of the track covered by the P&LE easement -- and again, I will be very honest with you, Mr. Ramun, seemed to have a tortured history; there seem to have been a lot of people involved with it.
13:50:43 **A Not before I got it. There was only one other --**
13:50:46 MR. GRIECO: Wait, wait for his question.
13:50:49 Q Okay. Before, before you entered into the

13:50:52 purchase agreement, who owned the property?
13:50:55 **A P&LE.**
13:50:57 Q Okay. After you purchased the property, what we're looking at is that you gave an easement back to the P&LE for railroad purposes?
13:51:01 **A Yeah.**
13:51:05 Q Okay. Who would have been using that line after you entered into this agreement?
13:51:07 **A P&LE or their successor.**
13:51:10 Q Okay. Do you know who those successors were?
13:51:12 **A I can't, I told you before I can't remember them all.**
13:51:14 Q All right. I have seen documents that reference a P&LW. Do you know who that is?
13:51:17 **A That was one of them.**
13:51:19 Q Okay. I have also seen documents that reference the Columbiana County Port Authority.
13:51:23 **A Well, they bought, they bought the property from where our lines end --**
13:51:26 Q Okay.
13:51:28 **A -- out Southern Boulevard, clear out to somewhere.**
13:51:29 Q So --
13:51:36 **A And, and so that, they were, they became -- they,**

13:51:36 **they owned that. And then whoever was servicing that, I'm,**
13:51:37 **I'm not certain.**
13:51:42 Q Okay.
13:51:44 **A I'm not certain, as I sit here today, that I have ever seen an easement that was turned over to Ohio Central.**
13:51:46 Q Okay.
13:51:46 **A I thought they had one. But I haven't seen it. We got it back in discovery. I haven't seen anything like that.**
13:51:49 Q Was the Columbiana County Port Authority ever using the P&L easement track? Was it 46 to 153; is that right?
13:51:52 **A They may have had --**
13:51:53 Q 146?
13:51:56 **A They may have, if they were successor --**
13:51:58 Q Okay.
13:52:02 **A -- in, in easement. But I can't confirm any of that at this point.**
13:52:04 Q Okay.
13:52:05 **A I mean, we could have had a situation where nobody had an easement on it.**
13:52:07 MR. GRIECO: Well, his question was slightly different. Not did they have an easement. He said, do you recall them ever using it? Is that the question?

13:53:16 **A** **I, I recall P&LW somehow was connected to the**
13:53:20 **Port Authority. And I'm not certain how. But they were**
13:53:23 **very nice people.**
13:53:24 **Q** Okay.
13:53:24 **A** **And they, they brought -- I mean, they actually**
13:53:27 **switched my cars. They're very nice. They --**
13:53:30 **Q** Okay.
13:53:31 **A** **They are -- they honored the relationship we had**
13:53:34 **between PL&E and Allied when they were moving our cars. It**
13:53:40 **was $20 a car, so it was P&LW and I think one other company**
13:53:45 **after that.**
13:53:45 **Q** Do you remember when PL&W stopped --
13:53:47 **A** **No.**
13:53:47 **Q** -- using the --
13:53:49 **A** **I mean, that's --**
13:53:50 **Q** It's probably been a while ago.
13:53:51 **A** **I mean, it's not that I don't know. It's that I**
13:53:55 **have not refreshed my memory.**
13:53:57 **Q** Sure. I also saw a reference in some document to
13:54:02 Railroad Ventures, Inc., having some involvement with the
13:54:06 P&LE easement. Does that ring a bell at all?
13:54:11 **A** **I can't recall.**
13:54:11 **Q** All right. Mr. Ramun, do you remember when Ohio
13:54:27 Central began using the track covered by the P&L easement?

13:54:35 **A** **No. As to a date, no.**
13:54:37 **Q** Do you remember --
13:54:38 **A** **As to the aggravation, yes.**
13:54:41 **Q** Okay. When did that start?
13:54:43 **A** **The aggravation? As soon as they got there.**
13:54:50 **Q** All right. You don't remember a year or
13:54:53 anything?
13:54:53 **A** **No. It was sometime before -- I don't know.**
13:55:02 **Sometime in the mid '90s, something like that. As to a**
13:55:13 **specific date, I don't have it in mind.**
13:55:15 **Q** Do you recall if Ohio Central Railroad ever
13:55:19 performed maintenance on the, the P&LE easement line?
13:55:26 **A** **They claimed they did some repairs on the**
13:55:30 **derailment that occurred there. But if they did, they were**
13:55:42 **extremely minor.**
13:55:42 **Q** Has Allied ever performed easement on the --
13:55:42 easement. Has Allied ever performed maintenance on the
13:55:45 P&LE?
13:55:46 **A** **We built a lot of that line, yes.**
13:55:48 **Q** And when did you do that?
13:55:49 **A** **I can't recall the dates.**
13:55:51 **Q** Okay. We're getting there. I think I might be
13:56:15 able to get Tim out in time here.
13:56:18 MR. GRIECO: Thanks.

13:56:38 **Q** Mr. Ramun, in the P&LE easement agreement, I
13:56:42 guess it's number two, there is a reference in there to a
13:56:44 lease of April 19, 1993 between the P&LE, the P&LW and the
13:56:53 Youngstown and Southern.
13:57:02 MR. LIPKA: Strike that.
13:57:03 **Q** Was the P&LW, did they ever store any rail cars
13:57:09 on that line?
13:57:10 **A** **No.**
13:57:10 **Q** How about the Youngstown and Southern, did they
13:57:13 ever store any cars?
13:57:14 **A** **No, not that I know of.**
13:57:15 **Q** And how about the P&LE, did they ever store any
13:57:19 cars?
13:57:19 **A** **No. And the current operator is not, either.**
13:57:34 **Q** Okay. Who is the current operator?
13:57:36 **A** **I don't know their name.**
13:57:37 **Q** I guess that was another question I had. There
13:57:40 is someone else, other than the Ohio Central Railroad, who
13:57:44 is using the track covered by the P&LE easement?
13:57:48 **A** **Yes.**
13:57:48 **Q** Do you have any complaints about their operations
13:57:51 on the track?
13:57:51 **A** **Zero.**
13:57:52 **Q** Have you seen any evidence that they are a

13:57:59 successor to this easement agreement?
13:58:02 **A** **I know they're somehow involved with the**
13:58:11 **Columbiana Port Authority. So I haven't seen the documents**
13:58:17 **yet.**
13:58:17 **Q** Okay. Have you requested that they show you
13:58:21 anything proving that they're covered by this easement
13:58:27 agreement?
13:58:37 MR. GRIECO: If you can remember.
13:58:39 **A** **I don't recall.**
13:59:00 MR. LIPKA: Okay. At this point, I just want to
13:59:02 take a one-minute break.
13:59:05 (Whereupon, a short break was taken.)
14:08:36 **Q** Mr. Ramun, we were talking about the P&LE. We're
14:08:45 going to come back to that. I apologize. We're sort of
14:08:49 skipping around. But I want to jump over to the bumper.
14:08:51 **A** **You ought to apologize for even having me here.**
14:08:54 **Q** The bumper at the end of the LE&E stub. I think
14:08:59 you had testified -- or maybe not. What's your
14:09:03 understanding as to what happened to that bumper?
14:09:05 **A** **Well, they were storing cars up there. They,**
14:09:07 **they just jam them up against the, the bumper, and they**
14:09:11 **broke the end of the rail off and the bumper.**
14:09:14 **Q** Okay. How?
14:09:17 **A** **And they were, they were the only ones going up**

14:09:20 **there. So it had to be them.**
14:09:22 Q Well, I guess that's my question. I mean, do you
14:09:24 know a guy named Jim Marter? M-a-r-t-e-r.
14:09:30 **A I have heard the name.**
14:09:31 Q Well, it's my understanding, correct me if I'm
14:09:36 wrong, was that he was the guy in charge of the Mahoning
14:09:38 Valley Railroad Heritage Association. I mean, does that
14:09:41 ring a bell?
14:09:43 **A Yes.**
14:09:44 Q Okay. I mean, here, I will, again, I'm the one
14:09:49 guy in the world who doesn't try to hide stuff here. I'm
14:09:53 going to hand you I guess five documents which I will mark
14:10:01 collectively as Defendant's Exhibit 3.
14:10:07 (Whereupon, Defendant's Exhibit No. 3 was marked
14:10:08 for identification purposes by the court reporter.)
14:10:23 Q Just take a look through all five pages, Mr.
14:10:25 Ramun.
14:10:27 MR. GRIECO: Just for the record, Tom.
14:10:29 MR. LIPKA: Sure.
14:10:30 MR. GRIECO: Where did these come from? Have
14:10:32 these been produced? Were they part of our production?
14:10:36 They don't have a Bates label, so --
14:10:38 MR. LIPKA: These came to me directly from Jim
14:10:41 Marter. And if I was, if I was supposed to produce them, I

14:10:46 didn't think so. I didn't think they were responsive to any
14:10:49 request. But that's where they originated from.
14:10:53 **A Okay.**
14:10:54 Q I mean, the first page of this exhibit, looks
14:10:57 like it's a letter to you from Mr. Marter. I mean, do you
14:11:00 remember receiving this letter?
14:11:01 **A Yes.**
14:11:03 Q Okay. And I mean, can you describe what this
14:11:10 transaction was, or this agreement was that you had with Mr.
14:11:14 Marter?
14:11:16 **A They evidently got some City property and are**
14:11:22 **putting a, or attempting to put a railroad museum there, and**
14:11:28 **they wanted to go up and use our track one time. And we**
14:11:37 **allowed them to use it that one time.**
14:11:42 Q And on the, on the map, do you know where they
14:11:46 were attempting to put in this museum, for lack of a better
14:11:52 term?
14:11:52 **A Well, they, they were to remove the bumper,**
14:11:57 **remove the bumper, and then they added track onto it, and**
14:12:02 **then they were supposed to remove the track.**
14:12:04 Q Okay.
14:12:05 **A And put the bump, reinstall the bumper. Well,**
14:12:08 **the bumper was broken off by that time already by Ohio**
14:12:16 **Central. They didn't break the bumper off.**

14:12:18 Q Okay.
14:12:19 **A Ohio Central broke it off.**
14:12:24 Q Do you happen to know, did they end up moving
14:12:33 these cars?
14:12:33 **A Yes.**
14:12:33 Q Did they build that extended track, I guess?
14:12:33 **A Yes. And that has to come back out, and the**
14:12:33 **bumper has to go in.**
14:12:33 Q So have they removed the extra track that they,
14:12:36 that they built?
14:12:37 **A Not yet. They're still moving, they have a**
14:12:39 **couple more things they want to move up there. And he's a**
14:12:42 **really nice guy. They're just a bunch of guys that do this,**
14:12:46 **and they get donations of railroad equipment. And I don't**
14:12:54 **know how they get their funds to operate. But --**
14:12:58 Q Okay.
14:13:01 **A They are a dying breed of railroaders. So --**
14:13:07 Q How long would it take, in your estimation, to
14:13:11 put the bumper back on the line?
14:13:12 **A Not long.**
14:13:14 Q Okay. I mean, could you do it in a day?
14:13:18 **A Well, they have to replace some track because**
14:13:21 **the, where the bumper was attached to the rail, they severed**
14:13:26 **the rail right off --**

14:13:28 Q Okay.
14:13:28 **A -- when they hit the bumper.**
14:13:30 Q So it's no longer passable? I mean, can you
14:13:34 still run a rail car over it?
14:13:35 **A Well, it wasn't passable. The bumpers**
14:13:38 **intended -- tended to be there to define the end of the line**
14:13:44 **and to take some resistance. But they evidently shoved the,**
14:13:50 **a bunch of cars in there, and misestimated how far they were**
14:13:56 **going in and impacted the bumper. And it basically broke**
14:14:02 **the two pieces of rail off. So that would have to be**
14:14:04 **repaired.**
14:14:04 Q I mean, I guess just from what we have talked
14:14:07 about, Mr. Marter was able to move these cars, 18 separate
14:14:13 cars over that line through where the bumper would have been
14:14:17 and onto new track to get wherever he was going?
14:14:23 **A Yeah. But he had constructed a, a joint there**
14:14:26 **that will be removed.**
14:14:28 Q Okay. So if we went out there today, it would be
14:14:35 one straight line with just a bumper lying by the side of
14:14:39 the track?
14:14:40 **A Right.**
14:14:40 Q Do you know when he plans on removing the, the
14:14:46 other track that he built?
14:14:48 **A No.**

14:14:49 Q Would it be possible to replace the bumper prior
14:14:53 to him digging out those tracks or removing them?
14:14:56 **A Yeah, you could put the bumper in. You could**
14:14:59 **install it over, over, over that, yes.**
14:15:01 Q I mean, do you have any idea, if you hired
14:15:06 somebody today to go out and replace that bumper, do you
14:15:09 have any idea what it would cost?
14:15:11 **A I don't know.**
14:15:12 Q Do you remember seeing the bumper off the track
14:15:26 prior to Mr. Marter building the new track?
14:15:29 **A Yes.**
14:15:30 Q Have you talked to Mr. Marter about the bumper?
14:15:33 **A Only that it has to be reinstalled.**
14:15:37 Q Okay.
14:15:38 **A Or will have to be reinstalled. And I didn't**
14:15:41 **really define who had to do it.**
14:15:42 Q Sure.
14:15:43 **A I don't believe he's doing it. He's just going**
14:15:47 **to disconnect his rails off of there. But it's not real --**
14:15:50 **it's not safe to really have that track there on that hill**
14:15:55 **with no bumper on.**
14:15:57 Q But I mean, I am assuming it was your
14:16:00 understanding that, if Mr. Marter did take the bumper off,
14:16:03 that he would put it back?

14:16:04 **A Yeah. But it wasn't on. It was already broken**
14:16:08 **off.**
14:16:21 Q What's the difference between breaking it off and
14:16:25 removing it? Does it make it that much more difficult to
14:16:29 put back on?
14:16:29 **A Well, the last several feet of the rail is broken**
14:16:33 **off, so you have to replace those several, those two rail**
14:16:37 **sections so that they're whole again, and re-drill them so**
14:16:41 **that that bumper can be installed so it's in the same place**
14:16:44 **it was; otherwise, if you, if you do it any other way, the**
14:16:50 **line will come short, the bumper gets moved down.**
14:16:54 Q Okay. I guess maybe what I'm trying to say is,
14:16:57 you know this area a lot better than I do. Was there any
14:17:00 collateral damage by the fact that this bumper may have been
14:17:03 banged off as opposed to removed by Mr. Marter?
14:17:06 **A Yeah. Damage, it damaged two sections of rail.**
14:17:09 Q Okay.
14:17:10 **A They will have to be replaced.**
14:17:12 Q And to the best of your knowledge, Mr. Marter
14:17:18 didn't replace those sections when he moved all the cars?
14:17:21 **A Whatever rail he put on there, he's allowed to**
14:17:26 **take that rail back. I mean, that's his rail, not mine.**
14:17:30 Q And I guess I'm just confused. It seems like at
14:17:33 the end of the LE&E stub, which is where the bumper is, when

14:17:37 the bumper got banged off, it's your understanding or your,
14:17:41 your recollection that there is some of the rail that was
14:17:43 damaged because it was banged off. And I guess from what we
14:17:47 have also decided is that Mr. Marter added on that line?
14:17:50 **A I don't know if he did a bolo connection, or if**
14:17:53 **he just bumped the two pieces together.**
14:17:55 Q Okay.
14:17:57 **A I'm not sure because he had -- wasn't really**
14:18:00 **running a train in there. He was just bringing a train, the**
14:18:04 **cars up there and then dragging them in where they had to be**
14:18:14 **on a rail. I don't even know who pushed the cars in for**
14:18:18 **him.**
14:18:22 Q All right. I think this should probably go for
14:18:28 the LTV one, but you know, we talked before about, you know,
14:18:35 what operations of Allied have been affected by storage on
14:18:39 the LTV easement, so I guess let me ask you this. Is there
14:18:44 any additional operations that have been affected by the
14:18:49 Ohio Central's actions in regard to P&LE easement track?
14:18:55 **A They're, they're one and the same. I mean, you**
14:18:58 **got two easements that were both affected in the very same**
14:19:02 **way by, by Ohio Central. Ohio Central, even after they quit**
14:19:10 **moving cars --**
14:19:11 Q Okay.
14:19:13 **A -- for the Port Authority or whatever, I don't**

14:19:16 **know what the relationship was there. I'm still waiting on**
14:19:19 **documents from Ohio Central. But they still went and stored**
14:19:23 **cars on our property. And they had no right to even be**
14:19:26 **there on the main line or anything else at that point in**
14:19:28 **time, as I understand it today.**
14:19:32 So for some period of time when -- that was a
14:19:34 year or so. I mean, they just -- it didn't matter to them
14:19:40 that they had a property owner that they well knew that they
14:19:46 weren't supposed to cross the line with, and they did.
14:19:49 So --
14:19:52 Q I had asked you in relation to the LTV tracks if
14:19:56 the problem had stopped and ended, and your testimony was
14:20:00 no. So let me ask you that with the PL&E tracks. Are they
14:20:05 still storing cars anywhere along the P&L easements?
14:20:08 **A I have not seen them on the P&L lien easements**
14:20:12 **lately.**
14:20:12 Q Okay.
14:20:13 **A And I do not believe they have any rights to be**
14:20:16 **there.**
14:20:16 Q Sure. And by lately, you mean in the last year?
14:20:20 Two years? Three years?
14:20:22 **A I don't have a time frame on that.**
14:20:25 Q But you mean --
14:20:28 **A I wouldn't say it's years. It's, it's when -- I**

14:20:41 **wouldn't say years.**
14:20:43 Q But I guess, as we sit here today, the problem
14:20:45 has stopped as far as the PL&E easement goes?
14:20:50 MR. GRIECO: Object to the form of the question.
14:20:52 You can answer.
14:20:53 **A Well, you know, they, they claim they haven't**
14:20:57 **stored any cars. They may -- I think they even answered one**
14:21:02 **of the, answered one of our interrogatories that way or**
14:21:06 **something like that, and then I see cars on at least the LTV**
14:21:10 **lines.**
14:21:10 Q Okay.
14:21:11 **A But here I have not seen them move their**
14:21:17 **equipment up in there lately.**
14:21:18 Q Okay.
14:21:32 **A All I know is that the overall circumstance that**
14:21:35 **we have is we have 196 acres on that side of the road, and**
14:21:41 **we have the majority of the acreage is not being able to**
14:21:47 **used in the context of having access to our own rail system**
14:21:55 **that we own. Until this case is over, and they're gone, or**
14:22:07 **acting right --**
14:22:08 Q Okay.
14:22:08 **A -- with whatever rights they have, we're still**
14:22:12 **being impacted.**
14:22:25 Q Again, we talked before in relation to the LTV

14:22:29 easements, about tanker cars, and construction demolition
14:22:33 debris cars, and those types of things being stored on the
14:22:36 LTV easement tracks. Were any of those stored on the P&LE
14:22:40 tracks?
14:22:41 **A Yes. They were, they were both stored there.**
14:22:46 Q Okay. Did you have the same type of vagrant or
14:22:51 vandal problem with the P&LE tracks that you testified about
14:22:55 for the LTV?
14:22:55 **A Yeah. Regardless if you have one easement, two**
14:22:59 **easements, yes, same problem.**
14:23:02 Q Did you ever call the police for the vagrant
14:23:08 problem?
14:23:08 **A I don't recall.**
14:23:11 Q Are you familiar, I believe it's a railroad term,
14:23:35 Mr. Ramun, with the word staging as opposed to storing? Is
14:23:42 that a railroad term that you have heard before, or you're
14:23:44 familiar with?
14:23:48 **A That is part of storing. Staging, building up**
14:23:53 **trains, stuff like that, that, that is not anything they**
14:24:02 **were allowed to do on our lines.**
14:24:04 Q Okay. So for the purposes of the easements,
14:24:07 you're saying there is no distinction between storing and
14:24:09 staging?
14:24:10 **A No. They were, they were allowed to pass through**

14:24:15 **nonexclusively. They never coordinated with anybody on**
14:24:21 **anything. They never asked for permission to do anything**
14:24:25 **beyond that. They just took it all, and in effect, snubbed**
14:24:32 **their nose at us. And that's why we're here.**
14:24:53 Q Mr. Ramun, have you retained any expert witnesses
14:25:04 in relation to your damages?
14:25:06 **A Not yet.**
14:25:08 Q Okay. It's your intent to?
14:25:10 **A I don't know.**
14:25:11 MR. GRIECO: Object to the question. But --
14:25:14 Q Who is, who is the accountant that handles
14:25:19 Allied's work?
14:25:22 **A It's none of your business.**
14:25:25 MR. GRIECO: What's the -- why do you need to
14:25:27 know that, Tom?
14:25:28 MR. LIPKA: Well, I mean, that would be a person
14:25:30 who I think would be most logically responsible for
14:25:34 calculating damages. If there is information that I want to
14:25:36 get ahold of for damages, that would be the person to
14:25:40 potentially subpoena. I think it's a valid question.
14:25:43 **A I will only answer that our accountant would not**
14:25:57 **be the person who would be doing that.**
14:25:57 Q All right. But as we sit here today, you're not
14:25:57 responding to that question?

14:25:58 **A You are correct.**
14:25:59 Q Okay. Sort of a general question, Mr. Ramun, I
14:26:12 mean, what, what are you ultimately hoping to attain as far
14:26:22 as this lawsuit goes? Money damages? Or you know,
14:26:27 increased cooperation from Ohio Central? I mean, what are
14:26:31 you looking for?
14:26:32 MR. GRIECO: Object to the form of the question.
14:26:35 **A I'm still working on that. Those, those, the**
14:26:41 **damages are being assessed at this point.**
14:26:44 Q Okay.
14:26:50 **A I do not want them to violate our rights anymore,**
14:26:55 **and I just, I'm sick of their abuse.**
14:27:12 Q All right. Mr. Ramun, I have got a series of
14:27:15 documents to go over.
14:27:26 MR. LIPKA: Let's just go off the record for one
14:27:28 second, Cyn.
14:27:29 (Whereupon, a discussion was held off the
14:27:31 record.)
14:28:46 MR. LIPKA: We're going to break the deposition
14:28:48 at this point and pick up at a mutually acceptable date and
14:28:52 go from there.
14:28:52 (Whereupon, a discussion was held off the
14:31:31 record.)
14:31:31 MR. LIPKA: Just to mark, we had a map, a Google

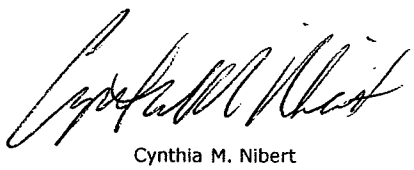
14:31:36 Earth map that we have been referring to the entire time,
14:31:39 and we are going to mark this as 4.

(Whereupon, Plaintiff's Exhibit No. 4 was marked for identification purposes by the court reporter, and the deposition was to be continued on another date.)

* * *

REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY that the above and foregoing is a full, true, and correct transcript of all the testimony introduced and proceedings had in the taking of the within named deposition, as shown by stenotype notes written by me, in the presence of the witness, at the time the said deposition was being taken.



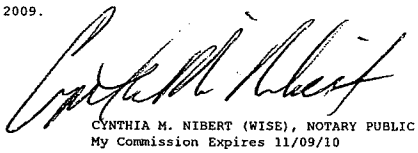
Cynthia M. Nibert
Registered Professional Reporter

STATE OF OHIO)
) SS CERTIFICATE
MAHONING COUNTY)

I, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above named MR. JOHN RAMUN was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was written by me in stenotype in the presence of the witness, and by me transcribed; that the transcript of his testimony will be made available to said witness for signature; that the said witness shall read said transcript and affix his signature, at the end thereof, and that the said deposition was taken pursuant to agreement and at the time and place therein specified.

I do further certify that I am not of counsel, attorney or relative of either party or otherwise interested in the event of this action or proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Youngstown, Ohio this 8th day of April, A.D., 2009.



CYNTHIA M. NIBERT (WISE), NOTARY PUBLIC
My Commission Expires 11/09/10

STATE OF OHIO)
) SS IN THE COURT OF COMMON PLEAS
MAHONING COUNTY)

CASE NO. 2006 CV 00181

ALLIED ERECTING AND DISMANTLING CO., INC., ET AL.,
Plaintiffs
vs
THE OHIO CENTRAL RAILROAD, INC., ET AL.,
Defendants

DEPOSITION OF MR. WILLIAM STRAWN

DEPOSITION taken before me, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, on the 15th day of April, A.D., 2009, pursuant to agreement, and at the time and place therein specified, to be read in evidence on behalf of the Defendants in the aforesaid cause of action, pending in the Court of Common Pleas within and for the County of Mahoning, in the State of Ohio.

APPEARANCES

JACOB C. McCREA, ESQ.,
On Behalf of Plaintiffs

THOMAS J. LIPKA, ESQ.,
On Behalf of Defendants

INDEX

Caption and Appearance 1
Stipulations 3
Reporter's Certificate 127
Notary Certificate 128

- - -

Witness	Exam	Attorney	Page
W. Strawn	Cross	Mr. McCrea	4

- - -

EXHIBITS

6 - Employer status determination, Y&S Railway Company
7 - 10/27/95 letter to William Strawn from James Carrothers with attachments
8 - 6/13/95 Amended and Restated Lease and Contract For Sale of Real Property between P&LE and Y&S
9 - Assignment and Assumption Agreement and Contract for Sale of Real Property
10 - 5/4/00 letter to William Strawn from Sheri Edison
11 - Quitclaim deed
12 - 11/30/00 bill of sale between LTV Steel Company and The Mahoning Valley Railway Company
13 - Defendants' response to Plaintiffs' interrogatories and requests for production
14 - The Ohio Central Railroad System, Youngstown Division, Operations Bulletin No. 01

- - -

Reported and Transcribed by:
Cynthia M. Nibert
Registered Professional Reporter

STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that this deposition may be taken at this time, 10:30 a.m., at the offices of Nadler, Nadler & Burdman Co., Attorneys at Law, Youngstown, Ohio, without the usual Notice to Take Deposition having been served, service of the same being waived.

It is further stipulated and agreed that the deposition may be written in stenotype by Cynthia M. Nibert, a Notary Public within and for the State of Ohio, and a Registered Professional Reporter, and by her transcribed; that the transcript be made available to the witness for signature, and that the witness shall read the same and subscribe thereto, and that the deposition may thereupon be used on behalf of the Plaintiff in the aforesaid cause of action.

* * *

WHEREUPON,

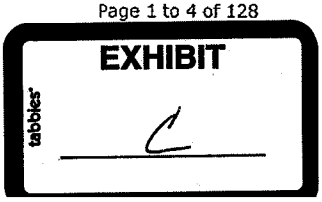
MR. WILLIAM STRAWN

of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes and says as follows:

CROSS EXAMINATION

By Mr. McCrea

10:44:03 Q Good morning, Mr. Strawn. My name is Jacob
10:44:08 McCrea, and I represent the Plaintiffs in this action. My
10:44:11 first question is, have you ever been deposed before?
10:44:14 A **Yes.**
10:44:14 Q Can you describe those circumstances for me,
10:44:17 please.
10:44:18 A **I have had over three dozen depositions. Any in**
10:44:22 **particular? Or what, what would you like to know?**
10:44:24 Q If you could just give me a very brief overview
10:44:28 of those depositions, certainly to --
10:44:30 A **All related to railroad business.**
10:44:32 Q Okay.
10:44:35 A **For whatever that specific case might have been.**
10:44:37 Q Okay. So you're well-versed in the basic ground
10:44:42 rules of a deposition that, you know, I'm going to ask you a
10:44:45 series of questions, and you have to answer verbally on the
10:44:49 record.



10:44:49 A Yes.
10:44:50 Q Okay. Very good. Could you describe for me
10:44:54 generally your educational background.
10:44:57 A **Yes. I went through high school in Pittsburgh,**
10:45:01 **Pennsylvania, and then went to the University of Pittsburgh**
10:45:05 **for two years, received an associate's degree in business,**
10:45:09 **and began in the railroad career.**
10:45:11 Q Okay. Can you describe for me generally your
10:45:15 employment background?
10:45:17 A **Yes. I began my employment in the railroad**
10:45:21 **industry in 1972 with The Union Railroad. While with The**
10:45:28 **Union Railroad I became -- well, I began as a trainman,**
10:45:33 **became a locomotive engineer, a yardmaster, an assistant**
10:45:38 **trainmaster, trainmaster, train movement director.**
10:45:41 And I ultimately left The Union Railroad in 1987
10:45:46 and went with a company known as Railtech out of San
10:45:54 Antonio, Texas, where my duties were to acquire, start and
10:45:57 staff railroads around the United States. I remained with
10:46:00 them until approximately August of 1993, when I came to The
10:46:10 Ohio Central Railroad Company as its President. And my
10:46:14 duties there were much the same, acquire railroads, start
10:46:17 them, staff them and bring good people aboard to, to run
10:46:20 them.
10:46:21 And then I left The Ohio Central Railroad in

10:46:25 September, actually, October 1st of 2008.
10:46:29 Q Okay. Is that in connection with The Ohio
10:46:32 Central Railroad being purchased by another entity?
10:46:34 A **That is correct.**
10:46:35 Q Okay. I forget the name of that entity, but I
10:46:40 have read.
10:46:40 A **Genesee and Wyoming.**
10:46:42 Q Genesee and Wyoming, thank you. To the extent
10:46:47 you haven't already, can you describe for me your job duties
10:46:50 as an employee -- rather, as the President of The Ohio
10:46:56 Central Railroad?
10:46:56 A **Sure. My duties were not so much involved with**
10:47:00 **the day-to-day running of the railroad, but more with the**
10:47:04 **strategic growth of the company, bringing managers into**
10:47:08 **various positions where they could also assist in growing**
10:47:11 **the company. I also handled human resources. I handled, to**
10:47:16 **the degree I was capable, legal issues. I handled a great**
10:47:20 **deal of lobbying efforts and further acquisition for the**
10:47:24 **company. I was more or less responsible for the, for the**
10:47:28 **growth of the company.**
10:47:29 Q Okay. As opposed to the nitty-gritty of, you
10:47:32 know, determining what, you know, when cars would be
10:47:36 shipped?
10:47:38 A **That was the hard stuff. No. They wouldn't let**

10:47:40 **me do that.**
10:47:41 Q The minutia of running a railroad?
10:47:45 A **I would say probably the complexity, if I could,**
10:47:48 **of running a railroad. Very complex business.**
10:47:51 Q And were you involved in leasing, generally
10:47:54 speaking, on behalf of Ohio Central?
10:47:56 A **Could you clarify that "leasing"?**
10:47:59 Q Let's, just to give an example, if The Ohio
10:48:03 Central Railroad were going to lease some land, or lease
10:48:06 some tracks, or acquire easements or acquire property, would
10:48:11 you be the guy in charge of that?
10:48:13 A **I would have not been necessarily directly in**
10:48:16 **charge, but would have oversight --**
10:48:18 Q Okay.
10:48:18 A **-- over certain activities. But may not be**
10:48:27 **directly involved.**
10:48:28 Q Could you please give me an overview of the
10:48:30 corporate structure of The Ohio Central Railroad at the time
10:48:33 that you departed from it prior to the purchase by Genesee
10:48:38 and Wyoming?
10:48:39 A **Would, would you like officers, or companies?**
10:48:42 **Could you clarify that?**
10:48:44 Q I guess I could do it this way. My understanding
10:48:48 is that The Ohio Central Railroad is really a trade name for

10:48:52 11 different railroads that are owned by a company called
10:48:56 Summitview, Inc.; is that correct?
10:48:58 A **No.**
10:48:59 Q Okay.
10:49:00 A **There were, there were 11 railroads that were**
10:49:04 **separately incorporated. They were their own business**
10:49:08 **entity. Summitview, as you had asked, was the parent**
10:49:11 **company --**
10:49:11 Q Okay.
10:49:12 A **-- of those railroads. But they were separately**
10:49:14 **incorporated.**
10:49:15 Q Okay. Did some of you own all the stock of those
10:49:20 11 different railroads? Or --
10:49:22 A **Yes.**
10:49:22 Q They were all wholly-owned subsidiaries, so to
10:49:28 speak?
10:49:28 A **Summitview owned all of the stock of the**
10:49:32 **railroads.**
10:49:32 Q And The Ohio Central Railroad isn't a legal
10:49:45 entity per se, it's really just a trade name?
10:49:45 A **No. It is a legally incorporated company, The**
10:49:45 **Ohio Central Railroad Company, Inc.**
10:49:45 Q Okay. And is that one of those 11 railroads?
10:49:48 A **Yes.**

10:49:47 Q Maybe I'm confusing The Ohio Central Railroad,
10:49:53 Inc., with The Ohio Central Railroad System. And I guess
10:50:00 this is really neither here nor there. I have a page from
10:50:03 The Ohio Central Railroad's web site that speaks to this.
10:50:07 A **Okay.**
10:50:08 Q In any event, I'm just trying to get an overview
10:50:11 of the lay of the land here --
10:50:13 A **I understand.**
10:50:13 Q -- as far as the corporations go. And is it
10:50:16 correct that you are speaking today as the corporate
10:50:20 representative of The Ohio Central Railroad?
10:50:23 And if you don't mind, I will just put this on
10:50:27 the record. When I say "The Ohio Central Railroad," can we
10:50:30 agree that that's a reference to, at the very least, all of
10:50:34 the railroads that are Defendants in this case?
10:50:39 MR. LIPKA: Well, I'm sorry. There is actually
10:50:41 two questions pending. One is, you asked Bill if he could
10:50:44 refer to The Ohio Central Railroad System collectively.
10:50:49 That's between you and him as to whether you could do that
10:50:51 or not.
10:50:52 MR. STRAWN: I don't have a problem with that.
10:50:53 MR. LIPKA: The second question was whether Bill
10:50:55 was the corporate designee, and that was more of a legal
10:50:58 designation that Attorney Grieco and I had worked out that,

10:51:01 yes, Bill Strawn is the 30(b)(5) designee for a portion of
10:51:07 matters that would be designated on that Notice of
10:51:09 Deposition.
10:51:12 MR. McCREA: If I understand correctly, those are
10:51:13 matters one, two, paragraphs one, two and four?
10:51:16 MR. LIPKA: That's my understanding. I will
10:51:18 represent to you that, that Bill Strawn has never seen that,
10:51:22 and so if you want to, go over that particular document with
10:51:24 him.
10:51:24 But between Attorney Grieco and myself, we have
10:51:27 designated him as the corporate designee for those
10:51:31 particular items.
10:51:32 MR. McCREA: Great. Well, in that case, I will
10:51:34 bring out a copy of that document.
10:51:36 MR. LIPKA: Sure. Just go off the record for one
10:51:38 second.
10:51:38 (Whereupon, a discussion was held off the
10:51:40 record.)
10:52:22 Q Mr. Strawn, I'm handing you the Notice of
10:52:27 Deposition pursuant to Rule 30(b)(5), a designated
10:52:33 representative of the Ohio Central Railroad System. Could
10:52:37 you please take a minute, or as much time as you need, to
10:52:39 review that document.
10:53:20 A **I have looked at it.**

10:53:21 Q Thank you. Just by way of background, as we were
10:53:27 discussing off the record, I'm going to be asking you
10:53:29 questions regarding specifically paragraphs one, two and
10:53:33 four, although I may also get into some of the issues that
10:53:38 are outlined in paragraphs three, five and six.
10:53:40 A **All right.**
10:53:40 Q I will just give you that by way of background.
10:53:46 Okay.
10:53:47 MR. LIPKA: And I'm sorry. One last item is that
10:53:51 Attorney Grieco and myself had discussed, in relation to
10:53:54 number four, that Bill would be the corporate designee as of
10:53:56 the time, as up until the time of the sale.
10:53:59 And then if you had questions about the corporate
10:54:02 structure after the sale, certainly Bill can testify about
10:54:06 what he knows, but that there may have to be another
10:54:12 corporate designee.
10:54:12 MR. McCREA: That's fine. I'm aware of that
10:54:16 caveat. Thank you.
10:54:21 Q Just let me, let me start off by asking you
10:54:25 generally, have you spoken with Mr. Feichtenbiner since his
10:54:32 deposition yesterday afternoon?
10:54:34 A **I called him this morning on my cell phone to let**
10:54:37 **him know I was coming up.**
10:54:38 Q Okay. Did you discuss any of the substance of

10:54:41 what occurred at the deposition?
10:54:42 A **No.**
10:54:42 Q Okay. Have you had any discussions with Mr.
10:54:49 Feichtenbiner or anyone else from Ohio Central Railroad
10:54:53 outside the presence of your attorneys regarding the
10:54:57 substance of this lawsuit?
10:54:58 A **No.**
10:54:59 Q Okay. By the way, what's your current residence?
10:55:03 A **Address?**
10:55:04 Q Yes.
10:55:04 A **6358 Seibert, S-e-i-b-e-r-t, Seibert Hill Road,**
10:55:13 **New Philadelphia, Ohio 44663.**
10:55:16 Q Is that some distance from where we are today?
10:55:20 A **It's about two hours.**
10:55:22 Q Okay. I just asked that by way of background.
10:55:27 Are you familiar with the first amended complaint in this
10:55:31 action?
10:55:32 A **Not off the top of my head, no.**
10:55:34 Q Okay. Have you ever reviewed it?
10:55:37 A **I don't recall.**
10:55:38 Q Okay. So generally speaking, and I have a copy
10:55:45 of it right here, but your testimony is that you have never
10:55:47 really, you don't recall having taken a long, hard look at
10:55:51 what's alleged in the complaint?

10:55:53 A **I have looked at a complaint, if that is the**
10:55:56 **complaint. But I, I don't recall. It's been quite some**
10:55:59 **time.**
10:55:59 Q Okay. Do you understand that there are really
10:56:05 two easements that are in dispute in this action filed by
10:56:10 Allied?
10:56:11 A **I know there are easements involved. I didn't**
10:56:13 **specifically know that it was two.**
10:56:15 Q Okay. I'm going to hand you what has already
10:56:25 been marked as an exhibit in the case.
10:56:28 MR. McCREA: And I think that what we can do here
10:56:30 is, I have a set of copies of the exhibits, but we will use
10:56:38 the prior designations.
10:56:39 MR. LIPKA: That's fine.
10:56:50 MR. McCREA: In fact, I wrote them down here.
10:56:50 MR. LIPKA: I think there is only five or six of
10:56:52 them. We can remember if you have questions.
10:56:55 Q Mr. Strawn, I'm going to hand you what's already
10:56:57 been marked as Exhibit 1 at the deposition of Mr.
10:57:01 Feichtenbiner. Can you take as much time as you need to
10:57:04 review that document there.
10:57:33 MR. McCREA: Do you have a copy of what I have
10:57:40 handed Mr. Strawn?
10:57:42 MR. LIPKA: Yes, I have a copy.

10:57:45 MR. McCREA: Does Mr. Feichtenbiner need a copy?
10:57:47 MR. LIPKA: I will get one for him if he needs
10:57:49 one. Thank you, though.
10:58:28 A **Okay. I have looked it over.**
10:58:30 Q Okay. Sir, do you recognize that document?
10:58:32 A **Yes. I believe I have seen this document in**
10:58:35 **various, various times, various forms even.**
10:58:38 Q Okay. Various forms?
10:58:40 A **Or, or iterations.**
10:58:43 Q Okay. But can you describe to me what your
10:58:49 background knowledge of that document is?
10:58:52 A **Well, my background knowledge is, I believe this**
10:58:55 **document is one that was produced -- well, it was obviously**
10:59:02 **produced with LTV and Allied regarding a, a sale agreement**
10:59:06 **that occurred in '92 referring to different easements and**
10:59:10 **how each will work with each other as those easements exist.**
10:59:15 Q Okay.
10:59:17 A **It talks about everything from railroads to**
10:59:18 **utilities to future agreements, et cetera.**
10:59:20 Q Okay. And is it the position of The Ohio Central
10:59:25 Railroad that it is an assignee of rights under this
10:59:32 easement agreement, or for the easement agreement itself?
10:59:40 A **My, my recollection, when we did our acquisition**
10:59:45 **with LTV, is that any and all agreements that were attached**

10:59:51 **or went with the property we were buying were assigned to**
10:59:55 **The Mahoning Valley Railway and/or The Ohio Central,**
11:00:01 **depending on how you -- but whatever LTV had was passed**
11:00:05 **along to us.**
11:00:06 Q Okay. And as part of what since -- I understand
11:00:10 Ohio Central's position, is that this was something that was
11:00:13 possessed by LTV and, in turn, passed along to The Mahoning
11:00:18 Valley Railway Company?
11:00:20 A **I believe so.**
11:00:20 Q Okay. I'm going to hand you what has been marked
11:00:25 as I believe Exhibit 4 from the deposition of Mr.
11:00:42 Feichtenbiner. It is a map of The Mahoning Valley Railway,
11:00:47 Railway Territory-West End.
11:00:51 A **Okay.**
11:00:58 Q What I would like you to document, Mr.
11:01:00 Feichtenbiner, is identify for me --
11:01:02 MR. LIPKA: Mr. Strawn.
11:01:05 Q I'm sorry. Mr. Strawn.
11:01:08 A **That was actually a compliment.**
11:01:08 Q I would like you to take a minute to review this,
11:01:11 or as much time as you need, and if you could, identify for
11:01:15 me what property The Ohio Central Railroad System owns. And
11:01:22 by that I mean to include all of its, all of its entities,
11:01:26 Summitview.

11:01:26 A **On this map?**
11:01:27 Q On this map, yes.
11:01:28 A **Okay.**
11:01:29 Q And we can start off by going through, you know,
11:01:32 what actual land the railroad owns, and then also go on from
11:01:37 there to easements or, you know, rights under the leasehold.
11:01:41 A **Sure. I can start right now if you're ready.**
11:01:43 Q Please.
11:01:44 A **Okay. In subsequent transactions or various**
11:01:49 **transactions with LTV, P&LE and ConRail, we acquired the**
11:01:55 **following: All of this property on the other side of the**
11:01:59 **river is owned by The Ohio Central or Mahoning Valley, one**
11:02:05 **or the other. This I believe is, all of the property on the**
11:02:11 **other side of the river is -- has been acquired from a**
11:02:17 **certain point I'm pointing to --**
11:02:19 Q Okay.
11:02:20 A **-- down. We, we acquired this property. We**
11:02:22 **acquired the track, and we acquired various tracks that**
11:02:26 **don't even show on this map on the other side of the river,**
11:02:29 **and some land as well that literally skirts up along here**
11:02:33 **towards interchange points. That's that side of the river.**
11:02:36 Q And I note for the record that you're marking, or
11:02:39 you were referring to the land on the right side of the map,
11:02:41 which I believe is going down towards Struthers, Ohio?

11:02:44 A **Yes, yes.**
11:02:46 Q Okay.
11:02:47 A **So we will now move to this side of the river,**
11:02:49 **for lack of a better term. And let me --**
11:02:53 Q That being the side of the river of Poland
11:02:57 Avenue, Ohio, Allied Erecting, and so on?
11:03:00 A **Correct. And if you take a look, we will show**
11:03:03 **an, that's conveniently marked as an interchange point with**
11:03:09 **CSX, and you will see track. Most of it is all in yellow.**
11:03:13 **Anything that I am seeing in yellow on this portion to this**
11:03:18 **point that I am showing with my hands is owned by The**
11:03:21 **Mahoning Valley or The Ohio Central Railroad.**
11:03:24 Q Okay.
11:03:24 A **This parcel of land, this parcel of land, the**
11:03:29 **locomotive shops, all owned by the, by The Mahoning Valley**
11:03:35 **Railroad.**
11:03:35 Q Okay. That's all, I believe, to the west or
11:03:42 north of the Center Street Bridge?
11:03:54 A **Okay. I'm going to trust your sense of**
11:03:54 **direction.**
11:03:54 We also own -- let's see if I can see it well
11:03:54 enough here. We also own this property in here that we
11:03:58 have, our offices are -- I think you can see those there,
11:04:01 our offices being on this property as well. Any of this

11:04:04 track marked in yellow was also acquired.
11:04:09 Q Okay. When you say "acquired," does that mean
11:04:13 that you have ownership, like a fee simple ownership
11:04:17 interest, or an easement right over it?
11:04:19 A **Well, the railroads are sold in many ways. They**
11:04:22 **can be sold fee simple, general interest. They can be**
11:04:26 **bifurcated. It would depend on which track and where. Some**
11:04:30 **track, the land we own directly; some track, the land we**
11:04:33 **have easement over, but we own the track, the materials.**
11:04:36 **And that's common practice in the industry.**
11:04:38 Q That's what you refer to by bifurcating? That's
11:04:42 to say someone can hold --
11:04:43 A **The may hold the land ownership, but the railroad**
11:04:46 **has easement for their track and materials, or their**
11:04:49 **operations or use.**
11:04:50 Q And the tracks and the ballasts, so to speak, are
11:04:54 something that can be owned by the railroad, even though
11:04:57 someone else owns the underlying --
11:05:00 A **That is correct. The major railroads in the U.S.**
11:05:05 **don't own everything that they operate over. It's most --**
11:05:05 **much of their track is on land that may be held by someone**
11:05:07 **else. But the ballast, the rail, everything above ground is**
11:05:12 **theirs.**
11:05:12 Q Okay.

11:05:14 A **And that would, that would also include the**
11:05:17 **connection. There is a cut point up in here with the**
11:05:20 **Youngstown Southeastern. We acquired this track from Gordon**
11:05:29 **Neuenschwander. I don't --**
11:05:29 COURT REPORTER: That's okay.
11:05:31 A **Who was at that time the trustee for the P&LE**
11:05:35 **bankruptcy, so we did acquire that track. And my**
11:05:37 **recollection, although I don't have documents, was that**
11:05:40 **there was a cut point where ownership would not be ours.**
11:05:44 **And if I'm correct, it would have been generally in this**
11:05:47 **area.**
11:05:48 Q Okay.
11:05:49 A **And that this particular part of the LE&E Main**
11:05:53 **line we had rights over, that this, I believe, belonged to**
11:05:58 **Mr. Ramun, and we had rights over this track to effect,**
11:06:03 **obviously, movement of freight, either, either into Haselton**
11:06:07 **Yard and/or across CP Graham where we have ownership to**
11:06:13 **reconnect us so we can interchange with CSX.**
11:06:17 Q Okay.
11:06:17 A **So this particular portion of track we had**
11:06:20 **easement rights over. These tracks in here we owned the**
11:06:26 **materials.**
11:06:27 Q Okay.
11:06:28 A **Because they were different sales, different**

11:06:29 **entities.**
11:06:30 Q Do you recall a day, probably less than a year
11:06:35 ago, when Mr. Chris Oblinsky, and John Ramun, and Mr.
11:06:41 Feichtenbiner, you were there, I was there, we all went out
11:06:44 for the so-called site visit?
11:06:47 A **Yes, I do.**
11:06:48 Q Okay. Do you recall that there was a section of
11:06:52 track, there were two sections of track that we looked at
11:06:56 when I think we were surveying damage that is alleged in
11:07:00 this case? Can you show me on the map here where, for
11:07:07 example, there was a bumper that, that was removed, was
11:07:12 moved or knocked off, or in any event, it's no longer on the
11:07:16 track, and I recall it being right next to where a fellow
11:07:19 had put a few old railroad cars as a sort of museum. Can
11:07:23 you identify on the map where that is?
11:07:24 A **Right here. The, referred to as the LE&E stub.**
11:07:28 **And there is a gentleman, I don't remember his name, that I**
11:07:33 **believed or was told had talked with John, and had**
11:07:35 **permission to use that track. I don't -- but that's my**
11:07:39 **understanding.**
11:07:39 Q Okay.
11:07:40 A **And I remember that we did look at that.**
11:07:42 Q Okay. Do you recall also walking down away from
11:07:49 the, along those tracks away from the City of Youngstown to

11:07:53 a point which I believe was near the Center Street pocket
11:07:58 referenced on the map when there was some, some track that
11:08:02 was torn up, so to speak?
11:08:04 **A Yes.**
11:08:04 Q Okay. If I remember correctly, I think I
11:08:09 overheard you say on that day that that property there was
11:08:11 owned by Ohio Central. Do you recall anything to that
11:08:15 effect, or can you describe for me who would have ownership
11:08:20 of this land in here?
11:08:21 **A My belief was that, when we acquired this track**
11:08:25 **off of Gordon Neuenschwander for P&LE, that we acquired the**
11:08:31 **track and the land and that in this area. And again, my**
11:08:34 **recollection is that the cut point of ownership was**
11:08:39 **somewhere in this vicinity.**
11:08:40 Now, whether that was for land or track, I don't
11:08:43 have those documents to refer to.
11:08:44 Q Okay.
11:08:45 **A But I do, I do recall visiting the site that day.**
11:08:48 Q Okay. Do you have the documents by which you, by
11:08:52 which this acquisition from Mr. Neuenschwander took place?
11:08:57 **A I have no documents.**
11:08:57 Q Okay. Do you know if The Ohio Central Railroad
11:09:01 has the documents somewhere?
11:09:13 **A I would believe they would.**

11:09:13 Q Okay.
11:09:13 **A But I, I personally have no documents.**
11:09:13 Q Okay. That was a question that I was going to
11:09:13 ask, whether you have retained any documents from your
11:09:15 employment with The Ohio Central.
11:09:17 **A No. Just my pay stubs.**
11:09:19 Q Just your pay stubs, okay. My understanding is
11:09:27 that, looking at this map, this, there is a silver outline
11:09:35 of a section of land in here. My understanding is that Mr.
11:09:39 Feichtenbiner drew the circle -- well, not a circle, but
11:09:43 drew this outline yesterday.
11:09:45 **A Okay.**
11:09:46 Q And delineated that as being actual land that The
11:09:50 Ohio Central owns as a fee simple interest ownership over.
11:09:55 Is that consistent with your knowledge of The Ohio Central's
11:09:59 land rights?
11:09:59 **A Yes.**
11:10:00 Q Okay.
11:10:04 **A In fact, I do recall that when we purchased --**
11:10:07 **and again, these are all multiple transactions with**
11:10:10 **different parties.**
11:10:10 When we did the acquisition here, they actually
11:10:13 had to resurvey and put new plot numbers for these, these
11:10:19 particular parcels. And they are recorded.

11:10:21 Q Okay. Can you describe for me generally what The
11:10:27 Ohio Central Railroad uses this property here for that is
11:10:31 within this silver outline?
11:10:35 **A For railroad business, moving of cars, repairing**
11:10:39 **locomotives, staging cars for customers, storing cars,**
11:10:44 **whatever railroad use would be required.**
11:10:47 Q Okay. And can you show me on this map the rail
11:10:53 lines by which you gain access to the area inside the silver
11:11:00 outline?
11:11:00 **A Okay. Well, you can use the 239 track, #4 Main.**
11:11:04 Q Okay.
11:11:05 **A They obviously all, you can see, attach. You can**
11:11:07 **also use #3 Main, which then goes on to #1. That also**
11:11:12 **attaches. You can use two -- I have got to look. That's a**
11:11:15 **little too small for my old eyes. 292, that's for your**
11:11:20 **interchange connection with CSX, which can also operate down**
11:11:25 **in that direction. So those are your entry points.**
11:11:28 Q And it doesn't look like this LE&E Main track has
11:11:31 any function in terms of allowing access to The Ohio Central
11:11:37 property inside this silver outline; is that correct?
11:11:41 **A Not as it stands today. There used to be a**
11:11:44 **number of crossovers, though, years ago that did actually**
11:11:47 **permit the railroads even greater access, as they did more**
11:11:52 **business with each other. And in fact, you can see the**

11:11:54 **switches are still in place, and you can see the old**
11:12:04 **right-of-ways.**
11:12:05 Q Okay. Bear with me for a second.
11:12:21 **A Sure.**
11:12:45 Q Do you know, Mr. Strawn, whether The Ohio Central
11:12:49 Railroad System can access its property and carry on its
11:12:54 business operations without going through any of the
11:12:58 property that's owned by Allied Erecting or Allied
11:13:11 Industrial Development Corporation?
11:13:11 **A Not on this end. And it would have to rely --**
11:13:16 **although this interchange, I don't know the status of this**
11:13:19 **interchange today.**
11:13:20 Q Okay.
11:13:20 **A It would have to rely solely on a little bit of**
11:13:24 **interchange with CSX, if they're still conducting it there.**
11:13:27 But Norfolk Southern, I think it's safe to say,
11:13:30 or at least was the primary class one at the time with
11:13:35 regards to carloads that the railroads were doing business
11:13:39 with. It certainly does business with CSX. But NS and the
11:13:44 Youngstown lines were doing the greater bulk of business at
11:13:49 that time in this area.
11:13:50 Q So it's your testimony that, in order for Ohio
11:13:54 Central to get access to its property coming from the
11:13:58 Struthers area, it has to go through Allied property one way

or the other; is that correct? Or, or am I misunderstanding?

A **Well, you, you could theoretically use NS. But currently no. There would have to be some track construction.**

Speaking today, unless there has been a change in the physical plant, you're going to be coming through property that I believe would show as ownership for Allied on this particular end.

Q Okay. That being the Struthers end?

A **CSX's interchange is down here, Norfolk Southern's is over here, and there is a very small interchange that may have been suspended. Everything may be going on over here. I don't know.**

Q And could you describe for me just generally what an interchange is, what, what function that serves?

A **Yes. An interchange is a point where two railroad carriers will exchange railroad cars, whether -- in this case it would be Norfolk Southern bringing us loaded or empty cars, and we would either be unloading through our customers or reloading, and then handing those cars back. It's a point where railroad cars are furthered to their customers.**

Q Okay. That is to say one railroad might take a

rail, might take some rail cars from A to B, second railroad would take those cars from B to C?

A **Right.**

Q Third railroad?

A **Think of a relay race with a baton.**

Q Okay.

A **It's where they pass the baton.**

Q Thank you. I appreciate that. Let's go back to this easement agreement that I handed you initially.

A **Yes.**

Q Is it -- did The Ohio Central Railroad System utilize this easement in the course of its operations?

A **Utilize it in, in what? Could you clarify that a bit? It's pretty general.**

Q Certainly. Did Ohio Central use the tracks that are subject to this agreement during its operations when you were there?

A **Yes.**

Q Okay. And could you identify for me on this map which tracks those are.

A **On the easement side?**

Q Yes, sir.

A **Regarding the easement?**

Q Yes.

A **We would have certainly used the LE&E Main. My sense was we may have put a few cars into John's facility off of the Allied lead, but I don't believe there were many. But we would have come and gone to interchange over the, the LE&E Main to get across, excuse me, to, to CSX. So we would have used that under the easement without, without a doubt.**

Since we acquired all of the other tracks on land that we either owned or had an easement, these tracks, meaning the #3, the #4, the #4 Main, the #1, they were tracks that we, we owned the materials, and those are tracks that I also believe may sit on property that would be owned by Allied.

Q Let's back up a second. I don't want to put words in your mouth, but I'm afraid we might be two ships passing in the night here in terms of what rail lines this easement pertains to.

If you could take a look at the second page of the easement agreement, take a look at paragraphs two, paragraphs three, paragraphs two and three under number two railroad easement.

(Whereupon, John Ramun joined the deposition proceedings.)

A **Uh-huh.**

Q Take a look at the end of those paragraphs, and

let's take a look at what tracks are referenced on there.

Or --

A **Okay. I have done that.**

Q It says on paragraph two, These tracks are known as the #2 and #3 Mains; paragraph three it says, The tracks numbered 220, 239, 240 and #4 Main, and later in that paragraph it refers to the tracks on parcel B or the #1 Main and the Heckett track.

A **Yes.**

Q There is an exhibit to this, if we look at the easement agreement. Can you take a look at that? I just want to make sure we're referring to the right easements here.

A **As the tracks are listed in this easement, they appear on the map, would have been tracks for this particular easement that The Mahoning Valley Railroad --**

Q Okay.

A **-- would have utilized.**

Q Okay.

A **This isn't a real good attachment.**

Q And that's, that's distinguished from what's identified on this map as the LE&E Main track, correct?

A **That is, that is correct.**

Q Okay. So --

11:19:28 A **That is a separate agreement.**
11:19:30 Q Okay. So just so we're on the same page, this
11:19:34 easement agreement that we're discussing right now pertains
11:19:37 to these tracks, the MVRY, as they're identified on this
11:19:42 map?
11:19:42 A **Yes.**
11:19:43 Q Okay. Great. Can you take a look at the first
11:19:49 page of that easement agreement. Under the heading
11:19:54 "Witnesseth," it says, "Now therefore, Allied, its
11:19:59 successors and assigns, for valuable consideration hereby
11:20:04 grant to LTV, its successors and assigns, perpetual,
11:20:07 non-exclusive easements appurtenant to the Allied property
11:20:11 as follows."
11:20:13 I want to focus in on the language about this
11:20:18 easement being nonexclusive. Can you describe for me what
11:20:20 your understanding of a nonexclusive easement over a
11:20:24 railroad line is, particularly this one that's subject to
11:20:28 this easement agreement?
11:20:40 A **There are different type of easements that apply**
11:20:44 **in the railroad industry. I view this nonexclusive easement**
11:20:48 **to indicate that other track could be, could be placed**
11:20:58 **elsewhere on the property.**
11:20:59 But -- and so far as the rail, the structure
11:21:03 itself, it doesn't really refer to that, that I can see.

11:21:05 I'm not quite sure what you're asking.
11:21:07 Q Do you understand this nonexclusive easement,
11:21:12 this term to mean that some other party, other than The
11:21:15 Mahoning Valley Railway or The Ohio Central Railway, could,
11:21:19 could have the right to use the lines that are subject to
11:21:21 this?
11:21:21 A **No.**
11:21:22 Q No?
11:21:23 A **No.**
11:21:24 Q Okay. Why not?
11:21:25 A **It, this, I view this easement as one for the**
11:21:31 **track to occupy the land, not for the use of the track.**
11:21:35 Q Okay. Your understanding is that because, as you
11:21:47 have testified, The Ohio Central is an assignee of this, it
11:21:47 has the rights to occupy the track?
11:21:49 A **To occupy it, use it for any railroad purpose.**
11:21:52 **It's railroad track. Yes.**
11:21:53 Q And if, say, Allied were to grant, just
11:21:55 theoretically, another easement to another railroad, do you
11:21:59 believe that that would be a violation of this easement
11:22:01 agreement?
11:22:01 A **What type of an easement would you be referring**
11:22:04 **to?**
11:22:04 Q Let's say an identically drafted easement that

11:22:09 would allow another railroad the same rights that are
11:22:12 enjoyed under this easement.
11:22:14 A **Over the same track?**
11:22:15 Q Yes, sir.
11:22:17 A **I wouldn't agree that that would be correct.**
11:22:19 Q Okay. So in essence, you're saying that by, you
11:22:30 know, anyone who holds this agreement or this easement has
11:22:33 an exclusive right to use that property at all times?
11:22:37 A **They -- we own the track. I would maintain we**
11:22:41 **own these tracks, and that we would have, excuse me, the**
11:22:44 **exclusive right to operate over railroad tracks that we own.**
11:22:48 Q Okay. Is it your testimony that, by the same
11:22:53 logic, you would have the right to store cars on the tracks
11:22:57 that are subject to this agreement?
11:22:58 A **Yes.**
11:22:59 Q Indefinitely?
11:23:00 A **I don't know what you mean by "indefinitely."**
11:23:03 **Could you clarify that?**
11:23:04 Q For an extended period of time, let's say a month
11:23:07 or so.
11:23:08 A **Most certainly. That's railroad use.**
11:23:10 Q Okay. You would have -- no other railroad, if
11:23:15 they wanted to get through there, could, could use it?
11:23:18 A **No.**

11:23:18 Q In your view?
11:23:19 A **No. When, as a matter of information that may be**
11:23:23 **beneficial, when we acquired -- and I will be very specific.**
11:23:28 **When we're talking about #3 Main and #2 Main, that you can't**
11:23:34 **really see them very well on here, The Mahoning Valley**
11:23:39 **Railroad historically, for years and years and years, stored**
11:23:41 **cars on these tracks. In fact, when we took the railroad**
11:23:43 **over, there were probably three or four dozen cars that had**
11:23:49 **been here for years that hadn't been used.**
11:23:51 Ultimately, as the pipe mill went down, it quit
11:23:55 operating, it became number two, the cars that were stored
11:23:59 for the pipe mill went to elsewhere. They were cut up, I
11:24:03 believe, because they were specialty cars. Cars that
11:24:06 belonged to customers went elsewhere. But the railroad has
11:24:08 always stored and/or staged or used these tracks for
11:24:12 whatever the railroad use was.
11:24:14 Q Okay. My understanding is that this line here,
11:24:21 referenced as MVRY #3 Main, is now defunct. I understand
11:24:27 there is now a big hole in the ground right here, and a lot
11:24:29 of these tracks are ripped up. Is that consistent with your
11:24:32 understanding?
11:24:32 A **I don't know. I haven't viewed it.**
11:24:34 Q Okay. Can you take a look at the second page of
11:24:40 that easement agreement, particularly paragraph two. Could

you read that for me, please.

A Paragraph two, under railroad easement?

Q Yes. You don't have to read it aloud, just to yourself.

A Okay. I have read it.

Q Sir, there is a reference there in the fourth line down of paragraph two to Mahoning Valley Railway Company leases, or rather, property that The Mahoning Valley Railway Company leases from LTV located along the north property line of parcel A.

Do you know if The Ohio Central Railroad is in possession of any of those leases? Because I don't, I will represent to you I don't believe they have been produced in this litigation.

A There were documents that referred to the property being acquired from LTV, that we acquired from the LTV that The Mahoning Valley Railway Company was leasing.

And when they refer to property, they're talking about -- they're not talking about land. They're talking about LTV's ownership of the ties, the ballast and the rail. That was what The Mahoning Valley Railroad leased. That was LTV's property, that hardware. And we bought that hardware.

Q Okay. But that's a separate agreement from this lease agreement?

A It was part of the sale agreement. It's a much larger document. This is just one easement.

Q Just one?

A It was part of the sale agreement, yeah. There is a larger group of documents, I believe.

Q Okay. Well, I would certainly like to see them. I would just say generally that these transactions have been challenging to get to the bottom of, and I would like to see those documents if we can.

A I don't have them.

MR. LIPKA: I mean, are you making a document request, Jake? I mean, I guess I'm not clear whether you're --

MR. McCREA: I mean, we will send you a letter afterwards to follow up --

MR. LIPKA: All right.

MR. McCREA: -- on some documents.

Q Under railroad easement here, number two, do you have any further understanding of what that means? That in terms of what The Ohio Central Railroad system is or isn't allowed to do on the land?

A Could you be more specific? I think it's self-explanatory. The one point I would make is that in parens in the second line, the reason the language states "at LTV's

sole cost and expense" is because that was, again, referring to their ownership of the property, meaning that the ties, the rail, the hardware and the ballast. And that was their way of delineating that that was what the railroad was leasing; and therefore, LTV was going to maintain their track as a part of the lease agreement.

Q Okay.

A There were leases in place between The Mahoning Valley Railroad and LTV, even though they were parent and subsidiary companies, as to how they would do business with one another. And that's what this is referring to.

Q Okay. Do you see -- is there any reference in this document, that you know of, to storing of cars upon real track? Because that's something I haven't, frankly haven't seen in any of these documents, anything that would permit that.

A Railroads would remain silent and not be specific about storage or staging. Railroad use is railroad use, whether you store it, stage it, move through it. It's just railroad use. It's part of the act of being a railroad business.

Q And what is the difference between storing and staging, in your mind?

A Staging is cars that are being assembled or maybe

being held for a short period of time to be furthered to a customer. Customer's track is full, they can't take any more; maybe they're not done loading the cars to come out.

Storage would be cars that may sit idle for a little, little longer period of time, and you would want those out of the way of your main business and traffic moving.

Typically railroads -- well, Haselton Yard, I will take what's directly in front of me, I know for a fact that Terry -- we would store cars in Norfolk Southern's yard that customers weren't ready for, and they would sit there for a period of time, weeks sometimes, because the customers weren't ready for them. So they would store them there. Railroads store cars everywhere.

Q So there is a point where staging becomes storing?

A Yeah.

Q Okay. Do you know if The Ohio Central Railroad is presently using these lines here that are the subject of this easement agreement?

A I don't know.

Q Okay. Were they using them when you departed from The Ohio Central Railroad?

A I wouldn't know all the lines that were being

11:29:41 **used or not used with 11 railroads in a given time. I**
11:29:45 **presume they were using some, if not all, but I don't know**
11:29:48 **that for a fact.**
11:29:49 Q Okay.
11:29:49 A **It would make sense that they would.**
11:29:52 Q Okay. Take a look at paragraph four of that
11:29:56 document. There is a reference there to an electrical
11:30:00 easement, and further going back in the pages there is
11:30:04 sanitary sewers and lift station, Ohio water service line.
11:30:10 Can you tell me whether The Ohio Central Railroad
11:30:12 System used any of these three easements that are referenced
11:30:16 that I just mentioned?
11:30:17 A **I'm not aware if they did or they didn't.**
11:30:24 Q Okay. Do you know of any use that the railroad
11:30:27 would have for them?
11:30:30 A **Off the top of my head, I don't know what use**
11:30:32 **they may need or not need.**
11:30:34 Q Okay. On the next page, it's page five, there is
11:30:42 a heading for "Future easements." Would you take a second
11:30:46 and review that paragraph for me, please.
11:31:12 A **Okay. Read that.**
11:31:14 Q Has The Ohio Central Railroad ever made use of
11:31:18 any of these future easements, to your knowledge?
11:31:22 MR. McCREA: Let me back up a and ask a different

11:31:25 question. I'm sorry.
11:31:25 A **That's fine.**
11:31:28 Q What's your understanding of the reason for this
11:31:28 future easement section?
11:31:32 A **It apparently was a fore, a forethought into**
11:31:37 **future development. Obviously, term "future easements" for**
11:31:41 **maybe business that could, could or might eventually locate**
11:31:44 **in that area where rail service would be necessary.**
11:31:48 Q Okay. Let's take a look at the final provision
11:31:53 of this easement, "Future cooperation." I ask that you take
11:31:57 a second to, to review that.
11:32:17 A **Okay.**
11:32:18 Q It says, "LTV and Allied agree to relocate (or
11:32:23 vacate if appropriate) any of the foregoing easements to
11:32:28 facilitate the development of either LTV property or Allied
11:32:32 property, provided any such relocation or vacation will not
11:32:38 adversely interfere with either parties' then existing
11:32:40 operations or access to their properties."
11:32:42 My question is: Is it your belief that Allied
11:32:47 could relocate the tracks that are subject to this easement
11:32:51 agreement, so long as the holder of the easement's ability
11:32:55 to use them was not adversely interfered with?
11:33:04 A **It generally speaks to that term. It suggests**
11:33:10 **it.**

11:33:11 Q So Allied, you know, if Allied wanted to move
11:33:14 these rail lines around, as long as ingress and egress or
11:33:17 some other use of the, of the rail lines weren't prejudiced
11:33:22 or adversely interfered with, it could do it, correct, at
11:33:37 least in your view?
11:33:37 A **It would seem to indicate that they, that they**
11:33:37 **could do that.**
11:33:37 Q Okay. Thank you. Was there a point in time, Mr.
11:33:49 Strawn, when The Ohio Central Railroad System stopped
11:33:53 storing cars on these rail lines here that are subject to
11:33:57 this easement agreement, which I think we can call the LTV
11:34:00 easement?
11:34:02 A **I'm not aware when any cars would have stopped**
11:34:07 **being stored or staged on those tracks. I wouldn't know**
11:34:10 **that time frame, if that would have occurred.**
11:34:13 Q Okay.
11:34:14 A **Mr. Feichtenbiner ran the railroad system. Those**
11:34:17 **would have been his responsibilities to determine what track**
11:34:20 **he needed, when he needed it, and how he was going to use**
11:34:22 **it.**
11:34:23 Q Okay. My understanding is that -- tell me if I'm
11:34:27 wrong -- is that after this suit was filed, The Ohio Central
11:34:31 Railroad System for the most part stopped storing cars on
11:34:35 the LTV easement lines. And if I understand your testimony

11:34:40 correctly, you would defer to Mr. Feichtenbiner on any
11:34:44 questions in that regard?
11:34:48 A **Yeah, I, I would. Again, as I had stated**
11:34:50 **earlier, probably a few moments ago, there were historically**
11:34:54 **cars always stored and/or trains coming and going on #2, #3**
11:34:59 **and #1. Those cars actually began to disappear prior to the**
11:35:04 **suit, because they were no longer needed. They were being**
11:35:07 **cut up. Those cars were scrapped out and cut up because**
11:35:10 **they were specialty cars, pipe rack cars, and there were**
11:35:14 **probably every bit of 60 of them, if I recall, maybe more,**
11:35:17 **maybe even upwards of a hundred that were cut up. And, but**
11:35:21 **that would be my recollection.**
11:35:22 Q Okay. Let's turn next to what has been referred
11:35:34 to as the, in the complaint as the P&LE easement. I noted
11:35:42 that has already been marked as Exhibit 2. I hand you a
11:35:50 copy of what's already been marked as Exhibit 2.
11:35:56 A **Thank you.**
11:36:09 Q Can you review that document for me, please.
11:36:10 A **Sure. Okay. I have read that.**
11:37:54 Q Thank you. I will represent to you this is
11:37:57 Exhibit 2 to the complaint , and it's referenced generally
11:38:01 in the complaint as the P&LE easement.
11:38:05 First question is: Can you identify for me,
11:38:11 having reviewed that document, what tracks this easement

relates to? When I say "these tracks," I'm referring to the map that's in front of you.

A Okay. I'm looking at the map. I'm leaving -- and again, not being exactly to scale, but that, but still a good reference point, that the easement would have begun somewhere in the vicinity of, I will say the Center Street Bridge. And again, I don't have the exact markings, but somewhere in this vicinity, continued on down, over the main and the siding that were used here, all the way down, down to the CP Graham.

Q Okay. Your fingers are following what's referenced on the map as the LE&E Main track?

A Actually the main and the siding would have, would have flowed under that easement.

Q The main and the siding?

A Yeah, I believe so.

Q Okay. Could you take a look at the second paragraph of that easement agreement -- first page. I'm sorry.

A That's okay.

Q Starting with "Now therefore."

A Uh-huh.

Q For in consideration of $10, it goes down to say, "payable the first day of each year, does hereby, insofar as

grantor's title permits, grant bargain and convey onto grantee, its successors and assigns, a perpetual, non-exclusive easement over that portion of the main line acquired by the grantor herein."

I note that it says "main line" here, and I note that in your testimony you also mentioned the siding. I don't want to ask you for a legal conclusion, but I have to ask, how, how is it that you understand that you would have the rights to use the siding, or Ohio Central would have the rights to use the siding if this agreement says explicitly the main line?

A My understanding of the terms of operation, because we took the line over from a railroad that was failing, which was the PL&W, the LE&E siding and the LE&E Main were used in conjunction with this easement historically, because it was an interchange point.

This was a point at one time where cars were delivered and exchanged between the railroads, because we had acquired track also from ConRail, who also had rights over this railroad when there used to be an interchange further on up the hill. Because we still own property up here as well.

There is actually an old interchange yard. I think it's still there, Terry. But there is an old

interchange yard with no tracks. So we actually still own property up here.

ConRail used to come all the way on the easement, across this track, and they would leave cars here for Youngstown -- I have got to get my names right -- Youngstown and Southern.

When this yard was disassembled and no longer used, this became the interchange point between the two railroads.

Q Okay.

A And therefore, finish, it will help you, therefore, ConRail and -- or CSX and ConRail, depending on who was there at the time -- ConRail, they were using these two tracks to affect interchange, and then ultimately there would be an interchanging over here, and directly in Haselton as Norfolk Southern took over.

Q So let me get this, try to get this straight. Your testimony is that ConRail at one time had rights over this LE&E Main line?

A They must have, because they have operated over this railroad.

Q Okay. But you're not -- you have never seen, tell me if I'm wrong, but you haven't seen any document that says they did?

A I have not seen the document.

Q Okay. When you were referring earlier to the ConRail yard that's now disassembled, --

A Yes.

Q -- you were pointing your left hand up toward the City of Youngstown?

A Yes.

Q Pretty well north and, in fact, off the map there where the LE&E lead --

A Probably in this area here.

Q Okay. Just to the left of the silver markings there?

A Yes.

Q Okay. This easement two on the first page, Mr. Strawn, states that it's a perpetual, nonexclusive easement over that portion of the main line acquired by the grantor herein.

I'm going to ask you, just as I asked about the other easement, this nonexclusive easement, is it your, your belief or your view that this easement would give The Ohio Central Railroad the right to store cars or park cars on this line for an extended period of time, say more than a month?

A Over which portion of the line? Could you show

me?
Q Yes, yes.
A **The main line?**
Q Yes. Over the LE&E Main track.
A **For a period of time more than a month? It's hard for me to envision that. I have to --**
Q Well, the bottom line question is this: Is it your view that this easement agreement gives The Ohio Central Railroad the right to use the LE&E Main track, or the, or the siding track for that matter, as a storage or staging facility?
A **May I have a moment, please?**
Q Go ahead.
A **Thank you.**
Q Take as much time as you need.
A **Yes. I would believe it would give the railroad the right to stage cars on that part of the railroad. That had actually been what had been occurring all along when we took the line over. Cars were stored there, staged. They were staged on the siding, sometimes on the main line.**
In fact, I do recall that, when we took the line over, that the railroad, the PL&W regularly stopped and tied their locomotive up there for the night and left cars there, yes. That was the practice for years and years before we

came.
Q Okay. I understand that, as you follow this LE&E, this LE&E lead westward to the point where it goes off the map, there is a scrap yard up there, that from time to time a train runs through going back and forth to the scrap yard. Do you know anything about that?
A **No.**
Q Okay. Let's just say hypothetically that someone had to use this LE&E Main track to get through to access something on one end or the other of Allied's property, and Ohio Central had a row of cars sitting there staged, or stored or otherwise lying dormant.
How would, how would the ingress and egress be worked out between the, the competing users, so to speak?
A **Well, first and foremost, railroads do this 365 days a year, since time immemorial, where they shared the same track, and it's done through communication. Track authority -- boy, you don't want me to go there. We will be hours. But track authority is vested with the common carrier, whoever has the common carrier license to operate the railroad.**
There were never any other railroads that had common carrier rights over this lease easement at the time that we had a railroad operating there. So therefore, we

were the only ones that were on the track and the only ones with authority under the Federal Government to operate over that track.
Had another railroad been granted -- this will be helpful to you -- been granted an easement right, then the railroads would work between themselves, as they do, as we do in Youngstown today with other railroads. We communicate with each other, and who is where, and what can be left where, what can't be left. It's easily done.
Q So just generally speaking, at any one time one railroad is going to have a license or trackage rights from the Surface Transportation Board or the Interstate Commercial Commission?
A **STB.**
Q The STB. That's the present entity, the STB?
A **Uh-huh.**
Q To grant a railroad license over the tracks?
A **Your common carrier license or obligations are granted from the STB. They are the only ones that can grant you that.**
Q Okay. Is it your testimony that one of The Ohio Central Railroads always had that common carrier obligation over that LE&E Main line?
A **Yes.**

Q Okay.
A **We had, we were obligated by law to provide railroad service to any and all customers that properly packaged whatever they wanted to ship.**
MR. McCREA: Okay. By the way, if we need to take a break at any time, just, just let me know. This doesn't need to --
MR. STRAWN: I could go for some more coffee at some point.
MR. LIPKA: Let's go off the record for one minute.
(Whereupon, a discussion was held off the record.)
Q Mr. Strawn, looking at the first page of this easement agreement dated September 17, 1993, it starts out in the second paragraph, "Now therefore, for and in consideration of $10, payable the first day of each year," do you know if The Ohio Central Railroad has ever made any payment to Allied under this, under that provision?
A **I don't know.**
Q Okay. Did you ever make any payment to Allied under that provision?
A **Personally, no.**
Q Yes. Later on in that paragraph there is a

reference to distance of approximately 1.913 miles. Can you identify on this map where you believe those 1.913 miles lie?

A **I believe generally in, in this area.**

Q Okay. And I note that your, your left hand is at a point maybe three/eighths of an inch in or a quarter of an inch or so to the left of the Center Street Bridge, and your right index finger is --

A **Somewhere in this area.**

Q -- right at the CP Graham marking where that starts. Okay. Thank you.

A **Sure.**

Q Could you go to the next page, please.

A **Sure.**

Q Paragraph one says, "Railroad operations over and upon the easement shall be conducted by such corporate party or parties to whom grantee has or may assign the operation of The Youngstown and Southern Railway."

My question is this: Has The Ohio Central Railroad System ever owned or operated The Youngstown and Southern Railway pursuant to authority granted by the Interstate Commerce Commission?

A **Yes.**

Q It has? When was that?

A **It would have been when the Pittsburgh, P&LW left that railroad when they were the lessee of the railroad. Then we operated the railroad.**

Q Okay. Do you know whether The Ohio Central Railroad is still an operator of The Youngstown and Southern Railway?

A **No.**

Q It is not?

A **It is not.**

Q Okay. Who is, if anyone? Do you know?

A **I believe it's The Youngstown and Southeastern, I think is the name. But I'm not certain that that is the correct corporate name.**

Q Okay. Do you know a guy by the name of, I think his name is David Handel?

A **Yes.**

Q Okay. Who is David Handel?

A **My knowledge is that Dave is a, I believe Dave is what you would call a developer, Handel Investments.**

Q Yes.

A **Yes, I know David Handel.**

Q Okay. My understanding is that he is, in fact, the owner -- or was, in fact, the owner of The Youngstown and Southern Railway, and that it is now defunct. Do you

have any knowledge of that one way or the other?

A **I'm not aware that, that the railroad is defunct. It operates daily still, to my knowledge. Youngstown and Southeastern goes over track.**

Now, at one time I believe Mr. Handel had an interest in the line, but I don't know how that all played out.

Q Okay. You said Youngstown and Southeastern. I'm not trying to be crass, but --

A **No.**

Q We're talking about The Youngstown and Southern Railway. I'm going to hand you what we can mark as Exhibit 6. This is a document that was not produced by either party, but which I located through my own research. Can you take a minute to look at that, please.

A **Sure. Okay.**

Q Have you ever seen this document before?

A **No.**

Q Okay. It says in the second paragraph, "The Y&S," The Youngstown and Southern, "line was last leased to the Ohio and Pennsylvania Railroad Company." Ohio and Pennsylvania ceased its operation of the Y&S line in 1996.

Do you know if, do you have any knowledge whether that's true or not?

A **That would be correct.**

Q Okay. The second, the sentence after that, "The Y&S line has not operated since that time," do you know if that's correct or not?

A **The -- that, that would not be correct, no. The Y&S as a, as a going-forward, operating railroad has not operated the line since that time.**

But the line has been operated since that time, and is currently operated today.

Q Okay. And it's currently operated today pursuant to the authority of the STB; is that correct?

A **I would expect so. It's not my company, so I don't know. But I would expect that to be the case.**

Q Okay. It further says here on this document, "In October 1999, Y&S was sold to Railroad Ventures, Inc." Do you understand that to be David Handel, or a company owned by David Handel?

A **Initially it was, to my knowledge, not a company owned by David Handel, but later became owned --**

Q Okay.

A **-- by David Handel, and that name was retained.**

Q Okay. The next sentence says, Y&S filed a corporate dissolution document with the IRS on February 29, 2000 indicating that Y&S was completely liquidated as of

11:56:19 October 31, 1999. Do you know if that's correct?
11:56:21 **A I have no idea.**
11:56:22 Q Okay. Thank you. Taking a look, going back to
11:56:33 the easement agreement that we have been discussing
11:56:40 pertaining to the P&LE line, in the first paragraph, second
11:56:45 page, it says, "As of the date hereof, said operations are
11:56:49 and will be conducted in accordance with the applicable
11:56:52 terms of that certain lease dated April 19, 1993, between
11:56:59 grantor, The Youngstown and Southern Railway Company and
11:57:02 PL&W Railroad."
11:57:08 Have you ever seen a copy of that lease that's
11:57:08 referenced there?
11:57:10 **A Yes.**
11:57:11 Q Okay. Do you know what its terms are, generally
11:57:18 speaking?
11:57:18 **A No.**
11:57:18 Q And I don't ask this to, to waste your time, but
11:57:22 I have never seen a copy of it.
11:57:23 **A Okay. No, I don't. It's been a long time since**
11:57:26 **I have seen that document, years, obviously.**
11:57:28 Q Okay. Do you know if that lease is still, still
11:57:32 operative; or on the other hand, has it been terminated?
11:57:35 **A I do not know.**
11:57:38 Q Okay. Could you turn to paragraph four, please,

11:57:48 on page three. Read paragraph four, and then, if you could,
11:57:56 give me a general overview of what you understand that to
11:57:59 mean.
11:58:07 **A Just simply states that, if the railroad abandons**
11:58:12 **operations over the easement, that easement can be**
11:58:20 **terminated.**
11:58:20 Q It says "shall be terminated."
11:58:22 **A Shall, can.**
11:58:27 Q But your understanding is that railroad
11:58:30 operations over that line have never been terminated?
11:58:33 **A Not to my knowledge.**
11:58:34 Q Okay. Now I want to get into -- well, let me ask
11:58:49 you about this easement here. This is a third easement.
11:58:54 This is not one of the exhibits to the complaint. I just
11:58:57 wanted to hand this to you and ask you if you have ever seen
11:59:00 this easement agreement here. Take as much time as you need
11:59:49 to view it.
11:59:56 **A Yes, I have seen this.**
11:59:57 Q Okay. Can you show for me on the map, Mr.
12:00:01 Strawn, which rail lines this easement agreement pertains
12:00:04 to, if any?
12:00:08 **A Essentially what I pointed out to you before,**
12:00:12 **generally in this area.**
12:00:15 Q Okay. The exact same set of railroad tracks that

12:00:19 you pointed out earlier?
12:00:21 **A It would indicate that in the language contained**
12:00:26 **in this agreement.**
12:00:27 Q Okay. There are some markings at the top that
12:00:33 say "Allied scrap track easement." Do you know whose
12:00:37 handwriting that is?
12:00:38 **A That's mine.**
12:00:39 Q Okay. Can you just describe for me, I mean,
12:00:44 obviously the words speak for themselves, but what's your
12:00:47 understanding of this Allied scrap track easement language?
12:00:50 **A Oh, well, I referred to the company oftentimes as**
12:00:54 **Allied scrap. And that's just track easement.**
12:00:56 Q Okay.
12:00:57 **A That's just what -- my identifier.**
12:01:00 Q So there is not a scrap track, so to speak?
12:01:03 **A No. Allied scrap, track easement.**
12:01:06 Q Okay.
12:01:06 **A Ran out of space.**
12:01:07 Q Okay. And is it the position of The Ohio Central
12:01:11 Railroad that it is a holder of rights under this easement
12:01:15 agreement?
12:01:15 **A Yes.**
12:01:19 Q Okay. And --
12:01:21 **A Inasmuch as it is still an operating railroad**

12:01:25 **licensed by the STB and owns track in this portion in this**
12:01:31 **area, plus it owns property that could eventually have track**
12:01:34 **where the former ConRail interchange was. And customers.**
12:01:37 Q That's The Ohio Central that owns what you
12:01:40 just --
12:01:41 **A It would be under one of the entity's name. I**
12:01:44 **don't know exactly which railroad, but one of the 10 or 11**
12:01:46 **railroads will own that.**
12:01:48 Q Okay. That brings me to another question. My
12:02:04 understanding from the discovery produced in this case is
12:02:09 that Ohio Central's position is that it's an assignee of
12:02:12 rights under this, under the P&LE line by way of Ohio and
12:02:18 Pennsylvania, that is to say, Ohio and Pennsylvania entered
12:02:22 into the underlying agreement by which it got rights under
12:02:25 the easement; and on the other hand, with regard to the LTV
12:02:29 easements, that The Mahoning Valley Railway is the entity
12:02:44 into which the rights were passed, so to speak.
12:02:44 Is it Ohio Central's position that, as long as
12:02:44 one of its entities has rights under a rail line, that all
12:02:47 of the railroads can use those rights, or is there some
12:02:51 transfer of rights that needs to be affected?
12:02:54 **A I couldn't speak for what their position would be**
12:02:57 **going forward.**
12:02:58 Q Okay. Can you speak for what it was?

12:03:00 A **I can speak generally about railroads that may be**
12:03:04 **in a common family, can assign rights to each other over**
12:03:08 **tracks that one or the other may own and/or control, that**
12:03:13 **they are documents that are filed.**
12:03:16 Q Filed with?
12:03:17 A **They're filed corporately with --**
12:03:19 Q Filed within the corporation?
12:03:20 A **Yes.**
12:03:20 Q Okay. They're not filed with the STB?
12:03:23 A **Would depend on the situation. And there could**
12:03:26 **be dozens of different types of situations.**
12:03:29 Q Okay. So if The Ohio and Pennsylvania Railroad
12:03:32 becomes an assignee of, like let's say a rail line, you
12:03:37 know, one of these rail lines on the map, it would have to
12:03:41 file some document internally with other corporations to
12:03:44 give, say, The Youngstown and Southern Railway or, rather,
12:03:48 one of the other 11 railroads the right to use that line?
12:03:52 A **If it chose to do so, it could, on any given day.**
12:03:55 **As an example, you might see locomotives that say Ohio**
12:04:00 **Central on The Youngstown Belt Railroad. That, it's common,**
12:04:02 **common equipment, common crews, just common -- same pool of**
12:04:07 **people, separately incorporated, that's all.**
12:04:15 Q Okay. What I want to get into now is the
12:04:31 underlying transactions from which, you know, the rights to

12:04:36 these rail lines reported to pass from Allied to The Ohio
12:04:43 Central Railroad. What I want to do is try to find out the
12:04:45 intervening steps between Allied's rights and whatever
12:04:49 rights The Ohio Central may have under these documents.
12:05:04 Bear with me a second.
12:05:05 A **Sure.**
12:05:19 Q I'm going to hand you what I'm going to mark as
12:05:22 Exhibit 7. This is a document produced by your counsel to
12:05:28 us in this litigation. Take a, take some time to review
12:05:40 this collection of documents, and I think that they have
12:05:44 been assembled correctly from your production.
12:07:18 I will also hand you what's been marked, what we
12:07:22 will mark as Exhibit 8.
12:07:51 (Whereupon, Exhibits No. 7 and 8 were marked for
12:07:54 identification purposes by the court reporter.)
12:08:20 A **I recognize both documents.**
12:08:28 Q Okay. Since the latter comes earlier in time,
12:08:35 can you just describe to me just what this, that document
12:08:39 is, that being the Amended and Restated Lease and Contract
12:08:47 For Sale of the Real Property, dated June 13, 1995.
12:08:53 A **This was an agreement that was drawn up by the**
12:09:00 **P&LE -- make sure of the signature here -- that, in essence,**
12:09:11 **allowed The Ohio and Pennsylvania to take over the lease**
12:09:16 **that The PL&W was vacating, where we became the substitute,**

12:09:24 **where we were substituted as the lessee and operator of the**
12:09:28 **line.**
12:09:30 And I see it's witnessed by all three, three
12:09:33 parties, all three railroads.
12:09:38 Q It allowed The Ohio and Pennsylvania to take over
12:09:41 the lease that --
12:09:44 A **Yeah. It allowed The Ohio and Pennsylvania**
12:09:46 **Railroad to take over the line and, under its common carrier**
12:09:51 **obligations, begin operation under the terms of the lease**
12:09:55 **that The PL&W was operating under. It's been a long time**
12:10:07 **since I have seen this.**
12:10:17 Q I notice that, in the first paragraph between The
12:10:21 Pittsburgh and Lake Erie Railroad Company, and then in
12:10:24 parens P&LE, rather, it's not between Pittsburgh and Lake
12:10:30 Erie Properties, Inc.
12:10:31 Could you explain any distinction between the
12:10:33 two, or why those, why this agreement wouldn't reference
12:10:37 Pittsburgh and Lake Erie Properties, Inc.?
12:10:39 A **I have no idea.**
12:10:40 Q Okay. Do you understand those two to be, for all
12:10:44 intents and purposes, the same thing, or do you know?
12:10:46 A **I don't know.**
12:10:47 Q No idea?
12:10:48 A **No, I don't know.**

12:10:48 Q Okay. It's really, the bottom line question is
12:10:58 this: Is this a document by which Ohio Central contends
12:11:01 that it became an assignee of the lease for the P&LE line,
12:11:08 which we have also referenced as the LE&E Main line?
12:11:21 A **Yes, in part. Yes, partially.**
12:11:24 Q Okay. Could you elaborate on --
12:11:27 A **I also believe that -- is this Exhibit 7 that**
12:11:33 **we're saying here? Yeah. I also believe that the, that**
12:11:37 **this also granted us the same rights when we purchased this**
12:11:46 **railroad, this part of the railroad from the P&LE, because**
12:11:53 **this is attached to the railroad as well.**
12:11:59 Q Attached to the railroad?
12:12:00 A **Yeah.**
12:12:01 Q Could you clarify that for me?
12:12:03 A **Yeah. It is part of the railroad, our ownership.**
12:12:12 Q Your ownership of The Pittsburgh and Lake Erie
12:12:15 Properties Railroad?
12:12:17 A **Yes.**
12:12:18 Q And I guess what I'm having a hard time
12:12:31 understanding is how there is a document that I showed you
12:12:31 before which seemed to indicate that the Pittsburgh -- or
12:12:38 rather, the Youngstown and Southern Railroad --
12:12:39 MR. McCREA: You know, never mind. Strike that.
12:12:41 I get my railroads mixed up.

12:12:43 A **It's easy to do.**
12:12:45 Q Yes, it is. Can you describe for me the
12:12:55 background of entering into this agreement between the
12:13:00 parties?
12:13:02 A **At some point, I don't recall the time we became**
12:13:08 **aware that the PL&W was struggling to continue to operate**
12:13:13 **the railroad, and we met with the PL&W first, I believe, and**
12:13:23 **then ultimately with the P&LE, to express our interest in**
12:13:29 **taking over the operations and potentially purchasing the**
12:13:32 **line in the future.**
12:13:43 Q And ultimately that led to this transaction?
12:13:43 A **Yes.**
12:13:43 Q Okay. Could you turn to the second page, please.
12:13:52 Under section two, terms and conditions, there is a
12:13:56 paragraph one, "Use," and there is some indented language in
12:14:01 there. And you can feel free to read as much or as little
12:14:04 as you want, but I can tell you that the question is going
12:14:08 to pertain to the indented language. So it probably would
12:14:14 be better to read the whole paragraph one.
12:14:35 A **Okay.**
12:14:35 Q There is a reference in that indented paragraph
12:14:38 to 2.65 plus miles of P&LE rail lines, the City of
12:14:45 Youngstown and Village of Struthers, Ohio. Could you
12:14:47 identify that 2.65 miles of P&LE line on the map? I guess I

12:14:56 want to know where that is.
12:14:57 A **My belief -- and if I can reference this, I**
12:15:01 **presume that's okay.**
12:15:02 Q Yes, it is.
12:15:09 A **If that was the way that The P&LE delineated that**
12:15:10 **they still retained ownership of railroad in the City that**
12:15:13 **we ultimately acquired for the $30,000, which would be this**
12:15:19 **track and a portion of the track down here.**
12:15:24 Q Okay.
12:15:25 A **And we also did a further acquisition with**
12:15:28 **ConRail for their ownership in this area as well.**
12:15:31 Q Okay. You were referring to tracks just a second
12:15:34 ago to the right of the CP Graham, green indicated area on
12:15:42 the map.
12:15:42 A **Yes.**
12:15:43 Q And also to the left of the Center Street Bridge?
12:15:48 A **Yes.**
12:15:47 Q Okay. Take a look at paragraph two of the terms
12:15:52 and conditions. It says, "The terms of this lease and
12:15:56 contract for sale of real property shall be for a period of
12:16:00 15 months commencing on June 13, 1995."
12:16:05 What happened? Was the contract accepted? I
12:16:10 want to know what happened next pursuant to this paragraph
12:16:14 two.

12:16:14 A **We operated the line for a period of time -- I**
12:16:18 **don't recall exactly how long -- and determined at that**
12:16:22 **particular juncture that we were not going to initially**
12:16:25 **acquire the railroad. And the railroad at some point was**
12:16:31 **then sold to Railroad Ventures.**
12:16:37 Q Okay.
12:16:39 A **There was a sale to Railroad Ventures.**
12:16:42 Q And when you talk about the sale of the railroad,
12:16:44 does that encompass the tracks, the ballast, the rail ties,
12:16:49 and also the common carrier obligations?
12:16:51 A **You cannot sell common carrier obligations.**
12:16:54 Q Okay. I guess what I'm trying to figure out is,
12:16:56 when you say "buy the railroad," what bundle of rights do
12:16:59 you get in your bundle?
12:17:01 A **You, you get what goes with that property, which**
12:17:05 **would have been from the other side of the Center Street**
12:17:10 **Bridge where I'm pointing to. It's kind of off the map,**
12:17:13 **where that point is.**
12:17:14 Q Yes.
12:17:14 A **Anything that would be going down towards Negley,**
12:17:19 **whatever, whatever was involved with that piece of property**
12:17:22 **would then be under your ownership.**
12:17:26 Q Okay. During this 15-month period in paragraph
12:17:37 two, was there some option to purchase the railroad?

12:17:42 A **Yes.**
12:17:42 Q Okay. And that was not, that was not exercised,
12:17:48 correct?
12:17:48 A **Correct.**
12:17:48 Q Okay. So did the rights under this, this
12:17:54 document cease after those 15 months ended?
12:18:01 A **Under this particular document, when the line was**
12:18:05 **sold, we had already filed our notice to cease operations.**
12:18:09 **I believe they coincided with each other.**
12:18:12 Q Okay.
12:18:13 A **Right before or during the transaction of the**
12:18:17 **sale to Railroad Ventures, if I recall correctly.**
12:18:20 Q Okay. I'm going to hand you what we will mark as
12:18:24 Exhibit 9. Do you recognize this document, Mr. Strawn?
12:18:45 A **Yes.**
12:19:04 Q Okay. Would you describe to me what this
12:19:09 document is, or what it does?
12:19:10 A **This, in essence, grants to The Ohio and**
12:19:15 **Pennsylvania Railroad the ability to operate under a lease**
12:19:20 **and acquire the line from the, from the PE -- I'm sorry,**
12:19:27 **from the P&LE or Youngstown Southern Railroad Company.**
12:19:38 Q Okay. And is there any relationship between
12:19:39 what's been marked as Exhibit 8 and Exhibit 9? That's to
12:19:44 say, do these two documents go together in some way, shape

12:19:47 or form?
12:19:57 **A They parallel each other in descriptions.**
12:19:59 Q Could you take a look at paragraph 10.3 of
12:20:02 Exhibit 8.
12:20:43 **A Okay.**
12:20:44 Q Is the conveyance that's referenced in paragraph
12:20:49 10.3 consummated, so to speak, or does it take effect, or is
12:21:05 it represented by this document here? That's to say the
12:21:05 transfer that's contemplated in 10.3, is that what this is,
12:21:05 "this" being Exhibit 9?
12:21:42 **A Similar language, basically similar language.**
12:21:47 Q Okay.
12:21:59 **A Appears to be very similar.**
12:22:01 Q Okay. I appreciate that it's similar. But what
12:22:03 I'm trying to figure out is whether, in fact, this Exhibit 9
12:22:07 is, you know, the assignment that's contemplated by
12:22:12 paragraph 10.3 of Exhibit 8.
12:22:25 Paragraph 10.3 says, "Lessor shall assign to
12:22:28 lessee all its right title and interest to any leases,
12:22:32 licenses, easements, permits or other agreements related to
12:22:35 the use or occupancy of the premises by third parties
12:22:38 including the right to receive and collect rents or income
12:22:43 therefrom."
12:22:47 What I'm trying to figure out is really yes or

12:22:51 no. Does Exhibit 9 do that, or is there some other document
12:22:54 that was drafted pursuant to paragraph 10.3 that would do
12:22:59 that?
12:23:00 **A I'm not certain.**
12:23:01 Q Okay. Turning back to Exhibit 7, does this
12:23:15 document and the attachments relate? Is it basically a
12:23:20 continuation of this transaction that we have just been
12:23:25 discussing and reviewing as reflected in Exhibits 8 and 9?
12:23:29 **A No.**
12:23:30 Q Okay. Can you explain to me the difference?
12:23:33 **A This was a separate transaction by The Ohio and**
12:23:37 **Pennsylvania Railroad to acquire this particular parcel of**
12:23:41 **land and track. It would stand, it's a stand-alone**
12:23:47 **agreement.**
12:23:47 Q Okay. By the way, was The Ohio Central Railroad
12:23:56 or The Ohio and Pennsylvania Railroad Company represented by
12:24:00 Stephenson, Stephenson and Carrothers attorneys?
12:24:05 **A Yes.**
12:24:05 Q Attorneys at law? Okay. That's your counsel?
12:24:08 **A Jim Carrothers.**
12:24:10 Q Were they your property attorneys, so to speak?
12:24:12 **A We had many property attorneys. They were not**
12:24:15 **our primary. We didn't have a primary. We had property**
12:24:18 **attorneys in every city we did business.**

12:24:21 MR. McCREA: Okay. Let's take a look and see
12:24:29 what time it is.
12:24:31 MR. LIPKA: It's 25 after.
12:24:33 MR. McCREA: Twenty-five after. If nobody has
12:24:36 any objection, we can stop now for lunch.
12:24:38 (Whereupon, a lunch back was taken. After lunch
12:24:38 Terry Feichtenbiner is no longer at the deposition
13:34:49 proceeding.)
13:34:49 Q Mr. Strawn, I have previously given you, and we
13:34:49 have reviewed a little bit Exhibit 7 here, and I believe you
13:34:53 testified that this granted the same rights as Exhibit 8; is
13:34:59 that correct? Is that your testimony?
13:35:00 **A Seven is the deed for the acquisition that we**
13:35:14 **made off the P&LE track that they owned.**
13:35:18 Q Can you outline for me on this map here where
13:35:21 that property is? Where is the property that's to say
13:35:25 that's the subject of Exhibit 7?
13:35:28 **A Yeah. It would be -- let me see how this is**
13:35:30 **labeled here. Excuse me. What we would call the Struthers**
13:35:33 **lead -- and again, the map is not long enough. But if you**
13:35:37 **were to follow this, it kind of doglegs a little bit to the**
13:35:41 **left towards the river, and there is a bridge that is**
13:35:43 **angulated. And just on the other side of the bridge there**
13:35:47 **is a terminus point where the track was previously owned by**

13:35:53 **CSX. It was called the river track.**
13:35:55 Q Okay.
13:35:59 **A I ultimately acquired that as well. But the**
13:35:58 **portion you're talking about is right in this particular**
13:36:02 **area until it hits the terminus point on the other side of**
13:36:05 **the river.**
13:36:05 Q Okay. And --
13:36:11 **A Document, yeah, this agreement.**
13:36:13 Q I note for the record that you were pointing to
13:36:15 the right-hand side of Exhibit 4, which I understand is the
13:36:20 southeast, southeasterly portion of the map as, as the rail
13:36:25 lines, and the river, for that matter, head down toward
13:36:29 Struthers, Ohio; is that correct?
13:36:30 **A Yes.**
13:36:31 Q Thank you.
13:36:32 **A Yes. Generally speaking, yes.**
13:36:55 Q And do these property rights that you acquired
13:36:59 pursuant to Exhibit 7, does that give you access as we go
13:37:03 down the rail lines toward Youngstown to CS --
13:37:08 MR. RAMUN: No.
13:37:09 MR. McCREA: Pardon me. Let me strike that
13:37:11 question.
13:37:26 Q Mr. Strawn, clarify for me, on the right-hand
13:37:31 side of this map what's marked as the OHCR Struthers lead,

13:37:36 does this line give you access to the, to CSX?
13:37:40 A **It, excuse me, gives us access to CSX, CASTLO**
13:37:47 **Industrial Park, it's all labeled here. Lally Pipe, Impact**
13:37:52 **Metals, Casey Equipment. It's pretty well labeled where all**
13:37:56 **that goes. And any other customers that could be developed**
13:37:58 **in that particular area.**
13:37:59 Q Okay. And access to a CSX line in that area?
13:38:02 A **Actually, no. It's several miles away.**
13:38:05 Q Okay.
13:38:05 A **It's several miles away. You would have to go,**
13:38:07 **cross the river, down the river track, which we ultimately**
13:38:11 **acquired from CSX, probably -- I'm not real good on**
13:38:15 **distance -- probably every bit of three miles, at least.**
13:38:18 Q Okay. This Exhibit 7 here, you have described
13:38:20 the land that was acquired pursuant to this exhibit.
13:38:25 A **Yes.**
13:38:25 Q Is there any other land on this Exhibit 4 that
13:38:30 was acquired pursuant to Exhibit 7? Take your time if you
13:38:38 need to.
13:38:37 A **No. This would be, this, this particular**
13:38:40 **agreement, the warranty deed refers to this area of**
13:38:47 **property, track that we acquired.**
13:38:48 Q Okay. Going off the right-hand side of the map?
13:38:50 A **Right. And this portion that I referred to in**

13:38:54 **the past was acquired from ConRail.**
13:38:58 Q Okay. It's your testimony that this Exhibit 7
13:39:00 doesn't pertain to any rights that are within the two, so to
13:39:06 speak, that are Allied's property?
13:39:09 A **Would you rephrase that, please?**
13:39:11 Q Well, here is really the bottom-line question.
13:39:14 Do you admit that this, the documents that are here as
13:39:17 Exhibit 7 don't give The Ohio Central Railroad any rights
13:39:22 over Allied's property?
13:39:26 A **This is a portion of the documents that do not**
13:39:29 **refer to specifically those rights. But it's not the entire**
13:39:34 **agreement. So if I'm looking just at this, no.**
13:39:38 Q Okay. Thank you. If I recall your earlier
13:40:27 testimony correctly, Mr. Strawn, this Exhibit 7 is, is or is
13:40:31 not related to what we marked as Exhibit 8, Amended and
13:40:40 Restated Lease and Contract. And just by way of background,
13:40:43 I'm not trying to, trying to play games or ask questions 16
13:40:46 times, but I'm just trying to get the chain of documents
13:40:50 here, figure it out.
13:40:52 A **Would you repeat that, please.**
13:40:54 Q Was this, was this -- Exhibit 7, does it relate
13:40:58 to an entirely separate transaction than what's referenced
13:41:03 in Exhibit 8?
13:41:04 A **These agreements occurred and were bundled**

13:41:08 **together at the same time. These, these particular actions**
13:41:13 **with the P&LE railroad occurred at the same time. They**
13:41:17 **would have been part -- that's why they go in that**
13:41:21 **chronological order, they were all occurring at the same**
13:41:23 **time, with the intent being that we would replace the PL&W**
13:41:27 **that was truly going bankrupt, for lack of a better term, at**
13:41:32 **the same time we were acquiring this section of the railroad**
13:41:33 **from ConRail, at the same time we were acquiring this. And**
13:41:37 **all of the rights then corresponded, because the railroad**
13:41:52 **was going to continue to operate, period.**
13:41:52 Q Okay.
13:41:52 A **Under STB authority.**
13:41:52 Q Okay. Ask you to take a look at what we will
13:42:01 mark as Exhibit 10. Just to tie together what we have been
13:42:23 discussing before, is it correct that you were using -- when
13:42:28 I say "you," I mean the Ohio Central -- was using an
13:42:32 easement through Allied's property here? Pointing to the
13:42:37 LE&E Main track through Allied's property, is it correct
13:42:42 that you were using that to access this railroad here on the
13:42:48 left side, and also these tracks here on the other side
13:42:50 going essentially through private property?
13:42:53 A **That was the only way the railroad could operate,**
13:42:56 **so yes.**
13:42:59 Q Okay.

13:42:57 A **That was the only way. In fact, when we acquired**
13:43:00 **the property from ConRail, we also got their rights, which**
13:43:03 **also provided for the ability to go across this track.**
13:43:06 MR. McCREA: Okay. Would there be any objection
13:43:08 if I marked ConRail here?
13:43:11 MR. LIPKA: No. Just have Bill mark it maybe,
13:43:14 and he can initial it.
13:43:18 Q Okay. That would be great.
13:43:18 A **Thank you. ConRail. What else would you like?**
13:43:26 Q Just write "ConRail."
13:43:27 A **Okay.**
13:43:27 Q That would be fine with me.
13:43:29 A **ConRail. I will do that. It's tax day, by the**
13:43:38 **way.**
13:43:40 Q Mr. Strawn, I'm going to hand you what we will
13:43:42 mark as Plaintiff's Exhibit 10. This is a document that was
13:43:50 produced to us. Is that your handwriting in the upper
13:43:59 right-hand corner?
13:43:59 A **Yes. Printing.**
13:44:00 Q Okay. It says, "Mr. Strawn:
13:44:08 "Pursuant to your request, enclosed are documents
13:44:09 relative to the trackage rights, easements and related
13:44:12 agreements in connection with the operations at Mahoning
13:44:14 Valley."

13:44:14 My question -- and that's not a complete
13:44:17 paragraph. But my question is: What was the reason that
13:44:20 you were requesting this trackage rights, easements and
13:44:24 related agreements? And this is getting into a compound
13:44:28 question, but if you could just generally describe for me
13:44:31 the background of this document, and the transactions that
13:44:35 were contemplated or going on at the time.
13:44:44 **A My recollection of this letter coming back, came**
13:44:52 **from Sheri Edison, and I believe she was the attorney at the**
13:44:56 **time working on the sale of the Mahoning Valley Railroad.**
13:45:00 **And when you acquire any property, you go through a series**
13:45:05 **of documentation requests, and that was a request that we**
13:45:09 **would always make as we bought railroads, that we would want**
13:45:13 **all documents that pertained to that railroad's ability to**
13:45:17 **operate. It's pretty much just a standard reply to a**
13:45:22 **standard request.**
13:45:22 Q Okay. What I know -- for example, I have this
13:45:29 document that actually is the first page of the Ohio
13:45:32 Central's web site. It indicates that The Mahoning Valley
13:45:37 Railway Company is part of the Youngstown Division of The
13:45:39 Ohio Central Railroad.
13:45:41 Could you describe for me when, if, if and when
13:45:44 The Mahoning Valley Railway Company became part of Ohio
13:45:48 Central? Is that something that Ohio Central acquired?

13:45:51 **A Ohio Central acquired The Mahoning Valley**
13:45:54 **Railroad from LTV steel.**
13:45:55 Q Okay.
13:45:56 **A I don't recall the exact date of the transaction,**
13:45:58 **though.**
13:45:58 Q Okay.
13:46:00 **A Youngstown Division would strictly be a moniker,**
13:46:03 **or you know, just a reference, Youngstown Division, meaning**
13:46:07 **railroads in the Youngstown area.**
13:46:08 Q Okay.
13:46:08 **A Not ownership, just railroads.**
13:46:10 Q Okay.
13:46:18 **A Sheri has nice handwriting. Sorry.**
13:46:19 Q I understand that there was a stock purchase
13:46:21 agreement among The Mahoning Valley Railway Company, and The
13:46:30 Cuyahoga Valley Railway Company and Summitview, Inc. What
13:46:35 I'm trying to do here is really get to the bottom of what
13:46:39 rights --
13:46:42 MR. LIPKA: Jacob, if I could just jump in for a
13:46:45 second. That particular document, the purchase agreement,
13:46:47 was the subject of a stipulated protective order discussion
13:46:51 between Attorney Grieco and myself. It's my understanding,
13:46:53 from speaking with him yesterday or the day before, that,
13:46:57 that he was fine with it, and that he had consented to it,

13:46:59 and that the only last step was to file it with the court to
13:47:02 get the Court's signature. I mean, is that your
13:47:04 understanding as well?
13:47:08 Because I'm hesitant to have that, you know,
13:47:08 admitted as an exhibit and ask questions unless that's
13:47:11 something that everybody's on the same page about.
13:47:13 And again, I did speak with Attorney Grieco, and
13:47:16 that's my understanding of speaking with him.
13:47:18 MR. McCREA: I will defer to whatever discussion
13:47:20 you had with Attorney Grieco about it. I will say
13:47:23 affirmatively that, you know, I did not, did not address
13:47:26 this issue one way or the other when we met, so I take you
13:47:31 at your word that that's the agreement.
13:47:33 I know, generally speaking, that there have been
13:47:36 discussions about keeping this document confidential.
13:47:40 MR. LIPKA: Correct.
13:47:41 MR. McCREA: And --
13:47:42 MR. LIPKA: Well, let me put this way. You can
13:47:44 certainly ask whatever questions you want about that
13:47:57 document. And I will just put a -- I have never, don't even
13:47:57 know how to phrase this -- but a temporary objection on the
13:47:57 record pending everybody signing off on that
13:47:57 stipulated order.
13:47:57 MR. McCREA: We can do this. We can not make it

13:48:00 an exhibit, and I could just ask questions about it.
13:48:02 MR. LIPKA: I mean, there was some content of
13:48:04 that that we didn't want in. And I will be honest, I don't
13:48:07 think you're going to ask about that content. But I'm not
13:48:10 sure.
13:48:10 So I don't think this is going to be an issue,
13:48:13 Jacob; to be honest. I just wanted to protect myself by
13:48:17 going on the record.
13:48:18 Let me put it this way. I will object to that
13:48:21 exhibit. If such time that both sides agree we can file the
13:48:23 stipulated protective order, then by its own volition, that
13:48:27 objection will be on. And if at such time we cannot agree
13:48:31 to a stipulated protective order, then maybe my objection, I
13:48:33 will attempt to have it stricken.
13:48:35 But regardless, I just wanted to put that on the
13:48:37 record today.
13:48:39 MR. McCREA: Okay. Thank you.
13:48:44 Q So, Mr. Strawn, was there a point where
13:48:49 Summitview, Inc., purchased all of the stock of The Mahoning
13:48:52 Valley Railway Company?
13:48:54 **A At some point.**
13:48:59 Q Okay. I'm going to hand you a large document
13:49:01 here which we have just been discussing. I'm going to ask
13:49:04 if you recognize that set of documents there.

13:49:10 A **Want me to look through it?**
13:49:13 Q Go right ahead.
13:49:38 A **Yes. I recognize some of these documents. I obviously haven't looked at every one.**
13:49:43 Q Okay. May I have that back, please?
13:49:45 A **Sure.**
13:49:47 Q Thank you. If I understand Defendant's position correctly, what we discussed as the LTV easement, which is Exhibit 1, is something that came to The Ohio Central Railroad by way of a purchase of The Mahoning Valley Railway Company; is that correct?
13:50:10 A **Which agreement are you referring to?**
13:50:13 Q Exhibit 1.
13:50:15 A **Okay.**
13:50:23 Q The Exhibit 1 easement agreement.
13:50:27 A **Easement agreement, okay. Which is my Number 2. Okay. And your question again? I'm sorry.**
13:50:38 Q My question is: Did this easement become -- or rather, did the Defendants come to have rights under this easement agreement by way of this transaction that we just discussed, the stock purchase agreement among The Mahoning Valley Railway Company and others?
13:50:54 A **I believe so, yes.**
13:50:55 Q Okay. I'm going to hand you the stock purchase

13:51:10 agreement. I'm going to turn to Exhibit B of the stock
13:51:14 purchase agreement, and Exhibit B is titled Assignment and
13:51:19 Assumption Agreement. Could you take a minute to review
13:51:22 that Exhibit B, please.
13:52:00 A **I have read that.**
13:52:01 Q Okay. You will see there, Mr. Strawn, there is,
13:52:08 on the first page it says, "Now therefore, in consideration
13:52:12 of the mutual covenants and agreements hereinafter set
13:52:16 forth, MVRC, LTV and purchaser agree as follows." And then
13:52:23 there is this assignment paragraph here.
13:52:25 My question is whether that assignment paragraph
13:52:28 is the legal language that assigns, among other things, this
13:52:34 easement agreement to The Mahoning Valley Railway.
13:52:40 MR. LIPKA: Just objection to the extent you're
13:52:42 calling for a legal conclusion.
13:52:44 MR. McCREA: Thank you.
13:52:45 A **I don't know that it does or that it doesn't.**
13:52:47 Q Okay.
13:52:49 A **I have no opinion on that.**
13:52:50 Q I'm, for what it's worth, not trying to get your
13:52:58 legal opinion.
13:52:58 A **I'm not a lawyer.**
13:52:59 Q Although it may seem so, but rather, just trying
13:53:02 to figure out the chain of documents here, and what, what

13:53:05 the, what language does what.
13:53:30 But you do agree -- correct me if I'm wrong --
13:53:32 that somewhere in this stock purchase agreement, somehow,
13:53:37 you know, in some way, shape or form, that's how The Ohio
13:53:40 Central Railroad came to be an easement holder under this
13:53:44 Exhibit 1 easement?
13:53:45 A **I would expect, if that's the entire agreement -- I never saw the entire agreement -- that it would be in there somewhere.**
13:53:50 Q Okay. I don't have any reason to believe that
13:53:53 this is or isn't the entire agreement. But that's what I'm
13:53:59 trying to get to the bottom of.
13:54:03 I'm going to hand you a document that we will
13:54:06 mark as Exhibit 11. Please take as much time as you need to
13:54:29 review that document.
13:55:04 (Whereupon, Exhibits No. 10 and 11 were marked
13:55:07 for identification purposes by the court reporter.)
13:55:33 A **Okay. I have looked at it.**
13:55:37 Q Do you recognize this document?
13:55:40 A **Yes.**
13:55:40 Q Can you tell me what this document, what it is,
13:55:45 and also what, what property rights it transfers?
13:55:49 A **This would be the quitclaim deed that refers to the sale of The Mahoning Valley Railway to the, to the, or**

13:56:03 **the sale of The Mahoning Valley Railway to, to our company.**
13:56:09 **And this refers to the different pieces of property that are**
13:56:12 **associated with that particular company.**
13:56:18 Q Okay.
13:56:19 A **And there is different lot numbers. I remember,**
13:56:33 **I recall new lot numbers being developed because of the way**
13:56:33 **the property was, was sold.**
13:56:33 Q Okay. The property was sold from LTV to The
13:56:33 Mahoning Valley Railway Company?
13:56:33 A **Yes.**
13:56:33 Q Okay. Can you demonstrate for me on the map,
13:56:37 Exhibit 4, where the properties that are the subject of this
13:56:41 document lie?
13:56:49 A **Should I continue?**
13:56:51 Q Yes. Please.
13:56:52 A **Okay. Without having another map in front of me, I'm going to indicate that property for The Mahoning Valley Railway. It's in this area.**
13:57:04 Q Okay.
13:57:05 A **And it would continue down through here. There is property, look here on this other side, there is property here.**
13:57:17 Q If I could ask you to pause for a second.
13:57:19 A **Sure.**

13:57:20 Q And I don't mean to be rude, but for the sake of
13:57:23 the record, when you were previously indicating, correct me
13:57:26 if I'm wrong, but you were indicating in the area of what's
13:57:29 marked on the map as the #3 Main?
13:57:31 **A Yes.**
13:57:31 Q And then the 279 track, 280 track, again #3 Main?
13:57:38 **A All the way to the river.**
13:57:39 Q 279 track all the way, proceeding to the left on
13:57:44 the map for some distance up near what is marked as -- I'm
13:57:53 sorry. Could you read that?
13:57:57 **A Cantar Poly.**
13:57:59 Q Cantar Poly, okay. So this quitclaim deed here
13:58:07 covers this land here that you indicated?
13:58:11 **A As well as land over here on the other side of**
13:58:14 **the river --**
13:58:14 Q Okay.
13:58:14 **A -- was also acquired.**
13:58:16 Q Could you take a blue pen, please, and outline
13:58:20 what you understand to be the property rights created by
13:58:23 this Exhibit 11?
13:58:25 **A Boundaries?**
13:58:27 Q Yes.
13:58:27 **A Okay. Because do you mean boundaries, or rights?**
13:58:32 **Do you want to know the boundary of what I'm aware of during**

13:58:35 **the sale?**
13:58:35 Q Yeah. Let's start off and do the boundary.
13:58:39 **A Okay. Because that will change this to a degree.**
13:58:42 **I'm not going to do it exactly right, but I believe it would**
13:58:48 **be -- it's not going to show very well, in this area, and it**
13:58:54 **would come down through here, and it would taper out into**
13:59:00 **this area down through here. Because this was acquired**
13:59:09 **later.**
13:59:09 Q Okay. If we could go --
13:59:13 **A And then obviously, you want me to retrace this**
13:59:16 **again on this side of the railroad?**
13:59:17 Q If you could just draw in a complete, not a
13:59:20 circle, but a complete block --
13:59:21 **A It will follow Mr. Feichtenbiner's.**
13:59:24 Q Okay. If you will, around that transaction
13:59:27 there.
13:59:36 **A There, like that.**
13:59:37 Q Okay. And what is in here?
13:59:40 **A That all follows suit. It's not a real good**
13:59:44 **color to do this.**
13:59:45 Q Okay. How about the other side of the river?
13:59:49 **A The other side of the river would be exactly what**
13:59:51 **Mr. Feichtenbiner outlined. I will just follow his.**
13:59:55 Q Okay.

13:59:56 **A It's easier, see better. And I can't show you**
13:59:59 **the other side, because it's not complete, because it goes**
14:00:02 **further over, further down.**
14:00:03 Q Okay.
14:00:04 **A And the same, likewise, on the other end here,**
14:00:08 **there is even more property that we acquired.**
14:00:10 Q Okay. How about these other properties in here
14:00:15 that are, that are on the, the Allied side, so to speak, of
14:00:20 the Mahoning River? Previously made what centrally is a
14:00:27 triangle with a long thin strip going down towards
14:00:31 Youngstown, Ohio.
14:00:31 **A You mean this area?**
14:00:33 Q Yes.
14:00:33 **A Those were, properties were acquired from**
14:00:38 **Maverick Tube.**
14:00:40 Q Okay. Could you make an outline of those
14:00:42 properties that Ohio Central also owns. I note that your
14:00:51 blue pen is following the outline made by Mr. Feichtenbiner
14:00:54 in a silver pen. And that transaction was after the
14:01:01 transaction that we just discussed, which is subject, the
14:01:04 subject of Exhibit 11?
14:01:04 (Whereupon, Exhibit No. 11 was marked for
14:01:05 identification purposes by the court reporter.)
14:01:05 **A That, yeah, that is correct. We, we acquired, in**

14:01:12 **essence, the entire mill from Maverick Tube. And I should**
14:01:20 **be clear. I was not clear on this.**
14:01:22 These changes that I have just drawn for you were
14:01:24 when we then sold the facility to Bill Marsteller, who I
14:01:29 believe you're selling it to is what I have heard -- buying
14:01:33 it from. These we retained. I did the deal with Bill
14:01:40 Marsteller to retain the offices and this tract of land, and
14:01:44 then he was most interested in the mill itself.
14:01:45 Q Okay.
14:01:47 **A But he's probably already told you that.**
14:01:49 Q So it's your testimony that, that Ohio Central
14:01:52 still owns this area right here, that I'm pointing to a line
14:01:56 just --
14:01:56 **A That is correct. We do own that.**
14:01:58 Q Okay.
14:02:00 **A And it's recorded as well.**
14:02:01 Q Okay. I'm going to hand you a document we will
14:02:20 mark as Exhibit 12. You discussed earlier about how Ohio
14:02:37 Central -- I think Ohio Central purchased this? My, my
14:02:39 question is just for clarification. Was it Ohio Central
14:02:45 that purchased any of these, that purchased this, or did you
14:02:49 purchase any land yourself personally? That's my question.
14:02:51 **A Me personally?**
14:02:53 Q Yes.

14:02:53 A **No. I would like to buy the mill back, but you**
14:03:07 **guys are already getting it.**
14:03:07 Q Okay. But you, you never have, correct me if I'm
14:03:07 wrong, but you never have, and you do not now personally own
14:03:07 any of this land on this map?
14:03:07 A **Not today.**
14:03:09 Q Did you in the past?
14:03:10 A **Not in the past, and not today.**
14:03:13 Q Okay. So in other words --
14:03:14 A **That covers it all the way to today. Not in the**
14:03:17 **past, and not today.**
14:03:18 Q You have never owned any of this land on this map
14:03:21 personally?
14:03:21 A **No.**
14:03:22 Q Okay. Let me hand you what we will mark as
14:03:28 Exhibit 12.
14:03:48 (Whereupon, Exhibit No. 12 was marked for
14:03:51 identification purposes by the court reporter.)
14:04:07 A **Okay. I have looked at it.**
14:04:08 Q Describe for me what this document is.
14:04:11 A **It's a bill of sale for equipment from, The**
14:04:23 **Mahoning Valley Railroad bought from LTV.**
14:04:28 Q Okay. And is that, is this part of the stock
14:04:33 purchase agreement for The Mahoning Valley Railway? I guess

14:04:37 to be fair --
14:04:39 A **I don't know, to be honest.**
14:04:40 Q To be fair, I think, I think it is. It's
14:04:42 right --
14:04:45 A **I would have to see it. If it's there, yeah,**
14:04:47 **okay. I would agree.**
14:04:49 Q This is the document by which The Mahoning Valley
14:05:00 Railway Company took title to various equipment?
14:05:02 A **Uh-huh.**
14:05:03 Q Okay.
14:05:05 A **Yes. Forgive me.**
14:05:28 MR. McCREA: Let's just take a five-minute break.
14:05:31 (Whereupon, a short break was taken.)
14:20:01 Q Okay. Thanks for waiting.
14:20:03 A **Sure.**
14:20:10 Q Mr. Strawn, let's take a look at Exhibit 11
14:20:13 again. I ask you to turn to what is the third page of that
14:20:17 document.
14:20:19 A **Okay.**
14:20:24 Q Up in the upper right-hand corner there is a
14:20:28 reference to Youngstown City Lot Number 62189. Can you do
14:20:32 me a favor and, with a green pen here, mark where you
14:20:37 understand that lot to be on the map.
14:20:40 A **I don't have a clue.**

14:20:41 Q You don't have a clue?
14:20:42 A **(Witness shakes head negatively.)**
14:20:43 Q Okay.
14:20:44 A **Without a plat map, no, I really don't know.**
14:20:47 Q Let's back up a little bit then, give you an
14:20:53 idea, try to reduce it. The second page of this document
14:20:58 references a Youngstown City Lot Number 62188. Could you
14:21:03 identify that parcel of land on the map?
14:21:07 A **No, not without a plat map. I couldn't point and**
14:21:12 **show you boundaries for any lot unless I had a plat map.**
14:21:15 **That's how we did the transaction. Not from a map like**
14:21:18 **this. I wouldn't -- I don't know the sequence.**
14:21:21 Q Okay.
14:21:22 A **Sorry.**
14:21:22 Q It's all right. I'm going to point here to a
14:21:25 building. It's referenced as shop one, shop -- actually, to
14:21:30 the left of the building on the map there are some markings,
14:21:33 shop one, shop two, shop three, shop four, shop five. I
14:21:38 understand that that's within Ohio Central's property,
14:21:43 correct?
14:21:43 A **Yes.**
14:21:44 Q Okay. And is it true that Ohio Central can get
14:21:49 from that shop using Mahoning Valley Railway #3 Main over
14:21:55 into the Norfolk Southern Haselton Yard?

14:21:59 A **Haselton Yard.**
14:22:01 Q Haselton Yard.
14:22:02 A **I believe so, unless something has changed.**
14:22:04 **Although I haven't looked at the property for well over**
14:22:07 **eight months, maybe nine.**
14:22:09 Q Okay. And then from Haselton or Haselton Yard,
14:22:12 The Ohio Central Railroad can proceed further down towards
14:22:16 Struthers and access the CSX line; is that correct?
14:22:20 A **Again, it, it should be able to. But I couldn't**
14:22:24 **state today that it can, because I don't know.**
14:22:27 Q Okay. Do you have any reason to doubt that it
14:22:31 couldn't?
14:22:32 A **I don't know.**
14:22:32 Q Okay. I handed you a document. I don't have it
14:22:47 quite at my hands. But it's this bill of sale, Exhibit 12.
14:22:55 And I need to grab that stock purchase agreement book just
14:23:02 momentarily.
14:23:11 In Exhibit 12 there is a reference to equipment
14:23:14 listed and described as Exhibit A. I'm going to turn to
14:23:18 Exhibit C in the book, and go to Exhibit A to that. Can you
14:23:24 take a look at Exhibit A. Just after you have had a chance
14:23:29 to take a look at it, describe to me generally just what
14:23:33 Exhibit A entails or covers. That would be the better word.
14:24:07 A **Exhibit A refers to the, as it's listed, fixed**

14:24:11 asset summary report for those assets that would have been
14:24:18 owned by The Mahoning Valley Railway.
14:24:20 Q Okay. And those are now owned by The Mahoning
14:24:27 Valley Railway, which is a part of The Ohio Central
14:24:31 Railroad?
14:24:33 A Mahoning Valley, assuming they still own these
14:24:36 things, yes. I don't know what they do have or don't have.
14:24:40 Q Okay. Great. But as of that time?
14:24:42 A As of that time.
14:24:43 Q That was what they bought? Okay.
14:24:44 A Under the fixed asset, yes.
14:24:45 Q Okay. Great. Thank you. Could I have that
14:24:48 back, please. I'm going to hand you -- I typically don't
14:26:04 mark responses to interrogatories as exhibits, but I'm going
14:25:17 to in this case. I hand you what we will mark as Exhibit
14:25:17 13, have some questions about this document.
14:25:21 (Whereupon, Exhibit No. 13 was marked for
14:25:23 identification purposes by the court reporter.)
14:25:34 Q I'm not going to ask you to review the entire
14:25:37 document with all of its legalese. We will just cut to the
14:25:41 chase here.
14:25:41 Turn to the third page of this document, and I'm
14:25:50 going to ask you to take a look at the interrogatory number
14:25:54 one, and also the answer to it.

14:26:23 A Okay.
14:26:24 Q The question asks The Ohio Central Railroad to
14:26:29 identify employees who worked for any named Defendant and
14:26:33 have knowledge related to the allegations in Allied's
14:26:37 complaint, so on. That's a summary.
14:26:40 The answer lists two people, Mr. Strawn, yourself
14:26:43 and Mr. Felchtenbiner.
14:26:45 My question is this: Do you know of anybody else
14:26:47 from Ohio Central who was involved in using these two
14:26:55 easements, or who has any other knowledge of this lawsuit or
14:26:59 the property transactions at issue?
14:27:04 A Within the company, is that your question?
14:27:08 Q Yes, yes. Who else from the company knows about
14:27:09 the easements, the lawsuit, Allied property?
14:27:13 A That would be as listed, myself and Terry.
14:27:17 Q Okay. You don't have any deputies or, I don't
14:27:21 like to use the term, but underlings who would -- who were
14:27:25 also enmeshed in the property transactions?
14:27:29 A No.
14:27:29 Q Okay. It was basically handled between yourself,
14:27:34 Terry and your attorneys?
14:27:35 A Yes.
14:27:38 Q Okay. By the way, how many people are employed
14:27:40 by The Ohio Central Railroad, at least when you left?

14:27:43 A Just shy of 200.
14:27:45 Q Okay. Could you give me some breakdown of how
14:27:49 that 200 is spread out?
14:27:51 A Would you like it by class?
14:27:53 Q Well, you know, how about let's just do this.
14:27:59 How many people worked at the main office?
14:28:01 A Which? This main office?
14:28:03 Q Yeah, this main office here referenced on the
14:28:06 map.
14:28:06 A At the office?
14:28:07 Q Yes.
14:28:07 A Four.
14:28:12 Q Okay. Would that be yourself?
14:28:15 A No. I was at the corporate office.
14:28:17 Q Okay.
14:28:18 A In Coshocton.
14:28:19 Q Who --
14:28:20 A That would be Terry Felchtenbiner; Rich Melvin,
14:28:25 who retired along with the company, I believe; another
14:28:29 fellow by the name of Rich, I have forgotten his name, he
14:28:33 was a clerk; and recent addition would have been a marketing
14:28:37 fellow by the name of Brian Freeman. But they were
14:28:41 basically the office people.
14:28:42 Q Okay. Let's turn to interrogatory number four,

14:28:49 which is on the next page. Could you read that
14:28:52 interrogatory and the answer, please. I just have a quick
14:28:55 question about the answer.
14:29:16 A Okay.
14:29:17 Q Okay. Second sentence of the answer says, "The
14:29:20 easements involve some track used by both The Ohio and
14:29:24 Pennsylvania Railroad Company and The Mahoning Valley
14:29:27 Railway Company and some track used separately by the two
14:29:30 companies."
14:29:33 I don't exactly understand what the sentence
14:29:35 means when it says "and some track used separately by the
14:29:39 two companies." Could you explain just, just what the
14:29:42 answer means as a whole?
14:29:44 A I believe that that answer is trying to delineate
14:29:52 tracks that were operated on under easement solely by each
14:29:56 railroad, which, which did occur, and then the joint track
14:30:00 that both railroads used to go to interchange point.
14:30:05 Q Okay. And you're pointing with your --
14:30:07 A I'm pointing over to the Struthers lead.
14:30:09 Q Okay. Let's take a look at interrogatory number
14:30:26 nine.
14:30:58 A Did you say number eight?
14:31:00 Q Yes. Just backing up a second, is it -- do you
14:31:07 understand that, one way or another, whether the Struthers

14:31:10 lead is in any way involved in this litigation or not?
14:31:13 **A I don't believe it is particularly.**
14:31:18 Q Okay. Thank you. Yeah. Interrogatory number
14:31:23 nine --
14:31:24 **A Nine.**
14:31:25 Q Sorry. Asks the Defendants to describe in detail
14:31:32 practices, policies regarding use of the main line, running
14:31:43 and/or spur as transfer points, switching stations, and/or
14:31:48 storage track; holding, storing or otherwise stopping
14:31:51 railcars on main line, running track, and/or spur; and
14:31:57 transporting or storing hazardous, toxic and/or regulated
14:32:05 substances and materials.
14:32:08 And the answer says that the Defendants don't
14:32:10 have any specific written practices or policies that govern
14:32:15 the matters alleged.
14:32:21 My question is this: Were there any formal or
14:32:23 informal policies regarding stopping tracks on either of the
14:32:28 two easements at issue in this case?
14:32:30 **A Stopping tracks, or trains?**
14:32:32 Q I'm sorry. Stopping trains.
14:32:34 **A Would you ask that question then, please?**
14:32:37 Q Sure. Did the Defendants have any formal or
14:32:40 informal policies regarding using the easements that are at
14:32:48 issue in this case for storing trains, using the easements

14:32:52 as staging areas or otherwise passing through there?
14:33:08 **A Other than following CFR49 Code Federal**
14:33:03 **Regulations, no.**
14:33:03 Q And what is CF --
14:33:03 **A That's issued by the, by the Federal Railroad**
14:33:10 **Administration. And that's just how all railroads operate.**
14:33:13 But no, we had nothing internal, specific,
14:33:16 nothing.
14:33:18 Q Okay. Does The Ohio Central Railroad System
14:33:27 lease any tracks from any third parties to use as storage
14:33:33 for railcars or staging areas for railcars?
14:33:42 **A Not to my knowledge.**
14:33:44 Q Okay.
14:33:45 **A Not to my knowledge.**
14:33:49 Q They have never done so in the past, at least to
14:33:52 the best of your knowledge?
14:33:53 **A No.**
14:33:54 Q Okay. So when they need, when The Ohio Central
14:33:59 Railroad System needs to store or stage cars, they will
14:34:01 simply use some tracks that they have rights over in some
14:34:06 way, shape or form; is that correct?
14:34:08 **A I believe so.**
14:34:08 Q Okay. What do you understand the concept of
14:34:16 demurrage to mean?

14:34:18 **A Demurrage is what one car owner charges another**
14:34:26 **car owner for the use of their railroad car while it's on or**
14:34:31 **in the possession of that particular railroad company.**
14:34:36 Q Okay. That's to say, if I owned a railroad car,
14:34:40 and The Ohio Central Railroad were using it to store, or
14:34:45 rather, to move goods, I would charge a demurrage fee, or I
14:34:50 would be entitled to a demurrage fee from The Ohio Central
14:34:54 for the use of my rail car?
14:34:55 **A You would be, if you chose to, to a demurrage**
14:35:01 **fee, which is an hourly rate, depending on the car type.**
14:35:04 Q Okay. How, do you know how those fees are
14:35:16 tracked by The Ohio Central Railroad, if -- I should back up
14:35:19 and say this as a foundation question.
14:35:22 Does The Ohio Central Railroad charge such fees,
14:35:25 or pay such fees?
14:35:27 **A Yes to both questions.**
14:35:29 Q Okay. How does it keep track of those fees?
14:35:32 **A There would be an in-house individual that would**
14:35:40 **probably track the placement of cars or cars going through**
14:35:44 **the system. But the majority of that work is done through a**
14:35:49 **third party under contract.**
14:35:50 Q Okay. Is that --
14:35:54 **A As most railroads do, they contract that out.**
14:35:57 Q Is that third party a software company that's

14:36:04 located in Atlanta, Georgia?
14:36:07 **A Yes.**
14:36:07 Q By the name of Railcar Management?
14:36:10 **A If they're still with them, yes.**
14:36:11 Q Okay. Can you describe to me what you know about
14:36:14 Railcar Management, and their, their relationship with Ohio
14:36:17 Central?
14:36:17 **A We were under contract with Railcar Management to**
14:36:24 **handle demurrage assessment, both what we owed and what may**
14:36:29 **be owed us, although we did not own very many railroad cars**
14:36:33 **that were off of our railroad system. But they, they were**
14:36:38 **the third party that kept track of that.**
14:36:38 Q Okay. Do you know, were you, were you very
14:36:44 involved in working with Railcar Management? Or was that
14:36:48 something that --
14:36:50 **A Only to the degree that I, I would negotiate the**
14:36:53 **contracts when they came to. But on a day-to-day basis,**
14:36:58 **would that be your question?**
14:36:59 Q Yes.
14:37:00 **A Maybe you could help me on that.**
14:37:01 Q Yeah. Do you know how the Railcar Management
14:37:03 system worked, or the software worked?
14:37:05 **A Peripherally -- no, software. No. I'm not a**
14:37:09 **tech. I'm not a tech.**

Q Okay. Do you know, generally speaking, how Railcar Management kept track of cars to the extent that they did?

A The entire railroad system, including how Railcar Management would work, relies on the advent of AEI, automatic equipment indicators.

And I'm not sure if you're familiar with what they are, but they are literally a small module that is riveted to each side of every railcar in the country. They are electronic readers, and they're a transponder that simply reads that car as it moves through any system all the way across the country. That is always tracing and tracking where that car is at any given time.

And that is then fed into a national database. And from there it is disseminated to the various third parties that provide tracking and tracing for billing purposes and for payment purposes.

Q Is this little box that's riveted to the side of a railcar analogous to a bar code, so to speak?

A It replaced the bar code.

Q Okay.

A The bar code was the former way that railroads used to track and trace cars. In fact, every time you go to the grocery store and you swipe the bar code, that was

developed by the railroad systems.

Q Is the box of today more akin to a GPS unit?

A It could be used that way. It can be used that way, yes.

Q Okay. So at any given time, you can figure out where your cars are sitting, if you want, by way of this system?

A If it is a second- or third-generation box. Some of the originals have not been replaced. And car owners will make that determination, depending on how important it is to them to know exactly where their car is at any given time.

Q Is there any trade name that this system operates under, or a trademark name?

A Not to my knowledge.

Q You referred to it as some sort of a system before, I believe. What is that?

A Well, no. There is a national database that all of this information goes to. But I don't really -- again, I'm not the tech guy. I don't know how they pull information out, and how it gets to the various third parties that do the administration work.

Q Okay. And this might not be something you know, but I have to ask it anyways.

A Sure.

Q This, this central database for all this information, is that run by the Federal Government as part of the Surface Transportation Board?

A I don't know.

Q Okay. You know somehow that data is collected and then disseminated to third parties, such as Railcar Management?

A Yes.

Q Do you know anything about the operation of Ohio Central's computer system? Go ahead.

A Would you repeat that, please?

MR. McCREA: I'm sorry. Could you read back the question.

(Whereupon, the last question was read back by the court reporter.)

A Which one?

Q What do you mean by "which one"?

A There are multiple computer systems on The Ohio Central Railroad. It's a PC-based company, but there is also a server. There are, there are multiple functions carried out on different computers.

Q Okay. Well, if you could, give me an overview of all of the functions on all of the different computers.

A There is a satellite dispatching system, I believe still under development, that is solely being developed for the movement of trains, safe movement of trains.

Q Okay.

A And that's to reduce congestion, get the maximum track occupancy of trains at any given point in time. It's more of a safety/management tool. So there is a dispatching system.

There are various software programs run by any given manager, whether it be a marketing computer system with modules that do pricing.

There is an engineering CAD system that track layouts, bridge designs, tunnels and drawings.

And then there would be just what I would call the general system where all of the laptops tie into the main server in Coshocton.

Q Okay.

A And that is used for different things.

Q Does your computer system track when Ohio Central's cars are on, you know, very -- whatever tracks that it happens to be using, whether they're easements on Allied's property, or whether their cars are going down CSX line? Is that tracked?

14:42:02 A **It doesn't track where the cars are at any given**
14:42:05 **time. What that computer system does is recognizes when a**
14:42:08 **car arrives at interchange from another railroad, when it is**
14:42:12 **placed at a customer. It's called constructive placement.**
14:42:17 So when it's CP'd, it's either CP'd as an empty
14:42:22 or a load, obviously to be loaded or unloaded.
14:42:25 Q Okay.
14:42:26 A **It will then track when the car has been released**
14:42:29 **by the customer. But it doesn't -- you can't go to that**
14:42:33 **computer system, as an example, and find out if that car is**
14:42:37 **moving right now. It doesn't have that capacity. And at**
14:42:40 **the end of the cycle of that car, it erases it, because it's**
14:42:44 **not information that needs to be retained.**
14:42:45 Q Okay.
14:42:47 A **We try, as an industry, very hard, probably not**
14:42:50 **as, as much as we would have liked to go paperless, under**
14:42:53 **the direction of the Federal Government, which is what**
14:42:56 **created what is known as EBOL, EBOL, which is an electronic**
14:43:03 **bill of lading that our customers provide.**
14:43:11 So every day the system wipes clean. It doesn't
14:43:13 keep old track records. We're just not -- there is no
14:43:16 reason to. It's useless data.
14:43:18 Q Okay. You say "wipes clean." What do you mean
14:43:25 by that?

14:43:25 A **Generic example, track number one has ten cars on**
14:43:28 **it today. Six cars have been removed. Tomorrow track**
14:43:32 **number one will only have four cars, and the six cars that**
14:43:35 **were removed will not show anywhere in the system, because**
14:43:37 **they're gone.**
14:43:38 Q Okay.
14:43:39 A **It continually updates itself, because there is**
14:43:42 **just no sense in retaining the information. It provides no**
14:43:45 **benefit to the railroad or the customer.**
14:43:47 Q Okay.
14:43:48 A **So there is no records.**
14:43:49 Q Is there anyone -- who in Youngstown would be
14:43:52 responsible for keeping track of where cars are, for
14:43:55 example, on Allied's property? Let's say, hypothetically,
14:43:59 that The Ohio Central Railroad has a line of cars sitting on
14:44:04 the LE&E Main line, and a line of cars sitting, also sitting
14:44:10 empty on the MVRY #1 Main. Who, who at Ohio Central in
14:44:15 Youngstown would, would know that the cars were there?
14:44:19 A **Certainly the crew that placed them there --**
14:44:32 Q Okay.
14:44:32 A **-- on any given day would be responsible, as they**
14:44:32 **always do, to radio in car locations to the office.**
14:44:32 At the office it could be -- well, it would have
14:44:32 been Rich Melvin, who is no longer there. He retired. He

14:44:35 would know. Whoever the clerk on duty might be, which might
14:44:40 be -- well, I don't know who the clerk on duty would be at
14:44:43 any given time, depending. But they generally run the
14:44:47 railroad daylight. Terry Feichtenbiner would know.
14:44:49 Q Who were some of the names of the clerks on duty
14:44:52 at that time when --
14:44:53 A **Rich, Rich McRacken would be the, would be the**
14:44:57 **primary one that I, I would think would probably get the**
14:45:01 **call.**
14:45:01 Q Okay.
14:45:02 A **That would be, I think, the ones that I can, I**
14:45:05 **can offer to you.**
14:45:08 Q So Rich Melvin or Rich McRacken would know, for
14:45:11 example, if a line of 10 of 15 cars were sitting on, on one
14:45:15 of these easements that we have been discussing today?
14:45:18 A **They might.**
14:45:18 Q Okay. Did you ever receive any complaints from
14:45:24 Allied about cars sitting on the two easement lines that are
14:45:30 subject to this suit?
14:45:32 A **I did not.**
14:45:33 Q Okay.
14:45:34 A **To my knowledge. I believe I had some**
14:45:38 **conversation, but I can't recall specifically what they were**
14:45:40 **about.**

14:45:40 Q Okay. Do you know when those conversations
14:45:43 occurred?
14:45:43 A **No.**
14:45:44 Q Do you recall --
14:45:44 A **I'm sorry.**
14:45:45 Q Mr. Strawn, I'm going to hand you a document
14:46:07 that's been produced by your counsel in this litigation. We
14:46:10 have marked it as Exhibit 14. Just take your time and take
14:46:25 a look at that.
14:46:35 (Whereupon, Exhibit No. 14 was marked for
14:46:37 identification purposes by the court reporter.)
14:47:41 A **Okay. I have generally looked it over.**
14:47:42 Q Thank you. Mr. Strawn, this Exhibit 14 indicates
14:47:52 at the top that it was issued January 1, 2007. Let me back
14:47:56 up and ask you this. Are you familiar with this document?
14:47:58 A **No.**
14:47:58 Q Okay. Have you ever seen it before?
14:48:00 A **No.**
14:48:09 Q Okay. So I guess it's safe to say that you
14:48:09 didn't draft it?
14:48:07 A **No.**
14:48:08 Q Do you have any knowledge of -- I will say it for
14:48:19 the record. This is Operations Bulletin Number 1. Did you
14:48:21 have any involvement at all in the operations bulletins, if

14:48:26 there were more than just this one, --
14:48:27 A **No.**
14:48:28 Q -- of The Ohio Central Railroad System?
14:48:29 A **No.**
14:48:29 Q Okay. Something that was totally handled by
14:48:33 somebody else?
14:48:33 A **One of my teammates.**
14:48:35 Q Okay. Who was that?
14:48:36 A **At this railroad?**
14:48:40 Q Yes.
14:48:40 A **Who issued this? Is that the question? Or maybe**
14:48:43 **you can ask it again.**
14:48:44 Q I will ask it that way. Is this a document that
14:48:47 was issued by someone at the Youngstown Division?
14:48:51 A **I don't know. If I look back here.**
14:48:57 Q Terry Feichtenbiner.
14:48:59 A **There it is.**
14:48:59 Q General manager. Okay. So you don't have any
14:49:09 knowledge of this document?
14:49:09 A **No.**
14:49:10 Q Okay. Could you turn to page 11, please.
14:49:31 A **Okay.**
14:49:31 Q In paragraph five, the sentence reads, "Effective
14:49:38 immediately and until further advised, all trackage

14:49:40 associated with The Mahoning Valley Railway is designated as
14:49:44 'excepted track.'" Do you have any knowledge of what
14:49:48 "excepted track" means?
14:49:51 A **Yes, I do.**
14:49:52 Q What, what does that mean?
14:49:53 A **Exactly what follows. Speed must not exceed 10**
14:49:57 **miles per hour on any track associated with The Mahoning**
14:50:03 **Valley Railway, and these instructions will not supersede**
14:50:05 **any previous instruction in effect which set forth a lower**
14:50:08 **speed.**
14:50:08 Q So it's essentially a speed limit?
14:50:10 A **Excepted track is a speed limit that is brought**
14:50:15 **upon by the condition of the track and/or the operating**
14:50:19 **requirements.**
14:50:20 Q Okay. So if the track is in a certain state of
14:50:24 repair, you can only go so fast on it?
14:50:27 A **And/or if you don't need to achieve any speed to**
14:50:30 **provide the service levels needed, why wear out the track?**
14:50:35 **Even if it can handle 40 miles an hour, 10 miles an hour may**
14:50:39 **be sufficient to accomplish your task.**
14:50:41 Q Okay. Bear with me a second.
14:51:03 A **Sure.**
14:51:22 Q I have some general questions for you with
14:51:26 respect to this lawsuit. Have you made or kept any notes in

14:51:30 connection with any of the easements here that we have been
14:51:34 discussing?
14:51:35 A **No.**
14:51:39 Q Okay. Were you involved in searching for
14:51:48 documents when the Plaintiffs in this case initially
14:51:48 requested the Defendants to turn over certain relevant
14:51:52 documents?
14:51:52 A **Yes.**
14:51:53 Q Okay. What did you do to search for documents?
14:51:56 A **I checked all files at the corporate offices in**
14:52:02 **Coshocton that I believe would have had anything pertaining**
14:52:06 **to the case, and produced whatever documents we could find.**
14:52:11 **Did a document sweep.**
14:52:12 Q Okay. Was that just in Coshocton?
14:52:18 A **That, in my office, that is correct.**
14:52:18 Q Okay.
14:52:18 A **That's where the documents would have been**
14:52:20 **maintained.**
14:52:21 Q Okay. Did anyone assist you in that search?
14:52:23 A **No.**
14:52:23 Q Okay. Bear with me. I'm just reviewing my
14:53:12 notes. Mr. Strawn, you testified earlier about a fellow by
14:53:38 the name of Bill Marsteller.
14:53:41 A **Yes.**

14:53:42 Q Is that correct? Okay.
14:53:43 A **Yes. I know Bill.**
14:53:44 MR. McCREA: Okay. Bear with me just a second.
14:53:49 I want to ask my client a question. We can go off the
14:53:52 record.
14:53:52 (Whereupon, a short break was taken.)
14:56:15 Q Mr. Strawn, I understand that The Ohio Central
14:56:32 Railroad had some sort of agreement or conversation with a
14:56:32 Bill Marsteller about using the interior of one of Bill's,
14:56:32 one of the buildings owned by Gearmar. Is that correct? Do
14:56:38 you know anything about that?
14:56:38 A **Yes.**
14:56:40 Q Okay. What do you know?
14:56:41 A **I believe the -- well, in fact, the conversation**
14:56:49 **was one that I had personally with Bill.**
14:56:51 Q Okay. What was the sum of it?
14:56:53 A **And, and the understanding was that we had some**
14:56:59 **locomotive equipment and parts, and I think they were in**
14:57:02 **the -- gosh, I forget the configuration of the building.**
14:57:05 **It's been so long. I think it was in the area known as the**
14:57:08 **north bay area. I could be wrong. But wherever they are**
14:57:11 **was the part that he and I were speaking about, and I**
14:57:14 **offered that we would move those out when he acquired the**
14:57:17 **facility from us.**

14:57:18 And Bill, who is a congenial fellow, very good to
14:57:23 do business with, he said no, he said, you don't need to
14:57:26 move them out. He said, they can stay. He said, if I --
14:57:30 you know, he said, I have no problem with them being here.
14:57:32 And I offered again to move them. And his reply
14:57:35 was no, they don't, they don't need to be moved, they're not
14:57:38 in my way, they're not taking up a lot of space. And that
14:57:41 was the conversation.
14:57:41 Q Okay.
14:58:01 **A Cell phone. He needs it.**
14:58:18 Q I'm going to get into some questions about
14:58:18 hazardous substances. Did The Ohio Central Railroad ever
14:58:23 travel across the two easements at issue in this case with
14:58:28 railcars containing any hazardous substances?
14:58:33 **A The Ohio Central Railroad would not have. It**
14:58:35 **didn't operate in that area. Are you referring to the**
14:58:39 **Mahoning Valley?**
14:58:40 Q Really any of the Ohio Central railroads.
14:58:51 **A If you will give me a second, I'm trying to reel**
14:58:53 **it back a little bit here.**
14:58:54 Q Take your time.
14:58:55 **A Wait until you get my age. You will have this**
14:58:57 **problem.**
14:58:57 Q Take your time.

14:59:04 **A The only recollection that I have of a properly-**
14:59:10 **placarded HAZMAT substance coming across the railroad would**
14:59:15 **have been shortly after we acquired the Mahoning Valley.**
14:59:19 **There were a few shipments of propane that came across the**
14:59:25 **railroad that I recall. But that would be my best**
14:59:29 **recollection.**
14:59:30 Q Okay. How about construction and demolition
14:59:34 debris, is that something that Ohio Central Railroad hauled?
14:59:38 **A Yes.**
14:59:40 Q Okay. Is that something that The Ohio Central
14:59:42 Railroad stored on Allied's property? When I say "Allied's
14:59:48 property," I mean the easements that are at issue in this
14:59:51 case.
14:59:52 **A One, it's not a HAZMAT, so that's why I didn't**
14:59:56 **name that. That should be clear. I don't believe anything**
14:59:59 **was stored on Mr. Ramun's property.**
15:00:07 And affecting construction/demolition debris, I
15:00:13 don't believe so. I wouldn't have witnessed, but I don't
15:00:15 believe so.
15:00:15 Q For my own background, are there any regulations,
15:00:18 that you're aware of, that govern the hauling of
15:00:21 construction and demolition debris?
15:00:24 **A The only regulations that would apply would be**
15:00:26 **the Federal Code that simply states any and all**

15:00:30 **substances -- and this isn't verbatim, this is just -- but**
15:00:33 **to the effect that any and all substances offered for**
15:00:37 **shipping and rail equipment will be properly packaged, which**
15:00:40 **then means if it is HAZMAT, it must have a placard**
15:00:44 **identifying what that HAZMAT is, and it must be handled**
15:00:47 **accordingly.**
15:00:49 The case of construction/demolition debris, if
15:00:51 you can load it in a car, that's all that's required. Load
15:00:54 it in a car, make sure the car is secure, and it gets
15:00:58 shipped.
15:00:58 Q Is there any requirement that construction and
15:01:00 demolition debris be tarped, that the top of the car be
15:01:05 tarped over as the --
15:01:10 **A I'm aware recently that there may have been some**
15:01:13 **efforts for that to occur. But I don't know that it's up on**
15:01:16 **the books regulation or not. I couldn't tell you for**
15:01:19 **certain. I do know they tarp some cars. I have seen some**
15:01:22 **cars that are not tarped.**
15:01:23 Q Okay. There was a little testimony earlier about
15:01:27 the bumper, and the torn-up tracks, and our site visit of
15:01:32 approximately a year or so, give or take.
15:01:35 You had identified two spots on the map where I
15:01:38 think those two incidents occurred, or where those two
15:01:43 pieces of property are.

15:01:48 One of Allied's allegations in the case is that
15:01:51 the bumper was damaged by Ohio Central Railroad. Do you
15:01:54 have any knowledge of, of that situation?
15:01:56 **A No.**
15:01:56 Q Okay. You don't know one way or another whether
15:02:00 Ohio Central knocked the bumper off the track or not?
15:02:04 **A I don't know.**
15:02:04 Q Okay. The second question pertains to some
15:02:10 tracks that we observed during a site visit, which I believe
15:02:15 were in the area of the, what's that, Center Street pocket
15:02:21 on the map here west of the Center Street Bridge. Do you
15:02:28 recall some tracks being pretty much torn up and on their
15:02:31 sides?
15:02:31 **A Tracks being torn up and on their sides?**
15:02:34 Q Yeah.
15:02:34 **A Tracks on their side?**
15:02:35 Q As opposed to tracks --
15:02:38 **A You mean rolled over as opposed to vertical?**
15:02:50 Q Yes.
15:02:50 **A I'm sorry. We all --**
15:02:50 Q Yes.
15:02:50 **A I remember there was track damage from a**
15:02:50 **derailment, what I call the Center Street property, Center**
15:02:50 **Street pocket.**

15:02:50 Q Okay. Do you have any knowledge of what caused
15:02:51 that derailment?
15:02:52 **A Poor tie condition.**
15:02:54 Q Okay. Do you have any knowledge of ties in that
15:02:57 area being rolled over due to an excavator running over
15:03:01 them?
15:03:01 **A No.**
15:03:01 Q Okay.
15:03:04 **A No, I don't.**
15:03:04 Q So the only, only rail damage that you're aware
15:03:08 of there was caused by a derailment?
15:03:10 **A That's my only knowledge.**
15:03:12 Q Okay. And is, if you know, is that the same
15:03:15 derailment that was the subject of an earlier lawsuit
15:03:18 between Allied and Ohio Central, or did that occur somewhere
15:03:21 else?
15:03:22 **A I'm not sure which lawsuit you're referring to.**
15:03:25 **If you could help me.**
15:03:28 Q There was a lawsuit filed by Allied. I don't
15:03:30 know the exact start time, or you know, the exact time of
15:03:34 the filing. But the gist of it was that there was a
15:03:38 derailment of an Ohio Central train as it passed over one of
15:03:44 the spots where the railroad tracks cross the road, and a
15:03:49 train continued down the road, and tracks were damaged, and

15:03:55 in short, Allied sued Ohio Central for the cost of repairing
15:03:59 the rails.
15:03:59 **A I recall that. Was it in this area?**
15:04:02 Q I don't know. That's why I asked.
15:04:04 **A It was not here then.**
15:04:05 Q Okay. Do you know where that, where that
15:04:08 occurred?
15:04:08 **A It probably occurred, my sense is in this**
15:04:13 **vicinity.**
15:04:14 Q Okay.
15:04:16 **A That's my sense, somewhere in this vicinity. I**
15:04:20 **don't recall exactly. It was so long ago. That was a long**
15:04:22 **time ago.**
15:04:23 Q I know that was a long time ago.
15:04:25 **A Long time.**
15:04:25 Q South towards Struthers, as you have indicated?
15:04:28 **A Yes.**
15:04:28 Q Okay. Great. Thank you. With reference to
15:04:37 what's indicated on the map as the LE&E Main track, was
15:04:43 there a point, was there a point in time when Ohio Central's
15:04:48 railroads basically stopped using that track?
15:04:53 **A There were different points in time, not a point,**
15:04:56 **but points.**
15:04:57 Q Okay. Could you outline or delineate those,

15:05:00 those various points for me?
15:05:02 **A The first time would have been when we took over**
15:05:05 **the operating lease from the PL&W, and we operated the line,**
15:05:11 **and then we quit operating the line just as it was being**
15:05:16 **sold to Railroad, Railroad Ventures. So we ceased using the**
15:05:20 **line at that time.**
15:05:27 The line then was dormant for a short, shorter
15:05:32 period of time, and then the line became active again with
15:05:40 another operator, who I'm going to forget who they were,
15:05:44 that began operating the railroad. And they were using the
15:05:50 tracks. In fact, the name will come back to me here at some
15:05:54 point. They would regularly park their trains, stage and
15:05:57 store cars continuously here.
15:05:59 Q Okay.
15:06:00 **A And I remember the one fellow saying that they**
15:06:03 **had -- this is where they tied up, just like we had done**
15:06:09 **prior to them coming on the railroad. They then went into**
15:06:11 **bankruptcy, and we were petitioned, quite frankly, by a lot**
15:06:17 **of the politicos in the area, as well as the State, to come**
15:06:20 **back and save the line.**
15:06:23 And we again, we took over where they left off.
15:06:25 And now it's The Youngstown and Southeastern.
15:06:28 Q When you took -- came back, and you were
15:06:30 petitioned by politicos, as you put it quite well, was that

15:06:37 when -- bear with me. I have the document here.
15:06:53 Was that the point at which Ohio Central, or
15:06:58 rather, The Youngstown and Southern Railway Company and The
15:07:03 Ohio and Pennsylvania Railroad Company entered into these
15:07:07 agreements marked as Exhibits 8 and 9?
15:07:17 **A This was the first time. Eight and 9 refer, make**
15:07:21 **sure, to the first time. The second time was post David**
15:07:30 **Handel's involvement in the line. This would refer, 8 and 9**
15:07:33 **refer to the first time it came on the line.**
15:07:39 Q Okay. And there was a period after that when you
15:07:57 weren't operating the line?
15:07:58 **A The line was, for lack of a better term, it was**
15:08:02 **quiet.**
15:08:02 Q Okay.
15:08:04 **A For a period of time.**
15:08:05 Q That was when David Handel had some possession of
15:08:09 it?
15:08:08 **A Had some possession. And I believe there was**
15:08:10 **some type of court battle going on with the Columbiana**
15:08:14 **County Port Authority --**
15:08:14 Q Okay.
15:08:14 **A -- at that time. But we were not involved in**
15:08:16 **that.**
15:08:16 Q Okay. And then can you take me forward from

there when Ohio Central next started to operate that, that line.

A Shortly after the resolution -- and I don't know if that's the correct term -- but whatever resolve was, was reached with the Railroad Ventures and the Columbiana County Port Authority, the Columbiana County Port Authority brought an operator to the line, folks that were out of Arkansas somewhere. I forget their names, to be honest with you. And they operated the line for, again, a period of time, until they filed bankruptcy.

Q Okay.

A And that was when we were strongly petitioned to come back and take over the line.

Q What happened next?

A We operated the line for, again, a period of time. We were able to grow the business with the opening of a, a landfill in Negley, worked with the proprietor of that landfill; however, we made a marketing and operating determination that the line was not going to yield the expectations that we had, and indicated that we were not going to acquire it from the then owner. And I don't know who owns it now. The Port Authority, at which point they began to look for someone to buy the, to buy the railroad. That would be my understanding.

Q Okay.

A And operate it.

Q Well, if they, they -- by saying "they," you mean the Columbiana County Port Authority. If they were looking to have somebody buy the railroad and operate it, how is it that Ohio Central has rights over, let's say the LE&E Main track at the same time? I'm having a little trouble understanding that.

A What do you mean "at the same time"? Could you be more clear?

Q You have testified to a series of, of, series of periods of time when The Ohio Central Railroad was operating this P&LE line, and the LE&E Main line then wasn't, then David Handel opened it, then Columbiana County Port Authority brought in somebody from Arkansas to own it, then they filed for bankruptcy, then you were petitioned by politicos to, you know, get the line up and running again.

A Yes.

Q Is it, is it The Ohio Central's position that, throughout that entire period of time, it had easement rights through Allied's property, through the P&LE main line?

A Yes.

Q Okay. And how is that?

A It -- those rights would have been as a direct result of our ownership of the portion that we bought from ConRail.

Q Okay.

A Because this is still, and always was, active railroad. This did not get quiet. It still had the potential for us. And in fact, at one time we were very close to doing business with the water treatment plant. There are a couple of builders supplies, and we had people looking at the property where the original interchange point used to be.

So it was a piece of property that we owned to this day, or the new owners owned to this day that had developmental potential, if not for trans loading, certainly for business that is in this area. And so we also had ConRail's rights, who had rights over this property as well.

So we received rights as a result of our ConRail acquisition, we received rights as a result of our P&LE acquisition, and we received rights as a result of our Mahoning Valley. Not over this particularly, but that's -- when you buy other railroads, you always buy -- the rights go with it.

Q Okay. I thought you testified earlier -- and I'm not trying to play games or put words in your mouth here.

But I thought you testified earlier that, pursuant to the rights that Ohio Central had under the easement for the P&LE line, which was, bear with me a second, Exhibit 2, that no other entity would have the right to use that line?

A Which line?

Q This LE&E, LE&E Main line, which we have also referred to as the P&LE line, through Allied's property.

A No. Allied, my belief is that Allied, if they had business they wanted to develop in this area, would have probably looked -- in fact, I believe, if you ask your client, he contacted ConRail/Norfolk Southern, because NS was buying them at the time, and asked if they would come over and serve. And they said no. He probably could verify that. I believe he would.

And so had he decided that, he was certainly free to have them come over on track that he owned to serve him.

We at the time, again, were working with property we owned on an active railroad that we bought from ConRail, and it was a ConRail acquisition, that whether we were doing business with Mr. Ramun or anywhere down the line, this was our active railroad, as was this.

Q Okay.

A And we would exercise our rights to come over this line and serve any customers we could develop here.

15:13:55 Q Okay.
15:13:55 A **So that's, yeah, we, if, if -- my point is, we had rights from two entities.**
15:13:59 Q Okay.
15:14:01 A **Who had rights over this. We had rights from the P&LE, and we had rights from ConRail.**
15:14:04 Q Okay. And they --
15:14:06 A **So we closed it in from both ends to make sure we could always operate it.**
15:14:11 Q Your testimony is that, by buying this railroad here, and land down here on the other end of the map, that that came, along with it came the rights, through Allied's property, on the LE&E Main line?
15:14:19 A **By buying this down here, and then operating under the agreement, the operating agreement that we originally had with the P&LE.**
15:14:34 Q At the far end right side of the map?
15:14:34 A **Right. But also under the lease terms. Originally when we operated the line, we had the right over this. When we bought ConRail, it made no difference -- my words -- whether we were operating on the Y&S or not, because we now have a railroad that is solely ours, that we operated on for business, to develop, and came very close. And we took -- we would have ConRail's successors and**

15:15:03 **assigned rights right over this railroad.**
15:15:08 Q Okay. Well, then that takes me to, to this question. If that's all so, then it would seem to me that there must be some easement agreement that ConRail had to go through this land, other than what's been marked in this case as Exhibit 2.
15:15:23 And my question is: Are you aware of any other easement that's out there, through Allied's property, going over what's on this map as the LE&E Main track, other than Exhibit 2? Go ahead.
15:15:33 A **Want to say that one more time now? Or ask, let's --**
15:16:14 MR. McCREA: Let's just read it back.
15:16:15 (Whereupon, the last question was read back by the court reporter.)
15:16:17 A **Thank you. I believe that, in the acquisition documents from ConRail, there would be language that would indicate that.**
15:16:44 Q Okay.
15:16:48 A **That would be my, my reply.**
15:16:51 Q Okay. Are you familiar with a rail line referred to as the Canfield Branch?
15:16:52 A **I have heard the term. But I couldn't tell you exactly what I believe it refers to.**
15:16:53 Q Okay. That's, that's, is that pretty much where your knowledge of the Canfield Branch starts and ends, what you have just testified to?
15:16:55 A **I'm not sure that I know.**
15:17:03 Q Okay. Do you know if Ohio Central ever had possession of these agreements by which you have testified that ConRail had some rights through Allied's property?
15:17:08 A **I believe they would be in a sale document.**
15:17:07 Q Okay. And is it your testimony also that this

15:17:09 rail property that you purchased at the far right-hand side
15:17:12 of the map also came with it, or also had, as part of that
15:17:15 purchase, some rights through Allied's LE&E Main track?
15:17:17 A **Being that this was -- excuse me. There are two tracks here. And again, it's not properly delineated. But there, and you can actually see them in the photo.**
15:17:27 There is a track that was solely the Mahoning
15:17:33 Valley Railroad's, and that would be the uppermost track.
15:17:38 You can actually see the cars there. And then there is what
15:17:45 is known as the Struthers lead. And that was purchased from
15:18:05 P&LE.
15:18:09 And so this is where the, the common operation
15:18:14 occurred between the two railroads. So the P&LE purchase
15:18:21 referred to movement solely in this direction towards CSX,
15:18:24 and towards the customers that are all listed here.
15:18:29 Q Okay. But my question was a little more pointed.
15:18:31 Does Ohio Central contend that it has any rights over the
15:18:34 LE&E Main track as a result of any business dealings that it
15:18:39 had done down at this right-hand side of the map, which had
15:18:42 been testified to earlier?
15:18:48 A **No. I believe that the rights emanated from the original lease in operating, the purchase agreement with the P&LE, and then subsequently the acquisition of ConRail's track.**
15:18:47 MR. McCREA: Okay. Thank you. Pardon me for a
15:18:50 second.
15:18:55 (Whereupon, a discussion was held off the
15:18:59 record.)
15:19:02 Q Mr. Strawn, I just have a few more questions --
15:19:08 A **Sure.**
15:19:11 Q -- at this point in time. Although let me ask
15:19:16 this. You have a series of exhibits in front of you, some
15:19:22 easement agreements. Other than the letters that were
15:19:23 written by attorneys, did you participate in the drafting of
15:19:25 any of these easements or other documents?
15:19:28 A **No, I didn't draft any of the easements, the sale agreements, no.**
15:19:33 MR. McCREA: Okay. I'm going to say that's the
15:19:33 last question that I have right now. I am going to say,

because I have exhausted all the documents that we have been given, I'm going to say on the record that I believe that there are still some documents out there that are in the chain of title for all of these transactions by which these easements that Allied granted came or purportedly came to be owned by the Ohio Central.

I believe that a further deposition of you is going to be necessary once these additional documents are produced. So I'm going to bring the deposition to a close right now, but I will say that we are definitely going to ask you further questions about additional documents that may be produced by your counsel.

I will say on the record that I appreciate you coming up here today from your home.

MR. STRAWN: You're welcome.

MR. McCREA: I know it's a two-hour trip. And so certainly, you know, wanting to bring you back for additional questions vis-à-vis additional documents isn't something that's done for malicious purposes, but instead, is something that I think we're going to need to do to really get to the bottom of additional documentation that I think is out there and that's been referenced in today's testimony.

MR. STRAWN: Okay.

MR. McCREA: So with that said, I will explain that -- well, you have been deposed 20 odd times I think you said. So you know that you have a right to read and sign the deposition. And whether or not you want to do that is between you and your attorney, Mr. Lipka.

MR. LIPKA: We will read.

MR. McCREA: With that said, I thank you for coming up here today for this deposition.

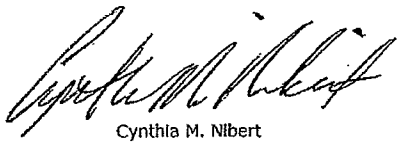
MR. STRAWN: You're welcome.

SIGNATURE NOT WAIVED

* * *

REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY that the above and foregoing is a full, true, and correct transcript of all the testimony introduced and proceedings had in the taking of the within named deposition, as shown by stenotype notes written by me, in the presence of the witness, at the time the said deposition was being taken.



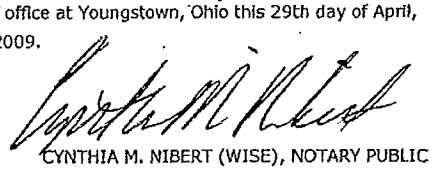
Cynthia M. Nibert
Registered Professional Reporter

STATE OF OHIO)
) SS CERTIFICATE
MAHONING COUNTY)

I, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above named MR. WILLIAM STRAWN was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was written by me in stenotype in the presence of the witness, and by me transcribed; that the transcript of his testimony will be made available to said witness for signature; that the said witness shall read said transcript and affix his signature, at the end thereof, and that the said deposition was taken pursuant to agreement and at the time and place therein specified.

I do further certify that I am not of counsel, attorney or relative of either party or otherwise interested in the event of this action or proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Youngstown, Ohio this 29th day of April, A.D., 2009.



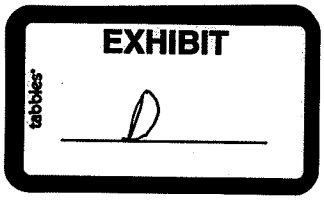
CYNTHIA M. NIBERT (WISE), NOTARY PUBLIC
My Commission Expires 11/09/10

SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION

DOCKET NO. FD 35316

ALLIED ERECTING AND DISMANTLING CO., INC.,	)	
Petitioner	)	DEPOSITION
VS	)	OF
THE OHIO CENTRAL RAILROAD SYSTEM,	)	MR. DAVID COLLINS
Respondent	)	

DEPOSITION taken before me, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, on the 9th day of December, A.D., 2010, pursuant to Notice, and at the time and place therein specified, to be read in evidence on behalf of the Petitioner in the aforesaid cause of action, pending at the Surface Transportation Board, Department of Transportation.



APPEARANCES

F. TIMOTHY GRIECO, ESQ., and
JACOB McCREA, ESQ.,
On Behalf of Petitioner

THOMAS J. LIPKA, ESQ.,
On Behalf of Respondent The Ohio Central Railroad System

INDEX

Caption and Appearance 1
Stipulations 5
Reporter's Certificate 77
Notary Certificate 78

- - -

Witness	Exam	Attorney	Page
David Collins	Cross	Mr. Grieco	6

- - -

STB EXHIBITS

28 - Notice of Deposition of Corporate Representative of the Respondents
29 - 8/26/09 letter to Tim Grieco from Tom Lipka with attached Notice of Filing of Supplemental Affidavit
30 - STB Finance Docket No. 35316, Reply of Respondents

- - -

Reported and Transcribed by:
Cynthia M. Nibert
Registered Professional Reporter

STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that this deposition may be taken at this time, 1:45 p.m., at the offices of Nadler, Nadler & Burdman, Attorneys at Law, Youngstown, Ohio, with the usual Notice to Take Deposition having been served.

It is further stipulated and agreed that the deposition may be written in stenotype by Cynthia M. Nibert, a Notary Public within and for the State of Ohio, and a Registered Professional Reporter, and by her transcribed; that the transcript be made available to the witness for signature, and that the witness shall read the same and subscribe thereto, and that the deposition may thereupon be used on behalf of the Petitioner in the aforesaid cause of action.

* * *

WHEREUPON,
MR. DAVID COLLINS
Of lawful age, being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, as hereinafter certified, deposes and says as follows:

CROSS EXAMINATION

By Mr. Grieco

Q Mr. Collins, how are you doing this afternoon?
A Doing fine.
Q As you know, my name is Tim Grieco. I represent Allied. We're going to ask you a series of questions today regarding the STB proceeding involving Allied Erecting, and Ohio Central Railroad and others.

Let me first ask, when did the Genesee and Wyoming purchase The Ohio Central Railroad System?
A We came to an agreement for a closing date of October 1st, 2008. It closed in escrow until the STB ruling on, I think it was January 29th of 2009 that we officially took control.
Q Okay. So we're coming up on two years that Genesee and Wyoming in effect will have owned The Ohio Central Railroad System, including Mahoning Valley Railway Company and The Ohio and Pennsylvania Railroad?
A Correct.

Q And with respect to the operations of The Ohio Central Railroad System, what is your role and function?
A I'm President of the Ohio Central Systems.
Q Okay.
A Individual railroads as well.
Q And in that role, what type of activities do you get involved with on a day-to-day basis relative to The Ohio Central Railroad companies?
A Planning the operations, determining what their operating plans will be, where we're going to be spending our capital, how many people we need to run the operation, what kind of locomotives we need to run the operations. Basically I'm responsible to run the business.
Q And I take it you were also involved in researching and doing due diligence on The Ohio Central Railroad System and its companies prior to Genesee and Wyoming making the acquisition in October of 2008?
A I was involved in the team, yes.
Q And as part of your activities as President, are you familiar with the territorial reach of The Ohio Central Railroad System?
A Yes.
Q And you're familiar with the interchanges and customers served with The Ohio Central Railroad System?

A Yes.
Q I'm going to show you what we will mark as STB 28. Mr. Collins, I have shown you what we marked as STB 28. Is this a document that you have had occasion to review prior to today?
A Yes.
Q And for the record, this is a Notice of Deposition of Corporate Representative of the Respondents in the STB proceeding with Allied, correct?
A Yes.
Q There are 14 categories of information. Do I understand correctly that you are the individual most knowledgeable for the Respondents concerning these categories of information?
A Most knowledgeable on all of them, I don't know that I would characterize myself there. But I think overall probably the best.
Q Okay. Let's just run through these real quick. It will help me understand, you know, where your knowledge is.
Number one says, Any information which pertains to the tracks which are subject to the LTV and/or P&LE Easements, including mileposts, number of tracks located on each segment, and then you can read the rest of it. But do

you have personal knowledge regarding that issue?
A I have some knowledge. The guys that you have already done, Mr. Strawn and Mr. Feichtenbiner, certainly have a lot more intimate knowledge than I do on this.
Q Would there be anyone currently employed with Ohio Central Railroad or Genesee and Wyoming that would have more knowledge than you on this issue?
A On those individually, probably Rich Rupp, who is the General Manager of our Pittsburgh, and Ohio Central and the Youngstown areas.
Q How do you spell Mr. Rupp's last name?
A R-u-p-p.
Q Okay. And when did he take on that position?
A After Terry left in '09.
Q Okay. And he is on a day-to-day basis more in contact with activities relative to the railroad tracks involved in this case than you are; would that be fair?
A Yeah. He's, he splits his time between Youngstown and Pittsburgh; and therefore, spends a lot more time on the property and manages the crews on a daily basis here.
Q Where did Mr. Rupp work prior to joining Ohio Central?
A He has worked for a number of railroads. I think

directly prior to coming to work for The Ohio Central System he worked for The Allegheny Valley Railroad. He worked for CSX at one point, Buffalo and Pittsburgh at a different point. I can't give you his chronology directly.
Q Okay. And he worked for those entities in this geographic location, in the Youngstown vicinity?
A No.
Q Do you know where the location was?
A Generally the Pittsburgh, West Virginia, that area.
Q Other than Mr. Rupp, is there anyone else, other than yourself, at Ohio Central Railroad System who would have more knowledge regarding the tracks which are subject to the LTV and P&LE easements involved in these proceedings?
A I'm not sure what type of information you're looking at. I mean, we have a track inspector who might know the condition better than I do. But I'm, you know, I guess I'm wondering what kind of information you're talking about.
Q Okay. Well, I mean, it's the information that's listed in number one, the number of tracks located on each segment, the location of each segment, the beginning and end points of the tracks and easements, that type of information.

A I would say our track maintainers know more about the track than I do, and exact locations and things like that. I'm not sure the relevance of, of that versus my knowledge. I mean, they have a lot more detailed information.
Q Okay. Let's look at number two. I'm paraphrasing. Any information regarding the tracks involved in this case as they connect with the interstate rail network, are you knowledgeable regarding that?
A Yes.
Q Number three, any information pertaining to the activities which Respondents perform or performed which are the subject of the LTV and P&LE easements, do you have knowledge regarding that?
A Limited. Because all that was well before our time here on the property. Since -- before 2009, other than the LTV portion, the P&LE portion obviously has not been operated by Mahoning Valley or the Ohio, OHPA since 2008 when we took over.
Q Okay. So let me clarify that. For the record, since you became associated with The Ohio Central Railroad System in late 2008, no railcar traffic associated with any of The Ohio Central Railroad Systems has operated over what we have called in these proceedings the LE&E main track,

which is identified on Exhibit 4?
A That is my understanding, correct.
Q And does that include also no staging or storing of any railcars of any type?
A No use.
Q No use whatsoever?
A (Witness nods head affirmatively.)
Q And do you have an understanding, regarding the LE&E main track, when that use ceased?
A My understanding is, was the date that Mr. Feichtenbiner reflected, which was a --
Q November 30, 2006?
A Yes.
Q Does that sound right?
A Yes.
Q Do you have any understanding as to whether there was any use of the LE&E Main track by Ohio Central after November 30th, 2006?
A I do not know. Between the two dates, between our taking over and that 2006 date, I can't tell you.
Q Okay. Switching to the LTV tracks -- and just for the record, let me indicate you were present for Mr. Feichtenbiner's deposition which occurred over the last couple hours today?

A Correct.
Q Correct? And so you had the benefit of the context we have created regarding not only Exhibit 4, but the terminology that we have used regarding both what we have called the LTV track east of the Center Street Bridge and both the LE&E Main track that runs parallel to Poland Avenue?
A Correct.
Q Okay. Since you were associated with The Ohio Central Railroad System in late 2008, have any of The Ohio Central Railroad companies operated or used the LTV tracks east of the Center Street Bridge?
A Yes.
Q Okay. Can you describe for me that use?
A We used track 239, 220 and #4 Main into and out of Haselton Yard.
Q Okay. Now, for the time being, Mr. Collins --
A And #4 Main. Excuse me.
Q Okay. For the time being, I'm just talking east of the Center Street Bridge. Do you mind delineating those again?
A Tracks starting at Center Street Bridge, we would have used track 239, the MVRY #4 Main, and track 220.
Q Okay. And for what purposes was that track used?

A To move freight cars for our customers between Haselton Yard and the, what I think has been referred to as the 270 yard; and then also to proceed to the east over the Struthers lead into the Castlo park, but using Haselton as the, the route to get there.
Q Okay. And you're referring to the 270 yard as the tracks west of the Center Street Bridge?
A Correct.
Q Just south of Mahoning River?
A Yes.
Q Okay. At a certain point in time after 2008, did any of that use of those tracks that you just delineated stop?
A No.
Q Okay. To this day, are those tracks that you just delineated used and operated over by The Ohio Central Railroad System?
A Yes.
Q Okay. And I guess my question is: How so? Is it in the same way you just described before?
A Yes.
Q What -- I want to get a little more specific on that. You described the flow of traffic as far as the different points. But what customers or what business is

being served by that use in the last two years?
A Okay. We have customers -- there are no active customers currently west of the Center Street Bridge. We have an interchange on the, in fact, it's labeled the tail track to the far west of Exhibit 4, and we moved the cars that we get at interchange from CSX over this route, to Lally Pipe and Impact Metals, are our two largest. We occasionally have some business at the Gateway Car Shop as well.
Q All right. So let's recap that. Am I correct, even since 2008 when Genesee and Wyoming made the acquisition, there were no customers of The Ohio Central Railroad System west of the Center Street Bridge that were served by these tracks?
A No, that's not correct. That's currently we have none active. We had -- there was MHF Logistics, which was west of Center Street Bridge. I don't remember. I would have to look back as to whether or not there has been any at Castlo, or if they have, it's been very small numbers, but still active.
Q I guess in Castlo --
A Or not Castlo. Cantar Poly.
Q Cantar Poly, okay.
A Sorry. And we had I think AmeriGas was doing

some trans loading of LPGs or something here as well.
Q In the 270 yard?
A Somewhere in that area, I believe.
Q And what did that involve?
A Setting a loaded tank car and unloading it into trucks for delivery to the local market.
Q So your testimony is, to this day The Ohio Central Railroad System can pass through over the #4 Main track under the Center Street Bridge and continue down to an interchange point with CSX?
A Correct.
Q And you don't know of that type of use stopping at any point in time during the last two years?
A No.
Q And your testimony is that that continues, in fact, to this day?
A In fact, I know there is four cars at interchange on the tail track today.
Q And when you refer to the tail track, you're referring to, oh, you're referring to the west side of the -- CSX?
A The west side, yeah.
Q And so what would be your expectation regarding the travel route of those cars?

A Our crew will come down to the locomotive shop, take our locomotive out to the interchange to the west.
Q At CSX?
A Grab those cars, and haul them across this route, including route, track 229, MVR #4 Main, into Haselton, and then out through CP Graham to the customers on the east end of the property.
Q And those cars are, do you know what customers they're bound for?
A Impact Metals and Lally Pipe, I believe.
Q And during the two years, the last two years, what has been the volume of use of these LTV tracks?
A Well, beginning in 2008 it was much higher when MHF was here, and AmeriGas, and whatever was going on with Cantar Poly. And I can't speak to that without looking back at the physical records.
So it's been going down since then, in particular since MHF is no longer around as a customer.
Q And is that measurable in any regard? I mean, have you either seen reports or talked to your employees regarding, for instance, the number of carloads, either per month or bimonthly, that travel across these LTV tracks?
A I get, I can get reports on monthly carloads for the MVRY, but the reports that I would look at wouldn't tell

me whether or not we're getting them at interchange from NS or from CSX. It's very hard to do that without getting into individual car records.
Q But would it give you an idea of what type of carloads are passing through --
A The volumes.
Q -- these LTV tracks right here going over Allied's property?
A If the cars were coming to us in the NS yard for Impact Metals and Lally, for instance, all we would be doing is getting our locomotive, which is housed at the locomotive shop, and bringing it through a route, getting the cars in Haselton, serving our customer and coming back, and then putting the locomotive back at the shop.
Q Right.
A So --
Q But that would be considered -- I mean, there is revenue generated from those activities?
A That's correct.
Q Okay. I'm just trying to get an idea if there is any way you can measure, either by carloads or some other measurement, what volume of activity currently is, you know, occurring with respect to these LTV tracks.
A I, I mean, I can tell you that the total carloads

on the whole MVRY are probably in a month 30 or less most months. I would have to get individual reports to figure out whether or not those cars came to us from CSX or NS. I guess that's my distinction.

And if they didn't come to us from CSX at that interchange, then they wouldn't go over this track. That's the part I can't quite get for you.

Q I understand. And you said "the whole MVRY." What do you understand that to be?

A From the west end lead track out to Struthers, basically the things in yellow on this map, plus the track continuing to the east on the other side of CP Graham.

Q Do you have an understanding of what the length of track or the mileage is involved for that area?

A I mean, I, it's -- I would be guessing.

Q But I mean, we're talking three or four miles?

A From end to end, I don't know. Maybe five or six.

Q But that's what you consider --

A That's what I would consider.

Q -- the scope of the MVRY?

A Correct.

Q So currently the only customers served by the MVRY are Lally Pipe and Impact Metals; is that accurate?

A No. Gateway Car Shop, Castlo Industrial is still served, as is Cantar Poly. It's just their volumes are not very high. We would call them an inactive customer, or close to it.

Q Cantar Poly?

A I think so. I don't, I don't remember the last time we had a car there. It may have been a year ago, may have been six months ago.

Q And what about for these other folks, Lally Pipe, Impact Metals, Gateway Car Shop?

A Those three in particular are the predominance of the business that we do on the MVRY.

Q So relative to the LTV tracks, I wanted to talk about how these customers can be served by the railroad company. You have already talked about how, you know, locomotive can go up and get cars at the CSX interchange and then bring them down to Castlo through the NS yard.

Is there any other route that can be taken, for instance, if your locomotives went out to the CSX interchange here on the west part of this Exhibit 4, could those cars be taken down the CSX track farther north of the Mahoning River and still make their way to your customers, Lally Pipe, Impact Metals or any of those?

A Not by us. We have no rights on that line.

Q So physically it could happen, if you had permission to do it?

A Yeah.

Q Okay. And what's involved with getting that kind of permission?

A You have to make a business case to CSX as to why they would let you out on their track to do that.

Q Is there -- well, I mean, you have been in the railroad business for a long time, correct?

A Yes.

Q Okay. The CSX line north of that Mahoning River is a main line, correct?

A It's a fairly busy main line, yeah.

Q What you operate as the MVRY is considered a short line railroad?

A Yes.

Q Is that right?

A Yes.

Q Okay. Do the short line railroads, in your experience, have occasion to operate over rail track that either they don't own or they don't control, and they have to get permission from another railroad company to move over?

A Yes.

Q And give me some examples of when that would occur.

A We, we operate over the Norfolk Southern in southern Ohio to serve a coal mine that we load coal at to come to a power plant on our railroad. And because the haul is so short, and it's so truck competitive, NS is allowing us to run, and we pay for the right to run on their railroad to serve their customers, bring that coal to our power plant, and we pay them in turn for that right.

Q Okay. So you made the business case to them, and they agreed? And --

A Normally what you would have is a two-line haul where we would put together a rate to our customer to move the business jointly where we would interchange. In this case there wasn't enough money to split between the two of us, and it was easier, and we could make the case that we could pay them something, just let us handle the business and make it more efficient to make it move. So there was a business case made, yes, to do that.

Q And in this case relative to CSX, do you have an understanding as to why they control that track, and you would effectively have to seek their permission to move over their track?

A That's exactly what I would have to do.

Q Yeah. But do you understand why that is?
A They own the track.
Q Okay. And how do you, how do you have your understanding that they own that track?
A I guess I am just assuming that they own it. I don't know, in fact, know that they own it. But they control and operate it, let's put it that way.
Q And would you have an understanding that they have common carrier obligations for that track?
A That's correct.
Q And in your experience, is it a case that only one railroad can have common carrier obligations for a stretch of track at one time?
A Yes.
Q Or can multiple? Okay. Just one railroad at a time?
A I have never -- I can't think of any example where there has been more than one. And I don't know if legally you can or cannot.
Q Okay. If the volume of business were to increase down here on the east with these customers to economically profitable levels, whatever that might be, could the business case be made to CSX to allow that type of movement over their tracks to enable you to serve your customers on

the east end of this Exhibit 4?
A I would guess that theoretically you could. But there would have to be a very strong case, and the volumes would have to be astronomically larger than they are today.
Q But it's tied to the volume of rail traffic?
A That, and the other economic considerations that might happen. You know, obviously the more business there is, the more willing they're going to be to work with us on solutions to find additional business. At the current volumes of a few cars a week, they're not going to ever get that.
Q Other than -- couple questions here. Physically as to how this route would occur, do you have an understanding as to, coming from the CSX interchange, how those railcars could get to the customers on the east end of Exhibit 4?
I mean, for example, does it involve coming down this CSX track and crossing over the river at some point through the NS yard to go east, or does it involve at points off this map to connect down farther?
A I'm not sure what the CSX layout is here. I would have to look at a map to be able to figure that out.
Q Okay. Do you know whether Ohio Central Railroad can make connection with the CSX either west or east through

the NS Haselton Yard --
A No.
Q -- physically?
A No.
Q You don't know that?
A I know that we cannot.
Q Oh, you know that you cannot?
A Right.
Q Why is that physically not possible?
A We don't have any rights to interchange with them through the Haselton Yard.
Q Okay. But I was stepping away from the rights issue. I was just talking about physically whether it's possible, given track, and infrastructure and that.
I thought I heard Mr. Feichtenbiner say that it would be possible to cross from the NS Haselton Yard and connect with the CSX across the river.
A Yes, physically. Provided there is enough money to do whatever you want to do with that, I guess physically you could find a possible way to do it. I mean, the probabilities and the economics of that would be just --
Q I understand. I understand your testimony in that regard. I'm just trying to get an understanding of what you know about the layout of these tracks, and how

physically they connect.
A Okay.
Q So do you have an understanding of whether physically The Ohio Central Railroad System can interchange with CSX through the NS Haselton Yard?
A Out into the area that you were talking about over here, or that Terry was talking about, which would be what, west of Haselton, I think Terry's testimony probably is as good as anybody's on that.
Q Well, I just want to ask you, though, if you have that understanding.
A I don't know it as well as he does. I don't know exactly where the lines of railroad used to be, nor how they cross each other.
Q What's the locomotive shop being used for these days? Anything?
A It has parts and some material in it, and that's about it.
Q Are there any operating locomotives over there?
A We have one operating locomotive that generally sits outside and is plugged in, into a heater unit. They may actually park it inside during the winter. I haven't been down there in a while to -- since winter started.
Q And that would be the locomotive used to go and

get the cars at the interchange?
A Yes.
Q Other than what you have described, any other uses for the LTV tracks?
A None that I know of.
Q Have there been, in the two years since the Genesee and Wyoming transaction, any storage or staging of railcars on these LTV tracks?
A I don't know specifically whether there has been a time. I do know from reading Terry's operating rules that that was not allowed. So I would assume, since Terry had his office just west of Center Street, that he would have been aware of any attempt to do so, and would have moved those cars, since he would have been here at that time.
Since Terry's left, I can tell you there has not been use of that track.
Q That's what I was going to ask. Is that edict still in effect, that there is no staging, holding, storage of cars?
A There are so few cars there is no need to, let's put it that way. I can't imagine us going out here and leaving anything on 220, which would have been the only place that you would have thrown cars.
We did have some cars on the MVRY Main #4 going

parallel to Poland that stubs here on the south side of the -- what do you call the building there?
Q Copperweld.
A The Copperweld. But we moved those out, I'm going to say last summer sometime when we got notice of --
Q Connection with the other case?
A With the other case, yes.
Q Say within the last six months, you know, going into summer 2010, do you know whether railcars have been staged or stored on any of these railroad tracks in the 270 yard?
A I believe there are still some, there may be some over there now, but not very many.
Q And what's the nature of those railcars?
A I would have to pull up the cars and look as to why they're there. I don't even know what's over there. Frankly, there has been so little activity out here, I haven't been on the property to drive through and look at the, what's on those tracks today.
Q Well, I mean, as the President of Ohio Central Railroad System, do you know whether that's permissible, to have cars staged or stored in the 270 yard?
A Yes, it is.
Q And do you know whether cars generally have been

stored or staged for customer use?
A Generally not.
Q Generally you don't know?
A Generally they have not been staged or stored for any significant period of time.
Q I'm going to go back to the notice real quick. We covered number four and number five, "Any authority issued by the Interstate Commerce Commission or the Surface Transportation Board which relates to the tracks which are subject to the LTV and/or P&LE Easements."
I understand you're not a lawyer, and I'm not looking for legal conclusions. But as part of your duties as the President, do you have any understanding of those issues?
A Can you be more -- what types of issues are you looking for?
Q Yeah. Issues relating to authority issued by the Surface Transportation Board regarding operating over the tracks subject to the LTV and P&LE easements.
A P&LE, I, I do not know what rights, if any, The Ohio and Pennsylvania continues to hold or not hold. We haven't operated over there. Whether they do or do not, I don't know.
Q Do you know what rights they ever had to operate

over there?
A Oh, I heard Terry's testimony.
Q But other than that, independent?
A No.
Q So the only reason you know they stopped November 30th, 2006, is because that was reported to you by either Mr. Strawn or Mr. Feichtenbiner?
A That's right.
Q And you have heard Mr. Feichtenbiner's contention that he believes, theoretically, that Ohio Central Railroad System can still operate over the LE&E main track? Did you hear that contention?
A I did.
Q Okay. And do you know whether that's true?
A I could not tell you one way or another on that.
Q Okay.
A Ohio and Pennsylvania, I used that, didn't I?
MR. McCREA: What's that?
Q Mr. Feichtenbiner, in connection with that testimony, he talked about a document that he saw Gordon Neuenschwander sign that, in his mind, gave a perpetual easement to The Ohio Central Railroad, and specifically The Ohio and Pennsylvania Railroad, to operate over the LE&E main track. Do you know anything about such a document?

A Only what Terry has told me.
Q Do you know whether any effort has been made to look for such a document?
A We have looked everywhere we could for any document even remotely related to either one of these two cases.
Q Do you know whether that document has been found?
A I do not believe it has been.
Q Okay. While we're on that LE&E main track, Mr. Feichtenbiner also talked about two periods of operation, from '95 to '96 roughly, and from '04 to '06. Do you have any knowledge regarding those periods of operation?
A No.
Q Do you have any knowledge regarding the ceasing of activity by The Ohio and Pennsylvania Railroad over the LE&E main track on November 30th, 2006?
A Nothing that you haven't heard from Terry that I wouldn't have heard from Terry.
Q Well, what's your understanding of why operations ceased at that time?
A The, they had the sale, or someone else started operating the Youngstown Southeastern after the business dried up.
Q Okay. Do you have an understanding of who holds

the common carrier obligations for the LE&E main track today?
A I do not.
MR. LIPKA: I'm just going to object to that. But go ahead. You answered already.
Q There is an intervener in this case. I think it's the Youngstown -- let me get the name.
MR. LIPKA: Let's go off the record for a second, if we could.
MR. GRIECO: Yeah.
(Whereupon, a discussion was held off the record.)
MR. GRIECO: Do you have that, Jake, their name?
MR. McCREA: The petition to intervene? I bet I do.
MR. GRIECO: Thank you.
Q Do you have an understanding that there is an intervener in this STB proceeding, Youngstown and Southern Railway Company?
A Yes.
Q And do you know whether they currently operate over the LE&E main track?
A That's my understanding, that they do. Actually, I know that they do.

Q And what do you base that on?
A The fact that we have an agreement with them to have their operating rights over the small piece of railroad that we own between Center Street and the start of their railroad, and we know that they have gone out to the east end of the property to interchange with CSX, I believe. Well, I don't know that. It could have been NS.
Q Okay. So you have an understanding that one of your railroad companies, specifically The Ohio and Pennsylvania, still owns track and property just west of the Center Street Bridge, correct?
A Yes.
Q And I believe Mr. Strawn also testified to a portion of track or property to the east side of this Exhibit 4 which Ohio and Pennsylvania owned as well. Do you recall that?
A Yes. That goes out to Castlo and whatever, whether it's Ohio and Pennsylvania or MVRY.
Q Right.
A They were parallel tracks. I guess the short line that Terry talked about was owned by the MVRY. Pennsylvania owned the other track.
Since then they have done some work, too, or before we came they did some kind of work to combine the

operation on those to simplify it.
Q So I'm just curious based on that ownership at both ends, and also your interaction with The Youngstown and Southern Railway Company. Do you have an understanding whether your railroad company, Ohio and Pennsylvania Railroad, or any of the other companies could operate over the LE&E main track if they needed to?
A I don't know. I really don't know.
Q You don't know because it's a legal issue?
A Yes.
Q Okay.
A We have not had a need to. I don't foresee a need to. But that doesn't mean that we don't have a right.
Q And I understand you're not a lawyer, but I guess given the uncertainties regarding some of the trackage rights in this case, and people talking about one-page documents that were shown in 1995 and among other things, I was just wondering whether you ever investigated yourself whether, in fact, your company had any rights to operate over the LE&E main track. That's just not something you have determined for yourself?
A I think we have looked for documentation to determine whether or not -- what rights and what documents that we, we do have to show what rights anyone has. There

are key pieces of documents that are -- would be awful handy to be able to put our hands on. Is that a fair way to put that?

MR. LIPKA: Handy is good.

Q I want to skip to number seven, the role played by SummitView, Inc., and Genesee and Wyoming, in the management of the other Respondents. Let me just ask that as a question.

What role, if any, is played by SummitView, Inc., and Genesee and Wyoming, Inc., in the management of the other Respondents, which include all the railroads?

A Genesee and Wyoming, Inc., is the parent company that owns SummitView, which purchased, when it purchased all of the Ohio Central properties. Genesee and Wyoming, Inc., has no employees. Neither does SummitView. But they're the -- it's the parent corporation for it.

Q Okay. You know, I think in part we covered this in your Gearmar deposition, but frankly, I don't know if it's clear on the record whether your answers applied to the tracks east of the Center Street Bridge. By implication they may have, but I'm going to ask you again.

Regarding these LTV tracks east of the Center Street Bridge, do you have any reason to believe that they qualify, in your experience, as main line tracks?

MR. LIPKA: Objection. You can answer.

A All I can say is they are the main route and the only active route that we have to move from one end of our railroad to the other. So that would qualify it as a main to me.

Q Okay. Are you aware of any --

MR. GRIECO: Let me back up and set a little bit of foundation.

Q Do you ever review any STB documentation, whether it's, you know, rulings, decisions, exemptions, anything like that?

A Ever? I mean, I have been in the business for over 30 years. There have been times where --

Q Let's talk within the last two years.

A No, no. I probably read the STB decision on the purchase of the Ohio Central. That's probably the last document that I --

Q Okay. Well, in connection with any document like that or any other similar document, do you know of any STB authority that would denominate the LTV track, LTV tracks as main line tracks or lines of railroad?

A I don't know.

Q I guess what I'm trying to figure out, and part of this is, you know, you're the company representative, and

what the company's position is.

A Right.

Q I guess if there is some document that you, as the President, are saying, hey, Allied, I got the right to do this, it's right here because, you know, the STB says these, these are main lines which carry common carrier obligations, and that trumps, and you know, that resolves the matter, do you have an understanding of any authority or document like that that speaks to that issue?

A The only documents that I --

MR. LIPKA: I'm just going to object. But you can go ahead and answer.

A Well, the answer is no. I mean, if I had those, I sure would produce it, and then I wouldn't be sitting here.

Q Well, I guess in the production -- and I'm not going to waste our time with this. There is plenty of STB-related documents. Some are older, some are new.

A Correct.

Q And we can all read those for ourselves. You know, I'm happy Ohio Central produced more. That's fine.

But I wanted to know from your, you know, just your perspective, as the President, whether in your review, you know, you had convinced yourself that there was

authority granted by the STB to operate these LTV tracks as main line railroad track over which you have a common carrier obligation.

MR. LIPKA: Just let me jump in. I know Dave has been privy to conversations with counsel at which this issue has been discussed. So I mean, I just would caution him to the extent he's learned anything through discussions with counsel. I thinks it's --

Q I don't want to impinge on attorney/ client communication. I mean, if you know in your business role as the President that there is a document that exists that gives you the authority to operate the way you want to, I would like to know that.

A And I would produce it, because it would get me out of this. I think at that point a lot of our issues would go away.

Q So you don't know of any such document?

A I don't know.

Q That's it for this. I'm going to show you what we will mark as STB 29.

(Whereupon, STB Exhibit 29 was marked for identification purposes by Attorney Lipka.)

Q Take a look at that, please, Mr. Collins. Let me know when you're done. And quite frankly, I'm really going

to question you about your affidavit portion of it, so you can read the first two pages if you want.
A Okay.
Q Mr. Collins, I have handed you what we marked as STB 29, which has a cover letter from your lawyer, but attaches an affidavit from you. I really want to just question you about the affidavit. Do you recall this affidavit?
A Vaguely.
Q Is that your signature on the second page?
A Yes, it is.
Q You had a chance to review the affidavit?
A Yes.
Q Do you still consider this affidavit true and accurate?
A For the most part.
Q Well, is there anything that you would like to correct that you feel is inaccurate?
A We just don't have as much, as much need for -- well, our business is down on the line; and therefore, the need of storage is limited.
Q All right.
A That staging or whatever you want to call it.
Q So let's just go through that real quick. There

is not much here. That's in part what I wanted to ask you about.
So if we start with paragraph three, it says, "The Defendants have stored railcars on these tracks in the past and have need to continue to store cars on these lines."
Let's first just talk about the statement that "The Defendants have stored railcars on these tracks in the past." What do you know about that?
A Which, which lines are we talking about?
Q I'm in paragraph three.
A Which lines?
MR. LIPKA: This affidavit supplements the previous one by Terry, which I think is an exhibit. So maybe --
MR. GRIECO: I can pull it out so you can have a context.
A I guess I'm asking, is it east of Center Street or -- I'm assuming it's the LTV east of Center Street?
MR. GRIECO: Well, go ahead, Tom.
MR. LIPKA: Part of that, I mean, this affidavit supplements a previous affidavit, which is in support of a motion to dismiss, so we might not know the answers to that without reviewing the motion to dismiss as well as the

previous affidavit.
MR. GRIECO: Well, I mean, here is the Feichtenbiner affidavit which it supplements, and the tracks --
Q I will hand this to you. The tracks that are being talked about are the ones covered by the LTV easement, which are the LTV tracks.
A East of Center Street.
Q Correct.
A Okay.
Q And yeah. At that time that's all that was involved. I think because you guys -- or there were different owners of, you know, the property west of Center Street Bridge. So it's talking about the LTV tracks and then the LE&E main track. I mean, you can look at Mr. Feichtenbiner's affidavit if you want.
A Okay.
Q Okay. So I mean, I will represent -- well, did you have an understanding when you made this affidavit that the tracks that you were talking about referred to the tracks involved in this case, the tracks covered by the, what we referred to as the P&LE easement and the LTV easement?
A Yeah.

Q Okay.
A I guess, yeah.
Q All right. So that's the tracks we're talking about. Okay. So I'm in the third paragraph, second sentence.
A Yeah.
Q "The Defendants have stored railcars on these tracks." I guess what do you know about that? What allows you to make that statement?
A Talking to Terry, since it was a historical issue, and he would have been the operator here.
Q Okay. And I mean, just real briefly, let's just take each set. I mean, regarding the LE&E main track, what do you recall him telling you? Not necessarily from today. I know you were here. But contemporaneously, you know, when you came into the business, what do you recall him telling you about what railcars they had stored on the LE&E main track?
A My understanding was they were holding cars because the landfill, whoever that was, couldn't handle them in the rate that they were coming, and they were using them on the LE&E to stage them to get them down there.
Q Okay.
A That's, that is my understanding.

Q And holding for how long? Do you have an idea of whether that involves like 48 hours? A week?
A I --
Q Was there ever explained to you?
A -- do not know. No.
Q Okay. Same question for what we call the LTV tracks just east of the Center Street Bridge.
A Well, the only track that they could have used would have been 220, because you had to keep your main line open to be able to traverse the property. And I, I think at different times they had had storage cars on there, but again, that would have been Terry that would have given me that information that I think he testified that they did use that as storage some.
Q Does the MVRY #4 Main become MVRY #1 Main, or run right into it?
A I think there is a switch that connects them. You can either go into Haselton Yard, or you can go onto the MVR 1 Main.
Q Now, you could go, in that scenario where you're taking cars from CSX and having your locomotive bring them down all the way to Castlo, let's say, you could come down through the #4 Main, get on the #1 Main and then go back down and hit the LE&E main track? Is that a possibility?

A Theoretically, again, yes. But the #1 Main is, is not in service beyond I think maybe 20 car lengths on the west end.
Q Why is that?
A Just track condition.
Q Do you know --
A And there was a right. We have permission from NS to be able to traverse Haselton, so there is really no need to have a second line of our own just to get out there.
Q You made me think of another question. Under that scenario where you're bringing cars down to the Castlo, and you go through the NS yard, that, that doesn't involve taking over cars from NS? I mean, you're, you're taking a car that's under your control from CSX, and it's under Ohio Central's control all the way to Castlo?
A Correct.
Q Is that fair?
A That's correct.
Q Okay. So under that type of scenario, when you go through the NS yard, you need permission to take those cars through there with your locomotive, right? You have to call ahead to NS to --
A We have to let them know that we're, we're going to be coming in. You call the yardmaster and tell him that you're coming through.

Q Okay. Is there any agreement or understanding with NS that allows that type of activity, that you know of?
A I can only say I assume there is. But I don't know that for sure.
Q And then what about payments of any type, whether direct or even indirect, is there any type of monetary compensation, fees, surcharges for NS associated with you passing through with your cars to get somewhere else?
A No.
Q Okay. Is that just done as a professional railroad courtesy?
A Well, generally we're going into Haselton as well. And we, if there is cars there, we would be coming down through with our CSX cars, picking up any NS cars as well and continuing on. So there is an interchangeability to -- that we would be, could be and would be performing if there was a need as we go through.
Q Kind of like a double duty?
A Yeah. We're not going to run one train just to run CSX cars and another train to run the NS cars. We're going to try to be efficient.
Q Okay. I want to go back to the affidavit. You continue your sentence and you say, "and have need to

continue to store cars on these lines." And I know you started to talk about this, but I want to get this clear for the record.
For the last two years, since late '08, what has Respondent's need to continue to store cars on the LTV tracks, and let's just talk about those right now, what has the need been to store cars on the LTV tracks been?
A Well, in 2009, which is what we're talking about, right?
Q Well, the last two years.
A Right. In particular we still had MHF as a customer, and some of the other customers that were in the 270 yard and on this 292 track that were there. So there was, there was traffic and customers being served out on those yards, as well as we had some cars that were up at our Youngstown Belt up in Girard, and the other side of Youngstown that V and M Star was -- is the largest customer we have in the Youngstown area. And their business, basically they shut down for three months, and the railcars that we had in service for them all came home at the same time, and we were running out of room . So we had some cars that we were holding. I don't know specifically whether we held them on track 220 or not.
Q Yeah. Because I thought -- I didn't -- I just,

I'm not trying to trick you. I just want to get straight what happened.

We started off, earlier in your deposition I asked about for the last two years have any cars been stored or staged on the LTV tracks east of the Center Street Bridge. I believe you said no.

A Yeah. Well, I could be wrong on that, for that period of time in the summer of 2009 when we had the flood of cars before the business went away.

Q So okay. You're not sure? There may or may not have been cars --

A There may have been.

Q -- stored?

A I can't tell you. I know we had cars that we were -- held in here, and we were running out of room. And when we had the issue with your folks complaining about the use and, on the other case, we had to move cars over here and park them on our main line over on the Castlo side to try to get them off of property. And that was a disaster. Because they were leaving cars parked on a main line, as you can well imagine, that whenever you want to serve a customer, now you got to deal with these cars every time you want to do it.

Q What main line was that?

A Over here.

Q What's it called?

A I don't know. It's a short line or the Struthers lead, probably the Struthers lead.

Q And that's track owned and controlled by --

A Ohio Central.

Q -- Ohio Central?

A MVRY effectively.

Q Okay. Did there come a point in time when Ohio Central did not have any need to store railroad cars on the LTV tracks east of the Center Street Bridge?

A Yeah. Sometime after as, as V and M Star, we got busier, we moved cars out. MHF went away. Our AmeriGas contract went away. So you're down to what you have today.

Q Okay. And currently there is no need to store or stage cars on the LTV tracks east of the Center Street Bridge?

A We have not been. Right, correct.

Q Okay. And that's probably been the case for about the last year or so?

A I would guess at least the last year.

Q You then say, "Storage of railcars on tracks is a necessary and common practice in the railroad industry." What did you mean by that?

A I'm not sure that we were making a distinction at the time between storage and staging. But holding onto cars on the property is something you have to do for your customers, and you may end up storing some cars. And it's something that railroads do all over the country.

Q Okay. And they do it because they're managing their customer business, and customers sometimes aren't ready for the railcars?

A Can be.

Q Is that the primary reason?

A That's, that's why you would stage cars, yeah.

Q And what's the primary reason that kind of drives the issue of storage?

A I think Terry did a fairly good job of explaining what we, what we would term in the railroad industry as storage.

It's car owners that have fleets of cars that have been active that, for whatever business reasons, throughout the country the demand for those types of cars goes away, and now they have got to have a home to put them on. So they contact railroads across the country, and they say, hey, I have got 200 center beam flat cars because there is no housing industry going on that normally haul wood, and there is no use for them, they're clogging up the system,

where can we put them to get them out of the way.

So they contact a short line, and they say, hey, we got empty track somewhere, we can throw them in here and leave them there for an extended period of time.

Q In your years -- and you have 25 years' experience?

A Thirty.

Q In your 30 years' experience, when a railroad needs to stage cars on railroad tracks, where is the railroad able to do that? Is it limited to doing that on its own tracks which it has exclusive control over and there is no other traffic? Can it be done on other tracks under certain circumstances?

A Certainly on any track that you own and control you can.

Q Okay. So let's move beyond that then.

A If it was somebody else's track, depends on the arrangement that you have with the owner of the track.

Q Okay. So in your 30 plus years of experience, do you have any knowledge of railroad cars being staged from one railroad company on a piece of track that is either owned, or dominated or primarily run by another railroad company? Does that ever happen?

For instance, let me ask a better question. I

know this has been kind of conversational, but I'm just trying to get through this stuff a little faster. You talked about that example with the --

A Flat cars.

Q No. The power plant.

MR. LIPKA: Coal mine.

Q In the coal mine where you're talking about your railroad is a short line railroad operating over other railroad track.

A Correct.

Q Okay. Can you think of any situation where any of The Ohio Central Railroads have to stage cars on another railroad's track? Is that something that ever happens?

A The only example that I could maybe give on that is if, depending on the types of interchange, arrangements that you might have between two railroads, big railroad giving cars to a small railroad with limited tracks, you can fill that railroad up so much that they can't move.

So you may have the other railroad holding cars, waiting for the other guy to clear so that he can continue to operate. That's happened occasionally.

Q Okay. And typically what does that arrangement entail? I mean, would there be some type of fee or surcharge?

A Not, not generally. Not generally. Because you're both involved in the, the freight haul, which is where the money is made by doing the freight haul. You're going to go talk to that guy and say, hey, I'm flooded, they have got a problem with their unloader or whatever, the cars are backing up, hold onto these for a while. And generally they just do so until you work that through the system.

Q Understood. Let me ask it this way so I just have the -- we can close the loop. Can you think of any situation where a railroad would stage cars on another railroad's tracks and would have to pay something in order to do that?

A You know, I think in the example that I gave you, if, if the railroad that was holding onto the cars was not involved in the freight haul, they would probably say, wait a minute, these aren't my cars.

Q And what would they do?

A They may, they may come to you and say, either you take them or we're going to bill you something for them. And I don't know.

Q Do you know of situations like that occurring?

A I don't know of any that I can think of.

Q Okay. With the railroads that you're involved operating, when we talk about staging cars then, does

staging really only occur on tracks owned or operated by your railroads?

A I think that's probably true. I can't think of any place where it's not, right off the top of my head.

Q And then of course with storage, though, that's different. If you're storing cars for somebody, there is going to be a revenue component to that?

A Yeah.

Q If you turn to the next page, you say, "The easements at issue are used by Defendants in interstate rail commerce. Forcing the Defendants to cease the storage of railcars, upon demand of Plaintiff, or pay for the right to store railcars, would negatively affect the Defendants' use of the rail lines in question and would greatly interfere with the Defendants interstate rail operations."

I guess my question to you, and let's just talk about today, how would forcing Ohio Central to stop storing or staging railcars on the LTV tracks east of the Center Street Bridge interfere with Defendants' interstate rail operations?

A Today?

Q Yes.

A It wouldn't. Because we're not doing it, and we don't have a high demand.

Q Would it have had any such effect in late 2008, early 2009 when there was a little heavier traffic?

A The spring of 2009 when that was heavy, yeah, we would have been, we would have run out of places to put cars.

Q So how would that have greatly interfered with Defendants' interstate rail operations?

A If I don't have a place to be able to run my train, or to switch cars out on a track and get them in order to get to customers, I can't serve them. You get plugged.

You have to, if you're going to switch a track out, you have to have a place to sort cars out. You don't get them in bunches from the Class 1s. You're not going to have the first three cars for MHF, the next 10 cars for somebody else. They're going to be just helter-skelter. You're going to have to be able to go through, sort them out. And that takes multiple tracks to be able to do so.

If those tracks are all filled with cars, you have got no place to put anything.

Q Is there a common term in the railroad industry that refers to the location where that type of sorting and ordering of cars occurs?

A It's generally what a yard is built for.

Q Called a yard?
A Switchyard.
Q What's a switching station? Would that be a switching station?
A Yeah. I guess you could use switching station. Switching yard is usually what you would call it. I don't know if I ever heard somebody say switching station.
Q I know Tom has probably rolled his eyes in the past when we have issued written interrogatories trying to get an idea of within so many mile vicinity of this location where we're at today where there is other switching stations. But let me try to pose a question to you in that regard.
Let's take, let's take a 20-mile radius here of where we are today in Youngstown. What other switching stations, yards, some location where this type of activity occurs which will allow for the sorting of railcars, as you have described? Where are any of those type of locations located that The Ohio Central Railroad System can make use of? Do you know of any?
A Very, very limited ability to do much of anything up on the Youngstown Belt. There is only a few tracks up there for doing it. And again, that's basically how we handle our V and M Star business. But other than that,

within 20 miles, we don't have another, we don't have anything even close to this little yard anyplace else in the area. This may be the second biggest yard that The Ohio Central System has, believe it or not.
Q And what do you refer to the yard that handles more of the cars for the V and M Star?
A It's Youngstown Belt Railroad. They don't have what I would call a yard. They just have some sidings, and along their, their main line that they use to piece things together. It's pretty sad that a four-track yard is the biggest yard we have got.
Q And just for completeness sake, with respect to the P&LE or the LE&E main track, there certainly would be no interstate rail ---
MR. GRIECO: Well, let me restate it.
Q There certainly would be no negative impact on interstate rail operations to The Ohio Central Railroad System if it was precluded from stopping, staging or storing cars on that track today?
A I can't think of a reason.
Q I show you what we will mark as STB 30.
MR. LIPKA: You want to take two minutes, Tim?
MR. GRIECO: Sure.
(Whereupon , a short break was taken, and STB

Exhibit 30 was marked for identification purposes by Attorney Lipka.)
Q Mr. Collins, I have shown you Exhibit STB 30. Before we get to that, I wanted to just ask you another question, and you will have plenty of time to look at that document. We're just going to look at bits and pieces of it. But I had a question.
Going back to staging and storing railcars on other railroads tracks relative to this vicinity, and particularly the Norfolk Southern Railroad and the CSX Railroad, are you aware of any situation where Ohio Central Railroad System cars have had to be staged on either the CSX or NS Railroad tracks?
A Well, I guess you would have to -- let me explain what happened even yesterday. We have four, I think it's either four or five cars, I'm not sure, out on the tail track that we went to move yesterday, and the locomotive wouldn't run, so we didn't move them yesterday. They're on an interchange track. Do you call that staging?
Q What is an interchange track?
A It's a track that's jointly used by either carrier to move and hand off cars between.
Q Who owns the track?
A Depends on the, on the track. If we're doing

interchange in the Norfolk Southern's Haselton Yard, they own it. I believe we own the tail track there.
Q The CSX tail track, is that --
A Yeah, actually, I think we own it. I don't know without having to go through all the documents and figure out exactly where the dividing line is between us and them as to whether or not those cars are there. I think I remember Terry's testimony or Bill's testimony, Mr. Strawn that is, about holding cars in Haselton to go to The Youngstown Southeastern when they had that flood of cars for the waste facility. But beyond that, I don't know.
But there are times when we don't go to interchange every day at NS. If we're not there every day, then I guess you could call that they're staged there.
Q Would that staging in any way interfere with traffic on the CSX main line?
A If it did, they would be all over us about it.
Q So it doesn't?
A Right.
Q And you may recall I questioned Mr. Strawn regarding some things he said in his prior deposition, and I re-questioned him regarding storage of cars in the Norfolk Southern Haselton Yard.
Do you have any understanding of as to whether

The Ohio Central Railroad System has ever stored cars in the Norfolk Southern Haselton Yard?
A I wouldn't know that. I think it would be unlikely that they would do storage as we are talking, where third party car owners would be stored on tracks that aren't yours.
Q Okay. What I have shown you of STB 30 is the Reply of Respondent. Do you generally recognize this document?
A Yeah.
Q On the last page, is that your verification saying that the foregoing is true and correct?
A Yeah.
Q That's your signature?
A Yeah.
Q I want to ask you about a couple of the responses.
MR. GRIECO: What's wrong?
MR. LIPKA: My name is on it. I'm not sure I have ever seen this. But it's just kind of funny.
Q Let's talk about six real quick, because this is an issue. It's been floating around. And if any time you want to see the complaint that this answers, I will provide it to you.

MR. LIPKA: You said page six, Tim, or paragraph?
MR. GRIECO: Paragraph six, page four.
Q The allegation in our original petition said, Allied is informed and believes, and therefore, avers that SummitView, Inc., and Genesee and Wyoming are the owners, operators and corporate parents of the railroads which operate as The Ohio Central Railroad System. Okay.
You answered, "Denied as stated. SummitView is the corporate parent of the Respondent railroads, and GWI is the indirect parent of the Respondent railroads." I believe you have already talked about that.
Then you say, "Neither SummitView or GWI is an 'operator' of the railroads or their properties." What does that mean?
A That the operator is the railroad itself, and that they are not -- they're just a, the parent to the operator.
MR. LIPKA: I'm just going to object to the extent that, you know, although Mr. Collins certainly verified them as being true and correct, I think we're all aware these were actually prepared by counsel. So when you say, "you did this" or "you did that," I don't know if it's a distinction without --
MR. GRIECO: Well , I'm not trying to put the

full -- you know, there is factual averments in here, and that's why I needed you to verify it I take it. So I just want to ask you about what you were verifying.
A Okay.
Q Seven, the petition described, well, made the following statement: Allied Industrial and Allied Erecting are the owners of parcels of commercial property located in Youngstown, Ohio. Collectively the Allied property, the Allied property was a former location of an LTV Steel Company, Inc., plant which has been decommissioned and demolished.
The answer to number seven says it denies, and says, Further, Respondents believe that the property described is the, as the "Allied property" included various facilities, and not just the "LTV Steel Company, Inc., plant."
Do you have a recollection as to what other facilities are being talked about here, not just the LTV Steel Company, Inc., plant?
A I do not recall.
Q Number 10, there was an allegation stating that the tracks which are subject to the LTV Easement Agreement are not main line rail lines, but instead are spur, side or industrial tracks, and were used only in connection with the

former industrial uses of the Allied property and the adjacent industrial properties.
The answer denies that, and the statement made is as follows: "On the contrary, the tracks include 'lines of railroad' that are part of the interstate rail network, and which have been, and continue to be, used by The Mahoning Valley Railway Company to perform its common carrier obligations."
Do you have an understanding of what "lines of railroad," in quotes, means?
A I believe that's a legal term for, used by the STB. But it would be anything involved in the interstate rail network, under my understanding of that term.
Q Okay. Based on your understanding of that term, "lines of railroad," what as far as railroad tracks falls outside of that? Do you have an understanding?
A Not a common carrier line of railroad.
Q Okay. Can you give me an example of a non-common carrier line of railroad?
MR. LIPKA: I'm just going to object. You can answer, Dave.
A Within a -- well, I don't know. I don't know where. I guess it would be property that is privately owned, I would, I would guess, not, not under a common

carrier.
Q So a common carrier -- well, a railroad that has a common carrier obligation owns the property over which the lines of railroad traverse?
A Ask, ask that again.
Q Well, I'm not sure I understand your answer.
A I got the phone call in the middle of that, so my mind may have --
Q Okay. Let me go back. You said, you said there were examples of non-common carrier lines of railroad, and I asked you, could you give me an example of that.
A Okay.
Q And so I guess, can you answer that?
MR. LIPKA: I'm just going to object. Go ahead, Dave.
A My understanding of a non-common carrier line would be something that is owned by a party that would have use of its own private railroad system or track.
Q And what does that mean? That they would actually own what, the property underneath the track, or they would have to own the track as well?
A Track.
Q Own the track?
A Yeah.

Q So that's an important component, owning the track itself?
MR. LIPKA: Same objection.
A Yeah.
Q Okay. So I'm going to give you a hypothetical. If there is a stretch of track, and I'm not a railroad, but I own the property on which the track traverses, and I can show I own the track, then under your definition, that would not be a common carrier line of railroad?
A No.
MR. LIPKA: Objection.
A I think you flipped the, the answer.
Q Okay. How did I screw it up?
A You can have a privately owned piece of track that is still common carrier, but you -- the inverse is not necessarily true. If it's privately owned doesn't mean it has to be a common carrier. You can have it be, but it doesn't have to be.
Q Okay. So --
A A non-railroad owned piece of track could still be part of the railroad infrastructure and line of railroad.
Q Okay. So here's the question. What, in your 30 years of experience, makes a line of railroad tracks a common carrier line of railroad?

MR. LIPKA: Objection.
A This is a question, in my 30 years of railroading, that may be the first time I have had to answer that. It's not exactly a --
Q First time as a lawyer I have had to --
A You know, ask the question again so I'm clear, if you would, please. Sorry.
MR. GRIECO: And I'm not doing this -- can she read it? I would gladly repeat it to you. It's just, as the afternoon fades, I would rather have her read it.
(Whereupon, the last question was read back by the court reporter.)
MR. LIPKA: Same objection.
A That it's operated by a railroad. I guess that would be my distinction, that the railroad is operating it.
Q Well, what does it mean for a railroad to operate a line of railroad? I mean, I'm trying to break that down, because we know that railroads operate over certain tracks that don't have common carrier obligations, right?
A Yes.
Q Okay. So the mere fact that the railroad company moves over those tracks doesn't mean it's -- there is a common carrier obligation.
A So they would have been given authority to

operate by the STB on those tracks.
Q Okay. So from your experience, it just goes back to STB authority?
A Yes.
Q And as we covered, you're not aware of any explicit authority or not relative to the LTV tracks regarding common carrier status?
A I don't know how to answer. I don't know the answer to that.
Q Okay.
A Actually, it would have had to have been related to the STB on giving the MVRY or the sale of the MVRY, I would imagine. But from LTV to whoever.
Q Now, you understand that LTV owned MVRY at one point, right?
A Yes.
Q And your contention in this case is that the LTV tracks over which the MVRY travel do have common carrier obligations?
A Yes.
Q Okay. Can you tell me of any reason that you know of as to why LTV, when it sold the property to Allied, would need to get an easement agreement for railroad operations if it had the right to continue its common

carrier function over those tracks?
MR. LIPKA: Objection.
Q Do you know of any reason why LTV would have to insist on Allied giving an easement back so that its --
A I don't, I don't.
Q So it's clear for the record, I'm not trying to interrupt you. So its wholly owned subsidiary, MVRY, could continue to operate over those tracks?
MR. LIPKA: Objection.
A I can't give you a legal reason. But I can tell you that that's not uncommon when the ground under, underneath the railroad has sold, that there would be a retainment of an easement.
Q But from your company's position in this case, that's really not necessary, correct?
MR. LIPKA: Objection.
A I don't know if it is or not. That to me is a legal answer.
Q Okay. But I'm just going for your understanding. Do you believe that, I mean, isn't it necessary, logical extension of your position that the MVRY company, back in the mid '90s after the sale of the property, underlying property from LTV to Allied, could have still operated over these LTV tracks because it had common carrier obligations?

MR. LIPKA: Objection.
A That would be my position.
Q Doesn't it follow from that that they didn't need the easement agreement?
A Then I would probably agree with you there.
Q So you -- okay. Based on that discussion, though, can you give me a reason as to why a railroad or owner position, such as the LTV was, requested an easement agreement back to it as part of the transfer of the property?
MR. LIPKA: Objection.
A I don't know how to give you a good answer on that, other than that's my experience that that's not uncommon to have happen.
Q This case started out talking about the easement agreement. We attached it to the original complaint filed in State court. We attached it to our STB petition.
Do you, as the company representative, believe that your rights to move over the LTV Company are in any way restricted or governed by the easement agreements that have been marked as STB 1 and STB 2?
MR. LIPKA: I object. Same objection.
Q I mean, I'm sure you have probably seen those. But --

A I have. But it's getting long. Sorry. The question again?
Q Yeah. I mean, is it your company's position that these two documents in any way govern the railroad's ability to move over the tracks involved in this case, or are they just irrelevant?
A Well, they do dictate who operate, use, maintain, repair, restore, replace and abandon. Those are beyond just operating. So there is, there is a reason to have these beyond just have the right to operate.
Q Well, your understanding, the easement allows one to move over another's property actually?
A Right.
Q As a right-of-way, correct?
A Correct.
Q Okay. Do you believe The Ohio Central Railroad System, for instance, relative to the LTV tracks, needs an easement today --
MR. LIPKA: Objection.
Q -- to, to move over the LTV tracks?
A Again, that's a legal question that I don't, I don't know the answer.
Q But in your business understanding, dealing with deals and acquisitions of railroads, I want to know, as a

business guy, whether you tell your people or even tell your lawyers, hey, we got to get easements to make sure we can do what we want to do. I mean, I assume you have been in that type of situation where you have to make sure you put the right agreements in place so you can operate the way you want to?
A Right.
Q And I guess what, from what you have seen of this situation, from a business perspective, do you have an understanding that you need easement agreements in place to move over Allied's property?
MR. LIPKA: Same objection.
A I'm trying to think of other times when we have had this situation. And almost all the time that you're purchasing a property that does have the easement, the easement would come in if you were -- or having to have a need would be if you were building a new rail line or doing something that doesn't already exist, which is very rare. In those cases you're, you're, you would probably have an easement to define limits by which you have the right to operate, either by width or length, and then responsibilities for things like maintenance and liability issues , those types of issues.
Q Have you ever dealt with a non-exclusive

easement? Have you ever heard that term?
A I know what non-exclusive means.
Q What do you take that to mean?
A That whatever you, as the party to the easement, aren't the only one who could have use of that easement.
Q Other people or entities could use the easement as well?
A Yes.
Q And these easements were for railroad tracks, correct?
A Correct.
Q Okay. Do you agree with me, if Ohio Central is blocking a track with railcars, that other individuals or entities would not be able to use those tracks, right?
A Not necessarily.
Q Why do you say that?
A They're -- I mean, they could use adjacent tracks. They could move the cars on the tracks. We, we have effectively joint use of tracks in the Haselton Yard. Both of us can use those tracks and move cars around. We don't -- just because it's non-exclusive doesn't mean that you're the only one, once you put a car there, that it's nailed to the ground and no one else can move it.
Q Look at paragraph 11, if you would, Mr. Collins.

It says, "The LTV easement was retained so that LTV's subsidiary railroad, MVRY, could continue to use the tracks and to perform its common carrier obligations, and not merely to serve the LTV Electric Welded Tube facility." What do you base that statement on?
A Which part of the statement? That it is not merely to serve the LTV electric weld tube?
Q Yeah.
A The fact that there are other customers of the MVRY.
Q You have been present for the depositions where we have gone over both the Transportation Services Agreement and the Stock Purchase Agreement, correct?
A Yeah.
Q The Transportation Services Agreement was marked as STB 5.
A Okay.
Q Do you recall that? I will show it to you. I'm just trying to -- take a look at STB 5.
A I mean, ask me a question.
Q I figured after I was talking about this for three different depositions that you guys would have covered this. But I mean, have you seen that document before?
A I don't recall seeing it.

Q Okay. As part of the due diligence with the GWI acquisition of Ohio Central Railroad, you don't recall becoming aware of a Transportation Services Agreement like the one before you?
A No.
Q And I mean, prior to this document coming up in these depositions, was that a document that you ever reviewed or --
A No.
Q -- discussed? STB 4 is a Stock Purchase Agreement. Do you recall ever reviewing or discussing that document prior to it coming up in these depositions?
A No.
Q Okay. Wouldn't that be an important document to look at in acquiring The Ohio Central Railroad in terms of it showing what, what the MVRY consisted of when it, when it was purchased in 2001?
A Well, evidently.
Q We have looked at a section in this agreement that's 3.2.5, and it says basically The Mahoning Valley Railway company will not have a right to operate within the Youngstown Facilities, except as provided in the Transportation Services Agreement. Did you have any understanding of any such restriction?

A No.
Q At any time prior to these depositions?
A No, I did not.
Q Okay. If you turn back to the STB 30, the Reply, page five, actually, we already covered that in past, paragraph 13. The good news is, looking back, we already covered those once. I was going to get you through looking at those allegations, so you can put that away.
You're aware from the other case that Allied purchased properties west of the Center Street Bridge in the vicinity of the Copperweld facility?
A Yes.
Q And you admit that there is presently no customer that the MVRY has west of the Center Street Bridge, correct?
A No active customer.
Q So there is only one customer west of the Center Street Bridge, and that's Cantar Poly, and you consider them inactive?
A Yes. At this time.
Q And Allied is not a customer of MVRY, correct?
A Not yet. There is always hope.
Q Did you have an understanding that the LTV tracks --
MR. GRIECO: Strike that. I withdraw the

question. I guess off the record for one second.
(Whereupon, a discussion was held off the record.)
MR. GRIECO: So I have handed counsel documents produced by Ohio Central Bates labeled R 1248 to R 1371, and my understanding is we have a stipulation that those documents are authentic, genuine documents that come from the Respondents' files, and are true and accurate?
MR. LIPKA: Yeah, that's correct.
MR. GRIECO: Okay. And then there was a document R 1 that was similarly produced from the Respondents' files, and that also is authentic and genuine documents from Respondents; and the information, at least from the Respondents' standpoint, is true and accurate on that document?
MR. LIPKA: When you're done, Dave.
You know, Tim, I will certainly stipulate that this is a document that Respondents created. It appears to be a compilation of data obviously taken from other underlying documents, and you know, it's, the information here is true as far as we know it or we wouldn't have put it here. So it's from our files. I'm not sure what else you want as far as that is concerned.
MR. GRIECO: Okay. Do you know which -- or you

can't tell what purpose this one was for, I mean, what this just shows generally? This says carload report.
MR. LIPKA: I mean, I'm guessing at this point, so I guess I can't stipulate to it, but I'm guessing that this was produced in response to a request of what is the carload traffic serving the clients of the MVRY for this respective time period, it's like 2005 through 2007. So that's what the data appears to be. But I would have to, I would have to talk to some people before I could stipulate to that.
Q Mr. Collins, is there any document similar to that that could be produced for, you know, '08, '09, 2010?
A Yes.
MR. GRIECO: Okay. I mean, I guess just for the record, if that's not too much of a hassle, I would request that. I think Mr. Collins said before that that would be the only way he could tell what the carload volume would be is to look at a report like this.
MR. LIPKA: I mean, if that's a document that, if there is documents that we keep in our regular course of business which, Dave, I guess we do as far as that's concerned, then yeah, we will turn it over for you.
A We have monthly carload reports. We just have to put it in that format.

MR. GRIECO: Okay. Give me one second off the record. I think we're done. I just want to make sure.
(Whereupon, a short break was taken.)
Q STB 27, have you ever seen that document?
A Earlier today.
Q That was the first time you saw it?
A Yes.
MR. GRIECO: Okay. Can I just have that pile back? Okay. That's all the questions I have, Mr. Collins.
MR. COLLINS: Thank you.
MR. GRIECO: Thank you. Thank you for coming in.
MR. LIPKA: He will read.
(Deposition end time is 4:00 p.m.)
* * *

REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY that the above and foregoing is a full, true, and correct transcript of all the testimony introduced and proceedings had in the taking of the within named deposition, as shown by stenotype notes written by me, in the presence of the witness, at the time the said deposition was being taken.

Cynthia M. Nibert
Registered Professional Reporter

STATE OF OHIO)
) SS CERTIFICATE
MAHONING COUNTY)

I, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above named MR. DAVID COLLINS was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was written by me in stenotype in the presence of the witness, and by me transcribed; that the transcript of his testimony will be made available to said witness for signature; that the said witness shall read said transcript and affix his signature, at the end thereof, and that the said deposition was taken pursuant to agreement and at the time and place therein specified.

I do further certify that I am not of counsel, attorney or relative of either party or otherwise interested in the event of this action or proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Youngstown, Ohio this 28th day of December, A.D., 2010.

CYNTHIA M. NIBERT, NOTARY PUBLIC
My Commission Expires 11/09/15



EXHIBIT

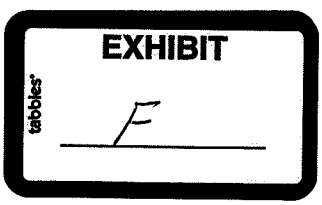
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SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION

DOCKET NO. FD 35316

ALLIED ERECTING AND DISMANTLING CO., INC.,	)	
Petitioner	)	DEPOSITION
VS	)	OF
THE OHIO CENTRAL RAILROAD SYSTEM,	)	MR. TERRY FEICHTENBINER
Respondent	)	

DEPOSITION taken before me, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, on the 17th day of December, A.D., 2010, pursuant to Notice, and at the time and place therein specified, to be read in evidence on behalf of the Petitioner in the aforesaid cause of action, pending at the Surface Transportation Board, Department of Transportation.



APPEARANCES

F. TIMOTHY GRIECO, ESQ., and
JACOB McCREA, ESQ.,
On Behalf of Petitioner

THOMAS J. LIPKA, ESQ.,
On Behalf of Respondent The Ohio Central Railroad System

RONALD KOPP, ESQ.,
On Behalf of Terry Feichtenbiner

Also Present:

David Collins

INDEX

Caption and Appearance 1
Stipulations 5
Reporter's Certificate 109
Notary Certificate 110

- - -

Witness	Exam	Attorney	Page
T. Feichtenbiner	Direct	Mr. McCrea	6

- - -

STB EXHIBITS

23 - Copies of photographs Bates stamped A_0001 to A_0043
24 - 8/9/05 letter to Terry Feichtenbiner from Christopher Opalinski
25 - Affidavit of Terry Feichtenbiner Support of Defendants' Motion for Summary Judgment
26 - The Ohio Central Railroad System, Youngstown Division, Operations Bulletin No. 01, Date issued 0001, January 1, 2007
27 - 8/6/81 Interstate Commerce Commission, Finance Docket No. 29658(Sub-1), 46 FR 40097

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Reported and Transcribed by:
Cynthia M. Nibert
Registered Professional Reporter

STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that this deposition may be taken at this time, 9:00 a.m., at the offices of Allied Consolidated Industries, Youngstown, Ohio, with the usual Notice to Take Deposition having been served.

It is further stipulated and agreed that the deposition may be written in stenotype by Cynthia M. Nibert, a Notary Public within and for the State of Ohio, and a Registered Professional Reporter, and by her transcribed; that the transcript be made available to the witness for signature, and that the witness shall read the same and subscribe thereto, and that the deposition may thereupon be used on behalf of the Petitioner in the aforesaid cause of action.

* * *

WHEREUPON,

MR. TERRY FEICHTENBINER

Of lawful age, being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

By Mr. McCrea

Q Good morning, Mr. Feichtenbiner. My name is Jacob McCrea, and I'm counsel for Allied Industrial Development Corporation and Allied Erecting and Dismantling in this case. Could you please state your name for the court reporter.

A Sure. Terry L. Feichtenbiner.

Q Thank you. Sir, you have been deposed before in this matter, and this deposition is a continuation of your deposition taken on April 14, 2009.

To reiterate what was explained on that day, I'm going to be asking you a series of questions. You need to respond verbally so that your answers can be properly recorded.

If you don't understand a question, please ask me to rephrase it, and I will be happy to do so.

A I understand.

Q I know you have been deposed a number of times,

so I won't go over the ground rules at length. But if you don't understand, just ask me to rephrase.
A That will be fine.
Q Just to clarify something, you're being represented here by Mr. Ron Kopp; is that correct?
A That is my understanding.
MR. KOPP: He is being represented personally, although I'm not involved in representing any of the parties in this case.
Q Okay. And my understanding is also, just so the record is clear, that Mr. Lipka is not today acting as your counsel?
A That's my understanding.
MR. LIPKA: Just for the sake of semantics, I mean, as a high-ranking former officer of the company, Jake, I will be honest, I haven't put any research into that, but I do think there is privilege issues between Terry and I at a minimum; and obviously, I just represent the company here, and I will put my two cents in as it pops up.
MR. McCREA: I guess if we could get to the bottom line question then, are you saying that you are representing Mr. Feichtenbiner right here right now? Or --
MR. LIPKA: Yeah. I think there is some dual representation certainly where Ron is representing him on an

individual basis; and again, as a high-ranking corporate officer of my clients, although a former officer, you know, I am certainly claiming privilege as to any discussions that I have had with Terry.
And then I think during the -- well, we will leave it at that. I'm claiming privilege, but I guess I'm technically here on behalf of my clients, who are the corporations.
MR. McCREA: Thank you for that clarification. I don't ask that to be difficult, but really instead just to get to the bottom of who is representing who. Thank you.
Q Mr. Feichtenbiner, did you do anything to prepare for today's deposition?
A I just reviewed prior transcripts of my deposition.
Q Okay. And would those, that would be for one the deposition taken in this matter on April 14 of last year?
A Yes.
Q Okay. Sir, did you also review your deposition of December 15 of last year in the separate lawsuit regarding Allied's purchase of property from Gearmar Properties?
A Yes, I did.
Q Okay. Sir, what is your home address?

A 213 Diana Drive, Poland, Ohio.
Q Okay. So you haven't moved since the last time --
A No.
Q -- your deposition was taken?
A Same, same address as prior depositions.
Q Okay. Am I correct that you left the employment of Ohio Central -- when I say "Ohio Central," I mean The Ohio Central Railroad System -- including all the subsidiary entities, on August 23, 2009?
A That is correct.
Q Okay. Sir, are you presently employed?
A I am active, let's put it that way.
Q What does that mean?
A It means that I am not employed by a bona fide company, but I am active in my own business.
Q So you're self-employed?
A That's correct.
Q And if you don't mind me asking, what's the nature of your present self-employment?
A It involves railroad transportation.
Q Okay. Since it involves railroad transportation, could you clarify that for me, or provide some of the background details?

A I would rather not go into a tremendous amount of detail at this stage of the game. But I can say it involves railroad operations.
Q Okay. Well --
A But nothing in this area, absolutely nothing in the Mahoning County area.
Q Okay. Well, perhaps we will follow up on that. So that we're clear, today we're going to be discussing, in large part, property that sits east of the Center Street Bridge, although some questions may apply to property which also sits west of the Center Street Bridge.
We have in front of you The Mahoning Valley Railway Territory-West End map.
MR. McCREA: Do we have another copy of this handy?
MR. GRIECO: Yes. Want me to put it in front of the witness?
MR. McCREA: Yes, please.
Q Mr. Feichtenbiner, do you recognize this map that has been placed in front of you and marked as Defendant's Exhibit 4?
COURT REPORTER: I'm sorry. Could I take a minute for my technical difficulties?
MR. McCREA: Sure.

(Whereupon, a short break was taken.)
Q Mr. Feichtenbiner, do you recognize the map that's in front of you and marked as Defendant's Exhibit 4?
A Yes, I do.
Q Okay. Were you involved in the preparation of this map?
A Yes, I was.
Q Okay. Could you describe for me generally how, how and when it was created?
MR. KOPP: Before you answer that, let's just make sure that there is an understanding on the record that the deposition, as it exists right now, was copied with a lot of handwriting and so on that's been placed on the, on the map previously, I believe in other depositions. And I just want to make sure that the record was clear that that's the exhibit that we have in front of us, and it is. I think it's identical to the actual Exhibit 4, but I don't know that.
MR. McCREA: Yeah. The document that I have in front of me is the actual Exhibit 4 that was first used, I'm almost certain, at Mr. William Strawn's deposition in early 2009.
MR. KOPP: All of that is fine. I just know that we add onto Exhibit 4 as we go along, and I just wanted to

establish the baseline that there is handwriting on Exhibit 4, and go from there. That's all.
MR. McCREA: Correct. You are correct. It's made an appearance as an exhibit in numerous depositions.
MR. KOPP: But perhaps in different forms is what I'm saying. So I just, I'm concerned about that, and I just put it on the record that there is handwriting on it. So go ahead.
MR. GRIECO: In that regard -- not to interrupt, Jake.
I wonder if we can get an understanding, Tom, as to what can be used from the prior litigation. Of course there were depositions in this very case in State court.
MR. LIPKA: Right.
MR. GRIECO: There were depositions in the Gearmar case. And I'm just noting your letter from December 6. Am I correct in my understanding that you are willing to stipulate that the depositions in those other cases may be used in the record in this STB case?
MR. LIPKA: Well, what we were willing to -- the purpose of the letter that we sent was to offer up Dave Collins's and Mark Hastings's deposition transcripts from the Gearmar case in an attempt to simply abbreviate or shorten as much as possible David's deposition today.

What we didn't want to do was for you guys to have to ask him any of the same questions that were asked in those transcripts just because they were in a different litigation and you didn't think you might be able to use them. So --
MR. GRIECO: Understood.
MR. LIPKA: With the caveat that I am hopeful that it will shorten today, yes, we can use David's and Mark's depositions from the Gearmar case.
MR. GRIECO: Okay. I think the same principle applies to Terry as well. There was questioning in the Gearmar case that did spill over to some of the issues that pertained to this case. It would shorten today's deposition if we're able to use that deposition as well in these proceedings.
MR. LIPKA: I don't, I don't have a problem with that. So that's fine.
MR. GRIECO: Okay. And would that apply to Bill Strawn as well?
MR. LIPKA: Well, I mean, Bill Strawn's is over.
MR. GRIECO: It is. I forgot to ask.
MR. LIPKA: Let me, I'm assuming I probably wouldn't have a problem with it. Let me take a look at Bill's before I agree to that.

MR. GRIECO: Okay. Thanks.
Q (By Mr. McCrea) Very good. Sir, before that colloquy on the record, there was a question posed to you about your role in producing this document here. Could you just explain that briefly?
A In my position as General Manager of the Youngstown Division, I wanted to be able to educate people on how the railroad laid out and how all of its individual territories interacted.
And the railroad division was essentially broken up into five individual territories, and the Mahoning Valley Territory was one of those five. And because of its size and detail, it was broken down into two maps, as we had explained before; the west end of the Mahoning Valley Railway territory, and the east end of the Mahoning Valley territory.
Q And the east end of that territory is by and large not visible on this map?
A That's correct. This, this map is indicative only of the west end. And the east end is a totally separate map.
Q Okay. By the way, that brings me to my next question. Are you in possession of that map?
A I don't have it, no, sir.

Q Okay. At the time that you departed from Ohio Central, was Ohio Central in possession of that map?
A Yes. There would be copies available at that time.
Q Okay. Are there any other maps like this pertaining to, for example, The Ohio and Pennsylvania Railway or any of the other Ohio Central Railroads that comprise the Youngstown Division?
A There was a Google Earth image similar to this for each one of the five territories.
Q Okay. Let's talk a little bit about your job duties while you were at Ohio Central. Am I correct, sir, that you weren't involved in seeking any authority from the Interstate Commerce Commission or the Surface Transportation Board regarding the railroad's right to operate over various lines and tracks?
A That is correct. I was not involved with any of that sort of handling, no.
Q Okay. Are you saying you had no involvement whatsoever, or that your involvement was relatively minor?
A I had no involvement whatsoever.
Q Okay. With that said, are you aware of any authority issued by either the Interstate Commerce Commission or the Surface Transportation Board allowing The

Mahoning Valley Railway to operate over any of the tracks reflected on this map?
A I was never privy to any document or ruling on that, no, sir.
Q Okay. Let's talk a little bit about the tracks that are identified as the LE&E tracks. Here on the map, down at the bottom of the map, we have the LE&E Main track, the Allied lead, what's referred to as the LE&E stub, Center Street pocket, LE&E siding. Do you see that area on the map?
A Yes, I do.
Q Okay. Sir, are you aware of any mileposts on this map that would be on this map regarding these tracks, the LE&E tracks?
A In my time with Ohio Central, my involvement with this portion of the railroad, no, I never was aware of any milepost designations.
Q Okay. If we look at the LE&E tracks which are east and also west of the Center Street Bridge, where do these tracks connect to other tracks that are owned by Ohio Central? Let's start with the west and then go down to the east.
A Okay. At the west end the LE&E Main track ultimately ties into, end to end the LE&E lead, which then

ties into what has typically been referred to as The Youngstown and Southern Railroad, or Railway, whichever.
Q Okay. That Youngstown and Southern Railway, I understand that, and correct me if I am wrong, that it is a 35.6 mile, give or take, railroad line from Youngstown down to Darlington, Pennsylvania?
A That's a good approximate estimate, yes.
Q Okay. Let's go down to the east end of the LE&E Main track, sir, and the question is the same. Where down at the east end of this map does the LE&E Main track connect to other tracks that are owned by Ohio Central, if at all?
A Well, I would answer that by simply saying that its connection with our other Ohio Central territory, which is The Ohio Central Struthers lead, is via Norfolk Southern's Control Point Graham.
Q And that Control Point Graham is owned by Norfolk Southern?
A Yes, it is.
Q And does Ohio Central -- I should say, do any of the Ohio Central companies have authority either contractual or from the STB to pass through that control point?
A At, during my time with The Ohio Central System, we did have authority to operate through and over that territory of Norfolk Southern, yes.

Q Okay. And I see at the far right side of the map the OHCR Struthers lead. Now, that Struthers lead, is that part of the Mahoning Valley Railway Territory?
A It was what we actually referred to as part of The Ohio and Pennsylvania Railroad. But it was part and parcel of what was used on a daily basis for the Mahoning Valley as well.
Q Okay. Is there a point on this map where The Mahoning Valley Railway Territory would end and The Ohio and Pennsylvania Railway Territory would start?
A The Mahoning Valley Railway Territory, on this map, would be, for instance, Mahoning Valley #1 Main, #2 Main, #3 Main, #4 Main, 220 track. Did I already say #4 Main? I believe I did.
Q You did.
A 239, 240, all of the 270s, that would be 273, 275, 274, 277, 279, 280, 292, 265 and 294, and in addition to the 265 track, I believe it was 264 and 263. It's been written over there on the map, so I don't recall. It's been a long time, so I don't recall that number.
Q Sir, where is the #2 Main?
A I recall that from my other deposition that I pointed out that it was an error on our part that #2 Main line was inadvertently omitted when we made the map. It is

parallel to a portion of #3 Main east of the Center Street Bridge.

In fact, if you look there, #3 Main is right alongside the river. You can see railcars standing on a track real close to the river, and then if you look closely enough, there are railcars standing directly parallel to those, and those would be #2 and 3 Main line. Now, I don't recall which one was closer to the river.

Q Okay.

A It was 2 or 3. But that was our omission.

Q So the bottom line is, there are actually two tracks there, #2 Main and #3 Main?

A That's correct.

Q Okay. Am I also correct that, if you start on the #3 Main and head west toward the City of Youngstown, approximately where that line hits the Center Street Bridge, that the track is torn up and impassible?

A That is correct.

Q Okay. Is it correct that both the #2 and #3 Mains are torn up and impassible?

A First let me qualify my last statement when I said that the track is torn up underneath the Center Street Bridge. It was when I left the company in 2009. I don't know if it is now. But the #2 track diverges -- or

converges, I should say, into #3 just east of the Center Street Bridge, if I remember correctly.

And at this moment I don't recall if that switch was, was damaged or not, but I know that the single track portion underneath the bridge was not passable in 2009.

Q Okay. These tracks that we have discussed, the LE&E tracks, the LE&E stub, LE&E lead, LE&E Main tracks, do they connect at any point with The Norfolk Southern Railroad? Or --

A The, the only track of those that you listed that actually connects with Norfolk Southern is what's labeled as the LE&E Main track.

Q Okay. And is that connection at the CP Graham interchange?

A Yes, that is correct.

Q Okay. That's on the east end of the map. Regarding the west end of the map, though, these LE&E tracks do not connect with any Norfolk Southern tracks?

A No, sir, they do not.

Q How about any connection between these LE&E tracks and the CSX Railroad, are there any connections between those two bodies of tracks reflected on this map?

A None of the LE&E tracks have a direct connection to CSX.

Q Okay. You say there is no direct connection. Is there any indirect connection?

A I would not call it a connection. But I would say that you can get from the LE&E Main tracks to CSX via The Ohio Central Struthers Industrial.

Q Which is where on the map, sir?

A That is the yellow track that heads on east from Control Point or CP Graham.

Q Okay. So somewhere to the east, if one were to take the Struthers lead as it's reflected on this map, one could connect to the CSX tracks?

A That would be the most fluid way, yes.

Q Okay. Could you describe for me your understanding of when the -- well, let me back up and ask this question first.

During the time that you were with Ohio Central, did any of its railroads operate on the LE&E Main track?

A In two different periods of time during my employment with The Ohio Central System, we operated over the LE&E Main track, that's correct.

Q Okay. And when you say the LE&E Main track, we're talking exclusively about the track that runs on Allied's property as reflected on this map?

A Now, I would describe it as extending the LE&E

trackage that extends from CP Graham west to the extremity of the LE&E lead.

Q Okay. And going farther, further to the left to the Y&SE Railroad, at what periods of time -- well, let me ask this.

What periods of time? You say there were two periods of time. What were they? Or when were they, rather?

A From the time that I became employed with Ohio Central System, September of 1995 through approximately October of 1996.

Q Okay.

A And then again beginning in December of 2004 through November 30th of 2006.

Q Okay. Let's start with the first period. Under what circumstances or what set of rights did that operation take place?

MR. LIPKA: Just objection to the extent you're looking for some legal conclusion. Terry, you can certainly answer.

A The Ohio Central System was operating the Youngstown and Southern Railroad as its Ohio and Pennsylvania Railroad. And so in order to access The Ohio and Pennsylvania Railroad, which on this map it also would

be synonymous with where we see too the Y&SE Railroad, it was necessary to use the LE&E trackage.
Q So the Y&SE Railroad, just to reiterate what was said before, that's the 35 mile, give or take, line down to Darlington?
A Yes. That is, that is an entity that's operating that line, or was operating that line at one time.
Q Okay. So The Ohio Central Railroad System took over the operation of that line from some entity?
A In 1995 at some point prior to my employment, my understanding is that that is correct, that The Ohio Central System took over the operation of that line, and did so under the flag of The Ohio and Pennsylvania Railroad.
Q Okay. And when that operation ended in October of 1996, was there any specific reason why that occurred?
A Economically, commercially it was just not feasible to continue the operation.
Q Okay. Let's go to the second period, December of 2004 to November 30, 2006. Could you describe for me the background circumstances of The Ohio and Pennsylvania Railroad, I presume, taking over the operation of these tracks at that time?
A Yes. Once again, Ohio Central System used its Ohio and Pennsylvania entity to operate what was always

known as the Youngstown and Southern Railroad, also referred to on this map as the Y&SE. We did so at the request of the Ohio Rail Development Commission, and did a considerable amount of rehabilitation to the line, physical rehabilitation to the track and so forth, and commercially developed it, and ran the railroad, as I say, until November 30th of 2006.
Q When you say "commercially developed it," could you clarify?
A Built, built the traffic base up, customer traffic volume.
Q Okay. The customers, I take it, were all on the Y&SE Railroad going down the line down to Darlington?
A They were on the Youngstown Southern, again, what's referred to as the Y&SE here, that is correct.
Q Okay. Could you list those customers for me, to the extent you recall?
A The closest customers in were Banner Supply and Wester Supply, and then had Signal Rail Terminal, and then we had -- bear with me just a minute here -- Total Waste Logistics. And then the final one or last one on the line was Darlington Brick.
Q Okay. And Total Waste Logistics, is that a landfill?

A That is correct.
Q What kind of landfill is that, if you --
A Construction and demolition debris at the time that I was operating the railroad.
Q Okay. You say there was an end date to this operation period of November 30, 2006. Why did the operation of the railroad end at that time?
A Traffic began to diminish. And once again, it became economically and commercially not feasible to continue the operation.
Q Okay. Setting aside the economics of it, do you have any knowledge of whether The Ohio and Pennsylvania's legal right to operate over that track ended at that time?
MR. LIPKA: Objection.
A I wouldn't be able to comment on that, simply because all I know is that we made a corporate decision to exit from the operation.
Q Okay. And during those two periods of operation that you mentioned, was there any, any entity of The Ohio Central Railroad, other than Ohio and Pennsylvania, that operated over these tracks?
A No. We, we always considered it to be The Ohio and Pennsylvania Railroad.
Q Okay. And was there any other time period that

Ohio and Pennsylvania operated over these tracks? By that I mean the LE&E tracks.
A Not in my time with The Ohio Central Railroad System.
Q Okay. Were railcars stored or staged on these LE&E tracks, either during the two periods that you mentioned or at any other time period?
A During the time period, the second time period I should say, from December of '04 through the 30th of November 2006, because of traffic levels at certain times during that period of time, it was necessary to stage customer traffic at various locations on the LE&E trackage.
Q Okay. Where would those locations have been, number one? And forgive me for asking a compound question. But are those locations reflected on the map, number two?
A First, the LE&E trackage that would have been involved with our staging operations are on here, and primarily it was the LE&E siding. And then we also at times used the Allied lead, and to a much lesser degree the Center Street pocket.
Q Okay. Was there a point in time where the Center Street pocket became inoperable or the tracks were unable to be used?
A That is correct.

Q Okay. If you know, why did that occur?
A It involved some overloaded cars. And I don't remember the time or the date.
Q But overloaded cars damaged the tracks?
A That is correct.
Q Okay. Were they Ohio Central cars, or cars that were under the charge of Ohio Central?
A They were customer cars, and we were handling the cars for the customer.
Q Okay. Were they loaded with construction and demolition debris?
A That is correct.
Q Okay. Did the railroad ever use the LE&E stub for storage or staging of cars?
A We would use that for staging empty equipment on its return to Youngstown, to the Youngstown area for movement to Norfolk Southern and CSX.
Q Okay. Could you explain for us the difference between storing and staging?
A Staging is typically when equipment is stopped at a given location and held pending further disposition by the customer or the equipment owner; and storage is typically, for an, for example, when the equipment is not needed, or it has been decommissioned, so to speak, and is not in use.

Q Okay. And you testified to some staging of cars on this property. So the record is clear, was there any storing of cars on the property as well? "The property" being the LE&E tracks.
A No, sir.
Q Okay. Was exclusively used for staging?
A That is correct.
Q Okay. In any given week, how often would cars be staged on the LE&E tracks?
A That's real difficult to, to give a, an accurate answer, because railroad transportation is very sporadic. There were times when the tracks would be used perhaps for several days consecutively, and then there would be times when the tracks would not be used consecutively for days on end. It just, it was very cyclical, and with no particular meter or form.
Q And I take it it was largely a function, if not entirely a function, of business and traffic volume on the tracks?
A That is correct. Totally tied to traffic volume, ebb and flow of traffic.
Q Okay. So it sounds like, in any event, depending on your traffic levels at various points in time during the operation over these tracks, railcars with construction and

demolition debris had to be staged on the LE&E tracks that you have described earlier?
A Yes, that is correct.
Q Okay. Would The Ohio and Pennsylvania recognize any revenue or income from being able to stage cars on these tracks?
A No, sir. Not -- none whatsoever. The cars were owned or perhaps leased by the consignee, and we had absolutely no recourse of storage fees or anything like that.
Q Okay. And I take it the cars were staged here on the LE&E tracks as a byproduct of, number one, as you have said earlier, the traffic volume; but I take it, two, there was an element of simply a lack of space that necessitated the storage of?
A Oh, lack of space?
Q Yes.
A That's correct.
MR. LIPKA: Objection to the characterization of storage in the question.
MR. McCREA: Pardon me. I meant to say staging.
A Yes. The lack of space primarily at the destination.
Q Okay.

A Because it was, traffic came in at times at a much greater rate than the destination could absorb it.
Q Regarding the Y&SE Railroad, Y&SE Railroad to the west on the map, and also the LE&E tracks, at any of the points in time that these were operated by Ohio and Pennsylvania, was there any other operator of the tracks, for example, another railroad?
A Not that I recall. The, the Y&SE was established upon our departure from the line in November, on November 30th of 2006. They assumed the operation of the line after we left November 30th, 2006.
Q Okay. Do you know whether they also assumed the common carrier obligation --
MR. LIPKA: Objection.
Q -- on the Y&SE line?
A I would not have any knowledge of that.
Q Okay. Do you have any understanding of the meaning of the term the Interstate Rail Network?
A Interstate?
Q Interstate, yes. As opposed to intrastate.
A It would connotate to me just simply the railroad network of the United States as it ties together from state to state.
Q Okay. That's, that's your own definition off the

top of your head?
A That is correct.
Q Okay. We have talked a little bit before in prior depositions about the different types of tracks. As I understand it, tracks can be industrial tracks, spur tracks, lines, main lines and perhaps other definitions. Could you define to me what your understanding of an industrial track is?
A It's a very general term that is used throughout the industry, throughout the railroad industry to just simply define trackage that is used primarily for the purposes of serving industry.
Q Okay. Regarding these, the LE&E Main track and also the other LE&E tracks here, do you have any opinion on what you consider these tracks to be?
Well, let me ask this. Are these tracks here industrial tracks?
A I would say they would fall under that heading, yes, sir.
Q Okay.
MR. LIPKA: I'm just going to object to the extent you're looking for a legal conclusion.
MR. McCREA: Understood. Thank you.
Q Let's switch gears here and discuss what we can

refer to generally as the LTV tracks. And let me put some meat on the bones of that for you.
We discussed generally all of these tracks that are labeled MVRY. You went through the litany of them earlier in the deposition.
Unless I say otherwise, let's assume we are talking about the MVRY tracks that appear to the east of the Center Street Bridge. Sir, regarding these tracks, are you aware of any mileposts on them?
A Were there mileposts?
Q Yes. Were there mileposts? Are you aware of any?
A Not, not to my knowledge, no.
Q Okay. Let's expand the question a little further. Looking at the entire map, whether we're talking about the LE&E tracks, the LTV tracks or any other tracks which may appear on here, are you aware of any mileposts on any of the tracks that are reflected on this map?
A Not that I'm aware of, no, sir.
Q Okay. As part of your job duties, could you give me an overview of what, what your job duties had to do with, with mileposts, if, if at all? Is that something that you generally worked with, or is it something that was more handled by the guys who were on the ground and the trains?

A Mileposts are just a very general designation or labeling of various tracks to enable reference to be made to a given location on a track for any number of reasons. Like for instance, if there is a defect on a track that needs to be called to the attention of a train, they would use a milepost designation to describe it.
Q Okay. These LTV tracks that we have talked about here east of the Center Street Bridge, can you articulate for me how they connect, to the extent that they do, to other tracks that are within The Mahoning Valley Railway territory?
A Well, the Mahoning Valley tracks that are east of the Center Street Bridge of course connect directly to the tracks that are west of the Center Street Bridge via #4 Main and number 239 track. And looking east of those MVR tracks of course converge over near the west end of the Norfolk Southern Haselton Yard, which is the big green, light green shaded area. They converge into, as the map indicates, Mahoning Valley Railway #1 Main, and that #1 Main continues on down east and then converges into the LE&E trackage.
Q Okay. With respect to connections with CSX, are there any connections between the LTV tracks and CSX on the east side of the map; or is that, as we discussed before, would get there indirectly by way of the OHCR Struthers

lead?
A Yes. To reiterate what we spoke about earlier today, that is correct. It would be via use of the Struthers Industrial to go east to CSX.
Q Okay. And then on the west end, is there or is there not a connection between this 294 track and the CSXT main tracks?
A Yeah, that is correct. And we called that the tail track, the MVRY tail track interchange with CSX.
Q Okay. Let's talk a little bit about storing or staging cars on the LTV line east of the Center Street Bridge. Was that done at any time?
A Yes, it was.
Q Okay. What time periods were those?
A I cannot recall right now what time period accurately it was that we purchased the additional trackage from the Mahoning Valley or that were The Mahoning Valley Railway tracks from LTV. But it was sometime in the early to mid 2000s.
And we used those tracks variously to store equipment up to approximately late 2005 or early 2006, I believe is what I have testified previously.
Q Okay. You say the tracks were used to store equipment. What kind of equipment?

A Railroad rolling stock, such as boxcars, tank cars, covered hoppers, that sort of thing.
Q Okay. So various railroad cars of various types?
A That is correct.
Q Okay. Were the LTV tracks east of the Center Street Bridge also used to stage cars?
A At times, yes.
Q Okay. And like the use of the LE&E tracks, was that likewise a function of lack of space on the one hand, and customer needs on the other?
A Could you say that question again? I'm sorry.
Q Let me -- I'm sorry. Let me rephrase it. Well, let me ask a question to you. Why were cars staged on the LTV tracks east of the Center Street Bridge?
A As I have testified in earlier depositions, The Mahoning Valley Railway Territory was very much a hub of our operation because of our locomotive shop and so forth located there. There was a lot of traffic that came and went, and traffic that would need to go to The Ohio and Pennsylvania Railroad.
And for instance, we used the number 220 track commonly as a staging track because of its open connection at both ends and so forth. Likewise, the MVRY #1 Main, the western most 12 or 15 car lengths of that were used as a

regular staging area.
Q Okay. And was that a function of a lack of, lack of storage space, so to speak?
A Well, it was staging. So when you stage equipment, you stage it where it is convenient to its next move. So 220 track was very convenient because, as I said a moment ago, it has a connection at both ends; so therefore, a locomotive could get to it at both ends.
Q Okay.
A Depending on the next move that was going to occur.
Q We have talked about the #1 Main, we talked about the 220 track. Was the MVRY #3 Main, or the #4 Main or the 239 track ever used for storing or staging?
A Well, specifically #4 Main from its east end where it converges with #3, from that point westerly on #4 Main to where it intersects with 239, that was, once again, as I have testified historically, that was very much a thoroughfare. It was a traffic track, a thoroughfare.
It was where cars -- I'm sorry, locomotives and locomotives with cars would come and go from Mahoning Valley Territory.
Q Okay. Let's delve into that a little more. When you say they were coming and going, where were they coming

from, and to where were they going?
A Any number of locations could have been coming from territory way to the east in The Mahoning Valley Railway Territory. They could have been coming from the Norfolk Southern Yard. They could have been coming from other Mahoning Valley trackage west of Center Street, and so forth.
Q Okay. I asked this question before about the LE&E tracks, but I have to ask it about these LTV tracks as well.
Was any revenue earned on the staging or storing of cars at those locations?
A There were cars that were stored there that, yes, were, were being stored for the car owner at given rates.
Q Okay. What were the rates?
A I, I do not know what those rates were.
Q Do you have any approximation, with the caveat that it would be an approximation?
A First, it's been a long time ago, and I really don't want to speculate at this point.
Q Okay. Well, do you have any records that wouldn't be speculating?
A I would not have any records.
Q Okay. Would The Ohio Central Railroad have any?

A There would have been records in my time at The Ohio Central, but I have no idea if they would maintain those records now.
Q Okay. Which customers would -- were these cars stored on behalf of?
A Once again, it would be the car owner.
Q Okay.
A And there were multiples of car owners that I would say were dispoing, giving disposition to their equipment to have it shipped in for storage. And that, again, is in line with what we have testified previously.
Q Okay. So to perhaps put a finer point on this, The Ohio Central Railroad had some customers -- and I'm being general here in addition to trying to be specific. The railroad had some customers. The customers had some cars. The customers needed the cars to be stored somewhere, and The Ohio Central Railroad would store them on these LTV tracks?
A I wouldn't refer to them as customers. They, I would refer to them as car owners. And because those tracks were our tracks through, purchased from LTV, we used them for storing the equipment.
Q Okay. Your position is that The Mahoning Valley Railway actually owned the tracks themselves?

A That is correct.
Q Okay. What do you base that on?
A What I was, information that I was given by Bill Strawn, the President of the company.
Q Okay. Do you have any independent information about ownership of these tracks that doesn't come from Mr. Strawn?
A Are you saying information that did not come from Mr. Strawn?
Q Correct.
A No, I do not.
Q Okay. So if Mr. Strawn happens to be incorrect in that information, you would, you would stand corrected, so to speak?
A I would stand corrected.
Q Okay. I don't mean to be flip about it. I just want to get to the bottom of it.
A No. I understand.
Q Let's talk a little bit about this Norfolk Southern Haselton Yard. Is it Haselton or Haselton?
A Haselton.
Q Haselton, okay. Did Ohio Central ever store cars in that yard?
A No. That, that was a yard that was in flux 24

hours a day, seven days a week. And you do not use an interchange yard as a place to store equipment.
Q Okay. Was any -- did Ohio Central ever stage any cars in those yards?
A Absolutely. And I have testified to that previously as well.
Q Okay. Well, then let's delve into that a little more. Were there any fees paid to Norfolk Southern in connection with Ohio Central's staging of cars?
A Say that again. I'm sorry.
Q Were any fees paid to Norfolk Southern for being able to stage cars in this Haselton Yard?
A Not that I'm aware of.
Q Okay. They let you do it for free, as far as you know?
A It's an interchange yard. And once again, I, I recall we went through quite a discussion on this in the previous deposition. In an interchange yard it's where multiple railroads -- in this case it would have been more than two railroads. But it was Norfolk Southern and let's say The Mahoning Valley Railway were interchanging traffic, Mahoning Valley to the Norfolk Southern, Norfolk Southern to the Mahoning Valley.
And as soon as we, the Mahoning Valley, would

deliver cars to Norfolk Southern, the cars did not just get moved instantaneously. They might stay there for 24, 36, 48, 60 hours. Likewise, when Norfolk Southern would interchange traffic to us electronically, we either would not have a train movement, or the customer didn't want the traffic right away, or some other operating condition would cause those cars coming to us to stand as well for maybe 12 hours, 24, 60, whatever. And that's very common in an interchange point.
Q Okay. What you're saying is, notwithstanding all of that, no money changed hands in connection with the cars sitting there for 24 or 48 hours?
A Not that I'm aware of. And I'm not aware of any arrangement in an interchange situation that would cause that to occur.
Q If that did occur, would you be the gentleman from Ohio Central who would have known about it, or was there someone else there? Perhaps Brian Freeman? Rick McCracken?
A I likely would have known about it, but I wouldn't say absolutely. But I likely would have known about it.
Q Okay. If a train from The Mahoning Valley Railway is coming from the east on this map on the OHCR

Struthers lead, is there any way that the train can connect to CSX without going across Allied's property?
A This is another point that I recall from previous depositions. I will tell you that physically it is possible because of existing track structure --
Q Okay.
A -- to move a train or engine from the OHCR Struthers Industrial onto the Norfolk Southern main track to an intersection with CSX at Center Street, which is right here, roughly that area right there.
Q Just a little west of the Center Street Bridge on --
A That is correct. There is an intersection there between Norfolk Southern and CSX. However, I will emphasize, as I did previously, that that is not going to occur, because it would economically be impossible to make it work. And that's, again, what I explained before, because of the charges that would be involved, plus there is the concept of competitive traffic.
Why is Norfolk Southern going to allow us to handle traffic that they have nothing to do with over their lines to get to their direct competitor, CSX?
Q Okay. Let's go through some -- do you need to take a break at all?

A No. Doing fine. Thank you.
Q Okay. Let's take a look at some documents here.
MR. LIPKA: Just off the record for ten seconds, if we could.
MR. McCREA: Sure.
(Whereupon, a short break was taken.)
Q Sir, I'm going to hand you a copy -- let's back up. I have a few follow-up questions. Regarding the tracks that we have discussed as the LE&E tracks, do you have any knowledge or understanding as to who actually owned those tracks that we see on this map?
A Specifically which LE&E tracks are you referring to?
Q Everything that's seen on the map, the LE&E stub, LE&E lead, Center Street pocket, Allied lead, LE&E Main. Let's say to the extent that they go down to the CP Graham interchange, because you already said that CP Graham owns that, I think, LE&E siding.
A All right. From, from my understanding, the LE&E Main track, starting down at Control Point Graham at the east end coming west, inclusive of the LE&E siding, the Allied lead, those are all owned by Allied Erecting. And our operation over those tracks, my understanding, was always covered by a document that I saw back in 1995 over

the signature of Gordon Neuenschwander from the Pittsburgh and Lake Erie that gave us the easement to operate over those lines.
Q Okay.
A And then the LE&E lead, a portion of that and the Center Street pocket, it was always my understanding was owned by The Ohio and Pennsylvania Railroad.
Q Okay. So your understanding is that -- well, I don't want to put words in your mouth. But your understanding is that Allied's ownership of the tracks starts at or around the Center Street Bridge?
A Somewhere in the vicinity of the Center Street Bridge. From there easterly, and I would add that the LE&E stub, I would say it is within my understanding, is owned by Allied Erecting.
Q Okay. Just the Center Street pocket and the LE&E lead, your understanding is that they're owned by Ohio and Pennsylvania?
A That is correct.
Q Okay. Going back to the LTV tracks, there was some testimony before our short break before about car owners storing, rather, Ohio Central storing cars on those tracks on behalf of owners. And do you recall the names of any of the owners?

MR. KOPP: Objection to the form of the question. But go ahead and testify.
A It would be speculative if I started reeling off car owner names, because I am aware of large railcar owners, owning companies.
Q Okay.
A And I could name those, but I would not be certain that they were ones that had equipment stored by Ohio Central.
Q Well, if you wouldn't mind doing so, with that caveat and clarification, I would be pleased to know the answer.
A Well, for instance, there is General Electric Capital, they're probably one of the largest. General Electric has purchased a lot of other companies like Pullman Leasing and so forth. Those are the two that would come to mind right off the bat.
Q And these are companies, correct me if I'm wrong, but companies which actually owned cars that are used in the railroad industry, and they actually own the cars themselves rather than those cars being owned by, say, The Ohio Central Railroad, or CSX or Norfolk Southern?
A In a very general sense, yes. But there are a lot more details that I understand are involved.

Q Okay. Well, just for my own edification, what are some of those details? Leases?
A There may be subleases. There might be other owners that are involved and so forth that, that's the way I would describe it.
Q Okay. So it's not a situation where, you know, like our personal automobiles, by and large I imagine we all own our own personal cars, but that's not always true with railcars; is that correct?
A That is a good way to explain it, yes.
Q Okay. Great. Let me hand you this set of pictures here.
MR. McCREA: I apologize. I don't have copies for everyone. But we can mark this as the next exhibit in the STB series.
(Whereupon, Exhibit STB 23 was marked for identification purposes by the court reporter.)
Q Mr. Feichtenbiner, I will hand you what's been marked as STB 23, and ask you to take a look at that set of pictures in there.
MR. LIPKA: I'm sorry. That's the only copy you have right now is the one that Terry has?
MR. GRIECO: Do you want to see it first?
MR. LIPKA: I can walk over next to him. But is

it Bates stamped?
MR. GRIECO: They are.
MR. LIPKA: These are the ones, you guys sent these over to us three years ago? Or --
MR. McCREA: Yeah. They should be Bates stamped 1 to 43.
MR. LIPKA: I know in the past in discovery you turned over photos, and just looking at the Bates stamps, these appear to be those. But if you don't know offhand, that's all right. Sorry.
A I understand that you would like me to page through all of these?
Q Yes. Take a look at them.
A All right. I have taken a look at all the pictures.
Q Thank you. First question, sir, is: Do you recognize, having looked through the pictures, any of those pictures as having been taken on either Allied's property?
A A number of the pictures appear to be construction/demolition loads on LE&E trackage.
Q Okay. Are you able to identify what LE&E trackage those loads are from?
A In some of the pictures that are taken from a perspective much further back, I can perhaps determine where

they are. But many of them are up too close, and obviously can't tell from that.
Q Okay. They don't give you a sufficient point of reference for the geography?
A Not all of the pictures, no.
Q Okay. Would you agree that those are, many of those are pictures of construction and demolition debris that was stored or -- rather, staged, as you have testified, on LE&E's tracks, the LE&E tracks?
A They appear to be railroad cars holding construction/demolition debris, and some of the pictures appear to be on what I recognize as LE&E trackage.
Q Okay. Are any of those, can you tell if any of those are stored on any of the side tracks, either the Center Street pocket, the Allied lead, the LE&E siding?
MR. KOPP: Objection to the form.
A Once again, they were loads. So if they are cars that were in the control of Ohio Central or Ohio and Pennsylvania at the time, they would have been staged, not stored.
There was one picture that I saw in here, I can't get to it, that looked as if it was on the Allied lead. I believe you asked that specifically.
Q Yes. Among other side tracks. I may have asked

this earlier, but we talked a little bit about damage on the Center Street pocket. Do you remember exactly what year that was?
A No, I sure don't. The only thing that I can say is that it would be between December of '04 and November of '06.
Q Okay. While we're at the LE&E line, let's take a look at the easement agreement regarding that line. That's previously been marked as STB Exhibit 2, and I will hand you a copy of that. I would ask you to take a look at that document there.
MR. McCREA: Gentlemen, if you need extra copies, I have them.
MR. LIPKA: Sure.
Q Let me know when you're ready.
A Okay. Just give me a few moments, please.
Q You're entitled to take all the time you need to review that document.
A Okay. All right. I have scanned over the Exhibit 2.
Q Okay. Thank you. Can you take a look at, not the last page, but the second to last page. Pardon me. The third to the last page with number 4 at the bottom.
A All right. I'm on page 4.

Q Do you recognize the signature of Gordon Neuenschwander there?
A I have seen what I believe to be a similar signature to that in the past, yes.
Q That similar signature being that of Mr. Neuenschwander?
A That is correct, yes.
Q Okay. There was earlier testimony about a document regarding rights over the LE&E tracks under the signature of Mr. Neuenschwander. Having reviewed this, do you recognize this as that document?
A No, this is not the particular document that I was referring to.
Q Okay. If you recall, what are the differences between this document and the other?
A Shortly after my commencement of employment with The Ohio Central Railroad System in September of '95, Bill Strawn showed me what I recall to be a one-page, maybe two pages, but I believe it was just a one-page document that was on Pittsburgh and Lake Erie letterhead, and it was over the signature of Gordon Neuenschwander as the President, that was conveying to The Ohio and Pennsylvania Railroad, if that's the correct terminology, a perpetual easement or participation in the perpetual easement that the P&LE had

acquired over the LE&E tracks from Control Point Graham west to The Ohio and Pennsylvania ownership, which we have always considered to be the Center Street pocket and the LE&E. And it was for the purposes of The Ohio Central Railroad System's entity, called The Ohio and Pennsylvania Railroad, to operate The Youngstown and Southern Railroad.

Q I don't want to get too far into the legalese of this, but it sounds like what you're describing is an assignment of rights?

A That perhaps would be what I describe it as well. But it was very specific in that it was conveying it to The Ohio and Pennsylvania Railroad.

Q Okay. Do you recall whether it was conveying rights under some, some other documents, for example, the one that's in front of you?

A Once again, that's, as we know, it's been 15 years ago. But it would, having just briefly reviewed this Exhibit 2, it would be my speculation that that one-page document that I'm referring to would be conferring or conveying an easement to The Ohio and Pennsylvania Railroad based upon this Exhibit 2.

Q Okay. Have you ever, in connection with the production of documents in this lawsuit which has been going on since 1996, did you ever have an occasion to take a look

for that one-page document?

MR. KOPP: Do you mean to say 2006?

MR. McCREA: Yeah, 2006.

MR. KOPP: Ten-year difference. But that's --

Q Okay. Have you ever taken a look for that?

A I would not have had the document, so no, I did not look for it.

Q Okay.

MR. GRIECO: Just I have a point for the record with Tom. Has this document been looked for as part of the request that Allied made? I mean, was it ever found?

MR. LIPKA: No. I have never seen that document.

Q Thank you. Let's turn to the document that is in front of us, this STB 2. Mr. Strawn, I would ask you to take a look at the second paragraph of the first page which starts out, "Now therefore." You will see about halfway down there reference to say Survey Station 45+00 plus or minus, and then a Survey Station 146+00 plus or minus. Do you have any idea where on this map, if at all, those two points are?

A I do not have. It would be pure speculative for me to say where those points were.

Q Okay.

A I, I would have thought there would be a diagram

with this agreement.

Q Okay. In that same paragraph it says, the Grantor "does hereby, insofar as Grantor's title permits, grant bargain and convey onto Grantee, its successors and assigns, a perpetual, non-exclusive easement over that portion of the main line acquired by the Grantor herein." And if you want to read the balance of it, you can. But I can tell you my questions will be about the specific words that I just asked about.

Where the words "non-exclusive" are used, do you have any understanding of what it means to have a non-exclusive easement?

MR. LIPKA: Objection.

A I, I would rather not speculate on what that means. I would rather defer that to legal counsel.

Q So you don't have an opinion one way or the other?

A No.

Q Okay. Going down the sentence there, it says there is an easement over that portion of the main line. As you read that, or as you understand this document, do you understand that that would give whoever holds the easement rights over just the main track, or rather, you understand that to give rights over not just the main track, but also

these side tracks?

MR. LIPKA: Objection. But you can go ahead and answer.

A I, based on my 35 years railroading, and using that as the basis, I would say that, when I have a right to operate over, operate over a main track, I also have access to the tracks that are appurtenant to that main track.

Q Okay.

A Which would mean the LE&E siding, the Allied lead and so forth.

Q Okay. So, okay. Let's go to the next page. I would ask you to closely read paragraph numbered 1.

A All right. Just a moment, please.

Q Go ahead.

A Okay. I have read 1.

Q Sir, there is a reference to The Youngstown and Southern Railway. My question is: Has Ohio Central ever operated The Youngstown and Southern Railway?

A Well, The Youngstown Southern Railway, of course, is the entity that we have referred to here a number of times in this deposition and the previous ones as being the portion of railroad that is off of the page on the left end of this diagram, this Number 4 where the label says to the YS&E Railroad.

The YS&E was the company that ultimately took over operation of The Youngstown and Southern Railway that extends the 35.6 miles that you referred to previously.
Q Let's see if we can make this distinction. We have The Youngstown and Southern. Can you draw a distinction between The Youngstown and Southern Railway on the one hand, and the legal entity that operates over that track on the other? Is there a difference between the two?
MR. LIPKA: Objection.
A All I can say is, is that The Youngstown and Southern Railway is just a very general name that everyone knows that railroad as being. Even the general public, you would be surprised, knows very much that's known as The Youngstown and Southern.
Q Okay. In that paragraph number 1, there is a reference to that certain lease dated April 1993 between The Youngstown and Southern Railway Company and PL&W Railroad. Have you ever seen that document, or do you have any understanding of what it is?
A Right now I don't recall if I have seen that document or not. Please remember, that is well over two years before I even came to work for the, for The Ohio Central System.
Q So the bottom line is you have never seen it?

You're not aware of it?
A Not to my knowledge.
Q Okay.
A Or to my recollection is what I should say.
Q Okay. Let's take a look at the second of our easements here.
MR. McCREA: We can go off the record.
(Whereupon, a short break was taken.)
Q Mr. Feichtenbiner, take your time to review that document.
A You want me to look the entire agreement over?
Q To the extent you think you need to. I don't have many questions about the --
A I will just kind of quickly scan it, all right, so I know what I'm looking at here.
(Whereupon, a discussion was held off the record.)
A I'm squared away here I think on this.
Q Okay. Thank you. Mr. Strawn, we have handed you a document previously marked as STB 1, and you have had a chance to take a look over it. Question number one: Do you recognize that document?
A I recognize it in that I believe at some point in the course of this litigation, in related litigation that I

have seen it.
Q Okay. Separate and apart from this litigation, though, that's a new document to you?
A I would say so, yes, sir.
Q Okay. With that caveat of your knowledge of it and your recent introduction to it, do you have any understanding as to which tracks this document applies to?
A Well, in, under Roman Numeral Number II, Railroad Easement, and then items under that heading number 2 and number 3, obviously it speaks to tracks that I'm familiar with, Number 2 and 3 Mains, let's see, 220, 239, 240 and Number 4 Main.
And then on page, well, it continues on to the next page. It mentioned Number 1 Main.
Q And all of those tracks you have just itemized are visible on the map in front of you?
A Well, and I don't -- I haven't digested the agreement enough to say that I know for sure that it's parallel to the diagram. But yes, there are tracks that are on the diagram that are also in this agreement.
Q I remember, I recall our earlier colloquy about the MVRY #3 Main, which although it exists, does not exist on this map, at least not as a yellow line, correct?
A Well, yes. And I would, to reiterate that, I

would just simply say I'm not sure, when we made this diagram, if we omitted #2 or #3, because they parallel each other in that area.
Q Okay. Let's go back to the first page, and I want to ask you under the "Witnesseth" headline, and down in the fourth paragraph of that, the sentence beginning with, "Now therefore." It says, "Now therefore, Allied, its successors and assigns, for valuable consideration hereby grants to LTV, its successors and assigns, perpetual, non-exclusive easements appurtenant to the Allied property as follows."
I know you have begged off on giving any legal definition of what non-exclusive means, and I imagine you will do that if I ask you this same question for this, right?
A That is correct, yes.
Q All right. With that said, in your 35 years of railroad experience, have you ever experienced a situation where there is a set of tracks, and not, not just one railroad, but two railroads enjoy easement rights over that set of tracks?
A I can't say that I can recall a time when an easement was involved. But certainly I have been involved in territory where multiple railroads used one given piece

of track.
Q Okay. And in those, if you could describe those situation -- well, were any of those situations when you were with The Ohio Central Railroad?
A Not specifically. I think of my time in a previous life when I operated into Chicago, and there were any number, like as many as a dozen different railroads using one given piece of track.
Q And in those situations, were there any written documents that established who could do what? Who had priority?
A I would not be able to speak to that. All I, I just simply followed the train dispatcher's instructions.
Q Okay. Very good. Let's mark this as the next exhibit in the STB series.
(Whereupon, STB Exhibit 24 was marked for identification purposes by the court reporter.)
Q Sir, I'm going to hand you what we will mark as Exhibit 24. Take as much time as you need to read it, and let me know when you're finished.
A All right. All right. I have scanned the document.
Q Thank you. Mr. Strawn, do you remember receiving this document when you were with the railroad?

A Yes, I do.
Q Okay. Did you read it when you got it?
A Yes, I did.
Q Okay. In response to this letter, what did you do, if anything?
A Discussed it with Mr. Strawn.
Q Okay. What did Mr., what did you discuss with -- could you be more specific about what you discussed with Mr. Strawn?
A Well, once again, it's been five years ago, so I don't, I don't recall exactly what the conversation involved.
But as you would expect, because I reported to Bill Strawn, I would have called him to make sure that he was aware that this letter existed. And I do not recall if he was copied on it or not, and whether he had already gotten a copy of it. But nonetheless, I made certain that he had a copy.
And we discussed what it -- what should I say -- demands and so forth. And then ultimately, as I had testified I believe in other depositions, plus I mentioned today that it was either in late 2005 or early 2006 --
Q Okay.
A -- that we removed the railcars in question.

Q Okay. Generally or specifically, to the extent you recall, what was Mr. Strawn's reaction to this letter?
MR. LIPKA: Terry, just let me stop you for a second. I don't know if that conversation occurred with counsel or not. If it did, let us know. If not, go ahead and respond.
A Well, right. I have no recollection exactly what his response was.
Q Okay. Let's take a look at the second paragraph. It says, "Moreover, certain of the cars stored in Allied's property are oil or chemical tanker cars, or cars containing untarped construction and demolition debris, the run-off of which is contaminating Allied's property."
Do you have any knowledge of oil or chemical tanker cars being staged or stored on Allied's property?
A Did I have knowledge?
Q Yes.
A Right now I don't recall for sure whether there were tank cars there or not.
Q Okay.
A And I could not speak to their previous commodities, the commodities that they handled.
Q Are there any customers in this region, the region of The Mahoning Valley Railway or the region of The

Ohio and Pennsylvania, generally the Youngstown area, to whom you would have been delivering to or taking from oil or chemical tanker cars?
A Not in this area, not that I recall, no.
Q Okay. And the construction and demolition debris, that was going down to the dump on the Y&SE line?
A The construction/demolition debris that we were staging on LE&E tracks would, yes, have ultimately been going to the landfill in the Negley, Ohio, area.
Q Okay. In the third paragraph it says, "Allied and its President, Mr. John Ramun, have repeatedly advised various representatives of Ohio Central to cease storing cars on these lines."
Sir, do you have any knowledge of Mr. Ramun, prior to this letter, asking Ohio Central to stop storing or staging cars on the line?
A I don't recall specific instances, no.
Q Okay. Do you recall any general instances? Did you, before this letter, did you know generally that John Ramun was irked that there were cars on his property?
A Well, John Ramun I don't recall communicated it directly to me.
Q Okay. Would it have been communicated indirectly, to your subordinates perhaps?

A I honestly, I don't recall the time line of things. I just know that when this letter came, we ultimately decided to, okay, we will pull the cars off of the, the LTV tracks and leave those tracks vacant.
Q Okay. And I notice that the date of this is August 9, 2005, and your use of the LE&E line ceased November 30th the next year. Did you also take any action regarding staging cars on the LE&E line?
A I would say no. Because we were at that point at a very, very much a peak of traffic levels moving to The Youngstown and Southern, and we simply needed the space. And it was our position that we had an easement to use those tracks relative to that one-page document that I mentioned earlier here today, so we continued to -- however, as 2005 progressed into 2006, we began to see an erosion of the traffic levels, and it ultimately became not necessary to stage any construction and demolition debris cars, loaded cars on the LE&E tracks, because the volume began to match what was being consumed at the landfill on a daily basis.
Q Okay. When, in response to this letter, when you pulled cars off of the LTV tracks, where did they go? Or were they staged at another location, or stored?
A Well, first off, the timing of this was almost advantageous, because the car owners that had the cars

stored began to participate in the benefits of the high scrap price market, and they began to cut the cars up.
And we began to, in tandem with pulling the cars off of Allied's property, meaning the LTV tracks, not the LE&E tracks, but the LTV tracks, Mahoning Valley Railway tracks we have been referring to them also, we were getting disposition from the owners of the cars to move them either to CSX, or to Norfolk Southern or to a scrap, I should say a railcar dismantler in the Briar Hill area. So that's how they, some of them just went away through attrition, so to speak, and then others we just jammed wherever we could jam them elsewhere, and told the car owners that we had to get them off the railroad.
Q Okay. And you say the cars were jammed wherever you could jam them. Did they get jammed anywhere else on this map?
A There would certainly have been some space that we might have consolidated in what we call the 270 yard. But it would have been very little space, because there were always a lot of cars in those two tracks as it was.
Q Okay. That's west of the Center Street Bridge?
A Yes, that's west of the Center Street Bridge.
And then when you are storing cars, as the entity providing the storage, you have the right or the option to get ahold

of the car owner and say, hey, fellas, we don't have this space available anymore, we need to get the cars out of here. Then the car owner will typically, reasonably promptly, give you dispo to get them out of there and moved to another location.
Q Okay. That's a right you have as a storer of cars?
A Yes, that's correct.
Q Okay.
A And all of those options are what we used to proactively vacate #2 and #3 Main primarily.
Q Okay. Let me ask one more question regarding getting cars off of the LTV lines, and also the, the slow down in business as you have described on the LE&E line.
Was there, in the course of any discussions with Mr. Strawn, a determination made that you didn't have the right -- when I say "you" I mean Ohio Central -- didn't have the right to actually stage cars or store cars on those tracks, and so separate and apart from the business issues and the scrapping issues of the cars, you simply needed to get the cars off the tracks?
A Never was that discussed, that it was always adamantly our position that we owned #2 and #3 Main, as well as 239, #4, #220, which are east of the Center Street

Bridge. And we also always stood by our, and maintained that we had the right to use all the LE&E tracks by virtue of that one-page agreement I referenced some time ago this morning in our operation of The Youngstown and Southern.
Q Okay. Forgive me if I asked this before. But regarding the LE&E line, when use of that stopped in November, on November 30, 2006, do you have any understanding of whether your legal rights to be there ceased, or whether -- or not?
MR. LIPKA: Objection.
MR. KOPP: Objection.
MR. LIPKA: You can answer.
A I, I would, I wouldn't want to speak to that, because that I would say is a legal matter, needs to be determined by counsel.
Q Okay. Thank you. Bear with me.
A Sure.
MR. McCREA: Let's mark this as STB Exhibit 25.
(Whereupon, STB Exhibit 25 was marked for identification purposes by the court reporter.)
Q Sir, I will hand you what's been marked as STB Exhibit 25, and it's a document you should recognize.
A All right. I have read Exhibit A.
Q Sir, what is this Exhibit A?

A It's a document that I recall participating in its setup, whatever I could call it, putting it together. Obviously I signed it.
Q Okay. If you look at paragraph eight, it says, "The Defendants acquired the rights to an easement for the use of railroad tracks over certain real property owned by Plaintiff Allied Erecting. The Easement is identified as the P&LE Easement in Plaintiff's. . .complaint."
Having taken the time to review this document, I just have a question about this paragraph eight here. This document is dated April 14, 2009. In this document are you saying that the Defendants acquired rights pursuant to an easement, pursuant to that P&LE easement at some point in time, and still maintain them on this day, or are you saying that, simply that those rights were acquired at some point in time?
A All I can answer is that, if this is referring to that one-page document that I have referred to earlier, that that is or was the right for The Ohio Pennsylvania Railroad to operate over what I always refer to as the LE&E railroad, which this is referring to as the P&LE.
Q In this document?
A That's what -- I, I'm making that connection.
Q Okay. In this deposition and probably in others

we have used P&LE, LE&E and perhaps Y&S, Youngstown and Southern somewhat interchangeably here, despite our best efforts to be as precise as we can.
A Well, yeah. And I would explain that the LE&E was a subsidiary owned by The Pittsburgh and Lake Erie, as was The Youngstown and Southern was a subsidiary of The Pittsburgh and Lake Erie. But this very much was the tracks we have been talking about that are labeled the LE&E. Those very much were the LE&E railroad.
Q Okay. We can set this exhibit aside. Mr. Feichtenbiner, let's take one last look at this, your affidavit here. If you look at paragraph nine, it says, "The use of the above easements by any of the Defendants was and is in furtherance of Interstate Commerce." What do you mean by that?
A When we used the LE&E track, we were hauling railroad traffic that was interstate traffic. In other words, it began on the east coast of the United States and terminated in Negley, Ohio. So that's interstate commerce.
Q Okay.
A That's my basic understanding of railroad transportation.
Q Okay. And your use of that track, if, to the extent that The Ohio Central Railroad, or rather the P&LE

wasn't using those tracks, it wasn't using those tracks after November of 2006 in interstate commerce because it simply wasn't using them at all?
A I apologize. But could you say the question again?
Q Yeah. If the easements weren't being used, or the LE&E tracks weren't being used, then naturally there wouldn't be any use of those tracks in furtherance of interstate commerce?
A Well, we ceased our participation as the common carrier on The Youngstown Southern November, at the close of business on November 30th, 2006. Now, what happened as far as interstate -- I'm sorry, as far as the common carrier obligation on The Youngstown and Southern after that, I do not know.
Q Okay. Great. Thank you. I'm going to show you a copy of the Operations Bulletin for The Youngstown and Southern, or rather, from the Mahoning Valley Territory.
MR. McCREA: Mark this as STB 26.
(Whereupon, STB Exhibit 26 was marked for identification purposes by the court reporter.)
Q Mr. Strawn, I'm going to hand you a document --
A Mr. Feichtenbiner.
Q Feichtenbiner, I'm sorry.

A Or Terry.
Q Terry.
MR. KOPP: But whatever you do, don't call him Bill Strawn.
Q Don't call him Bill Strawn, all right. Take as much time as you need to refamiliarize yourself with that document.
A All right. I worked it out. Operations Bulletin Number 1, I guess you're calling it Number 26.
Q Yes, sir.
A Okay.
Q Sir, do you recognize this document?
A Yes, I do.
Q And in your own words, what is it?
A It was, it was a stipulation of various requirements and rules, regulations and so forth that we put together for the Youngstown Territory in the Youngstown Division.
Q Okay. Was this -- is this document required to be produced or produced and maintained pursuant to Federal regulatory requirements of the railroad?
A Let's see. I want to be careful how I answer relative to certain time lines. I have been away from direct interface with the industry now for a year and a

half.

At the time I don't recall if this was an absolute requirement or not. But internally we viewed it as a requirement just to be able to provide order, and form of operation and so forth for the daily movement of our trains.

Q Okay. But whether it was required by the Code of Federal Regulations or the Surface Transportation Board?

A At the time I --

Q You don't know?

A I would rather not speculate.

Q Okay. That's fine. If you look at page 19, I see your name there as the General Manager of the Youngstown Division. Is it fair to say that you're the author of this document?

A Yes, I was.

Q Okay. Is this something that you created from scratch, or is it a continuation of something that existed before you joined the railroad?

A Well, again, being in the industry for a bunch of years, this is a form of a document that's not unusual on any railroad property. But I used what I had seen and applied in the past as the form to go by for creation of this document.

Q Okay. This document is effective as of January

1, 2007?

A That's what the issue date is shown as, yes, sir.

Q Okay. Were there prior versions of this?

A If I remember correctly, there were. If it was -- if they were called operations bulletins, I don't recall at this time, because we changed, corporately we changed terminology a couple of times. And I don't recall where this one falls relative to the timing of those terminology changes.

Q Okay. Was this document ever updated prior to when you departed?

A Well, yes. I, I updated it on an ongoing basis.

Q Okay. Was that done on, on a timetable, like a yearly requirement, or did you update it as, as necessary?

A Well, I believe that I stipulated that in, as stated here in this first page.

Q Okay.

A "Each Operations Bulletin will be identified in chronological order by number, beginning at 0001 on January 1st each year, and will become effective at 0001 on the date shown on the Operations Bulletin as Date Issued."

Q Okay. There was a reference in the second paragraph to added information being put in boldface italics. Would you have been the one that added new

language in boldface italics?

A I was the one that did it. Sometimes the information would originate with me, and sometimes it would originate from other sources, but I was the one that actually added it to this. We were a small operation, so in order to limit or eliminate confusion, we decided one person would manage it so that one person kept it always in the same form.

Q Okay. Let's take a look at page seven of this document.

A Page seven?

Q Yes, sir. And more specifically, paragraph 35. I have some questions about paragraph 35. What's the purpose of this first sentence of paragraph 35?

A The first sentence?

Q Yes. What's the harm that is intended to be avoided?

A Specifically what that paragraph centers on is the terminology of fouling any adjacent track. Fouling an adjacent track means that the equipment that you left standing on a given track is not in the clear on that track. In other words, the equipment is standing at such a position that, if you tried to move other equipment into an adjacent track, the two pieces of equipment would sideswipe or

collide, the moving equipment would collide with the standing equipment.

So all this does is stipulates that all equipment that's left standing must be left standing in the clear of other connecting tracks.

Q So if we had, for example, looking at the map, if we had a section of 20 cars that were on the Allied lead, and the final car is sticking out onto the LE&E Main track in such a way that a train couldn't pass down the LE&E Main track without hitting the section of 20 cars, that would be a violation of this section?

A That's exactly what we're talking about, yes, sir.

Q Okay. Let's go to page 12, specifically under the heading of "Ohio and Pennsylvania Railroad." I would ask you to read everything that's on that page under the "Ohio and Pennsylvania Railroad."

A All right. I have read parts (a), (b) and (c) of number 1 under Ohio and Pennsylvania Railroad.

Q Okay. Bear with me a second.

A Yes, sir.

Q There is a reference in paragraph 1(a) on page 12 to the OHPA MP 0.35. Do you have any idea whether that's on this map?

A No. The, I can tell you that the intention of the location of that milepost 0.35 is going to be off the bottom of the left end of this Exhibit Number 4, past where it says to the YS&E Railroad. It's going to be off past the white margin and onto the table.
Q Okay. The Darlington Junction Switch that's referenced in that same paragraph, would that likewise be off the map?
A No. That's, that's on the map. And the Darlington Junction Switch was terminology that we developed internally, just simply for identification purposes.
Q Okay.
A However, it pertained to the switch that is about a half an inch to the left of the Center Street Bridge on the LE&E Main track. This is the switch that divides the LE&E stub and the LE&E lead just a little to the left of the Center Street Bridge.
Q Okay. The fouling point, to the extent -- well, let me ask this. What is a fouling point?
A To refer to a conversation we had just moments ago about keeping equipment in the clear so they didn't strike, and you used the example of that the LE&E Main and the Allied lead, if you left cars on the Allied lead out foul of the LE&E Main track, there is a point where those

two tracks converge that is referred to as the fouling point. In other words, you go an inch beyond that point, and the pieces of equipment are going to collide.
Q They would run afoul of each other, so to speak?
A That's exactly. So the fouling point, when we refer to the fouling point -- stand by just a minute. Where was that, what piece of typing was that in? Oh, okay. It's the last line in (a) where it says "and its northern-most point at the fouling point of the Darlington Junction Switch."
So the, the southern-most segment of the line referred to in item (a), parentheses (a) there, the LE&E lead, is a point clear of the LE&E stub, which is just about, let's say an inch or an inch and a half to the left of the Center Street Bridge on this Number 4 diagram extending to the left and off of the page, and into territory that's not on this diagram.
Q Okay. And ultimately down to Darlington?
A Yes.
Q Okay. In this paragraph 1(b) on page 12 regarding the middle segment of this line, it says, "The middle segment of this line is referred to as the 'Struthers Lead' and extends between its southern-most point at the absolute signal governing entrance to the Norfolk Southern

CP 61 and its northern-most point at its end-to-end connection with the 'River Track' at the south switch of the Gateway Cab Track." To the extent that those two points are on this map, could you point them out for me?
A Yes, sir. That item (b) refers to over at the extreme right-hand side or east end of this Defendant's Exhibit Number 4. You see where the yellow line starts there at Control Point Graham, CP Graham?
Q Yes.
A I want to point out that, at the time that I wrote this text that's in item (b), Norfolk Southern was still referring to CP Graham as CP 61. Subsequent to my, my authorship or authoring this Operations Bulletin in '07, Norfolk Southern changed that location name to CP Graham from CP 61.
Q Okay.
A So with that clarification, the Ohio Central Struthers lead extends from CP Graham, or synonymous with CP 61, east off of the right-hand side or east end of this Defendant's Exhibit 4, goes well beyond where the diagram indicates.
Q Okay. Great. And the same question with regard to the northern-most segment of this line referred to as the River Track in paragraph 1(c), if it is on this map, where

is it, and please locate it for me.
A Okay. Item (c) refers to the River Track, is not on this portion of the Mahoning Valley Railway Territory. That River Track is shown on The Mahoning Valley Railway Territory east end section, where this item, or this Exhibit 4 is the west end section.
Q Okay. Let's go -- I'm sorry. Let's clarify this point here. We have just gone over these paragraphs 1(a), 1(b) and 1(c) regarding the operation of the Ohio and Pennsylvania Railroad. There was some earlier testimony about the operation of that railroad having ended on November 30 of 2006.
Just so the record is perfectly clear, even though what we have just been discussing on page 12 still exists in this, is it correct, am I correct that the railroad wasn't operating over the tracks that we see on the map?
A To answer your question, I would simply say that the reason that this information was in Operations Bulletin Number 1 dated January 1st of '07, the portion concerning The Ohio and Pennsylvania Railroad was because we, The Ohio Central System, owned those three pieces of track. And The Youngstown and Southeastern Company was operating The Youngstown and Southern.

And in order for them to operate The Youngstown and Southern, they had to have rights to operate over our ownership, so these three sections, and we had to set forth a means by which they would operate over our railroad. We had to set up an arrangement. And that's what this is, is the arrangement that was put together.

Q So these rules govern The Youngstown and Southeastern to the extent that they traversed Ohio and Pennsylvania?

A That was the, that was the intended design.

Q Okay. Let me just put that on the record that you and I were talking over a little bit, each other a little bit. But to the extent that The Youngstown and Southeastern was operating over tracks owned by Ohio and Pennsylvania Railroad, their use was governed by what we have just been discussing here in this Operations Bulletin?

A That is correct.

Q Okay. The rules of the road, so to speak?

A That is correct.

Q Okay.

MR. GRIECO: Will you guys permit me to ask one question?

MR. LIPKA: That's fine.

MR. GRIECO: So after December 20th, 2006, The

Ohio and Pennsylvania Railroad, for instance, coming from the east and going west, was no longer traversing across Allied's property, at least to your knowledge while you worked at Ohio Central?

MR. FEICHTENBINER: Well, first off, I believe you said December 30th. It was November 30th of '06.

The Ohio and Pennsylvania Railroad ceased its operation of The Youngstown and Southern on November 30th of '06, and I can't tell you exactly what day that The Youngstown and Southeastern started operating The Youngstown and Southern. But these instructions were put together to provide for a means of control and coordination of The Youngstown and Southeastern trains with relativity to their operation over our property.

MR. GRIECO: Okay. But The Youngstown and Southeastern company is not under The Ohio Central System?

MR. FEICHTENBINER: No affiliation whatsoever.

MR. GRIECO: Was there any railroad company under The Ohio Central Railroad System that operated from this point east to west over the tracks on Allied's property? That's the --

MR. FEICHTENBINER: After November 30th, 2006, none of the Ohio Central entities had the necessity to go to The Youngstown and Southern, so that would preclude our

necessity to operate over Allied's property.

However, I would mention for the record that almost on a daily basis Ohio Central trains did pass over the section of railroad described in (b) and (c), the Struthers lead and the River Track. We still did have operations that required our use of those tracks.

MR. GRIECO: But they would only come up to this point here? There would not be any continuation over the tracks on Allied's property?

MR. FEICHTENBINER: Not onto the LE&E. But they would move in and out of Norfolk Southern's Haselton Yard via CP 61, or CP Graham, whichever it's referred to as in either this document or on the diagram, and to the Struthers lead and onto the river track.

MR. GRIECO: Thank you.

MR. KOPP: That was more than one question, by the way.

MR. GRIECO: I appreciate your indulgence.

MR. McCREA: Thank you. It's much appreciated.

Q Mr. Feichtenbiner, let's take a look at page 13 of this document, specifically the paragraph labeled as 8.

A All right. I have read section 8.

Q Okay. Do you recall the first page of this document there was a reference to -- I don't want to

paraphrase a document that speaks for itself, but I think there was language referencing that new text would be in boldface and italicized print. Do you remember that from the first?

A Yes, I do.

Q Are you the author of this Section 8 right here?

A Yes, I am.

Q And when was that added?

A It would have been added with the production of this very document, the Operations Bulletin Number 1, January 1, 2007. Because any subsequent bulletins to this bulletin would lose the boldface, italicized version of this, because it would become then standard information. It wasn't new information. Okay?

Q Okay.

A So that was new with the publication of this Operations Bulletin Number 1.

Q Was that new information added in whole or in part in response to Mr. Opalinski's letter to you?

A It was added for two reasons. First being that it was factual that multiple entities could theoretically be operating on the LE&E track. We wanted to stipulate that so that any crews operating movements over the track would be well conversant with that.

Secondly, to answer your question, yes, the reason that I put the passage in there that use of any trackage appurtenant to the section is prohibited was directly as a result of this particular proceeding, yes.
Q Okay.
A And it was our effort, it was our effort to be proactive with Allied Erecting.
Q Okay. It says, "Use of any trackage appurtenant to this section of track is prohibited." That's one of the sentences. Is that trackage appurtenant to this section of track a reference to tracks other than the LE&E main track?
A My reference there would have been, yes, anything other than the LE&E main track. In other words, the LE&E siding, the Allied lead and the LE&E stub.
Q Okay. The reference in the section, second section to the owning entity, is that a reference to Allied Erecting and Dismantling?
A Yes.
Q Okay. This written authority in the same sentence, for multiple entities for use of this section on the first come-first served basis, and I know I'm paraphrasing, but is that a reference to this P&LE, this easement agreement that's been marked as Exhibit 2?
A Specifically to any Ohio Central Railroad System

entities, my intent was a reference to that one-page document that I spoke of earlier that was over the signature of Gordon Neuenschwander.
Q Okay. That's, so you're saying that the language in here, this written authority is not reference to Exhibit 2?
A In my mind, I was always referring to that one-page document that I saw back in 1995.
Q Okay. And is this -- I know this language speaks for itself, but I will ask it, the question anyways. Was the, this paragraph 8 a directive going forward in time that these tracks were not to be used for the staging of cars?
A They were just not to be used in any way, shape or form by Ohio Central people.
Q Okay.
A That was my intent.
Q Don't, the bottom line is, this is a directive to Ohio Central's people, don't use those tracks?
A To all the people under my charge, yes. And once again, it was to be proactive with Allied Erecting's demands.
Q Okay. So as a directive to your employees, is it a directive not to use just the LE&E main track, or not to use any of the tracks?

A Ask that question again, please.
Q Are you asking, are you telling the employees here not to, not to use just the LE&E tracks, or not to use any of the tracks, including the siding and the Center Street pocket?
MR. KOPP: Objection; asked and answered. But go ahead, answer again.
A The only way that I can answer that is it's, it's clear to me that, when I say, "The owning entity has provided written authority to multiple entities for use of this section of the former LE&E as a thoroughfare and such use must be considered to be on a first-come, first-served basis only. Use of any trackage appurtenant to this section of track is prohibited."
So I would answer to say that my intent here was that I was not saying we could not use LE&E main track; we just didn't want to use any tracks appurtenant to, and once again, be proactive with Allied Erecting's demands.
Q Okay. Thank you.
MR. KOPP: May we take a quick break?
(Whereupon, a short break was taken.)
Q Let's talk, I have a specific question about the LE&E track on Ohio Central's property from this fouling point of the Darlington Junction Switch down to the CP

Graham interchange that we have been talking about here on page 12 of the Operations Bulletin. No. Pardon me. Page 13, paragraph 8 of the Operations Bulletin.
At the time that you left Ohio Central in 2009, did you believe that at that time The Ohio and Pennsylvania had the right to operate over that section of track as distinguished from whether it did operate or didn't?
MR. KOPP: Objection to the extent it calls for a legal conclusion.
But you can testify as to your belief or understanding personally.
A All right. My personal belief, just simply based on what I read on that one-page document that I continue to revert to over Gordon Neuenschwander's signature, my own personal opinion would be that, yes, The Ohio Central Railroad System still had an easement to operate over the LE&E track.
Q Okay. Another question about your beliefs. Is it your belief that Allied was the actual owner of the tracks, the ballasts, the rails, whatever other physical structures are the track there?
MR. KOPP: Same objection. But you can answer.
A All right. And it's not because I didn't hear you. Would you ask me that again? I kind of --

Q Do you agree that Allied owns the tracks?
A That is correct, yes.
Q Okay.
A And let me add, I just want to make sure that my answer is clear. I understand that the, that Allied Erecting owns the LE&E trackage that's referred to as the LE&E Main track, the LE&E siding, the Allied lead and the LE&E stub.
Q Okay. Thank you. You have testified regarding page 13, paragraph 8 of the Operations Bulletin that this bolded language came in, in part, as a result of Mr. Opalinski's letter.
At that time was -- well, after the letter was sent out and received, was there any discussion of whether Ohio Central had any rights to operate over what's referred to as this appurtenant trackage?
A No. There was not any question again. It was all of us, being railroad people with long-time railroad backgrounds, it was our belief that the agreement covered use of all of that LE&E trackage for general railroad purposes.
Q But this sentence in here is saying use of any trackage appurtenant to this section of track is prohibited, was nevertheless added for --

A It was added, once again, to be proactive with Allied Erecting in their demands until we could get things settled.
Q Okay. If we could go back one page on the Operations Bulletin, take a look, if you would, at paragraph 7 at the top of that page 12.
A All right. I have looked at it.
Q Okay. Do you have any recollection of when that paragraph was entered into the Operations Bulletin?
A I don't have a specific recollection. But obviously, because it's standard new century font, not bold, that it was from a previous Operations Bulletin.
Q Okay. Now, does "holding" mean the same thing as "staging"?
A My intention in using that word "holding" was to be an all-encompassing term --
Q Okay.
A -- for the purposes of this instruction.
Q So this paragraph 7 could otherwise be read as saying, the following MVRY tracks must not be used for staging or storing any cars?
A That is correct. That was my intention, to cover all, all purposes of cars standing.
Q Okay. Well, the question that I have to ask is:

If there is this directive here that these tracks not be used for staging or storing, then why were they used for staging or storing?
A Well, first off, this directive was subsequent to this legal proceeding; and again, it was another intention to just be proactive with Allied Erecting relative to that letter from Eckert and Seamans.
Q Okay. You testified to a period of time between 1996 and 2004 when The Ohio and Pennsylvania wasn't operating over the LE&E tracks. Just so the record is clear on this point, is it your understanding that, despite the fact that the O&P wasn't operating at that time, it nevertheless had a legal right to operate over the LE&E tracks?
MR. KOPP: Objection to the extent it calls for a legal conclusion. But you can testify as to your understanding.
Q That's all I'm asking for.
MR. KOPP: Same objection.
A Could you repeat the question, please.
Q Yes. You have testified earlier that, between 1996 and 2004, Ohio and Pennsylvania didn't operate over these LE&E tracks, correct?
A That is correct.

Q Okay. Setting aside the issue of whether O&P was operating or not, what is your understanding of whether O&P had a legal right to operate over the tracks during that time?
MR. KOPP: Same objection. But go ahead.
A Do you mean the LE&E tracks?
Q I do, yes.
A Okay. Once again, I would fall back to my belief, based on that one-page document over Gordon Neuenschwander's signature, that we had perpetual right to operate over the LE&E.
Q Okay. Thank you. Mr. Feichtenbiner, let's take one last look at paragraph 8 of page 13. There are two terms here that I would like to ask you about just so we can gain maximum clarity here.
The second sentence says, "The owning entity has provided written authority to multiple entities for use of this section of the former LE&E as a thoroughfare and such use must be considered to be on a 'first-come, first-served' basis."
Number one, could you clarify what you meant by a "thoroughfare"?
A My intention in using the word "thoroughfare" was that it was a corridor to use to get from one place to

another. The LE&E main track was a thoroughfare.
Q Okay. And the reference to "first-come, first-served basis," I know in your, in other depositions either you or Mr. Strawn discussed trackage rights and issues like that.
To the extent that this isn't self-explanatory, what did you mean by "first-come, first-served basis" on these tracks?
A I meant that it is what's referred to as an uncontrolled piece of track. In other words, you don't call a train dispatcher and get permission to enter the track. You don't call a yardmaster or any other such controlling entity. It's just track there available for use by all of the above, so to speak.
Q Okay. With respect to the terms "thoroughfare" and "first-come, first-served," would those terms also apply to any of the LTV tracks?
MR. McCREA: And let me rephrase that.
Q Were any of the LTV tracks that we have discussed east of the Center Street Bridge operated on a first-come, first-served basis?
A No. Because we, The Ohio Central System, owned those tracks; and we were, therefore, the only entity that was operating on those tracks.

Q Okay. How about as a thoroughfare, would any of the LTV tracks qualify as a thoroughfare?
A Well, as I have testified I believe in other depositions and also today, in order to make movements, for instance, between our locomotive shop west of the Center Street Bridge and Norfolk Southern's Haselton Yard, we always kept #4 Main and #239 track clear of standing equipment, typically because it was what we considered to be the route to use as a, quote/unquote, "thoroughfare" to get, for instance, from Norfolk Southern Haselton Yard over to the locomotive shop, or vice versa, back.
Q Thank you. Sir, have you ever --
MR. McCREA: Let's go off the record for just a second.
(Whereupon, a discussion was held off the record.)
Q Mr. Feichtenbiner, I'm going to hand you what we have marked previously in Mr. Strawn's deposition as STB Exhibit 4 and STB Exhibit 5. I would ask you to first take a look at Exhibit 4, the Stock Purchase Agreement among The Mahoning Valley Railway Company, and The Cuyahoga Valley Railway Company and SummitView, Inc.
A All right. You want me to page through the entire document?

Q Yes, please. Let me ask you this. Have you ever seen this document before?
A I don't believe so.
Q Okay.
A It's obviously very lengthy.
Q Yes, that it is. Sir, let me ask this question while you're paging through that. Were you involved in the purchase of The Mahoning Valley Railway Company?
A Only from the point of discussing how we would integrate into our existing operations in Youngstown, and how certain infrastructure that would be included in the purchase would play a part in our daily operations.
Q Okay. Well, let's, let's explore both of those a little bit. How was The Mahoning Valley Railway Company to be integrated into The Ohio Central operation?
A Well, first there was only one person from The Mahoning Valley Railway that elected to become an employee of The Ohio Central. And of course the locomotive shop was at the time going to be very helpful for us for doing heavier repairs and that sort of thing, because they had an overhead crane and so on. Of course track space and so forth, and then not the least of which another consideration was the existing customers, the biggest of which was what used to be the electric weld tube, tubing plant down here

just west of Center Street.
Q Okay. And there was a second component that you had mentioned. It wasn't how it was integrated into the existing system, but something else. What was that?
A How certain parts of its infrastructure would, would be beneficial and would work on a daily basis to help us. And one of those things is the locomotive shop. We, we would gain more capability in doing on-site repairs instead of having to ship the locomotives to another location off site.
Q Okay. Did you have any involvement in negotiating that acquisition?
A Not, none whatsoever.
Q Okay. Was that handled by Mr. Strawn, among others?
A As far as I know, it was, yes.
Q Okay. But this is a document that you have never had an occasion to, to read through?
A This, you mean this STB Number 4?
Q Yes, sir.
A No. I, to my knowledge I have never seen this agreement.
Q Okay. There are a few, notwithstanding that proviso, there are a few questions I would like to ask you

about what it provides.
If you would turn to, well, just take a look at the first page. It defines The Mahoning Valley Railway Company as the Company; SummitView, Inc., as the Buyer; and The Cuyahoga Valley Railway Company as the Seller.
With that in mind, let's take a turn to page nine. If you could take a look at the top of that and read the Section 3.2.5 (a).
A All right.
Q There is a clause in that rather lengthy paragraph that says, "Following the Closing, the Company will not have the right to operate within the Youngstown Facilities (except to the extent expressly provided in Transportation Services Agreement appended hereto as Exhibit E)."
MR. KOPP: I'm going to object to the question, to any questioning about this paragraph until everything is defined, given the lack of knowledge that this witness has with the agreement. I see some, some capitalized words that you have not yet pointed the witness to.
MR. McCREA: Yeah. There is a definition of the "Closing" there.
MR. KOPP: And also "Youngstown Facilities."
MR. McCREA: "Youngstown Facilities."

MR. KOPP: And "Transportation Services Agreement."
Q Mr. Feichtenbiner, if you would go to page 2, Article I, Definitions, there is a definition for -- actually in the definition section I don't see a definition for "Closing."
Well, if you go back to page two, the first paragraph at the top it says, "Whereas, following the acquisition by Buyer of the outstanding capital stock of the Company, the Company will continue to provide rail service to and from certain facilities of LTV located in Youngstown, Ohio (the 'Youngstown Facilities') pursuant to the terms and conditions of a Transportation Services Agreement, a copy of which is appended hereto as Exhibit E."
MR. McCREA: So I think I have met your objection that the "Youngstown Facilities" are as they're defined at the top of page 2, namely LTV facilities.
Q Sir, was the intent of entering into this agreement -- I will let you finish.
A No. I was just double checking. I'm sorry. Go ahead.
Q Was the intent of entering into in agreement acquiring the Mahoning Valley Railway so that Ohio Central could service the LTV facilities?

MR. KOPP: Objection.
MR. LIPKA: Objection.
MR. KOPP: Lack of foundation. Go ahead. You can answer, if you can.
A I don't know what the main impetus was for the owner of The Ohio Central Railroad System to want to buy The Mahoning Valley Railway. I simply was involved from the standpoint of recognizing, as I said earlier, certain infrastructure that can be helpful and its integration into our system here.
Q Do you have any understanding of whether the transaction was limited to allowing Ohio Central to --
MR. McCREA: Let me back up and ask the question another way.
Q Do you have any understanding of any limitation on Mahoning Valley Railway's right to operate or do business in this area being limited to servicing LTV?
MR. KOPP: Objection; calls for a legal conclusion, lack of foundation. You can answer, if you can.
A Well, all I got to say -- I'm not sure, I apologize, but I'm not sure I understand the question. Hit me with it again, if you can, please.
Q Gladly. Was the purpose of entering into this transaction --

MR. McCREA: Well, strike that.
Q Was The Mahoning Valley Railway's right to operate limited in any way to serving LTV?
MR. KOPP: Same objection.
MR. LIPKA: Same objection.
A If it was, I certainly knew of nothing like that.
Q Okay. I take it, if you go to the Transportation Services Agreement, which is a different exhibit that you have in front of you, Exhibit 5 there, have you ever seen this document before?
A I believe I have seen this, because obviously I was the General Manager, so I needed to know what the requirements were. And there, there were certain things that we needed to be familiar with relative to the service to the pipe mill that LTV was operating on the property.
Q Okay. Could you describe what services were provided to the pipe mill?
A Details escape me now, only to simply say that, when they were on a heavy run of pipe outbound, service needed to be on a timely basis, and coordinated with their production and all that sort of thing.
Q Okay. Turn to page two of that. There is a Section 1.01 with Scope under it. And the sentence reads, the agreement, "This Agreement sets forth the understanding

of the Parties concerning rail service to be provided by Railroad to, from and in the Youngstown Facilities following the closing of the Transaction."

Was The Mahoning Valley Railway used during your tenure with Ohio Central to not only provide service to the LTV facilities, but also to provide services to various other customers in and around the Mahoning Valley?

A In, in the way that I was involved with assessment of The Mahoning Valley Railway prior to our purchase, I understood that The Mahoning Valley Railway, prior to our purchase, did, in fact, provide service, rail service to some other customers in the immediate area.

Q When you say "some other customers," am I fair to say that you mean some other customers other than just LTV?

A That is correct.

Q Okay. Do you know the names of any of those other customers off the top of your head?

A The first one that comes to mind is Cantar Poly Air. It was up, in fact, it's, yeah, it's actually listed in the left end of this diagram 4, the Exhibit 4. You see it there, Cantar Poly?

Q Yes.

A That was a customer that had no involvement whatsoever with LTV. It simply received railcar service via

Mahoning Valley Railway.

And then The Mahoning Valley Railway serviced, I do not recall the entity name, but down toward the right hand or the east end of the diagram above Haselton Yard and across the river towards the upside of the diagram you will see a large industrial complex there. There was some customer over in there that The Mahoning Valley Railway serviced, and I cannot remember the name or what they did.

Q That was before this 2001 purchase?

A Yeah, that's correct.

Q Okay. And did The Mahoning Valley Railway continue to provide those services after?

A For a very short time.

Q Okay. Is there any reason why the service ended?

A My recollection is that the company moved to another facility.

Q Okay. When you say "the company," you're referring to the one in the industrial area at the right side of the map?

A Yeah. The, the customer that was north of the river and up toward the top end of the right-hand side of the, the diagram.

Q Right where it says "The Mahoning Valley Railway" in yellow?

A You mean the label across the top says "Mahoning Valley Territory"?

Q I do.

A Yes, in that complex, yes, sir.

Q Okay. Regarding the service to Cantar Poly, am I correct that that occurred before this transaction took place, and also continued afterwards?

A Yes, it did.

Q And when you left Ohio Central, was service still being provided to Cantar Poly?

A Yes. On an as-needed basis. Their, their business trailed off considerably.

Q Okay.

A May I add, also, as I have been thinking here, Mahoning Valley Railway also provided service to Castlo Industrial Park, which we have discussed in a previous deposition.

MR. McCREA: Okay. I think we may, I think we may be finished right now. I would just ask to be able to take a couple minutes to review my notes, and may ask to need you a few more questions, or may not.

MR. FEICHTENBINER: Whatever you need to do.

(Whereupon, a short break was taken.)

Q When the purchase of The Mahoning Valley Railway

Company occurred, I know we have this map here that indicates what the west end of the Mahoning Valley Railway is at the time that the map was made. What I would like for you to describe for me is what territory, what tracks were, what territory or tracks composed or comprised The Mahoning Valley Railway Company at the time of this agreement.

A Largely what's indicated on this Mahoning Valley Railway Territory - West End, Defendant's Exhibit 4. You know, the yellow lines indicate the track. And again, primarily west of Center Street is what we considered to be The Mahoning Valley Railway when we purchased it.

Q Okay. You didn't consider the tracks east of that to be The Mahoning Valley Railway when you purchased it?

A I don't recall the date. But that was a subsequent purchase.

MR. GRIECO: I'm confused.

Q Are you sure of that?

A I'm sorry. No. I did tell you the wrong thing. No. I'm thinking of across the river. I apologize. I'm thinking of across the river to the north.

So when we purchased The Mahoning Valley Railway proper in 2001, May of 2001, it did, in fact, include the trackage west of Center Street and east of Center Street,

that's correct.
Q Is there anything off this map that was included in that purchase?
A There was. Down at the right-hand end of this diagram toward the east there is a track that is parallel or was parallel to The Ohio Central Struthers lead that was referred to as The Short Line. And it was Mahoning Valley Railway's means to access Castlo Industrial Park.
Q Okay. And that was part of the purchase?
A Yes, that is correct.
Q Okay. If you could turn briefly back to Operations Bulletin at page 7, down at the bottom there is a reference to various cars moving in construction and demolition debris service to our Negley and Girard customers. Could you list those customers for me? I know there has been a discussion of Total Waste Logistics.
A If you could, just bear with me a minute. You're referring to item 37?
Q Yes, sir.
A All right. Let me read that first.
Q Go ahead.
A All right. I have read 37. And your question was?
Q Who were the Negley and Girard customers?

A Okay. The Negley and Girard customers were both Total Waste Logistics.
Q So Total Waste Logistics had two landfills?
A Yes. They had a landfill at Negley, and they have a landfill on the west side of Youngstown.
Q Okay. Let's keep reading this paragraph starting with the word "Primarily." I have some questions about this slurry material that's referenced later in that paragraph.
A Yes. I'm familiar with the slurry.
Q All right. What was it?
A It was, it was a material that I would describe as being like pulverized egg cartons, and it was paper material, and it was sprayed on the open load of material at its origin.
And the original intention was that, in transit, because the cars move perhaps of speeds of up to 60 miles per hour, it was to keep material from blowing out of the cars and the dust level to be controlled.
Q Was it comparable to, like, a papier-mache mix?
A I think of papier-mache, I think of a hardening material. And it didn't really have necessarily a hardener in it.
When it was dry, it had the consistency of a broken-up egg carton, and it remained somewhat sticky. And

when sprayed en mass over the top of the load, it would just create a covering that adhered to itself, so to speak, and to the material that it was sprayed on.
Q If you know, was it something that was sprayed on wet and then dried out? And --
A My understanding was that it came out of a, atomized out of a gun-like apparatus that was wet in a slurry form, as I describe it in here, and put on the cars.
We had considerable amount of discussion about it with the customer and with other entities within the industry, as well as the Federal Railroad Administration.
Q When you say that there were discussions, did any of these discussions concern any environmental hazards or environmental liabilities?
A Absolutely not. That was the assertion that was made by Allied, that it was environmentally toxic. All it was was a paper slurry substance that was sprayed on to keep the dust down and from, debris from blowing out of the cars.
And our motive, the Motive Power and Equipment Inspector for the Federal Railroad Administration, his name was Tom Tumbry, T-u-m-b-r-y, if I remember correctly is his last name, he was involved with it as well, and investigated, and found out what the material was, and that it was harmless.

But our concern was that it was, when it was wet, it was slippery. So ultimately, in a very short time after our initial concern about it with the Federal Railroad Administration, the customer stopped using it. But it was absolutely not anything hazardous.
Q Okay. Do you know if it, do you have any specific knowledge, other than you say it was like busted-up egg cartons, what the content of it was? Whether it was paper with some kind of glue mixed in, or a resin?
A The only thing I can say is, is that the Federal Railroad Administration Inspector described it to me in a phone call that it was a paper slurry --
Q Okay.
A -- that was sprayed on with the intention of keeping the dust level down and material blowing out of the cars.
Q What was the name of that customer that applied this stuff?
A Don't recall that.
Q Okay.
A I truly don't recall that. But it was, it was a major customer or origin entity on the east coast that originated the construction and demolition debris loads.
Q There was discussion previously about section of

track off of the map on the east side of the map going to Castlo Industrial Park. Mr. Feichtenbiner, what was the length of that track going down to Castlo?

A Are you referring to the track that I described as being called The Short Line?

Q Yes.

A Now, that was actually the name of the track, The Short Line. And I would estimate that track to be approximately 35 to 40 railcar lengths, in other words, 50, using 50-foot railcar lengths, 35 to 40 50-foot railcar lengths.

Q So it truly was the short track?

A You can say that.

MR. McCREA: Let's mark this as one more exhibit.

(Whereupon, STB Exhibit 27 was marked for identification purposes by the court reporter.)

A I have read the portion highlighted on your STB Exhibit 27.

Q You can go ahead and read the whole thing.

MR. GRIECO: Yeah. It wasn't intended for the highlighted portion. Sorry. Actually, the first paragraph kind of defining the parameters of The Mahoning Valley Railway is what was more pertinent.

A All right. I have read the exhibit.

Q Thank you. Mr. Feichtenbiner, in the first paragraph of that exhibit there is a description of The Mahoning Valley Railway, and that document was dated August 6, 1981. And specifically in that document there is a description of The Mahoning Valley Railway consisting of some 18 miles of track, and also as operating over some 25 miles of track.

Now, my question to you is: Is that description of The Mahoning Valley Railway, well, is that description of The Mahoning Valley Railway there consistent with your understanding of what was purchased in 2001? It sounds like we're talking about --

MR. GRIECO: Well, let he him answer the question, Jake.

MR. KOPP: Object; lack of foundation. If you can, if you can answer it, answer it. This is obviously long before you became involved.

A The only thing I would say is it's, my goodness, it was, you know, 20 years prior to our purchase of The Mahoning Valley Railway. And I cannot imagine this description mirroring what we bought. It just, I don't see how it matches up at all.

MR. McCREA: Okay. Thank you sir. I don't have any further questions.

MR. GRIECO: I have none.

MR. McCREA: Tim has none. And your counsel or if you want.

MR. KOPP: We will read.

(Deposition end time is 12:40.)

* * *

REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY that the above and foregoing is a full, true, and correct transcript of all the testimony introduced and proceedings had in the taking of the within named deposition, as shown by stenotype notes written by me, in the presence of the witness, at the time the said deposition was being taken.

Cynthia M. Nibert
Registered Professional Reporter

STATE OF OHIO)
) SS CERTIFICATE
MAHONING COUNTY)

I, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above named MR. TERRY FEICHTENBINER was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was written by me in stenotype in the presence of the witness, and by me transcribed; that the transcript of his testimony will be made available to said witness for signature; that the said witness shall read said transcript and affix his signature, at the end thereof, and that the said deposition was taken pursuant to agreement and at the time and place therein specified.

I do further certify that I am not of counsel, attorney or relative of either party or otherwise interested in the event of this action or proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Youngstown, Ohio this 28th day of December, A.D., 2010.

CYNTHIA M. NIBERT, NOTARY PUBLIC
My Commission Expires 11/09/15

REPLAT YOUNGSTOWN CITY LOT No. 62188 AND 62320

No. 62188 AS SHOWN IN PLAT BOOK 100 AT PAGE 83 AND LOT No. 62320 AS SHOWN IN PLAT BOOK 105 AT PAGE 78

LOCATED IN THE CITY OF YOUNGSTOWN, MAHONING COUNTY, STATE OF OHIO

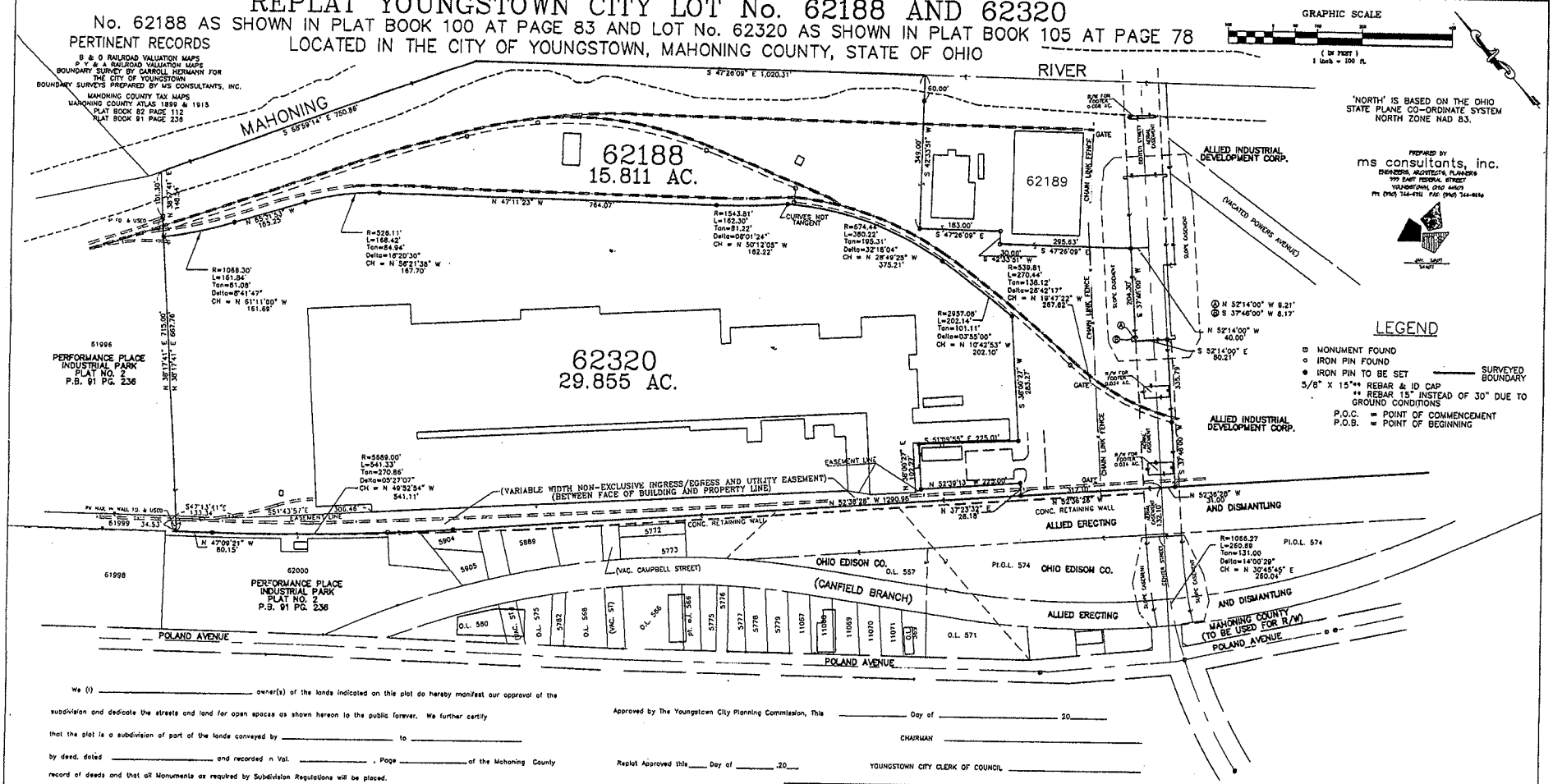
PERTINENT RECORDS

B & O RAILROAD VALUATION MAPS
P Y & A RAILROAD VALUATION MAPS
BOUNDARY SURVEY BY CARROLL HERMANN FOR THE CITY OF YOUNGSTOWN
BOUNDARY SURVEYS PREPARED BY MS CONSULTANTS, INC.
MAHONING COUNTY TAX MAPS
MAHONING COUNTY ATLAS 1899 & 1915
PLAT BOOK 82 PAGE 112
PLAT BOOK 81 PAGE 236

GRAPHIC SCALE

'NORTH' IS BASED ON THE OHIO STATE PLANE CO-ORDINATE SYSTEM NORTH ZONE NAD 83.

PREPARED BY
ms consultants, inc.
ENGINEERS, ARCHITECTS, PLANNERS
999 EAST FEDERAL STREET
YOUNGSTOWN, OHIO 44503
PH: (330) 744-8451 FAX: (330) 744-8456



LEGEND

- ⊡ MONUMENT FOUND
- ○ IRON PIN FOUND
- ● IRON PIN TO BE SET
- SURVEYED BOUNDARY

5/8" X 15"** REBAR & ID CAP
** REBAR 15" INSTEAD OF 30" DUE TO GROUND CONDITIONS

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING

We (I) _____ owner(s) of the lands indicated on this plat do hereby manifest our approval of the subdivision and dedicate the streets and land for open spaces as shown hereon to the public forever. We further certify that the plat is a subdivision of part of the lands conveyed by _____ to _____ by deed, dated _____ and recorded in Vol. _____, Page _____ of the Mahoning County record of deeds and that all Monuments as required by Subdivision Regulations will be placed.

As witness our (my) hand(s) this _____ day of _____, 20____

WITNESSES: _____ OWNERS _____

STATE OF OHIO } SS
MAHONING COUNTY }

Before me, a Notary Public in and for said County, personally appeared the above signed _____ who acknowledge that they are (he or she is) the owner(s) of the location shown on the accompanying subdivision as shown above, and that the signing of the above certificate is their (his or her) own free act and deed.

As witness hereof and have hereunto set my hand and affixed my official seal this _____ day of _____ 20____

NOTARY PUBLIC _____ SEAL

Approved by The Youngstown City Planning Commission, This _____ Day of _____ 20____

CHAIRMAN _____

Replat Approved this ____ Day of _____, 20____ YOUNGSTOWN CITY CLERK OF COUNCIL _____

AREA BREAKDOWN

	OLD 62188	OLD 62320	FOOTER TO STAIR	TOTAL
62188	9.973 AC.	5.906 AC.	-0.068 AC.	15.811 AC.
62320	———	29.855 AC.	———	29.855 AC.
TOTAL	9.973 AC.	35.761 AC.	-0.068 AC.	45.666 AC.

ENTERED FOR TRANSFER THIS _____ DAY OF _____ 20____ MAHONING COUNTY AUDITOR _____

Received for Record on the _____ Day of _____ 20____, at _____ o'clock

Recorded in Vol. _____ Page _____ of the Mahoning County Record of Plats.

On the _____ Day of _____ 20____

MAHONING COUNTY RECORDER _____

I HEREBY CERTIFY THAT THIS PLAT IS A TRUE DELINEATION OF A SURVEY MADE BY ms consultants IN JANUARY 2007, AND THAT ALL CORNER MONUMENTS AS SHOWN ARE IN PLACE.

RICHARD JOHN SWAN
REGISTERED SURVEYOR No. 6574

DATE

tabbies

EXHIBIT

6

STOCK PURCHASE AGREEMENT

Among

THE MAHONING VALLEY RAILWAY COMPANY

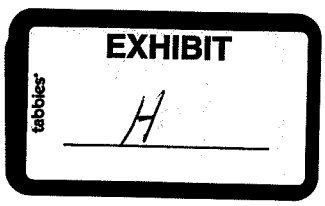
and

THE CUYAHOGA VALLEY RAILWAY COMPANY

and

SUMMIT VIEW, INC.

Dated as of March 30, 2001



STOCK PURCHASE AGREEMENT

THIS AGREEMENT is made as of March 30, 2001, by and among The Mahoning Valley Railway Company, an Ohio corporation (the "Company"), Summit View, Inc., an Ohio corporation ("Buyer"), and The Cuyahoga Valley Railway Company, an Ohio corporation ("Seller") (Buyer, Seller and Company are referred to together herein as the "Parties" and individually as a "Party").

WHEREAS, this Agreement contemplates a transaction in which Buyer will purchase from Seller, and Seller will sell to Buyer, all of the outstanding capital stock of the Company in return for cash;

WHEREAS, Seller is a wholly-owned subsidiary of LTV Steel Company, Inc. ("LTV") and LTV is a wholly-owned subsidiary of The LTV Corporation;

WHEREAS, LTV has conveyed to the Company by Quitclaim Deed, dated February 28, 2001 (the "Quitclaim Deed," a copy of which is appended hereto as Exhibit A), certain real property located in Youngstown, Ohio;

WHEREAS, Company and Seller have assigned to Buyer certain rights, interests and obligations with respect to the real property conveyed by the Quitclaim Deed, and Buyer has assumed these rights, interests and obligations, pursuant to the Assignment and Assumption Agreement among Seller, Company and Buyer, dated as of March 30, 2001 (a copy of which is appended hereto as Exhibit B);

WHEREAS, LTV has conveyed to Company by a Bill of Sale, dated November 30, 2000 (the "Bill of Sale"), a copy of which is appended hereto as Exhibit C, certain items of personal property used in connection with the operation of the business of the Company;

WHEREAS, pursuant to the Blanket Easement Agreement, dated as of March 30, 2001, among LTV, Company, Seller and Buyer, LTV has conveyed to Company certain real property interests, and pursuant to the Road and Bridge Easement and Maintenance Agreement, dated as of March 30, 2001, among LTV, Company and Buyer, LTV has transferred to Company certain real property interests, a copy of each of which is appended hereto as Exhibit D-1 and D-2, respectively;

WHEREAS, LTV presently is the subject of proceedings initiated pursuant to Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. § 1101, et seq.) before the United States Bankruptcy Court, Northern District of Ohio, Eastern Division, styled as In re: LTV Steel Company, Inc., a

New Jersey corporation, et al., Chapter 11, Case No. 00-43869 (the "Bankruptcy Proceedings"):

WHEREAS, following the acquisition by Buyer of the outstanding capital stock of the Company, the Company will continue to provide rail service to and from certain facilities of LTV located in Youngstown, Ohio (the "Youngstown Facilities") pursuant to the terms and conditions of a Transportation Services Agreement, a copy of which is appended hereto as Exhibit E; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the outstanding capital stock of the Company subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows:

ARTICLE I

DEFINITIONS

"Board" means the Surface Transportation Board.

"Code" means the Internal Revenue Code of 1986, as amended.

"Employee Benefit Plan" means any (i) nonqualified deferred compensation or retirement plan or arrangement that is an Employee Pension Benefit Plan, (ii) qualified defined contribution retirement plan or arrangement that is an Employee Pension Benefit Plan, (iii) qualified defined benefit retirement plan or arrangement that is an Employee Pension Benefit Plan (including any Multiemployer Plan), or (iv) Employee Welfare Benefit Plan.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA § 3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA § 3(1).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Environmental Law" means any applicable federal, state or local law or regulation relating to the pollution or protection of the environment.

"Excess Working Capital" means the amount, if any, by which the current assets of the Company as of the Closing Date exceed the current liabilities of the Company as of the Closing Date.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Indebtedness" with respect to any legal person means any obligation of such person for borrowed money.

"Lien" means any security interest, lien, mortgage, pledge, hypothecation, encumbrance, easement, or restriction on transfer or otherwise; provided, that the term "Lien," shall not include (i) mechanics', carriers', workmen's, repairmen's or other like liens incurred in the ordinary course of business, (ii) liens for taxes, assessments and other governmental charges that are not due and payable or which may hereafter be paid without penalty or which are being contested in good faith by appropriate proceedings, (iii) utility easements, licenses or permits located on or crossing properties of the Company, (iv) road crossing agreements with governmental authorities or private parties, (v) leases, pole and wire agreements, easements, and tenancy and similar agreements entered into by the Company or transferred or assigned to the Company, in the ordinary course of business, (vi) easements, licenses, permits and similar rights of public record that do not secure any Indebtedness of the Company, (vii) rights of reverter that have not been violated and will not be violated so long as the Company conducts railroad operations, and (viii) rights reserved to or vested in any governmental authority, and (ix) liens which do not materially detract from the value, or materially interfere with the current or intended use, of the property or assets subject thereto.

"Multiemployer Plan" has the meaning set forth in ERISA § 3(37).

"Order" means any decree, order, judgment, injunction, award, charge, writ, rule, lien, voting right, or consent of or by any court or governmental authority.

"Policies" means all contracts that insure (i) the Company's properties, plant and equipment for loss or damage, and (ii) the Company or any of its officers, directors, employees or agents against any liabilities, losses or damages (or lost profits) for any reason or purpose.

"Proprietary Rights" means all (i) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility, model, certificate of invention and design patents, patent applications, registrations and applications for registrations, (ii) trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof, and (iii) copyrights and registrations and applications for registration thereof.

"Regulated Substance" means any substance:

(1) which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant," "contaminant" or is regulated under any Environmental Law, including, without limitation, the federal Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, Clean Air Act and Federal Insecticide, Fungicide and Rodenticide Act, and similar state and local laws; or

(2) which contains gasoline, diesel fuel or other petroleum products or products containing petroleum hydro-carbons or volatile organic compounds; or

(3) which contains polychlorinated biphenyls ("PCBs") or asbestos or urea formaldehyde foam insulation; or

(4) which contains or emits radioactive particles, waves or materials, including radon gas.

"Regulation" means any rule, law, code, statute, regulation, ordinance, requirement, announcement or other binding action of or by a governmental authority.

"Release" has the definition set forth in Section 101 of the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(22), as amended from time to time.

"Share" means any share of the common stock of the Company.

"Tax Returns" means federal, state, foreign and local tax returns that must, under applicable law, be filed in respect of Taxes by the Company with any Taxing Authority.

"Taxes" means all taxes including, without limitation, income, gross receipts, net proceeds, alternative or add-on minimum, ad valorem, value added, turnover, sales, use, property, personal property (tangible and intangible), stamp, leasing, lease, user, excise, duty, franchise, transfer, license, withholding, payroll, employment, foreign, fuel, excess profits, occupational and interest equalization, windfall profits, severance, and other charges (including interest and penalties) imposed in a sovereign capacity by the United States of America, and state or local subdivision thereof, or any foreign government.

"Taxing Authorities" means the Internal Revenue Service and any other federal, state or local governmental authority that has the right to impose Taxes on the Company.

ARTICLE II

PURCHASE AND SALE OF SHARES

2.1 Purchase and Sale of Shares On and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of the Shares for the consideration specified in Section 2.2.

2.2 Purchase Price

(a) Buyer agrees to pay to Seller at the Closing (as defined in Section 2.4) an amount equal to One Million Three Hundred Thousand Dollars ($1,300,000) (the "Purchase Price").

(b) No more than two (2) business days prior to Closing, the Company shall estimate the amount of Excess Working Capital, and shall pay a Closing Dividend (as defined in Section

5.2(a) hereof) to Seller in the amount, if any, of the estimated Excess Working Capital.

2.3 Payment of the Purchase Price.

(a) At Closing, the Purchase Price shall be paid by wire transfer of immediately available funds to an account or accounts specified by Seller.

(b) In the event that it is determined by either Buyer or Seller within forty-five (45) days after the Closing Date that the dollar amount of the current assets of the Company as of the Closing Date is greater or less than the dollar amount of the current liabilities of the Company as of the Closing Date, then, on the sixtieth (60th) day following the Closing Date, or on a later date agreed to by Buyer and Seller resulting from the selection of an accounting firm as stated below, either (w) Buyer shall remit the amount of such excess to Seller, or (x) Seller shall remit the amount of such shortfall to Buyer, as appropriate; provided, however, that if the amount of such excess or shortfall is Twenty-Five Thousand Dollars ($25,000) or less, (y) Buyer shall not remit such excess to Seller and Seller shall not remit such shortfall to Buyer, as the case may be, and (z) Seller shall be deemed to have paid or not paid a Closing Dividend, as the case may be, in compliance with Sections 2.2(b) and 5.2(a) hereof. If Buyer and Seller disagree as to the amount of the current assets or current liabilities of the Company as of Closing, they shall select a mutually acceptable accounting firm to determine such accounts based upon GAAP, with the fee of the accounting firm borne solely by the Party whose position in the dispute, in the judgment of the accounting firm, least resembles the determination of the accounting firm. The accounting firm will be directed by Buyer and Seller to resolve the matters at issue within thirty (30) days following its selection. The decision of the accounting firm shall be binding on both Buyer and Seller, and non-appealable absent manifest error.

2.4 The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of LTV, commencing at 9:00 a.m. local time on April 27, 2001, or such other date as Buyer and Seller may mutually determine (the "Closing Date").

2.5 Deliveries at the Closing. Subject to the terms and conditions set forth in this Agreement, the Parties shall deliver the following at the Closing:

(a) Seller shall deliver to Buyer stock certificates representing all of the Shares, properly endorsed in blank or accompanied by duly executed stock powers in proper form for transfer.

(b) Seller shall deliver to Buyer the share ledgers and minute and stock books of the Company.

(c) Seller shall deliver the court approval order described in Section 5.4(b) below.

(d) The Company shall deliver to Buyer the written resignations of each of the officers and directors of the Company.

(e) Buyer shall deliver to Seller the Purchase Price in the amount and manner specified in Section 2.2 and 2.3 above.

(f) Seller shall deliver to Buyer a receipt for the payment of the Purchase Price.

(g) Seller or Company, as applicable, shall deliver to Buyer the various certificates, instruments, and documents referred to in Section 7.2 below.

(h) Buyer shall deliver to Seller the various certificates, instruments, and documents referred to in Section 7.1 below.

(i) Buyer shall deliver to Seller, and Seller shall deliver to Buyer, executed counterpart originals of the Transportation Services Agreement in the form of Exhibit E hereto.

(j) Buyer shall deliver or cause to be delivered to Seller, as appropriate, a document evidencing the delivery to Pittsburgh National Bank of executed signature authorization documentation for the Trust Agreement, dated June 1, 1989, between The LTV Corporation and Pittsburgh National Bank relating to the Mahoning Valley Railway Company Defined Contribution Plan (the "Trust Agreement");

(k) Buyer shall deliver or cause to be delivered to Seller a document evidencing coverage of the hourly employees under Buyer's existing or new group insurance programs to provide the welfare benefits provided under the Social Insurance Program of the Mahoning Valley Railway Company;

(l) Seller shall deliver or cause to be delivered to Buyer the amendments referenced in Sections 5.18(c) through 5.18(i) hereof, inclusive.

(m) Buyer shall deliver to Seller evidence of compliance with Sections 5.18(a) and 5.18(b) hereof.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER AND COMPANY

3.1 Except as set forth in the schedules attached to this Agreement that are expressly referenced in this Section 3.1, Seller represents to Buyer as of the date hereof and as of the Closing Date, except as provided below, as follows:

3.1.1 Execution, Delivery; Valid and Binding Agreements. This Agreement has been duly executed and delivered by Seller, and assuming that this Agreement is the valid and binding obligation of Buyer and Company, this Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms.

3.1.2 Authority. Subject to court approval in the Bankruptcy Proceedings as described in Section 5.4(b), Seller has all requisite power and authority and full legal capacity to

execute and deliver this Agreement and to perform its obligations hereunder.

3.1.3 Ownership of Shares. Seller holds of record and owns beneficially 3,961 Shares, free and clear of any Liens, options, proxies, voting trusts or agreements and other restrictions and limitations of any kind, other than applicable federal and state securities law restrictions.

3.1.4. Government Consents. Except (i) as contemplated in Section 5.4 hereof, and (ii) as set forth on Schedule 3.2.3, no material permit, consent, approval, exemption or authorization of any court, governmental or regulatory authority or any other party or person is required to be obtained by Seller in connection with its execution, delivery and performance of this Agreement or the transactions contemplated hereby.

3.2 Except as set forth in the schedules attached to this Agreement that are expressly referenced in this Section 3.2, the Company represents and warrants to Buyer as of the date hereof and as of the Closing Date, except as provided below, as follows:

3.2.1 Organization and Corporate Power; Authority. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, and the Company has (i) all requisite corporate power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder, and (ii) all authorizations, licenses and permits necessary to own and operate its properties and to carry on its businesses as now conducted, except where the failure to hold such authorizations, licenses and permits would not have a material adverse effect upon the financial condition of the Company. The Company is not required to be qualified to do business in any jurisdiction other than Ohio, except where the failure to be so qualified would not have a material adverse effect on the financial condition of the Company.

1,500 - PPH 3.2.2 Capitalization. The authorized capital stock of the Company consists of ~~4,000~~ Shares, of which ~~3,961~~ 500 - PPH Shares are issued and outstanding ~~and 39 Shares are held in treasury~~ PPH. All of the issued and outstanding Shares have been duly authorized, are validly issued, fully paid, and nonassessable, and are held of record by Seller. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Company to issue, sell or otherwise cause to become outstanding any of its capital stock.

execute and deliver this Agreement and to perform its obligations hereunder.

3.1.3 Ownership of Shares. Seller holds of record and owns beneficially 3,961 Shares, free and clear of any Liens, options, proxies, voting trusts or agreements and other restrictions and limitations of any kind, other than applicable federal and state securities law restrictions.

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3.2.1 Organization and Corporate Power; Authority. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, and the Company has (i) all requisite corporate power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder, and (ii) all authorizations, licenses and permits necessary to own and operate its properties and to carry on its businesses as now conducted, except where the failure to hold such authorizations, licenses and permits would not have a material adverse effect upon the financial condition of the Company. The Company is not required to be qualified to do business in any jurisdiction other than Ohio, except where the failure to be so qualified would not have a material adverse effect on the financial condition of the Company.

OK WDS 5-1-2001

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3.2.2 Capitalization The authorized capital stock of the Company consists of 1,500 ~~1,000~~ Shares, of which ~~3,961~~ Shares are issued and outstanding ~~and 39 Shares are held in treasury~~. All of the issued and outstanding Shares have been duly authorized, are validly issued, fully paid, and nonassessable, and are held of record by Seller. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Company to issue, sell or otherwise cause to become outstanding any of its capital stock.

OK WDS 5-1-2001

OK WDS 5-1-2001

3.2.3 Noncontravention

(a) Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) contravene or conflict with the Articles of Incorporation or By-Laws of the Company, (ii) assuming that all consents, authorizations and approvals contemplated by Section 5.4 hereof have been obtained and all filings described therein have been made, contravene or conflict with or constitute a violation of any Regulation or Order binding upon or applicable to the Company, (iii) conflict with, or result in the breach or termination of, or constitute a default (with or without the giving of notice or the lapse of time or both) under, or give rise to any right of termination, cancellation or loss of any benefit to which the Company is entitled under, any agreement, contract, license or other instrument binding upon the Company, or allow the acceleration of the performance of any obligation of the Company under any indenture, mortgage, deed of trust, lease, license, contract, instrument or other agreement to which the Company is a party or by which the Company is subject or bound, or (iv) result in the creation or imposition of any Lien, voting agreement or other encumbrance on any asset or property of the Company.

(b) Except (i) as contemplated in Section 5.4 hereof, and (ii) as set forth on Schedule 3.2.3, no material permit, consent, approval, exemption or authorization of any governmental or regulatory authority or any other party or person is required to be obtained by Company in connection with its execution, delivery and performance of this Agreement or the transactions contemplated hereby.

3.2.4 Financial Statements

(a) Attached hereto as Exhibit H are true and complete copies of the following financial statements (collectively the "Financial Statements") of the Company: (i) an unaudited consolidated balance sheet and income statement as of December 31, 2000 (the "Latest Financial Statements"), and (ii) the unaudited consolidated balance sheet and statement of income for the fiscal years ended December 31, 1998, and December 31, 1999. The Financial Statements have been prepared in accordance with GAAP and applied on a consistent basis throughout the periods covered thereby and present fairly the financial condition of the Company as of such dates and the results of operations of the Company for such periods; provided, however, that the Latest Financial Statements are subject to normal year-end adjustments and lacks footnotes and other presentation items.

(b) The Company does not have any Indebtedness arising out of transactions entered into, at or prior to the Closing Date, other than: (i) liabilities set forth in the Latest Financial Statement, and (ii) liabilities and obligations that have arisen after the date of the Latest Financial Statement in the ordinary course of business.

3.2.5 Title to Properties

(a) The real property interests held by the Company are sufficient to enable it to conduct operations substantially in the manner that it conducts operations as of the date hereof; provided, that following the Closing, the Company will not have the right to operate within the Youngstown Facilities (except to the extent expressly provided in Transportation Services Agreement appended hereto as Exhibit E).

(b) Except as set forth in Schedule 3.2.5(b), the Company owns good title to, or has a valid leasehold interest in, all of the personal property shown on the Latest Financial Statements, free and clear of all Liens. All personal properties used in the Company's business operations as of the date of the Latest Financial Statements are reflected in the Financial Statements and are reflected therein in accordance with and to the extent required by GAAP. Schedule 3.2.5(b) sets forth a complete and accurate list of all such leased assets that have annual rental payments in excess of Twelve Thousand Dollars ($12,000) (including the expiration date of such lease, the name of the lessor and the annual rental payment).

(c) The attached Schedule 3.2.5(c) sets forth all of the locomotives, freight cars, other rolling stock and motor vehicles included in the Latest Financial Statements.

3.2.6 Tax Matters

(a) The Company has (i) prepared in good faith and duly and timely filed (taking into account any extension of time within which to file) all federal, state and local tax returns required to be filed by it, either separately or as a consolidated group of entities, and all such tax returns were, as of the time of filing, true and complete, and (ii) paid or made provisions for the payment of all taxes that are shown as due and payable on such filed tax returns.

3.2.7 Litigation. Schedule 3.2.7 hereto sets forth each instance in which Company is subject to any outstanding Order or the Company is a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction, where an Order, action, suit, proceeding, hearing or investigation would have a material adverse effect on Company's performance under this Agreement or the consummation of the transactions contemplated hereby.

3.2.8 Unasserted Claims. Except as set forth on Schedule 3.2.8 hereto, to the knowledge of the Company there is no unasserted claim which is capable of assertion and could, if asserted, have a material adverse effect on Buyer's performance under this Agreement or the consummation of the transactions contemplated hereby.

3.2.9 Broker's Fees. The Company has no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated. The Company will have paid, prior to Closing, all fees or commissions owed by it to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

3.2.10 ERISA and Related Matters. Except for the plans as set forth on Schedule 3.2.10, the Company does not maintain, participate in or contribute to, or have any liability or contingent liability with respect to, any Employee Benefit Plan. Except as disclosed on Schedule 3.2.10, none of the Company, the Seller or any of their respective officers, directors or employees has taken any action directly or indirectly to obligate the Company to amend any such Employee Benefit Plan as to the Company.

3.2.11 Intellectual Property. To the knowledge of the Company, (i) no other person has any rights to any of the Proprietary Rights owned or used by the Company, (ii) no other person is infringing, violating or misappropriating any Proprietary Right, and (iii) no Proprietary Right is subject to any outstanding Order.

3.2.12 Insurance. The Company currently has, and through the Closing Date will have, Policies in full force and effect. All premiums with respect thereto covering all periods up to and including the Closing Date have been paid or accrued therefor, and no notice of cancellation or termination has been received with respect thereto. Schedule 3.2.12 lists all Policies. The Company has not breached or otherwise failed to perform in any material respect its obligations under any of the Policies nor has the Company received any adverse notice or communication from any of the insurers party to the Policies. All Policies are to the Company's knowledge valid, outstanding, collectible and enforceable policies, and will not in any way be affected by, or terminate or lapse by reason of, the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

3.2.13 Accounts Receivable. To the knowledge of the Company, the accounts receivable of the Company reflected in the Latest Financial Statements and such additional accounts receivable as are reflected on the books of the Company on the date hereof are good and collectible except to the extent reserved against thereon (which reserves have been determined based upon actual prior experience and are consistent with prior practices).

3.2.14 Absence of Certain Changes. Except as provided in Section 5.2 and Schedule 3.2.10, since the date of the Latest Financial Statements, there has been no (i) damage, destruction or loss, whether covered by insurance or not, having a material adverse effect on the financial condition of the Company as a whole; (ii) declaration of, setting aside of, or payment of, any dividend or distribution (whether in cash, stock or property) in respect of the Company's capital stock, or any redemption or other acquisition of such stock by the Company (except the Closing Dividend); (iii) increase in the compensation payable to or to become payable by the Company to its officers or employees (other than increases in the ordinary course consistent with past practice) or any adoption of or increase in any bonus, insurance, pension or other Employee Benefit Plan, (iv) entry into any material contract not in the ordinary course of business, including without limitation, any borrowing or capital expenditure; or (v) material change by the Company in accounting methods or principles.

3.2.15 Contracts and Commitments

(a) Except as set forth in Schedule 3.2.15(a), as of the Closing Date, the Company is

not a party to any contract, the performance of which will involve annual cash consideration or services valued in excess of Ten Thousand Dollars ($10,000), and has received no written notice of breach in connection with any such contract, including without limitation:

(1) pension, profit sharing, stock option, employee stock purchase or other plan for deferred or other compensation to employees or any other Employee Benefit Plan, or any contract with any labor union;

(2) contract relating to loans to officers, directors or affiliates;

(3) contract relating to the borrowing of money or the mortgaging, pledging or otherwise placing of a Lien on any asset of the Company;

(4) guarantee of any obligation;

(5) contract under which the Company has advanced or loaned any person money;

(6) contract under which the Company is lessee of or holds or operates any property, real or personal, owned by any other party;

(7) contract pursuant to which the Company is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by the Company;

(8) assignment, license, indemnification or contract with respect to any intangible property (including, without limitation, any Proprietary Rights);

(9) contract under which it has granted any person any registration rights (including piggyback rights) with respect to any securities; or

(10) contract providing for "take or pay" or similar unconditional purchase or payment obligations.

(b) Company has delivered to Buyer a correct and complete copy of each contract or other agreement (as amended to date) listed in Schedule 3.2.15(a).

3.2.16 Environmental Notices. To the knowledge of the Company, since January 1, 2000, the Company has not received written notice from any federal, state or local government agency (i) alleging a violation by the Company of any Environmental Law or alleging a Release in, on, under or from the rail line operated by the Company, or (ii) alleging the presence of a Regulated Substance on the rail line operated by the Company. For purposes of this Section 3.2.16, the term "knowledge of Company" shall refer exclusively to the actual knowledge of the Company's president, Daniel P. Hennessy, without duty of inquiry.

3.2.17 Bank Accounts. Set forth in Schedule 3.2.17 is a complete list showing

the name and address of each bank in which the Company has an account or safe deposit box and the number of any such account.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller, as of the date hereof and as of the Closing Date, except as provided below, as follows:

4.1 Organization and Corporate Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio, with full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

4.2 Authority. The execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action, and no other corporate proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement. Assuming that this Agreement is a valid and binding obligation of Seller, this Agreement constitutes a valid and binding obligation of Buyer, enforceable in accordance with its terms.

4.3 Noncontravention Assuming that all consents, authorizations and approvals contemplated by Section 5.4 hereof have been obtained and all filings described therein have been made, Buyer is not subject to or obligated under its Articles of Incorporation, its By-Laws, any applicable Regulation, any material agreement or instrument, any license, franchise or permit, or any Order, that would be breached or violated in any material respect by Buyer's execution, delivery or performance of this Agreement and consummation of the transactions contemplated hereby.

4.4 Investment Representation Buyer is purchasing the Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to or for sale in connection with any public distribution of such securities in violation of any federal or state securities laws.

4.5 Solvency. Immediately after giving effect to the transactions contemplated by this Agreement, Buyer shall (i) be able to pay its debts as they become due, (ii) own property that has a fair saleable value greater than the amounts required to pay its respective debts (including a reasonable estimate of the amount of all contingent liabilities), and (iii) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either current or future creditors of the Company.

4.6 Litigation Buyer is not subject to any outstanding Order, nor a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or

administrative agency of any federal, state, local or foreign jurisdiction, where an Order, action, suit, proceeding, hearing or investigation would have a material adverse effect on Buyer's performance under this Agreement or the consummation of the transactions contemplated hereby.

4.7 Governmental Consents. Except as contemplated in Section 5.4 hereof, no material permit, consent, approval, exemption or authorization of any governmental or regulatory authority or any other party or person is required to be obtained by Buyer in connection with its execution, delivery and performance of this Agreement or the transactions contemplated hereby.

4.8 Broker's Fees. Buyer has no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller or Company could become liable or obligated. Buyer will have paid, prior to Closing, all fees or commissions owed by it to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

4.9 Financing. Attached hereto as Exhibit M is a commitment letter (the "Commitment Letter") from Buyer's purchase money lender (the "Bank"), pursuant to which the Bank has undertaken to lend to Buyer not less than One Million Three Hundred Thousand dollars ($1,300,000) for the purchase of the Shares. To Buyer's knowledge, the Commitment Letter is in full force and effect, and there are no facts or circumstances that, if known by the Bank, likely would cause the Bank not to provide the full amount of the funding described in the Commitment Letter.

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ARTICLE V

PRE-CLOSING COVENANTS

5.1 General. Each of the Parties will use its reasonable best efforts to take all action and to do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Article VII below).

5.2 Conduct of the Business

(a) The Parties agree and acknowledge that no more than two (2) business days prior to the Closing Date, the Company shall declare and pay to Seller a dividend in an amount intended to cause the current assets of the Company to equal its current liabilities at Closing ("Closing Dividend"). The Parties further agree and acknowledge that for purposes of this Agreement, the declaration and payment by the Company of the Closing Dividend shall be considered to be in the Company's ordinary course of business.

(b) Except for the declaration and payment of the Closing Dividend, from the date hereof until the Closing Date the Company shall not engage in any practice, take any action, or

administrative agency of any federal, state, local or foreign jurisdiction, where an Order, action, suit, proceeding, hearing or investigation would have a material adverse effect on Buyer's performance under this Agreement or the consummation of the transactions contemplated hereby.

4.7 Governmental Consents. Except as contemplated in Section 5.4 hereof, no material permit, consent, approval, exemption or authorization of any governmental or regulatory authority or any other party or person is required to be obtained by Buyer in connection with its execution, delivery and performance of this Agreement or the transactions contemplated hereby.

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(b) Except for the declaration and payment of the Closing Dividend, from the date hereof until the Closing Date the Company shall not engage in any practice, take any action, or

enter into any transaction outside the ordinary course of business.

(c) Except for the declaration and payment of the Closing Dividend, and as otherwise consented to in writing by Buyer, from the date hereof through the Closing Date, the Company shall not (i) issue, sell or deliver any Shares or issue any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any Shares, (ii) effect any recapitalization, reclassification, stock dividend, stock split or like change in its capitalization, (iii) amend its Articles of Incorporation or By-Laws, (iv) declare or pay any dividends or make any distributions with respect to the Company's capital stock, or (v) make any redemption or purchase of any Shares.

5.3 Notification

(a) From the date hereof through the Closing Date, Seller, Buyer and Company, acting reasonably and in good faith, may amend, supplement or add disclosure schedules to its representations in Article III and Article IV hereof, by providing notice by overnight courier or hand delivery to the other Parties, which notice includes a copy of the amendments, supplements and additions (the "Amendments"); provided, that if such Amendments relate to any facts or circumstances that occur after the date hereof that do or would have a material adverse effect on the financial condition of the Company, the other Parties shall have the right to accept or reject such Amendments. If such Amendments are not accepted by the other Parties, the sole remedy of the non-accepting Party or Parties is the termination of this Agreement pursuant to Section 8.1 hereof. If such Amendments are accepted in writing by the other Parties, such Amendments shall thereafter be deemed to be disclosed as of the date of this Agreement.

(b) Prior to the Closing, Buyer shall promptly notify Seller if Buyer obtains actual knowledge that the representations and warranties of Seller or Company in this Agreement and the Schedules hereto are not true and correct in all material respects, or if Buyer obtains actual knowledge of any material errors in, or omissions from, the Schedules to this Agreement.

5.4 Regulatory and Court Filings.

(a) Within three (3) days following the date of this Agreement, Buyer shall make or cause to be made all filings and submissions with the Board under the ICC Termination Act of 1995 applicable to the consummation of the transactions contemplated by this Agreement. Buyer shall be responsible for all filing fees and other expenses in connection with such filing(s). Seller and Company shall assist and support in the preparation of such filings, and shall have an opportunity to review and comment on all such filings prior to the submission of such filings to the Board.

(b) Within three (3) days following the date of this Agreement, Seller shall make or cause to be made such filings and submissions before the presiding court in the Bankruptcy Proceedings as are necessary to obtain an order from such court approving full consummation of the transactions contemplated by this Agreement, under applicable bankruptcy law and rules thereunder. Such court approval order shall be a condition precedent to Buyer's obligation to proceed to closing under this Agreement. Any other provision of this Agreement to the contrary

notwithstanding, if Seller fails to secure such court approval order within sixty (60) days following the date of this Agreement, or if the presiding court in the Bankruptcy Proceeding imposes conditions on the issuance of an approval order which are unacceptable to Buyer in Buyer's sole discretion, then Buyer may terminate this Agreement, subject to Section 8.2 hereof.

5.5 Director and Officer Liability and Indemnification For a period of six (6) years after the Closing, Buyer shall not, and shall not permit the Company to, amend, repeal or modify any provision in the Company's Articles of Incorporation or By-Laws relating to the exculpation or indemnification of former officers and directors, unless required by law, or unless such amendment does not adversely affect such exculpation or indemnification rights.

5.6 Contact with Customers and Suppliers. Buyer and its employees, agents or representatives shall contact and communicate with the employees, customers and suppliers of the Company in connection with the transactions contemplated by this Agreement only with the prior, written consent of the Company, which consent shall not be unreasonably withheld.

5.7 Confidentiality of Information

(a) To the extent that this Section 5.7 varies from or is inconsistent with any prior confidentiality arrangements between or among two or more of the Parties, this Section 5.7 shall supersede those confidentiality arrangements.

(b) Buyer acknowledges that, in the course of its investigations of the Company, Buyer and its employees, agents and representatives have received and shall become aware of confidential information and documents of the Company and that use by it or communication of such confidential information and documents to third parties would be detrimental to the Company and would injure its business. In accordance with the requirements of this Section 5.7, Buyer covenants that all such confidential information and documents and all other information and documents concerning the Company received or reviewed by Buyer, its employees, agents or representatives, in connection with this Agreement and the transactions contemplated hereby shall be maintained in confidence and not disclosed or utilized (other than in connection with the transactions contemplated hereby) by Buyer, its employees, agents or representatives, without the Company's prior written consent, unless (i) such items were, are now, or become generally available to the public (but not as a result of a breach of any duty of confidentiality by which Buyer, or any of its employees, agents and representatives, is bound), (ii) such items were known to Buyer prior to their disclosure to Buyer as demonstrated by Buyer's written records, (iii) such items are disclosed to Buyer by a third party not subject to any duty of confidentiality to Seller, the Company or any of their respective affiliates, prior to their disclosure to Buyer by Seller or the Company, (iv) such items are required to be disclosed pursuant to a judicial order or applicable law, or (v) the transactions contemplated herein have been consummated.

(c) If this Agreement is terminated pursuant to Section 8.1 hereof, Buyer shall, and shall cause its employees, agents and representatives to, promptly return all confidential information and documents concerning the Company received pursuant to this Agreement or otherwise (including any copies thereof or extracts therefrom) and shall keep confidential and

shall not utilize any such information (including, without limitation, any computer programs or related software, which programs and software shall promptly be delivered to the Company or destroyed by Buyer) or documents unless required to disclose any such information or documents pursuant to a judicial order or applicable law.

(d) In the event that Buyer, or any of its employees, agents or representatives, is required to disclose any such information or documents pursuant to a judicial order or applicable law, Buyer shall provide the Company with prompt notice before such disclosure so that the Company may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement or both. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of this Agreement, Buyer shall furnish only that portion of the information or documents that it is advised by written opinion of counsel is legally required.

(e) It is agreed that money damages would not be a sufficient remedy for any breach of this Section 5.7 by Buyer and that the Company shall be entitled to specific performance as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Section 5.7 but shall be in addition to all other remedies available at law or in equity. Buyer further agrees and covenants that any confidential information or documents that has been or shall be obtained in connection with its investigation of the Company may not be used by Buyer in any judicial or administrative proceeding brought against Seller or the Company, except in a proceeding for breach of this Agreement.

5.8 Capital and Other Expenditures. Prior to the Closing Date, the Company shall not make any capital expenditures, or commitments with respect thereto, except in the ordinary course of business or as specifically provided for in this Agreement. Prior to the Closing Date, Seller shall cause the Company not to make any loan or advance to any affiliated entity and shall collect in full any amounts outstanding now due from any affiliated entity.

5.9 [intentionally omitted]

5.10 Borrowing. Prior to the Closing Date, the Company shall not incur, assume or guarantee any Indebtedness not reflected on the Latest Financial Statements, except in the ordinary course of business.

5.11 Full Access and Disclosure. Prior to the Closing Date and with prior written notice by Buyer to the Company, the Company shall afford Buyer and its counsel, accountants, agents and other authorized representatives, and financial institutions specified by Buyer, with reasonable access during normal business hours to the Company's plants, properties, books and records in order that Buyer may have full opportunity to make such reasonable investigations, at Buyer's sole expense, as it shall desire to make of the affairs of the Company; and the Company's officers, employees and auditors shall furnish such existing additional financial and operating data and other information as Buyer shall from time to time reasonably request including, without limitation, any internal control recommendations made by its independent auditors in connection with any audit of the Company.

5.12 Reasonable Best Efforts. Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties agrees to use its reasonable best efforts to take, or cause to be taken, to do, or cause to be done, and to assist and cooperate with the other Party or Parties in doing, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including, without limitation, (a) obtaining all consents, approvals, waivers, licenses, permits or authorizations as are required to be obtained under any applicable Regulation or from any third parties in connection with the transactions contemplated by this Agreement, (b) defending any lawsuits or other proceedings challenging this Agreement and (c) accepting and delivering additional instruments necessary to consummate the transactions contemplated by this Agreement.

5.13 Risk of Loss; Condemnation

(a) Subject to the limitations hereinafter stated, as between Buyer and Seller, the risk of loss or damage by fire or other casualty or cause to the Company's assets until the Closing shall be upon Seller. In the event of such loss or damage prior to the Closing, Seller shall use its best efforts to promptly restore, replace or repair the lost or damaged assets to their previous condition at Seller's sole cost and expense within a reasonable time after the occurrence of such loss or damage (for which time the Closing Date may be extended by either Buyer or Seller), unless: (i) the Buyer and Seller mutually determine that such restoration, replacement or repair of such assets is not necessary for Buyer to carry on the business and operations of the Company on substantially the same terms as enjoyed by Seller on the date hereof and Buyer has suffered no material identifiable lost opportunity; or (ii) the cost of such restoration, replacement or repair is less than Twenty Thousand Dollars ($20,000). In the event such loss or damage shall not be restored, replaced or repaired as of the Closing Date for any reason and the cost of restoration, repair or replacement is greater than Twenty Thousand Dollars ($20,000), Buyer shall proceed with the Closing and receive at Closing, through an assignment of insurance proceeds to which Seller would be entitled or an adjustment to the Purchase Price, an amount sufficient to pay for such restoration, replacement or repair. Notwithstanding the foregoing, if restoration, replacement or repair is required under the provisions of this Section 5.13(a), and any aggregate portions of such restoration, replacement or repair would result in uninsured costs to Seller that, in the aggregate, exceed One Hundred Thousand Dollars ($100,000), and Buyer does not waive Seller's obligation under this Section 5.13(a), Seller, at its option, may terminate this Agreement and no Party to this Agreement shall have any liability to the other Parties and this Agreement in its entirety, except for the provisions of Sections 5.7 and 9.2, shall be deemed null, void and of no further force and effect.

(b) Notwithstanding the provisions of Section 5.13(a), if loss or damage by fire or other casualty or cause to the Company's assets is caused by the Buyer, its affiliates or their respective officers, directors, employees, shareholders, representatives or agents prior to Closing, the risk of such loss shall be upon Buyer, and Buyer shall be obligated to perform its obligations under this Agreement regardless of the extent of such damage.

5.14 Responsibility for Labor Protection. It is the intention of the Parties that each

Party shall bear the full cost (i) of protection of its own employees under employee protective conditions that may be imposed on it by a governmental agency as a condition for that agency's approval of the transactions contemplated by this Agreement, and (ii) of grievances filed by its own employees under its collective bargaining agreements with its employees.

5.16. Cash Transfer. At Closing, Seller will wire transfer any remaining cash of the Company, not otherwise allocated to Buyer or Seller pursuant to this Agreement, from the account identified in Schedule 3.2.17 to a bank account identified by Buyer. The Parties agree that Buyer shall have no interest in the account identified in Schedule 3.2.17.

5.17 Payroll Administration. Prior to the Closing Date, Buyer shall make the necessary arrangements to provide for all post-Closing payroll administration for the employees of the Company.

5.18 Employee Benefits.

(a) Salaried Employees. Buyer will cause the Company to make available to salaried employees of the Company as of the Closing Date ("Salaried Employees") benefits which are comparable to those provided to similarly situated salaried employees of Buyer. Salaried Employees shall be immediately eligible to participate in the employee benefit plans, programs, policies and arrangements maintained by Buyer for its similarly situated salaried employees (the "Buyer's Benefit Plans"), subject to the terms and conditions of the Buyer's Benefit Plans; provided, however, that, to the extent applicable, Salaried Employees will be given credit under Buyer's Benefit Plans for (i) service with the Company for purposes of vesting, eligibility and satisfying any waiting periods, evidence of insurability requirements or the application of any pre-existing condition limitations, and (ii) amounts paid under a corresponding Employee Benefit Plan during the same period for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of Buyer's Benefit Plans;

(b) Hourly Employees. Buyer shall designate a defined contribution plan which is qualified under Sections 401(a) and (k) of the Internal Revenue Code to cover hourly employees of the Company as of the Closing Date ("Hourly Employees"). As of the Closing Date, Buyer shall establish a new trust for the Mahoning Valley Railway Company Defined Contribution Plan, or Buyer (or Company) shall become a successor to the Trust Agreement. If Buyer (or Company) becomes a successor to the Trust Agreement, then as of the Closing Date, Buyer (or Company) shall have provided the Trustee with executed signature authorization documentation for the Trust. The LTV Corporation shall terminate the Trust Agreement or shall consent to the substitution of the Buyer (or Company) as successor to that agreement. As of the Closing Date, Buyer shall have designated or entered into new group insurance programs to provide the welfare benefits provided under the Social Insurance Program of the Mahoning Valley Railway Company;

(c) LTV Steel Retirement Plan. As of the Closing Date, Seller shall cause The LTV Corporation to amend the LTV Steel Retirement Plan to remove the Company as an Employer (as defined therein) from that plan;

(d) LTV Steel Salaried Defined Benefit Retirement Plan. As of the Closing Date, Seller shall cause The LTV Corporation to amend the LTV Steel Salaried Defined Benefit Retirement Plan to remove the Company as an Employer (as defined therein) from that plan;

(e) LTV Capital Accumulation Plan. As of the Closing Date, Seller shall cause The LTV Corporation to amend the LTV Capital Accumulation Plan to remove the Company as an Employer (as defined therein) from that plan;

(f) LTV Steel-USWA Pension Plan. As of the Closing Date, Seller shall cause the LTV Corporation to amend the LTV Steel-USWA Pension Plan to remove the Company as an Employer (as defined therein) from that plan;

(g) LTV Steel Supplemental Pension Plan. As of the Closing Date, Seller shall cause The LTV Corporation to amend the LTV Steel Supplemental Pension Plan to remove the Company as an Employer (as defined therein) from that plan;

(h) LTV Corporation Health and Welfare Plan. As of the Closing Date, Seller shall cause The LTV Corporation to amend The LTV Corporation Health and Welfare Plan to remove the Company as an Employer (as defined therein) from that plan;

(i) LTV Railroads Welfare Benefit Plan. As of the Closing Date, Seller shall cause The LTV Corporation to amend the LTV Railroads Welfare Benefit Plan to remove the Company as an Employer from that plan and to re-establish the Social Insurance Program of the Mahoning Valley Railway Company as a separate plan sponsored by the Company; and

(j) Payroll Administration. As of the Closing Date, Buyer shall provide, or shall have entered into a contract for payroll administration to provide, for all post-Closing payroll administration for the employees of the Company, including, without limitation, source to gross to net calculation of paychecks, production and distribution of paychecks, W-2 reporting and depositing of payroll taxes.

ARTICLE VI

POST-CLOSING COVENANTS

6.1 Survival

(a) The representations and warranties set forth in Article III shall survive for a period terminating one hundred eighty (180) days after the Closing Date.

(b) The representations and warranties set forth in Article IV of this Agreement shall survive indefinitely the Closing Date and the consummation of the transactions contemplated hereby.

6.2 Indemnification by Seller.

(a) Seller shall indemnify Buyer and its subsidiaries and their respective officers, directors, employees, shareholders, representatives and agents, and hold each of them harmless against and in respect of any and all damage, loss, deficiency, liability, obligation, commitment, cost or expense (including reasonable attorneys' fees and expenses) ("Losses") resulting from, or in respect of (i) the failure of any of the representations and warranties made by Seller or Company in Article III hereof to be true and correct in all material respects as of the times such representations and warranties were made, or (ii) the failure by Seller to perform any of its covenants hereunder; provided, that except as provided in Section 5.4(b) hereof, the Seller's liability to Buyer under this Section 6.2(a) shall be limited as provided in subsections 6.2(b), 6.2(c) and 6.2(d) hereof. Except as expressly set forth in this Section 6.2, Buyer shall have no recourse against Seller or Company for liability arising out of or in connection with this Agreement, including without limitation, liability based upon breaches by Seller or Company of any of its obligations hereunder.

(b) Seller shall have no liability with respect to Losses unless and until the aggregate amount of all such Losses exceeds Seventy-Five Thousand Dollars ($75,000), and then only to the extent of such excess (subject to the limitations set forth in subsections 6.2(c) and 6.2(d)).

(c) Seller shall be liable to Buyer only with respect to Losses for which Buyer, on or before the One Hundred and Eightieth (180th) day after the Closing Date, provides Seller written notice specifying the basis of the claim, the nature of the Losses and the amount of actual Losses incurred by Buyer (subject to the limitations set forth in subsections 6.2(b) and 6.2(d).

(d) The maximum indemnification that shall be paid by Seller pursuant to Section 6.2(a) (subject to the limitations set forth in Sections 6.2(b) and 6.2(c)) shall be twenty percent (20%) of the Purchase Price.

6.3 Indemnification by Buyer. Buyer agrees to, and shall, indemnify the Seller, and its officers, directors, employees, representatives and agents, and hold each of them harmless against and in respect of any and all Losses resulting from, or in respect of, any of the following:

(a) any misrepresentation, breach of warranty or non-fulfillment of any obligation on the part of Buyer under this Agreement, or under any document relating hereto or thereto or contained in any Exhibit to this Agreement, or any misrepresentation in or omission from any certificate, Schedule, other agreement or instrument by Buyer hereunder; or

(b) all demands, assessments, judgments, costs and reasonable legal and other expenses arising from, or in connection with, any action, suit, proceeding or claim incident to any of the foregoing.

6.4 Third-Party Claims. Except as otherwise provided in this Agreement, and specifically subject to the limitations set forth in Sections 6.1 and 6.2, the following procedures shall be applicable with respect to indemnification for third-party claims:

(a) Promptly after receipt by Buyer or Seller seeking indemnification hereunder (the "Indemnitee") of notice of (i) the commencement of any Tax audit or proceeding for the assessment of Tax by any Taxing Authority or any other proceeding likely to result in the imposition of a Tax liability or obligation, or (ii) the commencement of any action or the assertion of any claim, liability or obligation by a third party (whether by legal process or otherwise), which shall collectively be referred to as "Claims," where the other Party (the "Indemnitor") is, or may be, required under this Agreement to indemnify the Indemnitee (an "Indemnifiable Claim"), the Indemnitee will notify the Indemnitor in writing of the commencement or assertion of such Indemnifiable Claims and give the Indemnitor a copy of such Indemnifiable Claims and the related process and legal pleadings. The Indemnitor shall have the right to assume the defense of such Indemnifiable Claims with counsel of reputable standing. The Indemnitor and the Indemnitee shall cooperate in the defense of such Indemnifiable Claims. In the case that the Indemnitor shall assume or participate in the defense of such an Indemnifiable Claim, the Indemnitee shall make available to the Indemnitor all relevant records and take such other action and sign such documents as are reasonably necessary to defend such Indemnifiable Claim in a timely manner. No Indemnitor, in the defense of any such Indemnifiable Claim, shall, except with the consent of the Indemnitee, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability with respect to such Indemnifiable Claim. In the event that the Indemnitor does not accept the defense of any Indemnifiable Claim for which it is entitled to assume such defense as above provided, the Indemnitee shall have the full right to defend against any such claims, and shall be entitled to settle or agree to pay in full such Indemnifiable Claim, in its reasonable discretion. If the Indemnitee shall be required by judgment or a settlement agreement to pay any amount in respect of any obligation or liability against which the Indemnitor has agreed to indemnify the Indemnitee under this Agreement, subject to this Article VI, the Indemnitor shall promptly reimburse the Indemnitee in an amount equal to the amount of such payment plus all reasonable expenses (including reasonable attorneys' fees and expenses) incurred by such Indemnitee in connection with such obligation or liability.

(b) Prior to paying or settling any Indemnifiable Claims, the Indemnitee must first supply the Indemnitor with a copy of a final court judgment or decree holding the Indemnitee liable on such an Indemnifiable Claim or failing such judgment or decree, must first receive the written approval of the terms and conditions of such settlement from the Indemnitor; provided, that the Indemnitee need not obtain the prior written approval of the Indemnitee of the settlement of any Indemnifiable Claim as to which the Indemnitor was entitled to assume the defense and elected not to do so. An Indemnitor or Indemnitee shall have the right to settle any Indemnifiable Claim against it, subject to the prior written approval of the other (except as provided in the immediately preceding sentence), which approval shall not unreasonably be withheld.

(c) An Indemnitee shall have the right to employ its own counsel in connection with any Indemnifiable Claim, but the fees and expenses of such counsel shall be at the expense of the Indemnitee unless (i) the employment of such counsel shall have been authorized in writing by the Indemnitor in connection with the defense of such Indemnifiable Claim, (ii) the

Indemnitor shall not have employed counsel in the defense of such Indemnifiable Claim, or (iii) such Indemnitee shall have reasonably concluded that there may be defenses available to it that are contrary to, or inconsistent with, those available to the Indemnitor, in any of which events such fees and expenses of not more than one counsel of Indemnitee shall be borne by the Indemnitor.

6.5 Release. Except to the extent expressly provided in this Article VI, Buyer hereby releases Seller and Company from any liability, and shall have no recourse against Seller and Company, for all claims and causes of action arising under or in connection with this Agreement or the transactions contemplated herein.

6.6 Disclosure Generally. If and to the extent any information required to be furnished in any Schedule is contained in this Agreement or in any Schedule attached hereto, such information shall be deemed to be included in all Schedules in which the information is required to be included to the extent such disclosure is reasonably apparent on its face. The inclusion of any information in any Schedule attached hereto shall not be deemed to be an admission or acknowledgement by the Company or Seller, in and of itself, that such information is material to or outside the ordinary course of the business of the Company.

6.7 Acknowledgement of Buyer. Buyer has conducted to its satisfaction an independent investigation and verification of the financial condition, results of operations, assets, liabilities, properties and projected operations of the Company. In making its determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of its own independent investigation and verification, and the representations and warranties of Seller and the Company expressly and specifically set forth in this Agreement, including the Schedules attached hereto. **SUCH REPRESENTATIONS AND WARRANTIES BY SELLER AND COMPANY CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF SELLER AND COMPANY TO BUYER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, AND BUYER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE EXPRESSED OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE OR HISTORICAL FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPANY) ARE SPECIFICALLY DISCLAIMED BY SELLER AND COMPANY. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, AND EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, SELLER AND COMPANY DISCLAIM ANY REPRESENTATION AND WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS CONVEYED TO THE BUYER PURSUANT TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ALL BUILDINGS, TRACK STRUCTURES, FIXTURES AND IMPROVEMENTS LOCATED ON REAL PROPERTY) AND AVER THAT SUCH ASSETS ARE BEING SOLD "AS IS, WHERE IS."**

6.8 Tax Matters. (a) Seller will indemnify Buyer against any taxes imposed upon

the Company for the taxation periods, or any portion thereof, ended on or before the Closing Date. Buyer shall cooperate fully by providing to Seller all information required for the preparation of federal and state income tax returns for periods ending on or before the Closing Date, which shall be prepared and filed by Seller. Buyer shall file or cause to be filed when due (taking into account any applicable extensions) all tax returns (except those returns for periods ending on or before the Closing Date) that are required to be filed by or with respect to the Company after the Closing Date. Tax returns for the tax year that begins before and ends after the Closing Date shall be prepared in a manner consistent with past practice and shall be submitted to Seller for review at least forty-five (45) days prior to the due date (including extensions) of such tax returns. If Seller, within ten (10) business days after delivery of any such tax return, notifies Buyer in writing that it objects to any items in such tax return, the disputed items shall be resolved (within a reasonable time, taking into account the deadline for filing such tax return) by an internationally recognized accounting firm chosen and mutually acceptable to both Buyer and Seller. Upon resolution of all such items, the relevant tax return shall be adjusted to reflect such resolution and shall be binding upon the Parties without further adjustment. The costs, fees and expenses of such accounting firm shall be borne equally by Buyer and Seller.

(b) Buyer shall notify Seller of any inquiry, request for audit, notice of adjustment, or notice of additional tax due for any tax period ending on or before Closing (for which period Seller has indemnified Buyer) within ten (10) business days of receipt. Seller shall have the sole right to defend itself against any adjustments to tax returns as filed and against the imposition of additional tax at the earliest possible opportunity. Seller shall have the right of final settlement of all such adjustments and all such additional tax due for all tax liabilities to which the Seller's indemnity applies.

6.9 Further Actions. From time to time, as and when requested by any Party and at that Party's expense, any other Party shall execute and deliver, or cause to be executed and delivered, all documents and instruments, and shall take, or cause to be taken, all further or other actions as the first Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

6.10 Retention of Records. Buyer shall cause the Company to retain all of the books and records of the Company relating to the business conducted by the Company prior to Closing for a period of not less than four (4) years after the Closing Date and throughout that four (4)- year period will make them available at the offices of the Company upon reasonable request at all reasonable business hours to Seller and its employees, agents and representatives solely for purposes of defending itself in a litigation or other legal proceeding or in connection with the preparation of its tax returns. At the end of the four (4) year retention period, Seller may, at its option, request that Buyer deliver or cause to be delivered to Seller, at Buyer's expense, all of the books and records of the Company relating to the business conducted by the Company prior to Closing.

ARTICLE VII

CONDITIONS

7.1 Conditions to Obligation of Seller and Company. The obligation of Seller and Company to consummate the transactions contemplated by this Agreement is subject to satisfaction of the following conditions (any or all of which, except subsection 7.1(f), may be waived in whole or in part by Seller and Company):

(a) The representations and warranties set forth in Article IV above shall be true and correct in all material respects at and as of the Closing Date (except to the extent a representation or warranty is expressly made as of a different date, in which case such representation or warranty shall be true and correct in all material respects as of such date).

(b) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing.

(c) On the Closing Date there shall be (i) no Order in effect that prohibits or restrains or restricts in any material respect the consummation of the transactions contemplated hereby, or (ii) no Regulation enacted, entered, enforced, promulgated or deemed applicable to the transactions contemplated by this Agreement that prohibits the consummation of the transactions contemplated hereby.

(d) Buyer shall have delivered to Seller a certificate, substantially in the form of Exhibit J hereto, to the effect that each of the conditions specified above in subsections 7.1(a)-(c) is satisfied in all respects.

(e) All actions to be taken by Buyer in connection with the consummation of the transactions contemplated by this Agreement, and all certificates, instruments and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Seller.

(f) All required approvals, exemptions, permits, authorizations and consents of any governmental, administrative or regulatory agency (federal, state, local or otherwise) (including without limitation approval or exemption by the Board of the transactions contemplated in this Agreement and the Interim Trackage Rights Agreement), upon terms reasonably acceptable to Seller, shall have been obtained and shall be in full force and effect.

(g) Seller shall have received a certificate in the form of Exhibit K-1, by the secretary of Buyer, as to the Articles of Incorporation and By-Laws of Buyer, the resolutions adopted by the directors of Buyer in connection with this Agreement, the incumbency of certain officers of Buyer and the jurisdictions in which Buyer is qualified to conduct business.

(h) Buyer shall have delivered the Transportation Services Agreement, in the form of Exhibit E hereto, executed by an authorized officer of Buyer, and the proof of insurance required in Section 13.02 thereof.

7.2 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to satisfaction of the following conditions (any or all of which, except subsection 7.2(g), may be waived in whole or in part by Buyer):

(a) The representations and warranties set forth in Article III above shall be true and correct in all material respects at and as of the Closing Date (except to the extent a representation or warranty is expressly made as of a different date, in which case such representation or warranty shall be true and correct in all material respects as of such date).

(b) Seller and Company shall have performed and complied with all of its covenants hereunder in all material respects through the Closing.

(c) On the Closing Date there shall be (i) no Order in effect that prohibits or restrains or restricts in any material respect the consummation of the transactions contemplated hereby, or (ii) no Regulation enacted, entered, enforced, promulgated or deemed applicable to the transactions contemplated by this Agreement that prohibits the consummation of the transactions contemplated hereby.

(d) Seller shall have delivered to Buyer a certificate, substantially in the form of Exhibit L hereto, to the effect that each of the conditions specified above in subsections 7.2(a)-(c) is satisfied in all respects.

(e) Seller shall have delivered to Buyer the court approval order described in Section 5.4(b) hereof.

(f) All actions to be taken by Seller and Company in connection with the consummation of the transactions contemplated by this Agreement, and all certificates, instruments and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Buyer.

(g) All required approvals, exemptions, permits, authorizations and consents of any governmental, administrative or regulatory agency (federal, state, local or otherwise) (including without limitation approval or exemption by the Board of the transactions contemplated in this Agreement and the Interim Trackage Rights Agreement), upon terms reasonably acceptable to Buyer, shall have been obtained and shall be in full force and effect.

(h) Since the date of the Latest Financial Statements, there has been no material adverse change in the financial condition or results of operations of the Company. Buyer agrees and acknowledges that the declaration and payment by the Company of the Closing Dividend shall not be a material adverse change in the financial condition or results of operations of the Company.

(i) Buyer shall have received a certificate (i) by the secretary of the Company in the form of Exhibit K-2A as to the Articles of Incorporation and By-Laws of the Company, the

incumbency of certain officers of the Company and the jurisdictions in which the Company is qualified to conduct business, and (ii) by the secretary of Seller in the form of Exhibit K-2B as to the resolutions adopted by the directors of Seller in connection with this Agreement and the incumbency of certain officers of Seller.

(j) At the Closing, Company shall have delivered to Buyer certificates issued by the appropriate governmental authorities evidencing the good standing, with respect to both the conduct of business and the payment of all franchise taxes, of the Company as of a date not more than thirty (30) days prior to the Closing Date.

(k) At the Closing, LTV shall have delivered the Transportation Services Agreement, in the form of Exhibit E hereto, executed by an authorized officer of LTV.

ARTICLE VIII

TERMINATION

8.1 Termination of Agreement. The Parties may terminate this Agreement as provided below:

(a) Buyer, Seller and Company may terminate this Agreement by mutual written consent at any time prior to Closing.

(b) Buyer may terminate this Agreement pursuant to Section 5.4(b), or if there has been a material violation or breach by Seller or Company of any covenant, representation or warranty contained in this Agreement that has prevented the satisfaction of any condition to the obligations of Buyer at the Closing, and such violation or breach has not been waived by Buyer or, in the case of a covenant breach, cured by Seller or Company within ten (10) days after written notice thereof from Buyer.

(c) Seller or Company may terminate this Agreement if there has been a material violation or breach by Buyer of any covenant, representation or warranty contained in this Agreement that has prevented the satisfaction of any condition to the obligations of Seller or Company at the Closing, and such violation or breach has not been waived by Seller and Company or, with respect to a covenant breach, cured by Buyer within ten (10) days after written notice thereof by Seller or Company; provided, however, that the failure to deliver the Purchase Price at the Closing as required hereunder shall not be subject to cure unless otherwise agreed to in writing by Seller and Company).

(d) Buyer or Seller may terminate this Agreement if the transactions contemplated hereby have not been consummated by December 31, 2001; provided, however, that neither Buyer nor Seller shall be entitled to terminate this Agreement pursuant to this subsection 8.1(d) if such Party's knowing or willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby.

8.2 Effect of Termination. In the event of termination of this Agreement by either Buyer or Seller as provided above, (i) the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 8.2 and Sections 5.7 and 9.2, which shall survive the termination of this Agreement), and (ii) there shall be no liability on the part of either Buyer, Seller or the Company to one another, except in the case of any knowing or willful breaches of this Agreement prior to the time of such termination.

ARTICLE IX

MISCELLANEOUS

9.1 Press Releases and Communications. No press release or public announcement related to this Agreement or the transactions contemplated herein, or, prior to the Closing, any other announcement or communication to the employees, customers or suppliers of the Company, shall be issued or made without the joint approval of Buyer and Seller, unless required by law (in the reasonable opinion of counsel) in which case Buyer and Seller shall have the right to review such press release, announcement or communication prior to publication.

9.2 Expenses.

(a) Except as otherwise expressly provided herein, Seller, Company and Buyer each shall pay all of its own expenses (including attorneys' and accountants' fees and expenses) in connection with the negotiation of this Agreement, the performance of its respective obligations hereunder and the consummation of the transactions contemplated by this Agreement (whether consummated or not).

(b) Buyer shall pay all transfer taxes and documentary stamps imposed on the transactions that are the subject of this Agreement.

9.3 Knowledge Defined. For the purposes of this Agreement, and except to the extent expressly provided otherwise in any provision herein, the terms "the knowledge of the Company" or "the knowledge of the Seller" or similar phrases, shall mean the actual knowledge of an officer of the Company or Seller, respectively, without independent investigation.

9.4 Notices. All notices, demands and other communications ("Notice") to be given or delivered by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been received on the date such Notice is personally delivered, on the first business day following the date on which such Notice is sent by a national overnight delivery service, on the third business day following the date such Notice is mailed by registered or certified mail, return receipt requested, or on any date using any other method of delivery as the Parties agree. A Notice to Buyer or Seller shall, unless another address is specified in writing, be sent to the address indicated below:

If to Buyer:	Summit View, Inc. 136 South Fifth Street Coshocton, OH 43812 Attention: Mr. W.A. Strawn
with a copy to:	Slover & Loftus 1224 Seventeenth Street, NW Washington, DC 20036 Attention: Kelvin J. Dowd
If to Seller:	The LTV Corporation 200 Public Square Cleveland, OH 44114-2308 Attention: General Counsel
with a copy to:	Weiner Brodsky Sidman Kider PC 1300 Nineteenth Street, NW Fifth Floor Washington, D.C. 20036-1609 Attention: Mark H. Sidman
If to Company:	Summit View, Inc. 136 South Fifth Street Coshocton, OH 43812 Attention: Mr. W.A. Strawn
with a copy to:	Slover & Loftus 1224 Seventeenth Street, NW Washington, DC 20036 Attention: Kelvin J. Dowd

9.5 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by Buyer without the prior written consent of Seller.

9.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without rendering ineffective the remainder of such provision or the remaining provisions of this Agreement.

9.7 No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

9.8 Amendment and Waiver. Any provision of this Agreement or the Schedules hereto may be amended or waived only in writing signed by Buyer and Seller. No waiver of any provision hereunder or any breach or default thereof shall extend to or effect in any way any other provision or prior or subsequent breach or default.

9.9 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

9.10 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any party other than the Parties and their respective successors and assigns.

9.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

9.12 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

9.13 Incorporation of Schedules and Exhibits. The Schedules and Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

9.14 Governing Law. All matters relating to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Ohio, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Ohio.

9.15 Consent to Jurisdiction

(a) The Parties hereby irrevocably submit to the jurisdiction of the courts of the State of Ohio and the federal courts of the United States of America located in Ohio and appropriate appellate courts therefrom, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each Party hereby irrevocably agrees that all claims in respect of such dispute may be heard and determined in such court. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each Party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. This consent to jurisdiction is being given solely for purposes of this Agreement and is not intended to, and shall not, confer consent to jurisdiction with respect to any other dispute in which a Party may become involved.

(b) Each Party hereby consents to process being served by another Party in any dispute of the nature specified in subsection 9.15(a) above by sending a copy thereof in the manner specified in Section 9.4.

9.16 Time of the Essence. The Parties agree and acknowledge that time is of the essence in the performance of their respective obligations under this Agreement.

* * * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SUMMIT VIEW, INC.

By: William C. Stanton II

Its: Vice President

THE CUYAHOGA VALLEY RAILWAY COMPANY

By: Daniel P. Hennessy

Its: PRESIDENT

THE MAHONING VALLEY RAILWAY COMPANY

By: Daniel P. Hennessy

Its: PRESIDENT

EXHIBITS

Exhibit A	Quitclaim Deed
Exhibit B	Assignment and Assumption Agreement
Exhibit C	Bill of Sale
Exhibit D-1	Blanket Easement Agreement
Exhibit D-2	Road and Bridge Easement and Maintenance Agreement
Exhibit E	Form of Transportation Services Agreement
Exhibit F	[Intentionally Omitted]
Exhibit G	[Intentionally Omitted]
Exhibit H	Financial Statements of the Company
Exhibit I	[Intentionally Omitted]
Exhibit J	Form of Certificate of Buyer to Seller
Exhibit K-1	Form of Secretary's Corporate Certificate (Buyer)
Exhibit K-2A	Form of Secretary's Corporate Certificate (Company)
Exhibit K-2B	Form of Secretary's Corporate Certificate (Seller)
Exhibit L	Form of Certificates of Seller and Company to Buyer
Exhibit M	Commitment Letter

SCHEDULES

Schedule 3.2.3

Schedule 3.2.5(b)

Schedule 3.2.5(c)

Schedule 3.2.7

Schedule 3.2.8

Schedule 3.2.10

Schedule 3.2.12

Schedule 3.2.15(a)

Schedule 3.2.17

STATE OF OHIO)
) SS IN THE COURT OF COMMON PLEAS
MAHONING COUNTY)

CASE NO. 2006 CV 00181

ALLIED ERECTING AND DISMANTLING CO., INC., ET AL.,
Plaintiffs
VS
THE OHIO CENTRAL RAILROAD, INC., ET AL.,
Defendants

DEPOSITION OF MR. TERRY FEICHTENBINER

DEPOSITION taken before me, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, on the 14th day of April, A.D., 2009, pursuant to agreement, and at the time and place therein specified, to be read in evidence on behalf of the Defendants in the aforesaid cause of action, pending in the Court of Common Pleas within and for the County of Mahoning, in the State of Ohio.

APPEARANCES

F. TIMOTHY GRIECO, ESQ.,
On Behalf of Plaintiffs

THOMAS J. LIPKA, ESQ.,
On Behalf of Defendants

INDEX

Caption and Appearance 1
Stipulations 3
Reporter's Certificate 142
Notary Certificate 143

- - -

Witness	Exam	Attorney	Page
T. Feichtenbiner	Cross	Mr. Grieco	4

- - -

EXHIBITS

5 - Ohio Central's discovery responses

- - -

Reported and Transcribed by:
Cynthia M. Nibert
Registered Professional Reporter

STIPULATIONS

It is stipulated and agreed by and between counsel for the parties hereto that this deposition may be taken at this time, 10:00 a.m., at the offices of Nadler, Nadler & Burdman Co., Attorneys at Law, Youngstown, Ohio, without the usual Notice to Take Deposition having been served, service of the same being waived.

It is further stipulated and agreed that the deposition may be written in stenotype by Cynthia M. Nibert, a Notary Public within and for the State of Ohio, and a Registered Professional Reporter, and by her transcribed; that the transcript be made available to the witness for signature, and that the witness shall read the same and subscribe thereto, and that the deposition may thereupon be used on behalf of the Plaintiff in the aforesaid cause of action.

* * *

WHEREUPON,

MR. TERRY FEICHTENBINER

of lawful age, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, as hereinafter certified, deposes and says as follows:

CROSS EXAMINATION

By Mr. Grieco

Q Would you state your full name for the record, please.

00:00:01 A **Terry L. Feichtenbiner.**

00:00:05 Q And could you spell that for the record, please?

00:00:07 A **Sure. Last name F as in Frank,**

00:00:10 **e-i-c-h-t-e-n-b-i-n-e-r.**

00:00:16 Q Do you mind if I call you Terry?

00:00:19 A **Go right ahead.**

00:00:19 Q Okay. We have met before. As you know, my name

00:00:22 is Tim Grieco. I'm the attorney for Allied Erecting. We

00:00:26 have called you here to ask you a series of questions

00:00:29 concerning a lawsuit between Allied and Ohio Central. Have

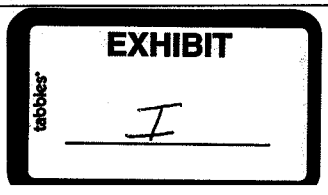
00:00:32 you ever had your deposition taken before?

00:00:33 A **Yes, I have.**

00:00:34 Q So you're familiar with the ground rules. I will

00:00:36 just give you a few of them. Basically I will try to ask my

00:00:39 questions as clear as possible. If you don't understand it,



00:00:41 let me know, and I will rephrase it. If you don't ask me to
00:00:44 do that, I will assume you understood my question.
00:00:47 Let me finish my questions, and I will try to let
00:00:49 you finish your answers so we don't talk over each other,
00:00:52 and the court reporter can take down our testimony
00:00:55 accurately.
00:00:56 If you need to take a break at any time, let me
00:00:57 know -- it's not an endurance contest -- and I will be sure
00:01:01 to accommodate you. Sound fair?
00:01:04 **A** **I understand. Sounds good.**
00:01:06 **Q** Okay. Let me ask you this. Has -- and I want to
00:01:12 set the ground rules for talking about Ohio Central. We
00:01:15 have named a list of Defendants, I believe 11 of them. And
00:01:20 my understanding is, from the discovery responses, that Ohio
00:01:25 Central is basically a trade name; is that correct?
00:01:27 **A** **Yes.**
00:01:27 **Q** Okay. And that encompasses the 11 individual
00:01:34 Ohio corporations that we have named as Defendants,
00:01:37 including Mahoning Valley Railway and others; is that
00:01:42 accurate?
00:01:42 **A** **That's generally accurate, yes.**
00:01:44 **Q** Okay. Is there anything more specific you would
00:01:47 like to add to that that's not --
00:01:49 **A** **No.**

00:01:49 **Q** Okay. I guess when I refer to Ohio Central, I
00:01:54 will be referring to all 11 of the named individual Ohio
00:01:59 corporations, individual railroads.
00:02:01 **A** **I understand.**
00:02:02 **Q** Is that okay?
00:02:02 **A** **Uh-huh.**
00:02:03 MR. LIPKA: If I can jump in for just one second.
00:02:06 I have got a copy of the first amended complaint. Is there
00:02:09 another one after that? The only reason I say that, looks
00:02:11 like there is six --
00:02:12 MR. GRIECO: Can I see that real quick?
00:02:13 MR. LIPKA: You sure can. I may just have an
00:02:15 earlier version.
00:02:17 MR. GRIECO: I think the reason -- we can go off
00:02:19 the record for one second.
00:02:20 (Whereupon, a discussion was held off the
00:02:22 record.)
00:03:07 **Q** I would like to clarify something. What I
00:03:10 understand from your interrogatory answers is that there is
00:03:13 11 companies that are wholly-owned subsidiaries of
00:03:18 Summitview, Inc. They include Ohio Central Railroad, Inc.,
00:03:22 Ohio and Pennsylvania Railroad Company, the Warren and
00:03:25 Trumbull Railroad Company, Youngstown and Austin Railroad
00:03:28 Company, Youngstown Belt Railroad Company and the Mahoning

00:03:32 Valley Railway Company. Those that I listed are named as
00:03:38 Defendants in this case.
00:03:38 **A** **Yes. And the only thing I will say is that it's**
00:03:41 **the Youngstown and Austintown.**
00:03:45 **Q** Okay. So it's the Youngstown and Austintown
00:03:50 Railroad Company?
00:03:51 **A** **Yeah.**
00:03:52 **Q** Okay. All right. So with that context for Ohio
00:03:59 Central, are you aware of any other lawsuit, either before
00:04:07 your time that you heard of or when you have been there, in
00:04:10 which Ohio Central has been accused of either trespassing or
00:04:17 violating any easement rights as part of its railroad
00:04:21 operations?
00:04:22 **A** **No, I'm not.**
00:04:23 **Q** Okay. You don't have any recollection of
00:04:26 anything similar to this Allied lawsuit in which there is an
00:04:30 allegation made of a breach of easement or going beyond the
00:04:33 scope of an easement by how Ohio Central operated its
00:04:38 railcars?
00:04:38 **A** **No.**
00:04:38 **Q** Okay. Have you had contact with anyone outside
00:04:47 of Ohio Central regarding this lawsuit or this deposition?
00:04:54 And that would include, you know, third parties, whether
00:04:59 Columbiana County Port Authority, other railroad operators

00:05:05 on the tracks in the proximity of the property we're talking
00:05:08 about in this case? Any third parties whatsoever?
00:05:11 **A** **No.**
00:05:12 **Q** Okay. Has anyone contacted you about the lawsuit
00:05:18 that Ohio Central is involved with with Allied?
00:05:23 **A** **Not to my knowledge.**
00:05:24 **Q** Okay. What about within Ohio Central, who have
00:05:28 you discussed this case with?
00:05:31 **A** **William A. Strawn, the prior President of the**
00:05:38 **company primarily.**
00:05:39 **Q** Okay. Anyone else?
00:05:41 **A** **The, certainly the, the new people that are**
00:05:47 **involved with ownership of The Ohio Central.**
00:05:49 **Q** Okay. And when you say "new people," is there a
00:05:54 group of people, or a, a main individual to whom this
00:05:58 lawsuit has had to be explained?
00:06:01 **A** **My superiors.**
00:06:03 **Q** Okay. And I guess we will get to that. Did you
00:06:09 talk to Bill Strawn in advance of this deposition today?
00:06:15 **A** **Only, only briefly, just to make sure we were**
00:06:20 **coordinated on deposition times.**
00:06:21 **Q** Okay. Did you talk about any of the issues in
00:06:24 the case?
00:06:24 **A** **No.**

00:06:25 Q Okay. I wanted to get a brief educational and
00:06:35 employment background from you. Let's just start with
00:06:35 education. Could you give me a brief education?
00:06:36 **A Obviously high school, completed high school, two**
00:06:38 **years of college.**
00:06:39 Q Where was high school at?
00:06:40 **A Sparta, Michigan, S-p-a-r-t-a, Michigan.**
00:06:45 Q Okay. And what year did you graduate?
00:06:47 **A 1971.**
00:06:48 Q You don't want to hear that's the year I was
00:06:54 born. Two years of college, and where was that at?
00:07:01 **A That was at Grand Rapids Junior College.**
00:07:05 Q And what was your course of study there?
00:07:09 **A Liberal arts.**
00:07:10 Q Okay. And did you have any further post
00:07:16 secondary education after these two years of college?
00:07:19 **A Only railroad related.**
00:07:22 Q And give me an idea of -- are you talking about
00:07:25 classes, or certifications? Give me an idea what other
00:07:29 training you had vis-a-vis railroad.
00:07:32 **A Locomotive engineer training, HAZMAT training,**
00:07:41 **accident cause finding.**
00:07:44 Q And what would be the context of this training in
00:07:46 terms of, number one, where, do you recall where this

00:07:51 training was at?
00:07:52 **A I would just say various places sponsored by the**
00:07:59 **railroad which I was employed.**
00:08:00 Q Okay. And give me an idea of the frequency or
00:08:04 the extent of this training, whether in terms of credits.
00:08:08 Or is this an annual thing, like continuing legal education?
00:08:13 I know we have that as lawyers.
00:08:16 **A I, I would just describe it as random.**
00:08:19 Q Okay. Do you receive a number of credits for the
00:08:26 number of classes you take?
00:08:27 **A If it's related to federally-mandated trainings,**
00:08:35 **for instance, with hazardous material handling, then a**
00:08:39 **record is made of it so that you are within compliance with**
00:08:42 **federal regs.**
00:08:46 Q Okay.
00:08:47 **A But other than that, no.**
00:08:52 Q Okay. So graduate from high school 1971, two
00:08:55 years of college at Grand Rapids, and then this
00:08:58 railroad-related training. Anything else as far as
00:09:01 education, or formal training or certifications?
00:09:09 **A I, I'm sure there are things that I don't recall**
00:09:13 **relative to my vocation that I have, that I have**
00:09:17 **participated in. But no, not, not significant to organized**
00:09:22 **education, no.**

00:09:22 Q Okay. Let's go over a brief employment history,
00:09:31 starting with when you graduated, well, when you ended your
00:09:35 two years at Grand Rapids. Who was your first employer?
00:09:38 **A My first employer was The Standard Supply and**
00:09:43 **Lumber Company.**
00:09:45 Q Okay. How long did you work for them?
00:09:47 **A Oh, approximately a year.**
00:09:49 Q What did you do there?
00:09:50 **A Was a truck driver and yard employee, so to**
00:09:56 **speak.**
00:09:56 Q Okay. After that?
00:09:59 **A I became employed with the Chesapeake and Ohio**
00:10:04 **Railway.**
00:10:05 Q When was that?
00:10:05 **A That was November 14th, 1974.**
00:10:13 Q And what did you do there when you first arrived?
00:10:15 **A I was a brakeman.**
00:10:17 Q What is a brakeman?
00:10:18 **A If you have ever seen a train switching cars at a**
00:10:25 **location, brakeman would be the person on the ground**
00:10:30 **directing the movement of the train through the engineer**
00:10:35 **verbally.**
00:10:36 Q Okay.
00:10:37 **A Sending cars from one track to another, coupling**

00:10:43 **up cars, cutting loose some cars and so forth.**
00:10:45 Q How long did you work at Chesapeake?
00:10:48 **A From 1974 until February of 1989.**
00:10:59 Q And can you kind of take me through your
00:11:01 progression of positions there?
00:11:03 **A Sure. In 1976 I transferred into what we call**
00:11:12 **engine service, which meant that I was going to train to**
00:11:15 **become a locomotive engineer. And I was promoted to**
00:11:21 **locomotive engineer in November of 1977, worked in that**
00:11:29 **capacity from November of '77 through December of 1985, at**
00:11:41 **which time I was promoted by the company into a supervisory**
00:11:47 **position.**
00:11:49 Q Okay. And what was -- this is still within
00:11:52 Chesapeake, right?
00:11:53 **A Yes, uh-huh.**
00:11:54 Q Okay. And describe for me that supervisory
00:11:56 position. What did that entail?
00:11:58 **A It was called road foreman of engines. And my**
00:12:03 **primary responsibility was the supervision of 210 locomotive**
00:12:10 **engineers over the Virginia Division of the Chesapeake and**
00:12:16 **Ohio Railway.**
00:12:19 Q During these years you worked at Chesapeake,
00:12:21 where were you located or stationed geographically?
00:12:25 **A Started out Grand Rapids, Michigan. I did a tour**

00:12:30 **duty in Newport News, Virginia, a tour of duty in Richmond,**
00:12:37 **Virginia, and ultimately in Clifton Forge, Virginia.**
00:12:41 Q Okay. So you occupied this supervisory position.
00:12:45 And I guess was there a title to that position?
00:12:47 **A Yeah. It was road foreman of engines.**
00:12:51 Q I'm sorry. You occupied that from 1985 to 1989?
00:12:54 **A Yes, that's correct.**
00:12:55 Q Okay. And then you left Chesapeake in 1989?
00:13:01 **A That is correct. February of '89 I left on my**
00:13:06 **own volition, and accepted a position of Vice President of**
00:13:10 **Operations with the Aberdeen, Carolina and Western Railway**
00:13:22 **in North Carolina.**
00:13:22 Q And I'm sorry. What was your position? Vice
00:13:25 President?
00:13:25 **A Vice President of Operations.**
00:13:29 Q And describe your job responsibilities in that
00:13:32 capacity.
00:13:32 **A Overall management of the railroad throughout the**
00:13:38 **day, movement of trains, customer service, marketing, so on**
00:13:48 **and so forth.**
00:13:49 Q Give me an idea of the scope of the operation at
00:13:51 Aberdeen.
00:13:54 **A It was 140 miles of railroad, extended roughly**
00:14:00 **from Aberdeen, North Carolina to Charlotte, North Carolina.**

00:14:09 **And the railroad typically operated four trains per day, and**
00:14:14 **handled roughly 14,000 revenue carloads per year.**
00:14:21 Q When you refer to a "revenue carload," what does
00:14:24 that mean?
00:14:25 **A Excuse me. A railcar carrying lading or material**
00:14:33 **for a customer, like a carload of lumber moving from its**
00:14:38 **origin at the, at the lumber mill to the lumberyard or the**
00:14:44 **distributor.**
00:14:44 Q Okay. How long were you with Aberdeen?
00:14:48 **A From February of 1989 until September of 1995.**
00:15:00 Q And in 1995 who did you join?
00:15:03 **A I accepted a position as General Manager with The**
00:15:07 **Ohio Central Railroad System in Youngstown, Ohio.**
00:15:17 Q And you have held that position to this date?
00:15:19 **A Yes, sir.**
00:15:20 Q Okay. There has been no changes or progressions
00:15:24 in your position or responsibilities at Ohio Central from
00:15:30 1995 to present?
00:15:31 **A When I became employed with The Ohio Central**
00:15:38 **Railroad System, the Youngstown territory or Youngstown**
00:15:41 **Division was considerably smaller in scope than it is now.**
00:15:44 **There has been considerable growth in territory size and**
00:15:51 **volume of traffic.**
00:15:52 Q Okay. Let's, let's unpack a little bit of that.

00:15:54 But let me back up for a second. Why did you leave
00:15:57 Aberdeen?
00:15:58 **A To accept this position here at The Ohio Central**
00:16:02 **Railroad.**
00:16:02 Q Just a better opportunity?
00:16:03 **A Well, yes. And it was closer to home, too. I'm**
00:16:07 **originally from Michigan.**
00:16:08 Q Okay. Let's talk about the position of General
00:16:15 Manager which you accepted in 1995. Give me a description
00:16:20 of the job responsibilities and activities in that capacity.
00:16:25 **A Overall management of the railroad's activities**
00:16:30 **throughout the day, of course planning for near term and**
00:16:37 **more distant term operations, customer service, marketing,**
00:16:45 **personnel and so on.**
00:16:52 Q Who did you answer to? Well, when you first --
00:16:57 MR. GRIECO: Let's step back.
00:16:59 Q Let's talk about when you mentioned before, when
00:17:01 you first started in '95, give me a sense of the scope of
00:17:06 operations at the Youngstown Division.
00:17:10 **A We had three individual carriers at that time,**
00:17:17 **the Warren and Trumbull Railroad, which was largely in**
00:17:19 **Warren, the Warren area of Ohio; the Youngstown and**
00:17:24 **Austintown Railroad, which is primarily in Austintown**
00:17:27 **Township; and then The Ohio and Pennsylvania Railroad, which**

00:17:34 **operates from Youngstown south to Darlington, Pennsylvania.**
00:17:39 Q Okay. And I guess within that frame work, give
00:17:45 me an idea of, like you did for I believe the Chesapeake
00:17:53 Railroad, an idea of the scope of operations, whether in
00:17:58 terms of miles of track, or quantity of, or volume of cars.
00:18:04 I mean, is there anything you can give me an idea in that
00:18:08 respect?
00:18:08 **A Well, total track miles at that time that we**
00:18:11 **would have operated would have been in the neighborhood of**
00:18:13 **45 miles.**
00:18:14 Q Okay. And then in terms of volume of business?
00:18:22 **A Boy, please understand, it's been a long time ago**
00:18:29 **as far as figures.**
00:18:30 Q Just trying to get an idea.
00:18:32 **A Let's say a few thousand carloads per year at the**
00:18:36 **outset.**
00:18:36 Q Okay. And then going forward -- and it's not
00:18:47 like I need to know, you know, every year, every minute
00:18:51 change. But if there was any significant demarcations, you
00:18:57 know, or benchmarks for progress, can you kind of take me
00:19:00 through how Ohio Central has grown to present day from '95?
00:19:05 **A Well, the local area here, Youngstown Division,**
00:19:09 **the most significant thing to answer your question would be**
00:19:12 **our acquisition of territory from ConRail in 1996. And we**

00:19:21 **created The Youngstown Belt Railroad with that newly-**
00:19:28 **acquired territory.**
00:19:34 Q And why don't I pull out what we marked as
00:19:37 Exhibit 4 last, or two weeks ago in the deposition of John
00:19:44 Ramun. Let me just ask you a couple questions about this.
00:19:49 This Exhibit 4, which does have markings in pen that John
00:19:53 Ramun made -- and if we have you use markings, we will use a
00:19:58 different color or something. This was a document or map
00:20:01 generated by you, correct?
00:20:02 A **Yes. It's a Google Earth image that we generated**
00:20:08 **for other purposes.**
00:20:09 Q I guess what were the other purposes?
00:20:11 A **Just manage the railroad, and training purposes**
00:20:14 **for training crews, and that sort of thing.**
00:20:16 Q So this map wasn't created for purposes of this
00:20:19 litigation?
00:20:27 A **No, sir, it was not.**
00:20:27 Q And it was created when? I guess there is a
00:20:27 September 2008 legend down there.
00:20:28 A **Yeah.**
00:20:28 Q Does that accurately describe when this was
00:20:30 created?
00:20:31 A **Yeah, that's correct. That's, that's when this**
00:20:33 **image was, yes.**

00:20:35 Q And it says "Concept," and it has your name, and
00:20:42 then it has, "Design, Richard P. Melvin." Could you explain
00:20:46 what that means?
00:20:47 A **Sure. Our territory, our Youngstown Division is**
00:20:52 **comprised of a number of different island territories that**
00:20:57 **are not physically connected. And in order to convey that**
00:21:02 **accurately and visually to train crews and other folks**
00:21:08 **throughout the company, I worked with Rich Melvin to create**
00:21:15 **this.**
00:21:16 Rich Melvin at the time was my -- he reported to
00:21:19 me as Superintendent of Operations, and he was very adept at
00:21:24 working with Google Earth. So he did the key strokes, and I
00:21:29 did the direction of what I wanted to see.
00:21:31 Q Okay. And we see certain rail lines marked with
00:21:35 designations, correct?
00:21:36 A **That is correct, yes, sir.**
00:21:37 Q Who was responsible for that?
00:21:38 A **Well, it was a joint effort between Rich and I to**
00:21:44 **accurately label the tracks. And once again, the labeling**
00:21:50 **would be for conveyance of information to train crews and so**
00:21:54 **forth.**
00:21:54 Q Okay. So this map just doesn't show tracks that
00:22:03 you believe are in dispute with Allied in this case ; this
00:22:07 map shows all of the tracks that Ohio Central operates over

00:22:13 within the property that's encompassed by the map?
00:22:19 A **Yes. This, this depicts the tracks that are**
00:22:25 **included within this sector of our railroad.**
00:22:28 Q Okay. And what's depicted here, would you refer
00:22:34 to this in total as the Youngstown Division?
00:22:38 A **No.**
00:22:39 Q Okay. What -- could it be referred to as
00:22:42 anything? Some subset of Youngstown Division?
00:22:45 A **Well, once again, as I said, we have five, we**
00:22:48 **have five islands within our railroad, and we refer to this**
00:22:53 **as the Mahoning Valley Railway territory, west end portion**
00:22:58 **of it.**
00:22:58 Q Okay. That would be the designation for what
00:23:00 this map depicts?
00:23:01 A **And I would just note that that's exactly what**
00:23:04 **the, the image has labeled across the top right --**
00:23:07 Q Okay.
00:23:08 A **-- end.**
00:23:08 Q And what are the five island territories? Can
00:23:12 you identify those?
00:23:13 A **Well, let's see here. There is this one, of**
00:23:17 **course, the Mahoning Valley Railway territory at west end,**
00:23:21 **there is the Mahoning Valley Railway territory, east end,**
00:23:25 **there is the Briar Hill territory, the Youngstown and**

00:23:31 **Austintown territory, and the Niles territory and the Warren**
00:23:40 **territory. Now, that totals six.**
00:23:43 And I want to make sure the record is clear here.
00:23:48 The Mahoning Valley Railway territory is one of the five
00:23:52 that I mentioned. The reason that we, we totaled six is
00:23:56 because The Mahoning Valley Railway territory has a lot of
00:24:00 detail, and in order to accurately depict it on the Google
00:24:06 Earth image, we had to break the image up into two pieces.
00:24:10 So it would really be better to say The Mahoning
00:24:14 Valley Railway territory, which is one of the five island
00:24:17 territories, is broken down into two subparts.
00:24:21 Q And again, what are the two subparts, for the
00:24:24 record?
00:24:24 A **East end and west end.**
00:24:26 Q Okay. And of course if the west end is the
00:24:34 portion of the map closer, going to Youngstown City, and the
00:24:40 east end is going out to where this kind of narrows down on
00:24:45 the right side of Exhibit 4, correct?
00:24:47 A **Exhibit 4 is the west end of The Mahoning Valley**
00:24:53 **Railway territory.**
00:24:54 Q Okay. So nothing on this map depicts the east
00:24:56 end --
00:24:56 A **No, sir.**
00:24:57 Q -- of the Mahoning -- okay. I also note there is

00:25:09 a reference to Ohio Central as The Buckeye Route. Can you
00:25:12 explain what that's a reference to? What is The Buckeye
00:25:15 Route?
00:25:16 **A Ohio is the Buckeye state.**
00:25:17 Q Okay. So it's just a reference to -- does that
00:25:20 encompass a certain portion of, when it says The Buckeye
00:25:24 Route, a certain portion of track? Or --
00:25:27 **A I don't know that I can answer that, other than**
00:25:29 **to say the former owner of The Ohio Central Railroad System**
00:25:32 **referred to it as The Buckeye Route.**
00:25:34 Q Okay. So you mentioned this acquisition of
00:25:41 ConRail territory in '96, which created The Youngstown Belt.
00:25:45 By the way, that's the original question I wanted
00:25:48 to ask. With reference to this map, can you depict or show
00:25:53 me anything regarding The Youngstown Belt or the beginning
00:25:59 or ending points of The Youngstown Belt?
00:26:00 **A There is no Youngstown Belt territory on this, on**
00:26:03 **this map.**
00:26:03 Q Okay. Where would that, in which direction would
00:26:10 that go? I mean, even if you have to point off the map,
00:26:13 where would The Youngstown Belt be in relationship to what's
00:26:24 depicted here?
00:26:24 **A Please forgive me. I'm not trying to be**
00:26:24 **difficult. But I just got -- there is just no Youngstown**

00:26:24 **Belt territory on this map.**
00:26:25 Q I understand. Okay. Is it east of the, of the
00:26:29 Mahoning Valley?
00:26:30 **A Oh, oh, it would be west. I'm sorry. It's west**
00:26:32 **of here.**
00:26:34 Q Okay. And how many miles of track roughly did
00:26:40 that add to the scope of operations?
00:26:42 **A Roughly 14.**
00:26:47 Q Okay. And then continuing with what we were
00:26:51 talking about, the, the scope or the progression of Ohio
00:26:57 Central or the Youngstown Division's development after this
00:27:00 acquisition, could you continue?
00:27:03 **A The only other, the only other significant**
00:27:12 **occurrence I can say is the, our purchase of The Mahoning**
00:27:25 **Valley Railway from LTV in approximately May of 2001.**
00:27:10 (Whereupon, John Ramun joined the deposition
00:27:40 proceedings.)
00:27:40 Q And describe that transaction for me the best you
00:27:43 understand it.
00:27:43 **A Could I ask in what terms you mean?**
00:27:48 Q Well, any of the terms that we have been talking
00:27:52 about in terms of what it added in terms of miles of track,
00:28:01 how it increased the scope of operations from that point
00:28:04 going forward in terms of volume of business.

00:28:08 **A It -- The Mahoning Valley Railway, I will tell**
00:28:12 **you, I have never seen any tabulation of miles. It was**
00:28:18 **largely just yard trackage and real estate.**
00:28:30 Q And when you say "yard trackage," what are you
00:28:33 referring to? Just rail track?
00:28:35 **A Yeah. Just miscellaneous holding tracks and so**
00:28:40 **forth.**
00:28:40 Q Does Exhibit 4 depict what was acquired in 2001
00:28:47 with the purchase of The Mahoning Valley Railway?
00:28:49 **A Pretty much so, yes.**
00:28:50 Q Okay. Could you generally point out those areas?
00:28:54 **A It would be, like, from up here at the tail track**
00:28:59 **interchange at the west end, down through here, down over,**
00:29:03 **and of course these tracks here, and #1 Main. And, and**
00:29:12 **that's pretty much it at this stage of the game.**
00:29:15 Q Okay. Actually, going back to -- okay. Now, '96
00:29:28 the acquisition of ConRail territory is not depicted by
00:29:31 this. Okay.
00:29:38 Can you describe for me how the scope of
00:29:42 operations increased from 2001 going forward, from what you
00:29:47 recall, in terms of volume of business or revenue
00:29:51 generation?
00:29:52 **A I don't recall exact figures. It was not -- but**
00:29:57 **I will say, it was not a large scope acquisition from the**

00:30:02 **standpoint of miles and/or revenue carloads per year.**
00:30:08 Q Okay. And then since 2001 to present, have there
00:30:13 been any significant changes in the scope of railroad
00:30:17 operations for Ohio Central?
00:30:18 **A In 2004 we were approached by the State of Ohio**
00:30:26 **to assume operation of a line that is locally referred to,**
00:30:34 **almost everyone knows it as The Youngstown and Southern.**
00:30:40 **Runs roughly from Center Street, Poland Avenue area south to**
00:30:49 **Darlington, Pennsylvania.**
00:30:50 Q And is a portion of that track depicted on
00:30:54 Exhibit 4?
00:30:55 **A Yes. It's this, it's this line right here at the**
00:30:59 **bottom left center of the diagram.**
00:31:02 Q And you're referring to what says the "LE&E
00:31:07 lead"?
00:31:07 **A Right. That's correct.**
00:31:09 Q Okay. And where did it, where did the track
00:31:15 start over, which then you assumed operation of?
00:31:18 **A It started at a point just a little bit beyond**
00:31:23 **Poland Avenue here. There is mile post zero, and that line**
00:31:29 **runs roughly 35.6 miles generally south to a place called**
00:31:36 **Darlington, Pennsylvania.**
00:31:37 Q All right. And on Exhibit 4 you're referring to
00:31:43 a point just south of this block that says to the Y&SE

00:31:50 Railroad?
00:31:50 **A The YS&E Railroad, yes, uh-huh.**
00:31:53 Q And does Ohio Central still operate on that line
00:31:59 to this date?
00:32:00 **A We do not operate that line at this time, no.**
00:32:05 Q When did you cease operating on that line?
00:32:08 **A November 30th, 2006.**
00:32:16 Q And why did you cease operating on that line?
00:32:19 **A It was not commercially or economically**
00:32:27 **available, and we elected to withdraw from its operation.**
00:32:32 Q What was the line being used for in terms, I
00:32:39 mean, what business purpose? What kind of traffic was
00:32:42 occurring over that line?
00:32:43 **A Primarily the transportation of construction and**
00:32:46 **demolition debris to a landfill in Negley, Ohio.**
00:33:04 Q Do you recall the documents by which you assumed
00:33:18 responsibility for operating over that line in 2004? And I
00:33:23 know "documents" is a broad term. But in terms of, was it
00:33:29 an assignment of some easement agreement, a lease, et
00:33:35 cetera, something along those lines? Do you recall how
00:33:39 legally Ohio Central obtained rights to operate over that
00:33:43 line?
00:33:44 **A I only know that the State of Ohio, Department of**
00:33:48 **Transportation, approached us to assume its operation upon**

00:33:55 **the failure of the previous operator. And I did not**
00:33:59 **negotiate the terms or, nor was I front line involved with**
00:34:04 **those negotiations and arrangements.**
00:34:07 Q Would Bill Strawn have done that?
00:34:10 **A Yes. That would be, that would be my direction.**
00:34:21 Q Who was the previous operator that failed?
00:34:21 **A It was a company referred to as The Central**
00:34:27 **Columbiana and Pennsylvania Railroad.**
00:34:36 Q Do you know what happened to that company?
00:34:39 **A Only that they had tremendous difficulty**
00:34:45 **continuing operations. And I, I only conject that they had**
00:34:49 **financial difficulties, also. That was my understanding.**
00:34:53 **But once again, I saw no bona fide documentation.**
00:35:00 Q Do you know who, if anyone, operates on that line
00:35:02 today?
00:35:02 **A My understanding is that it is a company that's**
00:35:09 **known as The Youngstown and Southeastern.**
00:35:18 Q Do you know who owns that company, or the main
00:35:21 principals of that company?
00:35:22 **A The railroad operation, my understanding, is part**
00:35:28 **of the Indiana Boxcar Corporation.**
00:35:40 Q Can you give me the names of the, of any of the
00:35:48 main individuals that you have had -- well, let's just say
00:35:52 that you know of, at either Y&S Eastern or Indiana Boxcar

00:35:57 Corporation, do you know anyone there?
00:35:58 **A Well, the fellow that is, once again, my**
00:36:03 **understanding, held responsible for its daily operation is a**
00:36:08 **guy by the name of Bud Gain.**
00:36:14 Q Have you met Bud Gain?
00:36:16 **A Yes, I have.**
00:36:17 Q Okay. Do you deal with him, or talk to him on a
00:36:19 regular basis?
00:36:20 **A No. Only occasionally. And that's only if he**
00:36:26 **needs to talk to me about something, or vice versa.**
00:36:29 Q What kind of things would he need to talk to you
00:36:31 about?
00:36:31 **A His operation uses segments of track that we own.**
00:36:44 Q What segments are those? And are they depicted
00:36:48 by Exhibit 4?
00:36:51 **A Not entirely, no.**
00:36:54 Q I guess could you otherwise describe what
00:36:56 segments Y&S Eastern uses of Ohio Central?
00:37:03 **A On this diagram there is a portion here that runs**
00:37:06 **roughly between mile post zero and, and an area over here**
00:37:12 **towards Center Street, and then down at the other end from**
00:37:19 **Norfolk Southern's Control Point Graham, from that point**
00:37:24 **northeasterly on the -- put my glasses on here, make sure**
00:37:31 **repeat the way it's shown here on the diagram -- the**

00:37:36 **Struthers lead. And then there are, there are other**
00:37:39 **portions of track that are not shown on this diagram that we**
00:37:42 **own.**
00:37:44 Q And to the eastern, in the eastern direction as
00:37:52 far east of the point that you described last?
00:37:54 **A Yes.**
00:37:55 Q Okay. And am I correct, to get to the, to this
00:38:06 waste dump, you have to run over this LE&E Main track, which
00:38:12 runs parallel to Poland Avenue?
00:38:14 **A That is the only route that currently exists, and**
00:38:20 **that I understand ever existed for getting to the, what is**
00:38:28 **once again commonly referred to in this area as The**
00:38:31 **Youngstown and Southern.**
00:38:32 Q Okay. Do you know of any other purpose, other
00:38:43 than the, getting access to the waste dump, for which this
00:38:50 LE&E Main line would be used?
00:38:53 **A That, that would be my only assessment, is that**
00:39:01 **it is a means by which to access The Youngstown and Southern**
00:39:09 **Railroad.**
00:39:10 Q Which provides access to the waste dump?
00:39:13 **A The landfill, yes.**
00:39:14 Q The landfill?
00:39:16 **A Uh-huh.**
00:39:16 Q Can you think of any other purposes for which a

railroad would use that line that we were just describing?

MR. LIPKA: Just objection; calls for speculation.

But go ahead, Terry, you can answer.

Q Well, whether through your experience or otherwise, is there any -- I mean, I don't want you to speculate. I'm just saying, based on your experience, is there any other business purpose, other than getting access to the landfill, that you know of, that a company would use that line for?

A From my knowledge, it is, once again, the access route, the only access route that exists to get to the Youngstown and Southern. And "access" would mean just general use of it for railroad purposes.

Q Okay. And I understand "access." I'm probably not being clear about this.

But as far as a business purpose, you know, we use the rail lines to accomplish, you know, various things, whether to transfer product, as you described before, to gain access to a landfill, is this line, to your knowledge, has it been used, or could it be used for anything else, other than to gain access to the landfill, as far as a business purpose?

I guess -- and let me just add this to the end of

the question. Is this line used to gain access or connect to other lines for transportation reasons that are wholly independent of gaining access to the landfill?

A Once again, as I said earlier, I'm not, forgive me, I'm not trying to be difficult. But it is the conduit for train movements to get to and from The Youngstown and Southern. And train movements would connotate with me general railroad transportation.

Q Maybe I could ask it like this. Does The Youngstown and Southern, as you refer to it, that line that starts right here, does it end at the landfill, or does it continue on?

A It goes all the way to a point called Darlington, Pennsylvania, which is roughly 35.6 or seven miles from the general area of Poland Avenue.

Q Okay.

A And the landfill is not directly on the line. It's at an, it's close to an intermediate point on the line.

Q Okay. So the landfill is about 17 miles from this point here that says to the Y&SE Railroad?

A No.

Q No? About how far is it from this point here, the block that says "To the Y&SE Railroad," how far is it from there to the landfill?

A Approximately 29 miles.

Q Okay. What's your understanding of the scope of operations that this landfill -- I mean, what is the landfill?

A I -- well, first off, please remember that I haven't been directly involved with it since November of 2006. So I, currently I have no idea --

Q Okay.

A -- the scope of their operation. The last that I was involved was just simply that they brought railroad cars full of construction/demolition waste, and that originated at various points on the East Coast, unloaded it in Negley, transported it from the rail location to the landfill, and then the empty cars were returned to the East Coast for another load.

Q Okay. Do you have any idea of the quantity or frequency of use of that line today by Y&S Eastern?

A I will see their train movements occasionally throughout the week. But I am a moving target most of the time, and I don't spend a lot of time in one place, so I can't speculate on how often they operate.

Q Let me push you a little bit on that. Do you see trains at least once a week moving over that line?

MR. LIPKA: Tim, I'm sorry. I'm confused when

you say "that line."

MR. GRIECO: Well, we're still talking about that --

MR. LIPKA: Mile marker zero to Darlington? Because we started jumping --

MR. GRIECO: Well, the only way, my understanding is the only way to get to that mile marker is over the LE&E line, correct?

MR. LIPKA: Yeah. You can answer. I'm not --

Q So I'm referring to the whole main line parallel to Poland Avenue that is marked as the LE&E Main track, which leads up to the LE&E lead, then that takes us to the Y&SE Railroad.

A Okay. So you're asking -- but could you be more specific? Where are you asking if I see train movements once per week?

Q Well, over the course of this entire line. And let me back up for a second.

My understanding is that the only way to access this point here, the LE&E lead, to the Y&SE Railroad.

A Yes, sir.

MR. GRIECO: I'm not good at reading backwards.

MR. LIPKA: Can we go off the record for just a second?

00:45:15 (Whereupon, a discussion was held off the record.)

00:45:38 MR. GRIECO: We want to go back on the record. We're back on record, and I have handed Terry a silver marker he's going to mark Exhibit 4 with. Mr. Ramun has previously marked Exhibit 4 with blue pen.

00:45:52 **A Okay. Slightly off of the actual image into the white margin, and I'm just going to put a mark right here, this would be roughly mile post zero.**

00:46:07 Q Okay.

00:46:08 **A And at that point the mile posts begin chronologically increasing southward, this way. From milepost zero northward, or from left to right on the diagram, I am not aware of any mile markers.**

00:46:36 Q Okay. But am I correct that, to gain access to mile marker zero, you have to travel over this main, LE&E Main track, which is parallel to Poland Avenue; is that accurate?

00:46:59 **A To my knowledge, it is the only route to reach mile post zero, which is the beginning of The Youngstown Southern Railroad.**

00:47:07 Q Okay. So that's why I got a little confused when you said, where on that track am I seeing train movement, because I assume, if you see a train moving here at mile

00:47:16 post zero, it means a couple minutes ago it was just running down here, you know, and I guess you said southern. I thought this was going eastern, you know, the eastern part of Exhibit 4.

00:47:36 **A I don't watch or keep track of what The Youngstown and Southeastern does.**

00:47:42 Q Right.

00:47:43 **A So I don't know exactly what their train movements do from day to day. But I occasionally see their trains moving perhaps past my office in the vicinity of what's labeled here as the Youngstown -- I'm sorry, scratch that. As the Center Street pocket. And other than that, I don't see them.**

00:48:15 Q Okay. Fair enough. Do you know of any other company or railroad that operates over the line we have been talking about for the last few minutes, other than Y&S Eastern?

00:48:22 **A To my knowledge, there isn't. But that doesn't mean that there isn't someone else. But to my knowledge, no.**

00:48:27 Q Okay. Was there a transaction between Ohio Central and Y&S Eastern relative to that portion of track that we have been discussing?

00:48:50 **A Which portion of track, please?**

00:48:52 Q Again, any part of the track from, starting with the L&E Main track, which runs parallel to Poland Avenue, all the way down to mile post zero.

00:49:17 **A Once again, in earlier questioning I answered that we, The Ohio Central Railroad System, own a short section of track at mile, from mile post zero toward the right on the diagram; and then once again, down at the right end of the diagram, The Ohio Central Railroad System owns the Struthers lead.**

00:49:47 Q Okay.

00:49:47 **A Certainly those portions of railroad, yes, to answer your question, we have an arrangement with the Youngstown Southeastern for them to use our track.**

00:49:57 Q Okay. And just describe for me the, the parameters of the arrangement. What is the nature of it?

00:50:03 **A I did not negotiate the, the deal. The portion of it that I'm exposed to is just managing the interface of any of their random train movements with our train movements.**

00:50:17 Q Do you know whether they purchased the property? Are leasing the property, what gives them the right to move over those tracks now?

00:50:25 **A First, I have not been told of any property of ours that has been sold to another railroad here. But they**

00:50:35 **have some manner of arrangement to operate over those portions that I have discussed that we own.**

00:50:44 Q And when you say "we own," you're saying Ohio Central owns that land?

00:50:48 **A Yes, sir.**

00:50:49 Q And track? Okay. Now, up until the end of '06, Ohio --

00:50:55 MR. GRIECO: Well, let me ask this question.

00:50:58 Q Does Ohio Central presently operate at all over this LE&E Main track leading up to the, the land you own by mile post zero?

00:51:11 **A We have not operated over that for general railroad purposes since November 30th of 2006.**

00:51:17 Q Okay. And I just want to understand what you mean by "general railroad purposes." Is there something you're carving out that you do do on that track as far as activities?

00:51:33 **A There is a group referred to as The Mahoning Valley Railroad, I'm sorry, Heritage Association, I believe, that is setting up a museum site in this vicinity down here, just north of where The Youngstown Southern crosses Poland Avenue.**

00:51:58 And the director of that association, a fellow by the name of Jim Marter, had gotten pieces of equipment that

00:52:13 he wanted moved to that future museum site.
00:52:17 Q Okay.
00:52:18 **A And the pieces of equipment were on Ohio Central**
00:52:21 **Railroad System property. And he asked if we would move**
00:52:24 **them. And I --**
00:52:26 Q Let's take it in pieces. Where were they located
00:52:28 on Ohio Central?
00:52:29 **A You know, I don't recall, to tell you the truth,**
00:52:32 **exactly where we had them. Runs in my mind that originally**
00:52:37 **there was some in Austintown, and there might have been some**
00:52:41 **here on The Mahoning Valley Railway.**
00:52:45 Q Okay.
00:52:45 **A But anyway.**
00:52:46 Q He approached you?
00:52:48 **A He approached me. And I said that we would be**
00:52:51 **happy to make the move, as long as he cleared it with Mr.**
00:52:54 **Ramun.**
00:52:54 Q Okay.
00:52:55 **A And while I did not speak with Mr. Ramun about**
00:52:57 **it, Jim Marter, being an upstanding fellow, verified to me**
00:53:02 **that he had spoken with Mr. Ramun, and had permission for**
00:53:06 **Ohio Central to make that move to the museum.**
00:53:10 Q And how did that then interact with these tracks?
00:53:14 What did you do?

00:53:15 **A Well, once again, I can't recall exactly where we**
00:53:17 **brought the equipment from. But I -- we would have come in**
00:53:23 **to Mr. Ramun's territory down at Norfolk Southern's Control**
00:53:28 **Point Graham, and moved westerly along the LE&E down to a**
00:53:36 **point just west of Center Street where there is a switch;**
00:53:40 **and we would align that switch so that it goes on into what**
00:53:44 **we refer to as the LE&E lead, and ultimately to the museum**
00:53:50 **site.**
00:53:50 Q This is like a one-time event?
00:53:53 **A Yes, that's correct.**
00:53:53 Q Okay. So other than that, since the end of '06,
00:53:58 Ohio Central has not operated any railcars over this main
00:54:04 line, the LE&E Main line track?
00:54:07 **A While I think of it, I'm not going to be able to**
00:54:12 **tell you the date, but Ohio Central Railroad System has a**
00:54:16 **customer in Youngstown known as Midwest Steel and Alloy.**
00:54:24 **And their yard superintendent, gentleman by the name of**
00:54:28 **Major Hammond, approached me and said that his company,**
00:54:41 **Midwest Steel Alloy, was considering purchase of some sort**
00:54:42 **of equipment from Allied Erecting. And he asked me if we**
00:54:50 **would handle some railroad cars. It runs in my mind it was**
00:54:54 **two of them. I could be wrong. As guinea pigs, so to**
00:55:01 **speak, to be, to be dismantled on Allied Erecting's property**
00:55:10 **with a piece of machinery from Allied Erecting, as a**

00:55:14 **demonstration.**
00:55:16 Once again, I said to Major Hammond, I said,
00:55:19 Major, as long as you get it approved with Mr. Ramun, we
00:55:25 will be happy to do that.
00:55:27 Once again, because I have been dealing with
00:55:28 Major Hammond for 12 or 13 years, I believed what he told
00:55:32 me. He said he had spoken with Mr. Ramun and got the
00:55:36 blessing to do so. So we handled the two cars, or whatever
00:55:40 it was, from some point on our line onto Mr. Ramun's
00:55:46 property down here at Control Point Graham, and brought the
00:55:50 cars up, and put them in the west or south end of LE&E
00:55:59 siding, as it's, as it's labeled here, and left them there
00:56:03 to be dismantled by Mr. Ramun's demonstration equipment.
00:56:07 Q And this is two cars?
00:56:09 **A Don't hold me to two. But my recollection is it**
00:56:13 **was two.**
00:56:13 Q And do you recall approximately when this
00:56:15 happened? What year?
00:56:16 **A I would say it was sometime, guessing, in 2008.**
00:56:22 **And I would stand corrected if that wasn't when it is. But**
00:56:25 **that's my guess.**
00:56:25 Q Okay. So other than those two examples, the one
00:56:29 with the railroad historical society and with Mr. Hammond,
00:56:35 there has been no other operation of railcars across this

00:56:38 main line we have been describing by Ohio Central?
00:56:42 **A Not that I can think of at this moment, no.**
00:56:44 Q When Ohio Central did operate on that line to
00:56:57 access the landfill, was that the sole purpose for which
00:57:02 Ohio Central, up until the end of '06, operated on that
00:57:04 line, to access the landfill? Or did it operate over that
00:57:10 line for any other purposes?
00:57:11 **A Operated over that line for the general railroad**
00:57:15 **purpose of operating The Youngstown and Southern Railroad.**
00:57:18 Q Okay. And for accessing The Youngstown and
00:57:27 Southern Railroad to gain access to the landfill, or to --
00:57:33 for other activities?
00:57:34 **A Well, there were, there were two, two or three**
00:57:39 **other small customers that we hauled sporadic traffic for**
00:57:46 **down onto the line. But that would be it.**
00:57:50 Q Okay. And what were the name of those customers,
00:57:53 do you recall?
00:57:53 **A Well, one, forgive me, but I don't recall their**
00:57:58 **name. They, they handled construction/demolition waste on**
00:58:04 **containers, on flat cars to a place called Signal, Ohio.**
00:58:10 **And then there was Darlington Brick Company in Darlington,**
00:58:16 **Pennsylvania. Obviously, that was outbound brick shipments.**
00:58:25 **And then close in in Youngstown, two other customers, Banner**
00:58:32 **Supply and Wester Fuel and Supply.**

00:58:44 Q During the time that Ohio Central did operate
00:58:49 over the LE&E Main line, were there other railroads or
00:58:56 companies that simultaneously operated over that line as
00:59:01 well?
00:59:01 **A If there were, I was unaware of it.**
00:59:05 Q Okay. Do you recall approximately the time
00:59:07 period over which Ohio Central operated over the LE&E Main
00:59:13 track?
00:59:14 **A There would be two segments of time. As I stated**
00:59:23 **earlier, I began my employment with The Ohio Central**
00:59:28 **Railroad System in the Youngstown area September of '95, and**
00:59:32 **at that time our subsidiary Ohio and Pennsylvania Railroad**
00:59:38 **was operating the Youngstown Southern, and did so until**
00:59:44 **roughly November, October or November of '96.**
00:59:52 And then we elected to withdraw operations, and
01:00:01 then we became -- began operations again at the request of
01:00:06 The Ohio Rail Development Commission, which is part of ODOT,
01:00:12 in December of 2004. And we operated the railroad
01:00:17 continuously, meaning the Youngstown and Southern, from
01:00:22 December of '04 through November 30th of '06.
01:00:25 Q All right. And during those two segments in
01:00:32 which you were involved, you're not aware of any other
01:00:38 railroad or company that operated over that line?
01:00:41 **A Not that I'm aware of.**

01:00:43 Q Okay. And today you're only aware of Y&S
01:00:51 Eastern, to your knowledge, that operates over that line?
01:00:53 **A That is correct, to my knowledge.**
01:00:54 Q We're going to get into this later, but you
01:00:59 recall there was a P&L easement that was given by Allied
01:01:06 back to P&LE, Pittsburgh and Lake Erie Railroad, that
01:01:11 pertained to this main line track we have been talking
01:01:14 about?
01:01:14 **A Okay.**
01:01:15 Q Correct? You're familiar with that?
01:01:17 **A I have been told of it, and understand that it**
01:01:21 **exists.**
01:01:23 Q Okay. You have never reviewed it?
01:01:26 **A I was not involved in its negotiation or any such**
01:01:30 **thing as that; however, back in the first what I call era of**
01:01:38 **our operation of The Youngstown and Southern, I saw a**
01:01:44 **document that defined Ohio and Pennsylvania's right to**
01:01:55 **operate and occupy the LE&E.**
01:01:59 Q What kind of document was it? Was it a lease?
01:02:02 **A I would describe it at this point as an easement.**
01:02:09 **But once again, I didn't negotiate it. And that's been,**
01:02:12 **obviously, 14 years ago. So I'm shooting from the hip to a**
01:02:17 **certain degree.**
01:02:19 Q Okay. I will show you some documents later, and

01:02:22 maybe you can maybe identify it.
01:02:28 Are you aware of any transaction between Y&S
01:02:36 Eastern? Do I have that right? Y&S Eastern and Ohio
01:02:43 Central whereby rights of Ohio Central to operate from --
01:02:54 well, to operate over the LE&E Main track all the way to
01:02:59 mile post zero?
01:03:01 So in between the two segments of property that
01:03:03 you have identified for me that Ohio Central owns, are you
01:03:06 aware of any transaction between Ohio Central and Y&S
01:03:12 Eastern that granted rights to Y&S Eastern to operate over
01:03:19 that main track?
01:03:24 **A Not at this time I'm not aware of it.**
01:03:26 Q Okay. So to your knowledge, that wasn't part of
01:03:30 the transaction whereby Y&S Eastern gained rights to operate
01:03:37 over the tracks owned by Ohio Central starting at mile post
01:03:41 zero and then back to the east over here at -- what did you
01:03:46 identify this as?
01:03:48 **A That's Norfolk and Southern's Control Point**
01:03:52 **Graham.**
01:03:52 Q Yes.
01:03:53 **A Once again, please remember that I did not**
01:03:55 **negotiate those deals. So I just did not see anything that**
01:04:00 **would be described as that, no.**
01:04:03 Q Okay. Fair enough. And Bill Strawn would

01:04:08 probably be a better person to ask about that?
01:04:10 **A Most likely, yes, sir.**
01:04:11 Q Do you have -- and if you, I mean, you're not
01:04:14 supposed to guess, but I will take a guess if you want to
01:04:17 give me one.
01:04:18 Do you have any idea by what right Y&S Eastern
01:04:23 operates over the main track, the LE&E Main, you know, that
01:04:31 goes in front of Allied and parallels Poland Avenue? Do you
01:04:36 have any idea where they derive their rights to do that?
01:04:41 **A No, sir. None whatsoever.**
01:04:43 Q Okay. As the general manager of Ohio Central,
01:05:01 who is your direct superior or direct report? And I guess
01:05:08 let's go back in time. If that changed from '95 forward,
01:05:11 let's bring me from '95 to the present. I know there has
01:05:16 been some corporate changes.
01:05:17 **A From the commencement of my employment with The**
01:05:24 **Ohio Central Railroad System in September '95 up to roughly**
01:05:30 **October of 2008, I reported directly to William A. Strawn.**
01:05:35 **He was President of The Ohio Central Railroad System.**
01:05:40 Q Okay. And during that same time period, give me
01:05:43 an idea of the number of employees that answered to you.
01:05:50 **A As many as 20.**
01:05:53 Q Okay. Give me an idea of the employment
01:05:58 structure. And again, from this period '95 to present, if

there were any significant changes along the way, note that.
But give me an idea of who the employees are that you oversee, and how -- what the employment structure is in the Youngstown Division, whether different positions, et cetera.

A **Well, obviously we have locomotive engineers. We have conductors. We have track maintenance personnel. We have locomotive maintenance personnel. We have railcar maintenance personnel. We have railroad crossing signal maintenance personnel. And we have office administration personnel. And in general, I'm held responsible for overseeing their functions.**

Q All of those employees?

A **Yes, sir.**

Q Which, at a high point, was what number?

A **About 20.**

Q About 20. Is that what it's currently at?

A **No, it is not.**

Q Okay. What is it at now?

A **It's at nine right now, due to the obvious economic conditions that the entire country is suffering.**

Q And who is your direct report now?

A **Fellow by the name of Leonard Wagner.**

Q And who is he?

A **He's Vice President of Operations for The Ohio**

Central Railroad System.

Q Do you know who he answers to?

A **He answers to David Collins.**

Q And who is he?

A **He is Senior Vice President, New York, Ohio, Pennsylvania region.**

Q For Ohio Central Railroad System? No?

A **No. In October 2008, The Ohio Central Railroad System was purchased by Genesee and Wyoming, Incorporated.**

And Mr. Collins was in a similar position at Genesee and Wyoming, and his territory was expanded to include The Ohio Central Railroad System acquisition.

Q What do you understand about the Genesee and Wyoming transaction? Do you understand how that -- what occurred there, how that occurred?

A **All I know is, is that the owner of The Ohio Central Railroad System elected to sell the company wholly and completely, and sold it to Genesee and Wyoming.**

Q That being Summitview, Inc.?

A **I can't answer that, because I don't know. I just know that The Ohio Central Railroad System was sold to Genesee and Wyoming, Incorporated.**

Q Okay. You know the individual Defendants we named at the beginning, Mahoning Valley Railway, Ohio and

Pennsylvania, the individual railroads?

A **Yes.**

Q Okay.

A **That comprised the Youngstown Division.**

Q Yes. Your understanding is they still exist as wholly-owned subsidiaries, independent companies of Genesee and Wyoming?

A **We still refer to ourselves as The Ohio Central Railroad System, a unit of Genesee and Wyoming, Incorporated.**

Q Do you understand, though, that those separately-named Defendants are independent Ohio corporations?

A **I cannot truly answer that to know if they're still incorporated in the State of Ohio or any other state; however, we still day to day refer to them as those names.**

Q Okay. I want to go over what property Ohio Central owns, and get an idea of its location. And I think Exhibit 4 is the best thing to refer to now.

Maybe using this silver pen, what I would like you to do is identify for me --

MR. GRIECO: Let me back up.

Q Have there been any changes in the property ownership, the property that Ohio Central has held on these parcels west of the Center Street Bridge since you arrived

in 1995, or is essentially the property owned the same now as then?

A **Well, in 1995 we did not own any of The Mahoning Valley Railway territory.**

Q Okay. That occurred in 2001, correct?

A **Yes. Roughly.**

Q Okay. Let's start with this. Currently what property does -- and let's just start for now with this property segment right here, west of the Center Street Bridge. What property does Ohio Central own?

A **Well, of course I don't have our plat here. But roughly, we own a corridor alongside the river here that would run along roughly like this, and it drops down to a certain degree here, over and down, and then includes the footprint that our, that our office is on.**

And it would be bordered, of course, on the east by roughly the center point of the Center Street Bridge.

Q Okay. Now, I guess do you mind using the silver marker? And I understand you don't have a plat map here. But to the best of your ability sitting here, draw a line around the property that you believe Ohio Central owns.

A **Sure. And I just want the record to show that this is just a rough description. I, I don't represent that it's perfect --**

01:12:34 Q Okay.
01:12:34 A **-- in exact property lines. It's just for**
01:12:37 **discussion purposes. Roughly something like this, roughly**
01:12:51 **like that, and then it includes an easement on this road.**
01:12:54 **And --**
01:12:58 Q Now, can you complete this? Are you saying this
01:12:59 line should come here, over here?
01:13:01 A **Oh, yeah, yeah. Roughly, uh-huh. And once**
01:13:11 **again, I don't have the plat to know exactly where it ends**
01:13:14 **up here at this end.**
01:13:16 Q Okay. Some of the parcels encompassed by what
01:13:22 you have circled were acquired in 2001 when the purchase of
01:13:26 The Mahoning Valley Railway occurred?
01:13:28 A **Some, yeah. And it escapes me exactly how the,**
01:13:32 **the borders were. Because then we made subsequent purchase**
01:13:37 **of roughly the 500,000 square foot and adjacent property of**
01:13:44 **this mill. Then we sold that roughly in 2006, and then I**
01:13:52 **understand now that this parcel is going to ultimately be**
01:13:55 **owned by Mr. Ramun.**
01:13:56 Q So "this," you're referring to the LTV plant?
01:14:00 A **Roughly, yes.**
01:14:02 Q This larger parcel?
01:14:03 A **Uh-huh.**
01:14:04 Q And that was acquired by Ohio Central when?

01:14:07 A **In, let's say, early 2000s at some point. I**
01:14:14 **can't remember exactly what year it was. Once again, I**
01:14:17 **didn't negotiate the deal. That would have been someone**
01:14:20 **else within the company that, higher up than I.**
01:14:23 Q And it was subsequently sold?
01:14:25 A **Then, yes. The Ohio Central Railroad System**
01:14:30 **elected to sell it to an outside party.**
01:14:34 Q Do you know who that outside party was?
01:14:36 A **Well, the outside party, I know the gentleman and**
01:14:40 **his partner. It would be William Marsteller and Dean Geary.**
01:14:49 **Yeah. I believe that's spelled G-e-a-r-y. I might be wrong**
01:14:55 **about that.**
01:14:55 Q Do you know what --
01:14:57 A **I hate to mess up people's names.**
01:14:59 Q That's why I wanted to call you Terry. And do
01:15:03 you know what company they were affiliated with?
01:15:10 A **No, I don't. As I say, there were multiple**
01:15:14 **companies that those two gentlemen have. And I, I wouldn't**
01:15:18 **be able to accurately tell you what company that they had**
01:15:21 **actually owning it.**
01:15:23 Q Let's talk a little bit about Ohio Central's
01:15:26 operations on this property. You circled in, in silver here
01:15:34 what you believe -- and I understand the qualifications you
01:15:38 made -- but what you believe to be the Ohio Central property

01:15:52 depicted on this Exhibit 4.
01:15:52 On the southern most part of what you circled in
01:15:52 silver closer to Poland Avenue, and adjacent to the Center
01:15:57 Street Bridge, what, what operations does Ohio Central
01:16:01 conduct in that area? Is that just vacant land? Or what,
01:16:06 what is, what is down there?
01:16:08 A **Well, there is a locomotive shop here.**
01:16:10 Q Well, I will get up there. I guess I'm talking
01:16:14 about this southern part down in here.
01:16:16 A **We just use it in general for whatever purpose**
01:16:21 **might be necessary at the time. I, once again, I'm not**
01:16:27 **evading the question. I just -- there is no specific use.**
01:16:31 Q Okay. And then if we come up here to the
01:16:37 northern part of what you circled closer to Mahoning River,
01:16:41 describe what, what these buildings are here, and whether
01:16:45 they're still there.
01:16:46 A **Well, of course this building was demolished. We**
01:16:52 **had that demolished because of its condition and so forth.**
01:16:55 But the locomotive shop continues to stand, and
01:16:59 is active as our Youngstown Division, locomotive division
01:17:05 maintenance and repair facility.
01:17:07 Q And the title suggests what's done there. But
01:17:10 describe for me what all activities occur within that
01:17:13 building.

01:17:13 A **Running repair for locomotives, semi heavy repair**
01:17:17 **and so forth.**
01:17:18 Q Okay.
01:17:19 A **And service.**
01:17:20 Q When was this building demolished?
01:17:22 A **Oh, I can't tell you exactly when. I'm going to**
01:17:27 **estimate perhaps two or three years ago.**
01:17:29 Q And what activities occurred in that building,
01:17:33 the one that was demolished?
01:17:34 A **The only activity that I was of aware of in that**
01:17:39 **building for our purposes was, within this big footprint of**
01:17:44 **a building, there was a very small cement blocked-off area**
01:17:48 **that was an office, and that's where our Youngstown Division**
01:17:53 **office was for a year or two.**
01:17:57 Q Okay. And, and was that subsequently moved?
01:18:01 A **Yeah. When we purchased the, the mill complex,**
01:18:07 **included in that purchase was the LTV general office. So**
01:18:13 **when we made that purchase, we relocated all of our offices**
01:18:17 **to their former office building.**
01:18:19 Q Okay. So am I correct, the only building Ohio
01:18:26 Central owns now within the property you identified as Ohio
01:18:33 Central property is the repair facility right here?
01:18:35 A **Well, the locomotive repair facility, and then**
01:18:39 **our office down here.**

01:18:40 Q Okay. So this is a, this is a building right
01:18:44 here?
01:18:45 **A Yeah. This is -- see this right here? That's a**
01:18:47 **driveway into a parking lot. That's grass right there. And**
01:18:50 **then that's actually the roof of the building.**
01:18:53 Q Okay. So this is your office location where you
01:19:00 currently reside?
01:19:01 **A That is correct.**
01:19:02 Q And how many employees are housed there?
01:19:07 **A Well, in general there is four or five of us.**
01:19:11 **But under current conditions, there is just three of us**
01:19:19 **that, three, three of us that keep offices there.**
01:19:24 Q Is there any other property on this entire
01:19:27 Exhibit 4 that you can identify as Ohio Central owned
01:19:33 property? And I guess other than you did identify two
01:19:40 parcels pertaining to the line, both at the Norfolk and
01:19:47 Southern.
01:19:48 **A Yeah. Obviously I don't have the plats. But The**
01:19:53 **Ohio Central Railroad System owns a portion of property down**
01:19:55 **here in the vicinity of Poland Avenue where it shows to the**
01:20:01 **Y&SE Railroad.**
01:20:03 Q South of Poland Avenue, correct? It would be
01:20:07 on --
01:20:07 **A No. My, my recollection is, from the plat, that**

01:20:10 **it goes a distance north of Poland Avenue, across Poland**
01:20:14 **Avenue, and slightly to the south. And then of course we**
01:20:18 **own a piece that adjoins Norfolk Southern's property at NS**
01:20:23 **CP Graham that runs roughly northeasterly at the bottom**
01:20:29 **right corner of the Google image.**
01:20:34 Q Any other Ohio Central property that you believe
01:20:37 is identified on Exhibit 4 anywhere?
01:20:39 **A Not that's identified.**
01:20:45 Q I guess shown or depicted in any way? I don't
01:20:48 want to get limited to identified by these markings. But do
01:20:54 you believe would encompass, you know, on this map Ohio
01:20:58 Central property?
01:20:58 **A Well, there, we own some land up at the top**
01:21:02 **portion of the diagram here.**
01:21:04 Q Across the Mahoning River?
01:21:05 **A Yeah, north of the Mahoning River, what I call**
01:21:08 **north of the Mahoning.**
01:21:09 Q Any property identified, or any property depicted
01:21:13 on Exhibit 4 south of the Mahoning River that Ohio Central
01:21:19 owns, other than the areas you have already described for
01:21:22 me?
01:21:22 **A At this moment, not that I can think of.**
01:21:33 Q Okay. Now, you mentioned that you heard that
01:21:38 John Ramun or Allied was making a purchase of property west

01:21:44 of the Center Street Bridge and involving the old LTV plant?
01:21:49 **A That's what I understand, yes.**
01:21:50 Q What's your understanding --
01:21:52 MR. GRIECO: Well, let me back up.
01:21:54 Q How did you gain this information? Who did you
01:21:56 talk to to learn this?
01:21:58 **A Some, some of his, that is, Marsteller's**
01:22:13 **employees have put the, the word to some of my folks. And**
01:22:13 **then I know through other contacts, like with the City and**
01:22:18 **so forth, that the property is subject to sale.**
01:22:20 Q Okay.
01:22:24 **A And I would emphasize, and I said that I heard**
01:22:27 **and understood that Mr. Ramun was buying the property. I**
01:22:30 **don't know that to be a bona fide fact.**
01:22:33 Q Okay. And what do you understand to be the scope
01:22:37 of the transaction?
01:22:38 **A None whatsoever. I have no, no understanding**
01:22:41 **beyond what I have said.**
01:22:42 Q Which is you think it involves the old LTV plant?
01:22:47 **A Roughly, yes, uh-huh.**
01:22:48 Q Okay. And that information came to you primarily
01:22:53 from your employees who had talked, who had talked to
01:22:56 Marsteller's employees?
01:22:58 **A Yes, sir.**

01:22:58 Q Do you know which employees of Marsteller --
01:23:01 **A Do not.**
01:23:02 Q -- your employees talked to?
01:23:03 **A I don't know any of his guys that work or that**
01:23:06 **are -- that frequent that building, no, sir. Don't know**
01:23:11 **their names or anything.**
01:23:12 Q Which employees of yours did you talk to to gain
01:23:22 this information?
01:23:23 **A Well, my locomotive mechanic.**
01:23:26 Q What is his name?
01:23:27 **A His name is Nicholas Mundisev. And his last name**
01:23:31 **is spelled M-u-n-d-i-s-e-v.**
01:23:35 Q Was that the only employee you talked about about
01:23:39 a potential purchase by Allied?
01:23:41 **A As far as I know, yes, uh-huh.**
01:23:42 Q Okay.
01:23:56 MR. LIPKA: Can we go off for just a second.
01:23:59 (Whereupon, a discussion was held off the record,
01:24:01 and a short break was taken.)
01:40:54 Q Terry, I wanted to continue to ask you about this
01:40:58 issue of what Ohio Central owns. With respect to the
01:41:05 parcels that you have generally outlined with the silver
01:41:09 marker, again, up against the river, the northern most part
01:41:16 of what you circled, there is the building that was

demolished, and then your current repair building.
Just so I understand your testimony, you're saying you currently own that property, to the best of your knowledge?
A **The best of my knowledge, based on the plat that I have, yes.**
Q The Ohio Central owns that property, has a fee interest, you know, pays taxes on it, correct?
A **Yeah. We, we had MS Consultants do the survey and so forth.**
Q Okay. So again, talking about this, this part and parcel up here where your current building is that your right to be there is based on ownership of the property, not based on a, a lease, or an easement or anything like that?
A **I have not seen, you know, conveyance documents, or property descriptions or anything like that. I just simply have a plat. And it is my understanding that we own this, roughly this footprint of property, the real estate.**
Q Okay.
A **And of course the building and track involved.**
Q Okay. And then that would include also your present office location?
A **That's my understanding, yes.**
Q Your testimony is you, you own that property?

You don't lease it, or pay rent to anybody for that?
A **That's my understanding.**
Q Okay. What about this portion of what you circled, kind of starting roughly at the edge of the old plant, and then extending down towards Youngstown City where what you circled kind of narrows along the track? Are you saying that Ohio, to the best of your knowledge, Ohio Central owns that property, or has an easement over that property?
A **Best of my knowledge, we own a narrow corridor. I will certainly stand corrected, but it's my understanding, based on the plats, that we own that up through there.**
Q Okay. I want to get an idea of currently what your use of the, of the rail lines is as depicted on Exhibit 4. I know this is going to be a broad question, but I just want to get a general idea of what the use is.
Frankly, we have talked about the LE&E line, and you have said that there is no further operations on that since the end of '06. The other lines that are depicted here that are closer to the river -- let me just come over there.
This group of tracks here, excluding the LE&E Main track, what would you refer to these tracks as? Is there any description you would use? Would you call them

the LTV tracks? Or you don't use that terminology?
A **Are you talking about, like, #3 Main, #4 Main, 220 and 239, so forth?**
Q Correct. Including #1 Main.
A **Yeah, #1 Main. And then for the record, too, I would say there is one omission on this diagram that I just never gotten corrected, one thing the fellow that did this image is no longer employed with Ohio Central, and I'm just not adept at doing the diagrams like he is.**
There is, alongside the river, yeah, alongside the south bank of the Mahoning River here, where it's listed as #3 Main, there is also a #2 Main that diverges east of the Center Street Bridge off of #3 -- and, and honestly I can't recall if #2 is north of 3, or 3 is north of, of 2.
But --
Q Okay.
A **Nonetheless, there are two tracks going through there, and it's supposed to be #2 and 3 Main.**
Q I appreciate that. Referring to all the -- what do you refer to all those tracks as? Is there any terminology that you use? Would you describe those as the LTV tracks? Or --
A **No. I just -- we usually, typically I should say, use the numbers as I have them depicted here. Because**

those are numbers that were left over from the LTV, and whoever the predecessor was to LTV. That's what they have always referred to them as, my understanding.
Q That's fine. How about for the time being we just refer to them as the LTV tracks, including the #1 Main, #3, including #2, 240, track 239, all these that are north of the old P&LE line.
A **That's fair enough. I understand.**
Q What is your use these days for the LTV tracks?
A **Well, of course 240 track is, is on property that I understand is ours.**
239 is our thoroughfare route that connects the main body of The Mahoning Valley Railway to our interchange access with Norfolk Southern, and then that also provides us access down through the Norfolk Southern yard to NS Control Point Graham, and through that Control Point and over to, once again, our property that we own, known as the Struthers lead and other property on east of there. That's primarily used as a thoroughfare at this time, 239, which then diverges into #4 Main, comes over here to Haselton Yard, just outside Haselton Yard. And this crossover that the map just doesn't have enough room to show it, but there is just a little short crossover from #4 Main down into the NS territory, and then #1 Main goes straight.

#1 Main, oh, about the first 10 or 15 car lengths of space there we use intermittently for cars that we're staging for either going to Briar Hill or other locations.

Q You use the term "thoroughfare." What do you mean by "thoroughfare"?

A **That's really just a general term to depict that it's a coming-and-going track. I mean, it's in order to get from the left end to the right end or the right end to the left end.**

Q Okay.

(Whereupon, a discussion was held off the record.)

Q Terry, east of the Center Street Bridge, now referring to just the property, not, you know, which include the tracks, but what is your understanding of who owns this property east of the Center Street Bridge here, between the Mahoning River and Poland Avenue?

A **When you say "property," do you mean the earth, or are you talking about track structure?**

Q I understand you have a position about tracks, and we're going to talk about that when we look at the easements. But if you want to exclude that from your answer right now.

A **I just want to answer accurately what my**

understanding is. That's why I asked that question.

Q Well, let's include all of it. If you want to carve something out, feel free to.

But east of the Center Street Bridge between Mahoning River and Poland Avenue, let's just work down going east, and you can point generally, do you have an understanding as to who owns this property here?

A **East, east of Center Street?**

Q Yeah.

A **East of Center Street --**

Q Yeah.

A **-- and south of the Mahoning, north of Poland Avenue, the real estate, I understand is -- I have always understood -- is owned by Allied Erecting.**

Q Okay. And that, do you understand, do you have an understanding as to where their property line ends, either going easterly or --

A **No. I haven't studied their property necessarily.**

Q Okay.

A **But I would, I would -- no. I will tell you, I just don't know. Because I, I -- when it comes to my property, I look at tax maps, and plats and so forth. But I haven't paid attention to what Allied Erecting, so I would**

be speculating.

Q Okay. But generally, your understanding is east of the Center Street Bridge, and between the Mahoning River and Poland Avenue, Allied Erecting owns the real estate?

A **Yeah. This area here, because Allied Erecting's property I know abuts our property roughly in the center line of the Center Street Bridge.**

Q And I guess you don't have an understanding easterly as to where Allied's property ends?

A **No, no. I mean, where do you mean easterly?**

Q Well, as, as it narrows here between the Mahoning River and Poland Avenue.

A **Only thing I know for sure is that Norfolk Southern intervenes in between Allied Erecting and the river. But --**

Q Do you have an understanding who owns this land that's marked NS Haselton Yard?

A **Just roughly speaking, the green territory here that's shown in green on the Google image is, once again, our understanding that that's owned by Norfolk Southern.**

Q Does Ohio Central have any rights at all through any type of instrument, be it a lease, a license, an easement, to operate over the NS yard?

A **Yes, we do.**

Q Okay. Could you describe that for me, please.

A **It was originally conveyed to the, my understanding is, it was originally conveyed to The Mahoning Valley Railway prior to our purchase. And it provides, generally speaking, for The Mahoning Valley Railway to be able to traverse the Norfolk Southern territory, what we normally refer to as Haselton Yard.**

Q Okay. And is that ability for you to do that still in place to this day?

A **As far as I know, it is.**

Q Okay. And what is the nature of your right?

A **My nature of what?**

Q Of your right.

A **Only that, I can only answer that I know that we have the right to operate trains and engines through the Norfolk Southern yard.**

Q As part of operating, do you mean just passing through, or crossing over the tracks, or do you mean other activities in addition to that?

A **We do a lot of business with Norfolk Southern.**

Q What, what kind of business do you do?

A **Interchange traffic.**

Q And describe what that is. What is "interchange traffic"?

A **They forward traffic to us for delivery to its destination, or we forward traffic to them for delivery to destination.**

Q And as part of that interchange traffic, do you have to communicate with Norfolk Southern?

A **In general, yes. That's the way interchanges occurred, or occurs, you know, amongst railroads.**

Q And describe for me how that communication plays out.

A **It's both electronic, and verbal at times.**

Q Are you involved directly in those communications?

A **Sometimes. Sometimes not.**

Q And give me an example of the type of a communication that you would be involved with in such an interchange.

A **If our trainmaster agent is busy, I might take a call from Norfolk Southern in the morning wherein he, the yardmaster, Norfolk Southern yardmaster wants to discuss what traffic he has for delivery to us, or finding out if, if we're coming to deliver anything to them that they will have to hold a train for so that they can make the connection.**

Q If Ohio Central is going to move railcars over

the Norfolk Southern yard, does it have to first give advance notice to Norfolk Southern and get permission to do that?

A **Just call and tell them what you have, and they say all right, come on in the yard.**

Q Okay. That sounds to me like approval, though. So you have to get their approval?

A **Yeah. Because this is an active location here. There is -- you have a double track main line operating on the north edge of the yard, and then of course Norfolk Southern operates multiple train movements of their own in and out of this yard. So it's coordination of their movements with our movements. That's the purpose of that communication.**

Q What are the current customers or business that you conduct on the LTV tracks as we defined them today?

A **Well, as I said a few minutes ago, the 239 track together with the #4 Main affects our route to move between our Mahoning Valley territory west of Center Street and our Mahoning Valley territory that's in Struthers.**

Q Can I interrupt you for one second?

A **Sure.**

Q I understood that prior testimony in terms of how they're used. But I meant more from a, the business

purposes, the types of customers, what type of traffic currently is done over the lines?

A **It's just movement, movement of locomotives. It's movement of traffic either from Norfolk Southern to destinations over here, or movements of traffic from CSX here down to CASTLO Industrial Park and so forth.**

Q Remember the term you used before, revenue-generated carload? What was the term?

A **Revenue carloads, uh-huh.**

Q Revenue carloads, okay. Do you have those type of carloads that are passing through these LTV tracks today?

A **Over this 239 and #4 Main, absolutely. That's the way we get from this end to this end, or this end to this end, meaning right to left or left to right.**

Q What type of cars are you dealing with?

A **Well, let's see, there is steel. There is lumber perhaps. There is equipment moving to a current tenant in this Marsteller building that repairs their own equipment, and we haul the equipment in for them and haul it back out, so forth.**

Q Who are your main customers today, vis-à-vis these LTV tracks?

A **Well, certainly MHF Logistics is, is an active customer. Let me stop and think. I got to give it an**

accurate to you, because with the current economic conditions, there are some that aren't active anymore.

Gateway Car Shop, CNC, that's seen, Impact Metals. They're across the river on the north side. And that would pretty much sum it up right now.

Q What is the current volume of traffic that you conduct over the LTV tracks?

A **Oh boy, it's, it's very small at this stage of the game, very small. I don't have traffic figures in front of me, but it's hands full of cars maybe in a week's time.**

Q Okay. And when was the drop off point -- I mean, I'm trying to get a sense of before it was hands full, what was the type of volume, and when was the drop off?

A **You know, I don't commit traffic figures to memory. But March was a very impactive month for us, as it has been for most industry.**

This portion of the railroad system in Youngstown was certainly not as heavily impacted as our other portions, primarily The Youngstown Belt.

So to try to give you a best answer I can, this portion of the railroad that we're speaking about, the Mahoning Valley tracks, over the last couple of years, since we ceased operation of the Youngstown and Southern in November of '06, has been reasonably low tempo and

reasonably steady.

Q Are there any documents that Ohio Central maintains that show in any way the volume of traffic for any period?

A Well, there are certainly going to be figures that you internally maintain for, you know, near term periods of time, customer, by customer. But certainly nothing that says we hauled this many cars over this piece of track from January 1st to March 31st, like for the first quarter of a year. Those kind of records aren't kept.

Q Okay. But they're --

A They're just customer-related.

Q There would be customer-related documents that Ohio Central maintains at its offices that would show generally the volume of traffic over the LTV tracks?

A No. It wouldn't be track specific. It would be customer specific. And then that would be further divided by origin of traffic and so forth.

Q And when you say "origin of traffic," what do you mean?

A Whether it came from NS or CSX.

Q Well, wouldn't you be able to tell from looking at the customer or origin of traffic whether it entailed using some portion of the LTV tracks?

A With a great deal of hand work, yes.

Q Okay. Let me jump back for a second. On the LE&E Main track, which you ceased operating on in November of '06, correct?

A (Witness nods head affirmatively.)

Q Do you believe that Ohio Central has any current rights to operate over that track if it so choose to do so today?

A As I mentioned earlier, I recall a document from my early years when I first became employed with The Ohio Central Railroad System that described what I would further describe as an easement to use and occupy the tracks of the LE&E.

Q And so your belief is based on that document that, if Ohio Central wanted or needed to, it could operate railcars over that main track today?

A If, if The Ohio Central Railroad System elected to, once again, be involved with The Youngstown and Southern, obviously it would have to come this way. And it would be my position, based on my understanding of the document that I saw many years ago, that the answer to that would be yes, that we would have the right to come and go and occupy these tracks.

Q Do you have any understanding that your ceasing

operation on that main track constituted an abandonment such that Ohio Central no longer had right going into the future to move over that track?

A Abandonment wouldn't be applicable, in my understanding of it.

Q Why not?

A Abandonment refers to closure, removal of track and so forth.

MR. GRIECO: Okay. Well, now is a good point to stop.

MR. LIPKA: All right.

(Whereupon, a lunch break was taken, and Exhibit No. 5 was marked for identification purposes by the court reporter.)

Q Actually, Terry, before we get to Exhibit 5, I have some other questions. That was just to get us ready for that. On Exhibit 4 you referenced a customer of yours called MHF Logistics?

A Uh-huh.

Q And I guess just yes, for the record? I didn't say that at the beginning. Doesn't take uh-huhs.

A Oh, yes, yes. I'm sorry.

Q Describe for me, to the extent you can, what does MHF Logistics do?

A My understanding of their business is that they are, as the name suggests, a logistics company that owns a considerable amount of railroad rolling equipment of various types, and they move all kinds of materials and so forth.

Now, that's basically what I understand about their business. Their function here in the north bay of this building is, the way I understand it again, is maintenance repair and cleaning of the equipment that they own.

Q Which is railroad equipment?

A Yes, sir. Uh-huh, yes.

Q Okay. And do you know when they started occupying that portion of the plant, or started doing business there?

A Not able to tell you a date. But I can say that it was during the period of time that The Ohio Central Railroad System owned that former LTV Electric Weld building.

Q Which was roughly between what time and what time?

A Let's say the early 2000s, in that range someplace. I didn't negotiate the deal. But it was during our tenure as owner of the building.

Q Bill Strawn negotiated the deal?

A **I would say so.**
Q I think you gave me a date before when, you have a year when you believe that sale occurred?
A **Now, which sale do you mean?**
Q The sale of the LTV plant portion.
A **My recollection is I said, you know, the -- no. That was our purchase of the building was the early 2000s. I guesstimated that we sold the building along in 2005 or six, somewhere along in there.**
Q Okay. So sometime during that period, MHF came in to those premises?
A **Prior to our sale.**
Q Okay. And do you know, did they have a lease with Ohio Central, or one of Ohio Central's subsidiaries?
A **My understanding was that they occupied what we referred to as the north bay under some sort of lease agreement in order for them to do their repair and maintenance work.**
Q Did you know what the nature or any of the terms of their lease was?
A **I do not.**
Q Have you ever seen their lease?
A **Not that I'm aware of.**
Q Do you know whether they were current in making

all payments under their lease?
A **Because I'm not involved with receivables or payables at my location, I can't answer that. I do not know.**
Q What did Ohio Central do for MHF?
A **Move, we moved their equipment in for whatever function they want to perform, and then out, per their order, to either CSX or NS for disposition.**
Q Do you deal with anybody at MHF?
A **There is, they're controlled out of Pittsburgh, and they have a local guy that comes in on an as-needed basis to work on equipment. And he, the fellow that comes in on an as-needed basis, communicates directly with my office to ask for train movements, switching in and switching out.**
Q Who is that fellow?
A **Don't know his name.**
Q Do you know the name of anybody you deal with at MHF?
A **There were people that are no longer there with the company that I, that I knew.**
Q Who were they?
A **Oh, boy. I knew, as soon as I said that, I knew you were going to ask me names. I can't recall.**

Q Okay. Do you know whether MHF has a term to their lease?
A **Do you mean as far as the length of it?**
Q Yes.
A **No, I don't.**
Q Okay. And do you know whether they currently occupy that space?
A **We're performing switching for them, so I'm making the assumption that they do.**
Q Okay. Currently does Ohio Central have any equipment, cars, materials, really anything at all on these premises here?
A **I haven't looked just lately, so I can't detail. But my last understanding was we had some locomotive parts stored, I believe, up here towards the, the west end of the north bay. And that was under an agreement with Bill Marsteller.**
And then at periods in time this building directly behind our office building has been kind enough to let us, let employees put boats there, storage vehicles and that sort of thing.
Q Okay. Let's take these one at a time. With respect to -- I'm sorry. What did you say was up here? Equipment?

A **Locomotive, various locomotive parts, components.**
Q Locomotive parts?
A **Whatever you want to call them.**
Q On kind of what would be the northwestern end of the plant?
A **That's what I describe it as.**
Q And you said you had an agreement with --
A **My understanding, through Bill Strawn, was that we had an agreement with Bill Marsteller to use that west end of that north bay.**
Q Okay. So you didn't enter into the agreement with Mr. Marsteller? You didn't have communications in that regard with Mr. Marsteller?
A **No.**
Q Bill Strawn did apparently?
A **That is correct.**
Q Okay. And then what about the materials or items that you kept in this building here outside of Ohio Central property? On what basis was that done?
A **Just the same thing, the same thing.**
Q Okay. Is there anywhere else, other than these two areas you identified, on any of this property right outside the bounds of the Ohio Central property on which Ohio Central is either storing materials, cars, equipment or

conducting any activities?

A There will be railroad cars on some of these, of course these tracks, 273, 275, 274, 277. As I indicated earlier by my line drawing here, those are ours.

And then my understanding of the sale to Marsteller was that we retained ownership of the track structure outside of the buildings anywhere where it was on the real estate that was being purchased by Marsteller. And that's, that's something that's very common in the railroad industry.

Q All right. So do you know that for a fact, or are you just speculating as to --

A I'm not speculating. I'm operating on what I am told. Once again, I didn't see the agreement. But Bill Strawn defined that to me when the sale took place.

Q All right. So based on your discussion with Bill Strawn, your understanding would be that, when Ohio Central made this sale to Marsteller of this old LTV property here on which the big plant is on, --

A Yes.

Q -- that there was a reservation of rights for Ohio Central to operate on the tracks on the property?

A To further qualify it.

Q Okay.

A I would first answer yes, they have the right to operate on it. But then also, we retained ownership of the track structure, not the real estate, but the track structure.

Q When you say "track structure," what do you mean?

A Track and ties, ballast, whatever is related to the track itself. And that's very common within the industry.

Q So that would include the 292 track?

A Yes.

Q And what else? Or is that primarily what we're talking about? Because I don't want to talk about the ones that you're saying are on your property right now.

A Those up there, 292. And I can't remember -- this is 290 something. I can't recall. And it looks like it's obliterated by my, my gray marker.

Q It's the line coming into the northwestern --

A Northwest corner.

Q Okay.

A And then there is a 298 track that comes into the old coil bay that actually, now that I see this diagram, that's one that we left off, also. I never noticed that until this moment. But that roughly goes right in through here.

Q What, what is that designated as?

A It's, once again, what we understood from LTV as being 298.

Q Do you mind, with this blue pen, just maybe writing that in there.

A Sure.

Q Maybe just initial that, if you don't mind. So with respect to those tracks that are not on Ohio Central property, does Ohio Central currently operate on those tracks?

A Only as needed. If, if there is equipment that needs to be shuffled around and so forth, or positioned for MHF and so forth.

Once again, I would point out that this gray line that I drew down and over here like this indicates that is our real estate. So actually, that portion of 298, you know, up to roughly here would be on our property anyway.

And not having the plat here with me, I want to, once again, emphasize that I'm doing this from memory.

Q Well, let me ask you that. It's interesting that you said about memory that you're relying on. And maybe I should have asked this at the beginning.

Obviously this lawsuit was filed some time ago, and there has been legal wrangling and all that, discussions

between the parties. But when the lawsuit was first filed, what did you do to check into the allegations as to what Ohio Central's rights were over these tracks we have been talking about, and whether, in fact, any violations had occurred?

I mean, I understand one can, you know, go based on memory. But did you do any investigation on your own where you went to check out the documentation to say, okay, what are our rights; and are, in fact, we violating anything?

A I reported to Bill Strawn. And I had no reason to, to doubt or otherwise circumvent what he had told me. So I operated completely on the information that Bill Strawn had provided me as far as ownership of property.

Q Well, in preparation for this deposition, did you go back and look at any of the documents that Ohio Central has produced to Allied in this case, including the easement agreements and the Summitview, Inc., purchase agreement?

A I have seen some of the documents. But I haven't, my goodness, I haven't read anywhere near the whole sale document, no.

Q Those two areas where Ohio Central has materials off its property on the Marsteller site, are any of those understandings or agreements to store property there or

items, is that in writing, whether a letter, or an e-mail, or anything?

A I can't attest one way or the other.

Q Okay. Does Ohio Central have an agreement or a lease for any space outside of the property line that you circled on the west side of Center Street Bridge?

A And you're referring to property that would be owned by Marsteller?

Q Yes.

A You know, at this moment, the only thing that I can recall is, once again, as I stated, that we had the, the agreement with Marsteller to store locomotive components, major components up here in the northwest corner of the building.

Q I'm sorry. Go ahead.

A And we have known Bill Marsteller for quite a number of years, and been involved with him and other properties. And many times we just basically operated on discussions between the two of us.

Q Okay. But I'm just trying to get a sense of, was there anything more formal, with consideration paid? Like I mean, do you know whether you all are paying some type of, you know, payment or rent for these two areas?

A Haven't, haven't got a clue, no, sir. Do not.

MR. LIPKA: Tim, I'm just going to put a continuing objection on the record as to this line of questioning about the relationship with Bill Marsteller. I'm not going to instruct him not to answer. You can ask him whatever questions you wants. I just don't see the relevance of it, so I wanted to put an objection on the record.

MR. GRIECO: That's fine.

Q Were -- since you joined in '95, did you ever become aware of any environmental problems, concerns, whatever word you want to use, issues with the, the former LTV property, which obviously at one point became Mahoning Valley Railway property, on the west side of the Center Street Bridge here?

A As with any transaction of, when property changes hands, especially in this day and age, there are always environmental i's to dot, t's to cross.

And I just know in general that things were done according to Hoyle and all above board, if there was anything to do.

LTV did -- actually, it was Maverick Tube did a considerable remediation inside prior to our purchase. And then when we purchased it, it was what I understood to be a clean site.

Q Right. And my question is slightly different. I mean, I'm not trying to trip you up. I understand that, you know, when those sales occurred, the transactions have to have a lot of different legal documentation and take care of those issues, and I understand you may not have been involved in all that.

I'm just saying, from being the general manager on the site, and you hear things, and you get practical on-site knowledge about potential issues, did you ever become aware of a concern or issue regarding, you know, environmental, you know, issues, or potential liabilities or anything of that sort on this property here?

A Well, no. Nothing, nothing that I can recall.

Q Okay. And I guess you mentioned that MHF's main operation here involves their cleaning, and maintenance and repairing of their railroad equipment. Do they also store containers here that transport hazardous waste materials?

A Well, first I would answer by providing that MHF is a very high-profile company, and very well-respected in the industry. And they are very competent to do business with.

I do not know what they haul. I know that they have containers. And of course that's what I mentioned earlier, that they had all sorts of railroad equipment in

there. And yes, there are containers back here, stackable railroad ship, sea-going containers. But as far as knowing what they haul in them, I can't answer that.

Q You don't have any knowledge that they would haul regulated or otherwise hazardous materials in those containers?

A Do not know what they haul, no.

Q And I'm sorry. Where do they -- you talked about the stacking up of containers. Where do they keep these?

A In general, just right in this area right back in here.

Q Do you know whether they have rights to put that -- those containers there on that property?

A Well, once again, you get more detail from Bill Strawn or someone within our current organization that would have access to the, to the lease.

But my understanding, in general, was that a parcel on this property right here that would be, excuse me, north of the old mill building and south of our ownership was leased for that specific use by MHF Logistics.

Q Okay. I wanted to jump back to the NS yard for a second. We talked about communications with NS.

A Okay.

Q Was there ever a time when anyone, since at least

1995 with you, where someone at NS had called you or anyone else at Ohio Central and, and indicated that cars were being improperly parked, stored, staged, whatever term you want to use, on the NS yard, and that that activity had to cease?

A You done with the question?

Q Yes.

A I didn't want to interrupt you. May I ask what you mean by "improper"?

Q Well, I can take the word "improper" out of it to make it less tricky, if you want. It's just something that they, at least NS called you up about, and they had a problem of some sort, whether it was proper or improper, do you recall a situation ever where someone at NS called you or anyone else up at Ohio Central and said, what you're doing with your cars in our yard we don't want you doing, and you got to stop it?

A I would say that this, because this is an interchange point between the Norfolk Southern, and The Mahoning Valley Railway, and The Ohio and Pennsylvania Railway and The Youngstown Belt, that means simply that there is a lot of traffic that comes and goes between the two of us. And it is a very typical happenstance at an interchange location that one carrier will talk to another carrier and say, hey, those cars we delivered to you four

days ago, those have got to be moved, we need the space and so forth.

And I would say, for the purposes of what we're talking about here today, that absolutely there has been times when NS called and said, hey, this car on #5 track, it's going to Negley, we got to get them moved. Then our response was that we will move them as soon as we get approval to move them, as soon as the customer wants them, as soon as we get an electronic interchange or something of that nature.

There is a lot that must occur between two carriers, and that involves customers, before you just grab onto a cut of cars and yank them out of the yard.

So absolutely, that is something that goes on all the time between railroad carriers at interchange locations.

Q I believe I asked this question before, but maybe we didn't pursue it far enough. As part of your rights to operate over the NS yard, do you believe you had the right to stop cars in their yard and keep them there for a period of time?

A What -- when you say stop our cars, can you define that a little further, please?

Q Yes. I tried to -- it's funny because I thought you might have -- hold on for a second. I wanted to use

just the most general term I could to kind of keep it out of the, you know, the -- but I can rephrase it.

I mean, do you believe you had the right to store cars there? Let's take that first, and we will go through all the different permutations.

A Okay. We have never stored cars at the NS Haselton Yard.

Q And what do you understand by the term "store"?

A Store is when, in the railroad business, storing equipment is when equipment is either surplus, or out of service and not under current dispo.

Q Current?

A Disposition.

Q What about a car, if I went up to a line of cars that didn't have a locomotive attached to it, and I just saw them sitting there on the track, and I wanted to figure out whether they were being stored or whether they're in some other state, what would tell me, you know, the status of the cars?

A You have to talk with the railroad or railroads involved to see what the status was.

Q Okay. I couldn't tell by looking at them -- you know, I'm just going to throw out some terms. I'm sure, you know, whether there is couplers, or brakes or -- I mean, is

there anything about the cars themselves that would tell me their status?

A If there is, I'm unaware of it.

Q Okay. So you couldn't tell just by looking? You couldn't, you couldn't tell just by looking at it?

A Not just looking at the equipment, no.

Q Okay. Was there ever a time that you staged cars on the NS yard?

A Absolutely.

Q Okay. And what does staging encompass?

A Staging typically means that the equipment is standing for unspecified amount of time pending order to a customer or to another advance location. That's typically what we use the terminology staging to mean.

Q And did you have an understanding as to whether you had a right to stage cars on the NS yard?

A I don't know that that's, when it comes to interchange locations between railroads, I don't know that "right" enters into it.

However, if the receiving carrier, if there is no space for the cars to be advanced to the customer, and no other space, then the interchange location is typically where they stay.

And as I said earlier, I would never try to

represent that there has not been wranglings between our entities and Norfolk Southern, and as far as that goes, between our entities and CSX, and vice versa. It's a very, very common thing to those of us that are familiar with the industry and that have worked in it for 35 years.

Q Is there a limit to the time period for which cars could be staged? I mean, is there a time limit that, that if you go beyond, and we're really not talking about staging, we're talking about something else?

A **If there is, I'm not aware of it. If there is, I'm not aware of anyplace where that's stipulated.**

Q But from your 35 years of experience, though, is there any standard of commercial reasonableness, or any other standard where there would be some limit? Maybe it's not stipulated in paper somewhere, but you would have an understanding that there is a reasonableness limitation that, if cars were parked for some, you know, lengthy period of time, that would be something more than staging?

A **I'm going to answer with the best that I can with an example. All railroads sell their equipment for dismantling to company scrap yards that dismantle them and further process of scrap.**

And for example, here at Norfolk Southern's yard, when NS uses their Haselton Yard for cars waiting for us to

handle them up to Briar Hill to Midwest Steel and Alloy for dismantling, the yard can be virtually full of that, and no one says a word.

But if there is one of the tracks that has eight or ten cars in it that are disbarred to us that are not still -- what should I say -- within the interest of Norfolk Southern, then that's when the wranglings start taking place. We need to have those cars moved, we need to have those cars moved. So it's --

Q If there is an impact of some type?

A **Yeah. It's one of those things where it's what's good for the goose is what's good for the gander, you know.**

Q Was there ever a time that anyone from the NS yard threatened or even alluded to charging Ohio Central demurrage or any other fee or cost?

A **There is, there is no tariff basis for that, no.**

Q Okay. And I'm not sure if that quite -- I mean, whether there is a basis or not, I'm just asking, do you ever recall someone at NS threatening, or even alluding to trying, trying to impose some charge on Ohio Central --

A **Not that I was aware of.**

Q -- for staying on their yard?

A **No, not that I was aware of. What typically has been involved is NS just wanting to see the cars moved to**

open space up for other activity.

Q Okay. Now, let's see. Can you connect from the NS yard to this #3 Main here?

A **Yes. Earlier, in earlier testimony I explained that there was a crossover that comes out --**

Q Right.

A **-- of the NS yard onto this #1 Main, and then it is that crossover I referred to is east of this diverging point right here where #3 Main and #4 Main come together.**

So the answer to that is yes, you could line that switch straight so it would go right into #3, and thence into #2 Main, also.

Q Okay. So #2 doesn't start right here as well? It starts later?

A **Someplace back here further to west. And I, honestly I can't tell you where it is. But it's back from this point at some location.**

Q Now, under an example where you would be staging cars in the NS yard, you're not on the MVR one #1 Main? You're off of that? You're in here somewhere; is that right?

A **Yeah. That's -- may I use -- your pen is a little better. You see this dark line right there?**

Q Yes.

A **Okay. That's actually our lead coming down into what's known as #11 track. And then right along through here is a driveway, I mean for rubber-tired vehicles. And so just to give you an idea where the demarcation is.**

But no, we're in the NS yard unless there is something we don't know about that, that Allied Erecting owns, Norfolk Southern, also. No, as far as we understand, that's NS's property.

Q No. I understand. I'm not asserting that. I'm just saying I want to make sure that, when we're talking about staging cars in the NS yard, where do you come in from? Let's just start with that point.

A **Okay. What would you like to know?**

Q If you're going to come into the NS yard, how do you access the NS yard?

A **Well, it depends on whether we're coming from the, the north, timetable direction north or timetable direction south.**

But from the north right up here, basically -- I folded the map up too far. Okay. Right. The Google image doesn't show it real well, but right along in here is a crossover coming off of their, NS's #1 Main that's called Aey Brothers lead. And I think that's spelled A-e-y, Brothers, if I --

03:33:05 Q Do you mind just doing a little jut out, and put
03:33:10 "Aey Brothers lead"?
03:33:10 **A You want me to use the gray one? Or --**
03:33:13 Q Yeah.
03:33:13 **A Okay. Approximately in this vicinity right here**
03:33:17 **it comes off, and just comes down here like this, and across**
03:33:24 **this bridge, and then into the yard.**
03:33:25 Q Okay. And then could you just put a little
03:33:28 arrow, and then right "Aey Brothers." Okay. So that's
03:33:43 understood. That's the only way in from the north?
03:33:46 **A Well, no, it's not the only way. That's the**
03:33:48 **typical way.**
03:33:49 Q Typical way, okay.
03:33:50 **A Two main tracks here. Depends on how the**
03:33:52 **dispatcher has you lined up up here further to the north how**
03:33:56 **you get in. Because there is another crossover between the**
03:34:00 **two mains here that would bring you from #2 to #1, and then**
03:34:03 **there is a crossover from #1 to the yard lead. So there is**
03:34:06 **obviously that way, there is this way, and so forth.**
03:34:09 Q Okay. Now, from the east or south?
03:34:12 **A Okay. From the south end, of course this is all**
03:34:18 **at the south end all power-operated switches. These are all**
03:34:24 **power-operated switches. And our Struthers lead comes**
03:34:29 **across, ties into the single main line, and then right up in**

03:34:36 **this. There you go right there. You see where it goes to**
03:34:38 **double track?**
03:34:39 Q Yes.
03:34:40 **A That's where NS's #1 and #2 Main start. From**
03:34:44 **that point southward it's called single main track.**
03:34:47 But we tie in through a trailing point power
03:34:51 switch, and then we come up here to the yard lead, and they
03:34:54 line you in like this, right along parallel.
03:34:57 Q Now, do you have to get onto the L&EE main track
03:35:00 to do what you just described?
03:35:02 **A No, sir.**
03:35:02 Q It's before that?
03:35:03 **A No.**
03:35:03 Q Okay. Can you just mark at that point where you
03:35:08 were describing where it breaks off there?
03:35:10 **A Yeah. Roughly, let's see, you see -- and I don't**
03:35:14 **want to mess up the reporter, but I don't know when this**
03:35:20 **Google image was taken. But NS did a considerable amount of**
03:35:23 **relocating switches down here like, oh, along in 2003 or**
03:35:31 **four. And I don't know, to tell you the truth, if this is**
03:35:35 **exactly the way it is right now.**
03:35:37 But we come across like this, down into #1 Main,
03:35:46 and then there is a further divergence off of #1 Main into
03:35:49 the south yard lead. And it's kind of a long lead like

03:35:54 this. And then it runs onto what we call the ladder track
03:35:58 where all of the tracks diverge off of it like a backbone --
03:36:02 Q Okay.
03:36:03 **A -- with, with ribs coming off of it.**
03:36:05 Q Do you mind just putting "ladder track" right
03:36:08 there?
03:36:09 **A I don't know where the cover is to that.**
03:36:29 Q Okay. Now, if you're coming in then from the
03:36:31 south, you, you come in through the, into the NS yard,
03:36:41 you're telling me you can connect from the NS yard to the #3
03:36:47 Main?
03:36:47 **A Yeah.**
03:36:47 Q Correct?
03:36:48 **A Or #4 Main. There is, let's see here, it's**
03:36:54 **roughly like this.**
03:37:05 Q Okay. Right here?
03:37:05 **A Uh-huh.**
03:37:06 Q So you actually have to get on the #1 Main before
03:37:09 you get to the #3 Main?
03:37:11 **A If that's still referred to as #1 Main out there.**
03:37:15 **Frankly, I, I wouldn't be able to attest if #1 Main starts**
03:37:19 **right here and goes this way, and this is #4 Main down here,**
03:37:22 **or if that's #3. Don't know that answer.**
03:37:25 Q Is it your understanding, once you cross onto

03:37:28 here, you're on Allied property right here?
03:37:31 **A No, that's not my understanding. I can't say**
03:37:33 **that I know how the plats lay down there.**
03:37:36 Q Okay. So you, it's not that you're saying it's
03:37:39 not that way, you just don't know?
03:37:41 **A Yeah. Just not sure, no.**
03:37:51 Q Okay. All right. Thank you. Based on the
03:38:38 configuration we just went over and the movement of cars
03:38:45 over these tracks, what would be the purpose, from Ohio
03:38:53 Central's standpoint, in coming down onto this #4 Main,
03:39:00 coming down this way over across the Center Street Bridge,
03:39:05 either onto this 239 track or continuing on the #4 Main?
03:39:09 What would be the purpose for that?
03:39:10 **A Well, you will recall in earlier testimony there,**
03:39:13 **in your questions I answered, that this is a thoroughfare,**
03:39:18 **if you will, for us to get from not only the NS property,**
03:39:24 **but our other properties over in Struthers, and Campbell and**
03:39:29 **Lowellville to this property here. That's, that's**
03:39:36 **essentially the only way, the only practical way.**
03:39:39 Q Well, you could do it on the #3 Main as well,
03:39:42 right?
03:39:42 **A Yeah. That's correct. Up here, right now I, in**
03:39:45 **looking through our fence here, of course there is, there is**
03:39:50 **a piece of track right here that, on our property that's**

messed up very -- to a minor degree. But anyway, east of Center Street the tracks are covered up with dirt and so forth, and debris. At least they were the last that I looked.

(Whereupon, a discussion was held off the record.)

A **May I also add to your last question the use of this track, obviously, in order to service this #4 Main, and to come in to the west end of the building where there is a track here -- that's another track that's not actually shown -- you need to have head room. If you're coming out here, you need the head room out here to reverse direction to go here.**

Q Okay. But why would you need to come in here?

A **Because this was the shipping bay, this was the main shipping bay for this building.**

Q Okay. Up until what point?

A **Well, it was the main shipping bay when it was LTV Electric Weld and Maverick Tube, and then when we served logistics company that was doing transloading in here.**

Q All right. But currently there is no reason to go in there?

A **Not right at this moment, no.**

Q Would you change engines on these tracks through

here? Would you change an engine out on these tracks through here?

A **Now, I'm not sure I understand what you -- can you ask another way? When we "change engines out," I'm not sure what you mean.**

Q Well, I don't know what you would call it where you, where you change an engine out. I guess let me see if I can get a better understanding.

I'm trying to get an understanding of the different purposes for which you would use these tracks over here east of the -- or west of the Center Street Bridge, I mean, well, including west of the Center Street Bridge coming in what we have called the LTV tracks essentially. And basically what I see is -- you tell me if you agree or disagree -- is currently you can come in to service MHF. Okay?

A **That's correct.**

Q Or you could be taking cars or an engine to your repair facility, correct? I guess, what is the scope of the, of what is repaired at this facility right here? Is it just engines, or just locomotive engines?

A **That's a locomotive shop.**

Q That's, that's kind where I was going with the, using "change out of an engine" term.

A **Okay.**

Q But you would bring an engine in here for repair?

A **Yeah. That's our locomotive shop for the Youngstown Division.**

Q Okay. Now, other than servicing MHF or bringing a locomotive engine in here for repair, can you give me any other example as to why you would use these LTV tracks?

A **Well, we interchange with CSX up here. So if CSX delivers us a carload that needs to go to Impact Metals over in Campbell, then we have to get it down through here.**

Q Could you mark that CSX.

A **Actually, there is a little crossover right there. But this is, it's tail track. That's the CSX interchange.**

Q Okay. So I'm sorry. Continue.

A **Okay. I got to stop, think where I was. If we get interchanged traffic from CSX here, it's bound for customers at CASTLO Industrial Park.**

Q CASTLO?

A **It's CASTLO. It's all capitals. C-A-S-T-L-O, Industrial Park. Customers at CASTLO Industrial Park over in Campbell and so forth, it gets handled this route right here, and down through NS, out across there, Control Point Graham, and to our track on the Struthers lead.**

Q Okay. Can you cross over the river at this point here this way?

A **No. That's CSX's main line. That's their Chicago to Baltimore main line.**

Q And you have no rights to use that?

A **We don't operate on that, no, sir.**

Q Okay. And then my other question was: Down here on the main #3, and the main #2, are those passable currently?

A **No. That's what I said a few minutes ago, that right underneath the Center Street Bridge, the track is messed up, and we just haven't fixed it, because there is no sense in fixing it relative to this proceeding here, because there is no reason to go east and cause Allied Erecting further dismay and so forth.**

We have, since this suit has come up, we have withdrawn from storing cars or using those tracks.

Q Okay. Well, which tracks are you talking about specifically?

A **Specifically #2 and 3. So because there is a connection here between these two to single track to these two. But that connection is, as I say, messed up, partially dismantled , whatever you want to refer to it as.**

Q Not passable?

03:47:43 **A** **That's correct. That's correct.**
03:47:44 **Q** Okay.
03:47:45 **A** **And we're totally aware of that, totally aware of**
03:47:47 **that. But as I say, there is no reason to have it.**
03:47:50 **Q** Okay. Now we get to Exhibit 5, which I marked.
03:48:17 Do you recall ever participating in preparing this document
03:48:24 or reviewing this document?
03:48:28 And I represent to you, obviously, as the first
03:48:34 page states, these are Ohio Central's responses to discovery
03:48:38 requests posed to it by Allied in this case. And there is a
03:48:43 series of interrogatory questions, and then there is
03:48:48 requests for documents. And I'm going to point your
03:50:29 direction to a specific one. So take your time to read as
03:50:33 much as you --
03:50:33 **A** **You say you are, or are not?**
03:50:35 **Q** I will. So it's not like I'm going to try to
03:50:37 catch you, you know, based on the whole document.
03:50:39 **A** **Okay. Well, I just, for, you know, obviously I**
03:50:43 **wanted to look it all over. But sure, there are parts of**
03:50:45 **this that I recall contributing to, yes.**
03:50:48 **Q** Okay. Do you recall signing a verification for
03:50:54 this document?
03:50:55 **A** **You know what? I'm going to say that no, I don't**
03:51:00 **recall that. I'm not saying that I did, not saying that I**

03:51:03 **didn't.**
03:51:03 **Q** For any of the pleadings or legal papers in this
03:51:06 case, have you been signing the verifications as needed, or
03:51:11 is it, is it Mr. Strawn?
03:51:13 **A** **I'm not sure that I'm --**
03:51:17 **Q** Okay. That's fine. And we can check it. We can
03:51:21 check it. Were you involved in searching for documents that
03:51:28 were responsive to these document requests?
03:51:30 **A** **I have assisted in assembling documents, yes.**
03:51:33 **Q** Okay. Tell me what you did.
03:51:36 **A** **I have gone through our headquarter's records to**
03:51:44 **pull out anything that I could find that was applicable to**
03:51:48 **this particular case.**
03:51:49 **Q** Where is the headquarters?
03:51:51 **A** **In Coshocton, Ohio.**
03:51:52 **Q** Okay. And describe for me how the documents were
03:51:58 kept, and the process you went through to search for
03:52:01 responsive documents.
03:52:02 **A** **Just standard filing procedures and so forth.**
03:52:06 **And because we needed certain components and so forth, and I**
03:52:11 **had greater familiarity than other people remaining in the**
03:52:17 **organization since Bill Strawn's departure, I obviously**
03:52:21 **looked for documents that had familiarity to this**
03:52:28 **proceeding.**

03:52:28 **Q** Did anyone else assist you in searching for
03:52:31 documents?
03:52:32 **A** **Our property fellow directed me to files, but**
03:52:40 **didn't assist me.**
03:52:41 **Q** What's the property fellow, I think you said?
03:52:44 **A** **A fellow by the name of John B. Korns.**
03:52:47 **Q** What's his position?
03:52:48 **A** **He directed me to the file cabinets where things**
03:52:51 **were kept.**
03:52:51 **Q** Okay. At headquarters?
03:52:53 **A** **That is correct.**
03:52:54 **Q** Did you search files at the location in
03:52:56 Youngstown Division?
03:52:57 **A** **No. Because I have never maintained this sort of**
03:53:00 **thing here in Youngstown.**
03:53:01 **Q** Well, I mean, wouldn't you maintain at Youngstown
03:53:05 correspondence with Allied, or anything like that?
03:53:11 **A** **No, not typically, no. That's all headquarters'**
03:53:16 **function.**
03:53:16 **Q** Do you maintain any documents at the
03:53:18 Youngstown --
03:53:19 **A** **Plats, diagrams and that sort of thing that I**
03:53:21 **have, you know, been referencing.**
03:53:25 **Q** Diagrams of what?

03:53:26 **A** **Property, our property ownership.**
03:53:30 **Q** What about rail track lines and usage?
03:53:36 **A** **Rail track line usage?**
03:53:38 **Q** Yes. The rail lines themselves, and usage of
03:53:42 these lines.
03:53:43 **A** **As I have said regarding usage of track, like**
03:53:47 **back to the one we were talking about the LTV track, since**
03:53:50 **we have decided that we're going to refer to them as, I**
03:53:53 **acted upon direction from Bill Strawn as to what were ours**
03:53:58 **and, and the use of which and so forth. I did not have the**
03:54:04 **agreements, nor negotiate the agreements here in Youngstown.**
03:54:09 **Q** Okay. Other, other than you then, did anyone
03:54:28 else participate in looking for responsive documents? Did
03:54:28 Bill Strawn participate?
03:54:28 **A** **He's no longer with the company.**
03:54:28 **Q** But prior to him leaving? Because this
03:54:28 litigation started actually some time ago.
03:54:28 **A** **I don't know.**
03:54:30 **Q** Okay. Do you know whether everything has been
03:54:37 produced responsive to these requests? Is there anything
03:54:41 that you weren't able to find or that is missing that you
03:54:45 believe would have been responsive, but you just can't get
03:54:48 your hands on?
03:54:50 **A** **We --**

MR. LIPKA: I'm sorry. When you say "these requests," just make sure you review the requests. I mean --

MR. FEICHTENBINER: Oh, that's what we're talking about?

MR. LIPKA: Well, I'm sorry. The question was: Is there anything responsive to these requests that hasn't been produced yet?

And I guess my point is that you had sort of cut out halfway reviewing requests.

Q I don't want to cut you out. I'm just saying, you know what this case is about, correct?

A **Yes, I know what this case is about.**

Q You have reviewed the Allied complaint? You know what their allegations are?

A **Yes.**

Q Okay. You reviewed the document request, correct?

A **I quickly leafed through it. But if I'm, if I'm going to have to answer based on my quick review of this whether or not we have produced everything, then I have got to have a few minutes to read and talk with counsel so that I make sure that I am telling the correct thing. Because I want to answer correctly.**

Q Okay. Well, let's take a few of them. Turn to number seven, request number seven. So that's after the interrogatories.

A **Okay. Request number seven.**

Q You can read this request. I'm going to paraphrase it, because as requests tends to be, they're all-encompassing, and we use a lot of different words, so there is, you know, there is no ambiguity.

But this relates to any documents concerning interpretation or analysis of the LTV or P&LE agreements, or Ohio Central rights thereunder.

Do you recall seeing any documents, internal documents of Ohio Central that spoke to the interpretation or analysis of what Ohio Central believed its rights were under the LTV easement or the P&LE easement?

A **No, I don't.**

Q Okay. You don't recall seeing any correspondence, notes, informal communications regarding what Ohio Central thought its rights were under those easement agreements?

A **At this moment, no, I can't. If you're asking for information that passed back and forth between people at Ohio Central, right now I can't put my finger on anything that I recall, no.**

Q And I guess I'm just trying to figure out, because you're the one who searched for documents, whether you ever saw anything that was responsive to that request.

A **No.**

Q Okay. Go to number eight. This was any and all documents relating to the use of the various tracks on Allied's property, and then you know, there is lots of different documents, you know, logs, diaries, calenders, blah, blah, blah.

Basically your answer says that there are internal rules regarding the conduct of the railroad operations, and those were attached. That was the operations bulletin.

My question to you is: Other than that operations bulletin, were there any other documents that either exist or that you saw that speak to the use by Ohio Central of the railroad tracks on Allied's property?

A **No. I'm, I'm responsible for the operation of the railroad. So I have to -- the operations bulletin is, is my form of setting forth operating requirements for trains and engines over all pieces of track that I'm responsible for. So beyond the scope of operations and things related, no.**

Q Okay. So does that mean basically, that

operations bulletin, which supersedes all the prior bulletins, correct?

A **Whenever an operations bulletin is created or put into effect, the typical practice is that it then supersedes, and the previous one, and it includes anything that's carried over from the previous one.**

Q So does that mean that the operations bulletin is the only document that Ohio Central has that governs or speaks to the use of these tracks that we have been talking about, either the LTV tracks or the LE&E Main track?

A **From an operating standpoint, it's the only one I'm aware of.**

Q Okay. Let's go to number nine. This asks for any and all documents relating to the frequency and nature of Ohio Central's purported railroad operations occurring on the various tracks.

And basically your answer says that they do not, Ohio Central does not maintain these records; and that to the extent they exist, Railcar Management, Inc., a third party car hire, maintains electronic records, including bills of lading, weigh bills, switch lists and inventory records.

I want to make sure that we're not speaking past each other. I know in this answer Ohio Central says that

they don't have records that relate specifically or exclusively to Defendant's rail operations on tracks located on Allied's property.

But does Ohio Central maintain records that relate to a broader area maybe, you know, that encompassed the tracks on Allied's property, but it's just a broader area?

A **I, you know, I apologize, but I'm having some difficulty understanding what it is that you're looking for. I want to answer, but I got to, I got to more clearly understand.**

Q What I'm trying to -- the question asked for any documents that would show the frequency or nature of railroad operations over these tracks. Okay?

And so before, we talked about volume or quantity of cars, you know. I'm just trying to get an idea of whether Ohio Central itself -- put RMI aside for a second -- whether Ohio Central maintains any records that would show this frequency or volume of cars over tracks in a certain area.

And I didn't want to get hung up on just Allied's tracks, because I think what you have been saying is there is nothing that's going to limit it to just what traveled over Allied's tracks. And I just want to understand

whether -- even if you broaden it for a larger area, maybe the Youngstown Division as a whole, or the whole Mahoning Valley Railway territory west end, or maybe including the east end, is there some other broader territory for which you have documents that show the volume or frequency of railcar traffic? Does that help at all?

A **I believe that these diagrams have probably confused the issue to some degree. The Youngstown Division, for accounting purposes, traffic accounting is just viewed as a whole.**

Q I'm sorry?

A **Is viewed as a whole.**

Q Okay.

A **This, these diagrams are, and the way they're broken up into five sections, as I explained earlier in my testimony, are merely for educational and illustrative purposes.**

There would be records that could tell you volumes of traffic for the Youngstown Division that might be as much as a year old. But because there is no regulatory requirement for that sort of record keeping, it's just useless paper.

Q Well, how far back do these documents go?

A **I might be able to produce , if we wanted to see**

what the Youngstown Division did in 2008, you could see what the Youngstown Division did in 2008, because the year just closed. But I can't guarantee that '07, '06, '05, '04 and so on back, that you could dig up any information.

Q Okay. I mean, could you check in that regard to see how far they go back? I guess that's a request we're going to make.

MR. GRIECO: I can put them in writing to you later, Tom.

A **Sure, sure.**

Q Okay. Let me ask you these couple of questions. Can Ohio Central monitor or track -- excuse the pun -- where cars are stopped or located on a rail line?

A **I'm not sure what you mean by "monitor."**

Q Well, and I will use whatever term you want me to use. But just something that would bring knowledge back to Ohio Central that we got 17 cars, and that's where they're at. I mean, I assume that Ohio Central's just not in the dark as to where cars are.

I mean, let's take an example. If, if there is 17 cars just here in the middle of this #4 Main, is there a way that back here at Youngstown Division somebody knows, hey -- and you know, I know a lot of this can be seen visually. But I mean, maybe I should pick something better.

I mean, I don't know if you can see all the way over here. But I, I assume that, if this is out of sight, someone has got to be able to note, through some method or process, that there is 17 cars that are -- we're responsible for, Ohio Central's responsible for sitting over here.

And so that's kind of what I mean by monitor or track. I mean, how does Ohio Central know that?

A **Electronic inventory.**

Q Okay. How does that work?

A **Just PC-based.**

Q What's the software?

A **Can't answer that. I'm not a computer geek.**

Q Do you have an understanding as to, okay, maybe not how the software works, but how the electronic inventory works? What feeds the data in? I mean, is this done by, like, GPS? You know, trip system or something? Or how?

A **No. Just, just human entry.**

Q Human entry?

A **Absolutely.**

Q So give me an idea how it works. Just --

A **Just a man sitting at a keyboard moving cars from one location to another.**

Q Okay. But the guy back here that's just at the keyboard, how does he know that there is 17 cars out here on

#4 Main?

A **By verbal contact with the train crews.**

Q Verbal contact with the train crews?

A **The trains are all equipped with cell phones. And when they move, when they leave the office in the morning, they have an inventory. And when they move ten cars off of, off of A track, and move those ten to another track, they report that verbally to the agency, and the agency moves them in the computer.**

Q Okay. So a line of cars come in down here with an engine, of course, attached, I guess. I'm not a railroad guy, and I apologize for that. And they, they bring them through up here, let's say they either come through the NS yard, or maybe they at an earlier time came up through the LE&E lead, and then on to the MVRY main #1.

They come up here, and then they're going to, for whatever reason, leave 17 whatever number of cars on the main, #4 Main. Describe to me how that should occur, how that properly should occur, from Ohio Central's standpoint.

A **Just as I said, when the train crew leaves those 17 cars on #4 Main, they verbally report that by cell phone to the agency, and those cars are moved electronically to, to #4 Main.**

Q Okay. So within your software they're going to

identify in some way what cars they are? I mean, and how do they do that? I mean --

A **Just by car number.**

Q Car number?

A **Uh-huh.**

Q And there is going to be entries as to, for these car numbers are on this track, and there will be a designation main, #4 Main?

A **That's just basic inventory is all it is.**

Q Okay. So that data is entered at the Youngstown Division headquarters, correct?

A **That's correct.**

Q Is that, that inventory exists there and can be produced electronically?

A **Over what period of time?**

Q Well, how far does that electronic inventory go back, do you know?

A **I don't know the answer to that. Typically the purposes of an inventory are, the purpose of an inventory is to keep you apprised of what and where it is when it's on your line.**

When it's gone, in other words, interchanged to another carrier, your interest is no longer existing. So you don't track the cars, so the record goes away. They're

what we call blown out of the system.

Q Okay. Well, these inventory records, are they ever printed out in hard copy fashion periodically?

A **Only for the train crews in the morning. The, the industry in the mid to late '80s made a big move to go paperless. I don't think it will ever happen, to tell you the truth, but to go paperless.**

And that has made tremendous, the industry in general has made tremendous strides in eliminating paper records in favor of electronic records.

Q Okay. I understand that as a general matter. You said that a printout for train crews are out every morning?

A **Just for the train crew to take with them to use for that tour duty, and then they're discarded.**

Q Okay. And is there a document retention policy or procedure that speaks to that issue of discarding those?

A **No, sir.**

Q Are they supposed to turn those inventories back in, or they are supposed to discard them?

A **No, sir. It's all done verbally throughout the day, so that inventory, at the end of the day, is completely different than what -- it exists completely differently in the field than what's on that paper at the end of a tour of**

duty to occur.

Q Have you checked physically, you or anybody else, have you checked physically at the Youngstown Division location or at the headquarters in Coshocton whether there are printed out, hard copies of any inventory records pertaining to these tracks?

A **As I say, it's, it's not our policy to maintain written records like that.**

Q I understand that. But you would agree with me that you may have a policy, but for whatever reason, documents exist, were printed out, were kept in a folder and are there for someone to look at if need be.

So I'm ask -- so it's a slightly different question from what your policy is. Did you or anyone else at Ohio Central look for inventory records at either Youngstown Division or at the home headquarters?

A **I pretty much know what we have and what we maintain. So no, I, I haven't, because I'm, I'm certain we don't maintain those records in a paper form, I emphasize.**

Q So you didn't search for them because you believe they don't exist?

A **That's correct.**

Q If, if your life counted on it, and you had to find these records, where would you look? Would you be able

to make a further examination as to whether these records existed in some form, either partially, or maybe for a certain period of time?

A **Because, once again, I understand how train movements and the accounting for the train movements work, I feel very comfortable that they don't exist; so therefore, I would not waste time looking.**

Q So if the only time they're ever printed out was for the train crews, and then they were discarded, that's your testimony?

A **That's correct.**

Q They weren't printed out for any other reason?

A **They're printed out for that purpose, so the train crew -- because they don't have a computer in the field -- they can see and compare notes with the office throughout the tour of duty.**

Q Describe for me the computer system. And I know you're not a computer guy, but I'm just talking about literally what you see, how many computers. Describe for me the electronic capabilities at the home office there in Youngstown Division. How many computers do you have, et cetera?

A **Okay. The, the agency has just one computer that maintains the inventories, maintains the movements and so**

forth. And of course that's tied into the nation-wide system, because when we interchange a cut of cars, those 17 cars that you have referred to, if those have to go to Norfolk Southern, then we have to be able to talk electronically with Norfolk Southern so that they get what we call an electronic interchange, and which is also -- another way to describe it is a notification of interchange.

Q Okay. Who is your computer guru? Or who would know the most about the electronic capabilities or how the software works at Ohio Central?

A **Well, the Genesee and Wyoming, I don't know people in that department, but the Genesee, Wyoming has an IT group, and that's where I would point you.**

Q Okay. But right now if -- who is doing the entry on, on if the computer say today for an interchange or something?

A **Our agent trainmaster, Rick McRacken.**

Q And is there anyone else? Well, who are the three existing employees now?

A **It's myself, Rick McRacken, and our market manager, Brian Freeman.**

Q Brian Freedman?

A **Freeman, F-r-e-e-m-a-n.**

Q And what all does Brian do?

A **Markets our business.**

Q He doesn't get involved with train movements or data entry?

A **Not the rudimentary things. If he has a new move, if he's developed new traffic, he will tell me, and he will tell the agent that such and such new business is on line, we're going to be starting to move traffic out of this location to so an so, and so on.**

But no. Brian is, is typically making customer calls, working with the class ones to develop rates, and so on and so forth.

Q How about Rick McRacken? Describe his job responsibilities.

A **His job is front-line management of the train crews, interfacing information to and from the class one connections, which is CSX and Norfolk Southern, managing what the customers need based -- versus what our train movements are, so on and so forth, then obviously he has the data input responsibility also, moving cars in the system.**

Q Is it fair to say Rick is the most knowledgeable then at Youngstown Division regarding how the electronic data input would work?

A **I would caution you not to construe that he is a tech on the computer system, absolutely not. He knows how**

to use the system, just like I know how to use Microsoft Word in my laptop. And that's the best way I can describe it to you.

Q But he's the most responsible for the information that's put onto that computer, how it's maintained, how it's kept?

A **He's responsible for moving the cars in the system.**

Q So we talked about the hard copy. Let's just talk electronically now. Is that information backed up onto a backup tape, or is it backed up onto CDs, or DVDs, or disks of any type?

A **It, it goes to Railcar Management, as we discussed earlier. It goes to RMI, Railcar Management.**

Q Okay. But do you do any backup there locally? I understand it goes somewhere else. Do you there do any backup of that information so that you could access it without going to Railcar Management? Is there any way you could access a past inventory record electronically?

A **Years ago we all used to do backups. No one does anymore because it's maintained at Railcar Management.**

Q Okay. So when about did that stop? Do you remember what year?

A **Can't -- no, I don't recall. But it's been**

years. It's been years.
Q Before 2000?
A I would say it's possible.
Q Would you be able to find out when you, the latest backup was?
A That would be tough because of personnel changes and so forth. I want to make sure. I'm not trying to lead you astray here. What I'm trying to convey is, is that, instead of making a backup tape at the end of the day and taking it home with you, the data is instead maintained at Railcar Management so you don't have to do the backup.
Q Right.
A See what I mean?
Q Right. Okay.
A When Railcar Management began offering that service, then the railroads in general backed away from that local regiment of every night running a backup, taking an hour to run a backup.
Q Do you recall when Ohio Central, specifically at the Youngstown Division, engaged RMI to do this function for it?
A Well, first off, when I came here in '95, just like the carrier that I left in North Carolina, RMI was already installed. I definitely recall in my early time

here that we would run a backup on local movements in case our PC crashed.
But once again, because that information is now immediately exported to RMI, we no longer do that.
Q Do you recall when you stopped doing the local backups?
A Well, give you an example. I recall that in 1999 our office in Briar Hill burned, and at that time that is where our PC was located for recording daily movements, making car movements. And the fellow that was our agent at the time, who is no longer employed with us, had the backup tape at home, so all we had to do was find a PC, and put the tape in, and we were back in, in business.
Because as you would expect, you know, it's a myriad of moves, and you would be in chaos if you lost it. So he had us fired up in a matter of a couple of hours.
But it's been sometime subsequent to that. And my best faith answer is it was probably in the early 2000s sometime when that requirement ceased, and Railcar Management began to maintain a dual backup in Atlanta for all these movements.
Q Have you ever had occasion to contact RMI in the ordinary course of business to get inventory or related type of information from RMI?

A I don't typically, no, deal with RMI. That's typically a tech side. They're very high-tech people, and it's typically a tech group involvement.
Q Well, can you think of an example that either you were involved in or you were just made aware of where the tech people at Ohio Central had to interact with the tech people at RMI?
A I can't recall a specific occasion. But I would certainly not try to say it hasn't happened.
Q Well, can you think of a reason why Ohio Central would need to get information from RMI?
A Not right offhand, no.
Q You're not aware of any instance of having to access any backup information of any type from RMI?
A I emphasize, I'm not saying that it hasn't happened.
Q I understand.
A I'm just not aware of.
Q You're not aware of any instance?
A That's correct.
Q From what you know of how the process works, do you believe that Allied should be able to get from RMI inventory records that would show on particular dates what cars and how many cars were on the tracks identified on

Exhibit 4?
A I can't speak for RMI, of course, what they're willing to provide, or exactly what their capabilities are, especially historical capabilities.
Q Theoretically, based on data that is inputted and should be available, and from what you know, they are transmitted and keep --
A If, if I had a specific car number, and I contacted RMI and gave them that car number, I believe that they could, to some extent, historically speaking -- and once again, I don't know how far back -- they can produce a movement record for that car.
But what they're not going to have, by my understanding, is -- and I stand corrected if I'm not correct -- I don't believe that they're going to have any record that, that it's recording, you know, --
Q Cars?
A -- cars standing on 220 track, or #4 Main on such and such a date.
Q Okay. But let me understand this. Because -- and I didn't really understand this as much until today. That information existed at some point, though, because as you say, otherwise it would be chaos?
A Well , wait a minute. What I'm saying is, is

04:24:00 **that it's not going to necessarily be track specific. See**
04:24:00 **what I mean?**
04:24:00 It's movement specific, so that it can be --
04:24:05 let's see, when we -- when I accept ten railroad cars from
04:24:13 you in interchange, you're Railroad A, I'm Railroad B, and I
04:24:18 accept those ten cars from you, as soon as you
04:24:22 electronically notify me that those cars are delivered to
04:24:26 me, I begin paying what we call car hire, c-a-r, separate
04:24:36 word, h-i-r-e, or per diem, some people call it per diem.
04:24:42 It's an hourly rate that you pay. It's rent on those cars
04:24:46 as if you just go to the U-Haul place and rent a trailer.
04:24:50 You start paying for it as soon as you get it, pay for it
04:24:52 until you bring it back.
04:24:54 When you give me ten of your cars, I start paying
04:24:57 as soon as that electronic interchange occurs, and I pay
04:25:00 until I give them back to you. That is the primary reason
04:25:03 for car movement records, so that we can settle with each
04:25:08 other on car hire.
04:25:11 At the end of the year -- well, it's not done at
04:25:14 the end of the year, but let's just say for discussion
04:25:17 purposes at the end of the year you might owe me 75,000, and
04:25:21 I owe you a hundred thousand, and we just settle on the 25
04:25:25 grand difference.
04:25:27 Obviously, the other main purpose of the data

04:25:29 management is so that you know where shipments are while
04:25:34 they're en route and so forth. It's, it's inventory and car
04:25:40 hire specific.
04:25:41 Now, beyond that, someone else with a lot more
04:25:45 technical knowledge would have to explain.
04:25:47 Q But when we went over it before, though, and I
04:25:50 was asking you, when did Ohio Central have to know that 17
04:25:55 cars were on #4 Main, for whatever reason, but they have to
04:25:58 know they were there, you said there would be data entry
04:26:01 from verbal notification, there would be data entry as to
04:26:05 the number of cars, car number and the track that they're
04:26:08 on.
04:26:08 A **For our internal. But Railcar Management doesn't**
04:26:12 **keep track locations, unless I'm badly mistaken.**
04:26:15 Q Okay. So I -- okay. Let's just focus on track
04:26:19 locations then. Those are entered locally at some point, as
04:26:23 we went over?
04:26:24 A **That's correct.**
04:26:24 Q Okay. Is -- I guess I got to understand the way
04:26:30 your software works. I mean, is that entered in the same
04:26:34 software program that's connected to RMI, or is that
04:26:38 something different?
04:26:39 A **It is RMI.**
04:26:41 Q It is RMI. But you don't think that's

04:26:44 information that they back up or keep, the track location?
04:26:48 A **Boy, I will tell you once again, I will stand**
04:26:51 **corrected, but it's not my understanding that they keep**
04:26:54 **track-specific information for every railroad for every --**
04:27:00 **when you consider the millions of railcar movements that**
04:27:03 **occur each year in the United States, it's hard to imagine**
04:27:09 **that records could be kept that are track specific.**
04:27:12 The movements are kept, the times, dates and all
04:27:15 that sort of thing. But once again, RMI is much more
04:27:21 qualified, and obviously infinitely qualified to answer
04:27:25 those questions.
04:27:25 Q And we will get -- and I'm going to talk to them.
04:27:28 But I wanted to get from you the first -- what's kept
04:27:30 locally, and then what your understanding of their
04:27:33 capabilities is.
04:27:34 I mean, what is intriguing to me, though, is, as
04:27:38 you know -- and I know you guys have your defenses and
04:27:40 dispute maybe things about this case. We're going to get to
04:27:48 this later.
04:27:49 But obviously now, for an example, you
04:27:51 acknowledge, don't you, that at least at certain points
04:27:54 prior to when a decision was made to stop that Ohio
04:28:01 Central -- to use your term, I'm not saying I agree with it,
04:28:04 but I will use your term -- staged cars on the LTV tracks or

04:28:11 the P&LE main line for periods of time, I mean, you
04:28:16 acknowledge that that occurred at least on some occasions,
04:28:20 do you?
04:28:20 A **We need to make sure we're -- we need to**
04:28:23 **differentiate. On the L&E tracks, that was staging, because**
04:28:32 **traffic was coming in faster than what the destination could**
04:28:38 **absorb it or accept it.**
04:28:42 On the LTV tracks, except for our, what I have
04:28:48 earlier described as our thoroughfare route, those cars were
04:28:52 stored.
04:28:54 Q Okay. Now, you understand Allied has made an
04:28:57 allegation that they don't think the staging was allowable,
04:29:01 they don't think the storing was allowable, and one part of
04:29:04 what they want to do, although they have pictures of certain
04:29:08 dates and proof that it happened, and you acknowledge that
04:29:11 it happened in part, we want to get records that show by
04:29:23 date and by number of cars, you know, when this occurred.
04:29:23 And what, what's intriguing about what you have
04:29:23 said is that, at a point in time, that information is known
04:29:27 and recorded. And all I'm trying to do is understand, you
04:29:31 know, on a track basis, too, all I'm trying to understand
04:29:35 is: Is that information, whether electronically or in print
04:29:40 version, available in any manner presently?
04:29:46 So we, as we're allowed to do in discovery,

figure out when cars were on a certain track, and I'm asking you if you know if that exists at all.

A And that's what I answered, that I -- we do not maintain those kind of paper records in Youngstown.

Q Okay.

A I cannot attest that I know exactly what Railcar Management has or doesn't have. But I know that typically they are involved with car hire issues or management, I should say, and movements nation wide so the customers can track the cars.

Q Right. Which is, as you're describing, may be something that's independent of needing to know what track cars were on?

A Perhaps.

Q So --

A And if they can provide that information, I should say, if that information exists, then I would say the most likely place would be RMI.

But I, my understanding of what RMI keeps is more basic in, in detail than what you're asking.

Q Okay. The one computer you mentioned the agency has, how long have you had that computer for?

A I have no clue, no clue.

Q Who would know that?

A Maybe the IT people at Genesee and Wyoming. But please bear in behind that Genesee Wyoming purchased the company in October of 2008, and they have done some upgrades, and others they haven't upgraded. So I'm not going to -- that's a Pandora's box. I'm not going to lie to you. I'm just going to tell you you need to talk with somebody in IT to see.

Q I have a sneaking feeling, though, I mean, you have been there the longest and on the ground. I mean, these guys have just bought the company. They're not going to know more than you.

So I want to talk to someone in Youngstown Division who has been there and knows what has existed there. I mean, can you, can -- well, since you have been there, there has just been one computer?

A You mean one computer constantly?

Q Well, yeah. I mean, has there been more than one computer since you have been there?

A Well, it's an office location, so there are multiple PCs. Now everyone, except for the agency, has gone to laptops. I mean, I used to have a PC. I now have a laptop.

Q Let me change the question. As far as -- what do you call the computer, the one computer that exists now into

which the data is put?

A That's the agency computer.

Q You call that the agency computer?

A Uh-huh.

Q Was -- okay. Was there ever a time at which there were more than one computer into which track movements, car locations, car movements, car locations would be inputted? Was there ever a point which that was done to --

A There was, there was a time when our traffic levels were different, and our manpower status was different, so we maybe had more than one work station so that there wasn't just one location the man had to sit.

But right now, and for quite some time, we have had just one PC in the agency for the man to sit at. If you, if you went to our office right now, you would see one PC in the agency.

Q And that's the computer, that's the agency computer into which --

A That's correct.

Q -- the data is inputted from the example I gave you? If you needed to know where 17 cars were located, it goes into that computer?

A Yeah. As long as that inventory, as long as

those cars are on our line, we maintain the inventory. And as soon as they're interchanged off of our railroad, they're what typically is referred to as blown out of the system. They're blown out, and then we lose track of them. We're not -- we don't track them on CSX and Norfolk Southern.

Q Okay. Do you recall approximately how long you have just had that one computer for that type of that input?

A I have no clue. I don't pay attention to that stuff. I have had my PC for about a year and a half, and I have no clue how long that particular box has been in the agency.

Q Who, who would know?

A Once again, our company has changed hands, so I'm not -- I don't know exactly who would know. But perhaps Genesee Wyoming IT department, because they came over and changed the network setup. They might be able to shed some light on how old that computer is.

Q And you believe at some point going back into the past, there was a point at which there might have been multiple work stations? So you had --

A Oh, I know there was.

Q You had two or three?

A I know there was.

Q Or three computers into which this data was

input?

A Sure. They -- and as computer hardware, you know, improves, you change and so forth. But we have not had a dual agency computer for multiples of years now.

MR. LIPKA: Go off the record for just a second.

(Whereupon, a discussion was held off the record.)

Q Actually, I talked with Tom some time ago. We might have just gotten it all ass backwards, so you can correct it for us. But I thought we talked about maybe some aspect of a GPS system or something that helped with car movements.

Are you aware, with Ohio Central, of any use of GPS or anything like that to monitor car movements?

A GPS, there is a nation-wide system that's called AEI.

Q What is that?

A I think it's just an acronym, and I think it's automated electronic identification, if I remember correctly. But every railcar has a, a gray magnetic bar riveted on each side of it. And as trains pass, readers or scanners, whatever you want to refer to them as, and there is, pardon me, there is no specific point where these scanners or readers are located. They're very randomly

placed relative to where Railroad A or Railroad B or Railroad C thinks is an applicable location.

But those readers can produce a list of a train, if the train is going 60 miles an hour, it instantaneously produces a list of the train.

Q Okay. And what's the purpose of the AEI system versus the electronic inventory maintained by RMI? Is there a difference?

A Okay. The only thing RMI can do is register -- let's back up. My understanding is the Railcar Management deals with hard input that a human introduces into the system.

So if our agent enters a movement that these 17 cars that you have referred to were interchanged to Norfolk Southern Haselton Yard, that move would be in the computer.

Now, as those cars depart Norfolk Southern's Haselton Yard, I don't know what NS's policies are, what they do, if they show a departure or not. Let's say that they don't, just theoretically speaking. Let's say they don't show a departure from Haselton, but somewhere between Haselton and ConRail Yard in Pittsburgh there is a reader. That reader is then going to update the system and show where the car was last reported. That's my understanding of how the system works.

Q So is AEI information, I mean, information from, you know, showing where these cars are at from the magnetic bars that pass by the readers, is that information that RMI would keep as well?

A That's where I am, I truly -- it would be obvious, just from a common sense standpoint, that that perhaps would be the case. But I don't know that to be the case.

Q Do you make use of AEI information in any way, review it, or consult it? Or --

A For instance, CSX has an AEI reader over near Akron, and we can get reports. We can request CSX, like if we have a unit stone train coming to us from Carey, Carey, Ohio, we can request an AEI scan list of it after the train has passed by so we know exactly how the train stands, you know, in standing order how cars stand. Because commodities might be different throughout the train.

Q Okay. Do you keep these reports?

A Only for the day that you need them.

Q So there is AEI reports, and there is verbal communication from the train crew , and this is the only way you, as a general manager, can, these two ways would let you know where trains are?

A Or where trains or cars are, yes.

Q Yeah.

A And I think I can request, if I want to talk to Rick and say, hey, Rick, I would like to get a list of what's standing on #273 track, then if it's still on our system, I can get that. But if the car is gone, interchanged off, if there is nothing in 273, cars are blown out of the system.

Q Can you, or have you or can you monitor track, again, whatever word you want to use, what commodity is in a railcar, or whether there is hazardous material, or C and D material --

A Okay.

Q -- in a railcar?

A If hazardous shipments are moving over any railroad in North America, they have to be accompanied by what's known as a hazardous endorsement. And if I get -- if we receive a hazardous shipment in interchange from NS or CSX, I have to have, either electronically produced or physically handed to me, or to, to us, as Ohio Central, a written endorsement of the hazardous shipment.

And it has, like, a United Nations code on it. It has the standard transportation commodity code on it, any special instructions relative to its handling, emergency instructions in the case of catastrophe, and so on and so

forth.

Q Are records kept of these hazardous endorsements?

A Only while they're on the railroad.

Q So you're saying, once they're gone, they're discarded?

A They're gone.

Q Is there any backup made of that information, or would RMI have any of that information?

A If there is, I'm unaware of it. But certainly RMI might have it. But I am not the authority to talk to you to know whether or not RMI has it.

Q We will probably get to this next time, but your operations bulletin talked about a daily log that's kept at the Youngstown Division.

A A daily log.

Q A daily log.

A That's correct, yeah.

Q Okay. What is that?

A It's just a one-inch thick paper binder that you make, the agency makes notes on it. Like for instance, if he's on a phone call with Concord Steel out of Warren, and Concord says, tomorrow we need to get two more empties to load, he will make that written note so that he doesn't get sidetracked and forget that he needs to put two empties in

the work list for the crew tomorrow to take to Warren. Those are the types of things.

Q It doesn't in any way track or monitor movement of cars?

A No. I would be happy to show it to you any time. It's just a handwritten log that looks just like your notes on your legal pad.

Q And I take it from what you have already told me, if I said, how does Ohio Central figure out if a track is blocked, or movement can't be made through a certain stretch of track, you would know that through the same process that we talked about for when we identify if rail cars are stored somewhere or otherwise? Somebody, if they're blocking track, or they had to stop for some reason, there is going to be a verbal notification, and then data entry of that point of, of blockage?

A I, I need to -- we need to talk about that further. I'm not -- when you say if a track is blocked with cars, am I going to have a written notification that track so and so is blocked cars?

Q Or verbal notification?

A I'm sorry?

Q Verbal notification. I mean, if, if a line of cars came in right in here on, on the main, P&LE Main line,

and came right here and just stopped on the main line, okay, such that other traffic could not get through, would you be notified of that?

A Not necessarily, no.

Q Why not?

A Well, I mean, why would you be notified?

Q Well, wouldn't you have to know that cars are stopped on that track, and that no other traffic can get through?

A If, if that was a, what we call an absolute controlled main track, like the Norfolk Southern main line, then yes. But this is just a totally uncontrolled, absolutely no requirement for authority for occupancy piece of track. It's like what we call yard limits. No.

Q But I didn't understand the terms you just threw out.

A Okay.

MR. GRIECO: Could you read back that last part of that answer?

(Whereupon, the last answer was read back by the court reporter.)

Q Okay. I'm trying to digest what that means.

A Well, it's tough when you haven't been a railroad person.

Q Right. So maybe you can help explain it to me. Are you suggesting that that means that Ohio Central has exclusive right over those tracks?

A Oh, no, absolutely not.

Q Okay.

A No, no. What that means is --

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

A If you have a piece of track between A and B that is set up in the timetable and stipulates that track occupancy of the section between A and B requires written track authority for movement, then that's what we call absolute track occupancy authority.

If, if the track between points A and B is what we call a yard limit territory, it's just first come, first served. And any movements on that track must be prepared to stop within one half the range of vision.

Q I think I understand that. And I would agree with you as to movement. But isn't it different when we talk about stopping and blocking? I mean, you wouldn't have to get permission to move across. But if you stop and blocked a track?

A That's what I'm saying. Absolute track occupancy authority, if you were going to stop and leave a, a train, a cut of cars, whatever, blocking that main track, then yes,

04:47:23 **you have to have authority to do that.**
04:47:25 But in a, in a yard limit-type operation, no.
04:47:28 **Q** Okay. And maybe next time we can go over whether
04:47:32 those easements include yard-limit concept. But give me one
04:47:38 more second here.
04:47:55 MR. GRIECO: Okay. I appreciate your time. I
04:47:57 know you have a commitment, you know, so we would --
04:48:01 MR. LIPKA: We will pick another day.
04:48:03 MR. GRIECO: We're not concluding the deposition,
04:48:04 but we will just pick up on another day.
(Whereupon, the deposition was to be continued on another date.)

SIGNATURE NOT WAIVED

* * *

REPORTER'S CERTIFICATE

I DO HEREBY CERTIFY that the above and foregoing is a full, true, and correct transcript of all the testimony introduced and proceedings had in the taking of the within named deposition, as shown by stenotype notes written by me, in the presence of the witness, at the time the said deposition was being taken.

Cynthia M. Nibert
Registered Professional Reporter

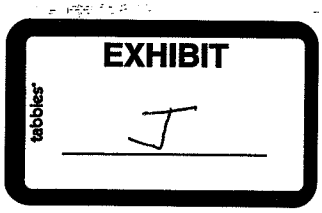
STATE OF OHIO)
) SS CERTIFICATE
MAHONING COUNTY)

I, Cynthia M. Nibert, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above named MR. TERRY FEICHTENBINER was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was written by me in stenotype in the presence of the witness, and by me transcribed; that the transcript of his testimony will be made available to said witness for signature; that the said witness shall read said transcript and affix his signature, at the end thereof, and that the said deposition was taken pursuant to agreement and at the time and place therein specified.

I do further certify that I am not of counsel, attorney or relative of either party or otherwise interested in the event of this action or proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Youngstown, Ohio this 24th day of April, A.D., 2009.

CYNTHIA M. NIBERT (WISE), NOTARY PUBLIC
My Commission Expires 11/09/10





NEWS - NEWS - NEWS - NEWS - NEWS - NEWS

FOR RELEASE MONDAY, 26 JUNE 1995

NEWEST RAILROAD IN TWO STATES STARTS ROLLING!

With the recent approval of its application by the Interstate Commerce Commission (ICC), the Ohio & Pennsylvania Railroad (O&P) has commenced operation over tracks formerly operated by the Youngstown & Southern Railway between Youngstown OH and Darlington PA. Without the O&P coming forward and purchasing the property it was probable that the 40-mile Feeder Line railroad in Mahoning and Columbiana counties of Ohio and Beaver County in Pennsylvania would have been abandoned and dismantled.

Instead, the states of Ohio and Pennsylvania share their newest railroad--every aspect of which is being brought up-to-date as the O&P's new managers position the railroad to profitably roll into the 21st Century. In the few days since the ICC has given its approval to the purchase, the O&P has stationed two locomotives on the line, conducted an in-person marketing survey of current and potential customers, surveyed new tracks for industrial development, and worked with the Ohio Rail Development Commission and the Pennsylvania Department of Transportation to complete Phase

I of a line rehabilitation.

O&P rails run from the Struthers section of Youngstown through Boardman, North Lima, Columbiana, Signal, Rogers, and Negley in Ohio en route to Cannelton and Darlington in Beaver County PA. The O&P's car and locomotive shops are in Negley.

H. C. "Bud" Brueggemann, a prior veteran of the line, has been retained as General Manager of the new railroad with offices in Columbiana. The new O&P is a member of the six-railroad 325-mile Ohio Central Railroad System (OCRS). The OCRS, with general offices in Coshocton, Ohio, will provide the O&P full back-up resources in areas as diverse as car, locomotive, and track maintenance, marketing and sales, industrial development, and finance.

Interested parties are invited to contact the railroad at 614-622-8092.

For more information please contact:

Michael J. Connor, Executive Vice-President
Ohio & Pennsylvania Railroad Company
136 South Fifth Street
Coshocton, Ohio 43812
614-622-8092
(Fax) 614-622-8097

NEWS - NEWS- NEWS- NEWS - NEWS - NEWS

PITTSBURGH & LAKE ERIE PROPERTIES, INC.

Suite 210, Commerce Court
Four Station Square
Pittsburgh, PA 15219
(412) 263-3813
Fax (412) 263-3913

November 15, 1996

Mr. W. A. Strawn, II
President
OHIO CENTRAL RAILROAD SYSTEM
136 South 5th Street
Coshocton, OH 43812

Dear Mr. Strawn:

I am writing to confirm that Ohio and Pennsylvania Railroad Company's lease with P&LE/Y&S to operate the premises of the Youngstown & Southern Railway had expired effective September 14, 1995 and that the O&P has opted not to purchase this line.

On behalf of the P&LE and Y&S, I wish to extend my appreciation for O&P's efforts to operate this line and regret that the economics were such as to not favor your purchase of the road. I also want to offer my personal thanks for the assistance and cooperation you have provided during the difficult transition period of locating a new buyer for the road and wish you and your company success in all future endeavors.

Sincerely,

J. D. Hartman
Vice President - Treasurer

EXHIBIT
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EXHIBIT
STB 19

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2004 WL 2944122 (S.T.B.)

Surface Transportation Board (S.T.B.)

THE OHIO AND PENNSYLVANIA RAILROAD--ACQUISITION AND OPERATION EXEMPTION--RAIL LINES OF COLUMBIANA COUNTY PORT AUTHORITY IN MAHONING AND COLUMBIANA COUNTIES, OH, AND BEAVER COUNTY, PA

Decided: December 14, 2004
Service Date: December 21, 2004

SURFACE TRANSPORTATION BOARD

DEPARTMENT OF TRANSPORTATION

STB Finance Docket No. 34632

By the Board, David M. Konschnik, Director, Office of Proceedings.

*1 The Ohio and Pennsylvania Railroad (O&P), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by lease) approximately 36 miles of rail line owned by the Columbiana County Port Authority (CCPA), between milepost 0.0 at or near Youngstown, OH, and milepost 35.7 at or near Darlington, PA.

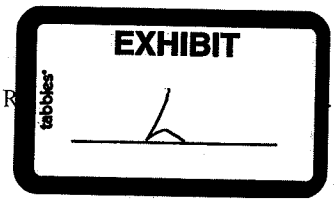
The Central Columbiana and Pennsylvania Railway Company (CCPR) currently serves as the line's operator pursuant to a track lease and operating agreement with CCPA. On June 14, 2004, CCPR filed for bankruptcy protection before the U.S. Bankruptcy Court for the Eastern District of Arkansas, Little Rock Division (Case No. 4:04-bk-16887 M, Chapter 11) (bankruptcy court). Pursuant to an agreement between CCPA, O&P, and the bankruptcy trustee for CCPR, O&P will acquire and operate the line by assuming CCPR's rights, duties, and obligations under CCPR's track lease and operating agreement with CCPA (including CCPR's option to purchase the line in March 2006). The agreement is pending final approval from the bankruptcy court, which O&P expects will be granted before December 31, 2004.[FN1]

The transaction is scheduled to be consummated on or after December 15, 2004. O&P certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

This transaction is related to STB Docket No. AB-556 (Sub-No. 2X), Railroad Ventures, Inc.--Abanondment Exemption--Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA, which involves the purchase of the line by CCPA pursuant to the offer of financial assistance provisions of 49 U.S.C. 10904 and 49 CFR 1152.27.

If this notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not auto-

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matically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34632, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Vernon A. Williams

Secretary

FN1. To ensure the continued availability of rail service to shippers on the line, the bankruptcy court, by a December 3, 2004 order, has approved an interim agreement between O&P and CCPR's bankruptcy trustee, which would allow O&P to assume immediate operational control of the line.

2004 WL 2944122 (S.T.B.)
END OF DOCUMENT

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218124

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November 21, 2006

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

FEE RECEIVED
NOV 22 2006
SURFACE
TRANSPORTATION BOARD



Re: **Finance Docket No. 34934**
Eastern States Railroad, LLC—Exemption for Purchase of Lease, Agreement to Acquire the Leased Line, and Assignments of Operating Rights—Central Columbiana & Pennsylvania Railway, Inc. and Columbiana County Port Authority

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Eastern States Railroad, LLC pursuant to 49 C.F.R. § 1150.31**, dated November 21, 2006. A check in the amount of $1,500, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice and the *Federal Register* caption summary in MS Word 2000 format are attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Myles L. Tobin
Attorney for Eastern States Railroad, LLC

Enclosures.
cc: Mr. Richard L. Cox
Mr. Todd Pickard
Mr. John Heffner
Mr. Tracy Drake
Mr. Harry A. Light

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NOV 22 2006
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Office of Proceedings
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Public Record

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M

Mr. James F. Dowden
Mr. James E. Smith
Mr. Lance R. Miller
Mr. Geoffrey B. Treece
Allied Erecting and Dismantling Company, Inc.
Matteson Equipment Company
Mr. William H. Johnson, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510
Attn: Joint Facilities Dept., CSX Transportation, Inc., 500 Water Street, 15th Floor, Jacksonville, Florida 32202

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.
AND
COLUMBIANA COUNTY PORT AUTHORITY

FEE RECEIVED
NOV 22 2006
SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF
EASTERN STATES RAILROAD, LLC
PURSUANT TO 49 C.F.R. § 1150.31

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NOV 22 2006
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Public Record

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Myles L. Tobin
Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEYS FOR
EASTERN STATES RAILROAD, LLC

Dated: November 21, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.
AND
COLUMBIANA COUNTY PORT AUTHORITY

VERIFIED NOTICE OF EXEMPTION
OF
EASTERN STATES RAILROAD, LLC
PURSUANT TO 49 C.F.R. § 1150.31

Pursuant to 49 C.F.R. § 1150.31, et seq., Eastern States Railroad, LLC ("ESR"), a non-carrier, hereby files this Verified Notice of Exemption to purchase operating and lease rights (which lease, as amended, includes an agreement on the part of ESR to acquire the leased line) in a bankruptcy proceeding, receive permanent assignments of operating rights on continuous segments of lines connected to the leased line, and pending closing on the purchase of the operating and lease rights and on the permanent assignment of operating rights, receive an interim assignment of operating rights on all these lines pursuant to an Interim Operating Agreement, so that ESR can become a common carrier and commence operations prior to closing of the purchase transaction.

Specifically, ESR will be purchasing operating and lease rights, which lease as amended includes an agreement to acquire the leased line on specified terms. The line is the former Youngstown & Southern Line and runs from Milepost 35.7 in Darlington, Pennsylvania to

Milepost 0.0 in Youngstown, Ohio,[1] which was formerly operated by Central Columbiana & Pennsylvania Railway, Inc. ("CQPA") and is owned by Columbiana County Port Authority ("CCPA"). In addition, at Youngstown, ESR will receive permanent assignments of CQPA's and CCPA's operating rights running east of Milepost 0.0 in Youngstown which, in combination with other rights ESR has obtained, will, inter alia, facilitate interchange with Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSX"). Pending the closing of the lease and operating rights purchase and of the permanent assignments, ESR has entered into an Interim Operating Agreement with the Trustee of the CQPA for an interim assignment of operating rights on all the lines described herein so that it may become a common carrier and commence operations. All of this trackage is shown on Exhibit A, attached and incorporated herein, and is in Columbiana and Mahoning Counties, Ohio, and Beaver County, Pennsylvania. Based on projected revenues for the ESR, it expects to become and remain a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.33, ESR submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the rail carrier applicant herein is as follows:

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[1] Currently, the Ohio & Pennsylvania Railroad Company operates over this line pursuant to an Interim Operating Agreement with the Trustee of CQPA in the CQPA bankruptcy proceeding, presently pending in the U.S. Bankruptcy Court for the Eastern District of Arkansas in Case No. 04-BK-16887T (the "CQPA Bankruptcy Proceeding"). Ohio & Pennsylvania received interim operating authority from the STB in Finance Docket No. 34632, The Ohio and Pennsylvania Railroad—Acquisition and Operation Exemption—Rail Lines of Columbiana County Port Authority in Mahoning and Columbiana Counties, OH, and Beaver County, PA, decision served December 21, 2004. Pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, the Ohio & Pennsylvania Interim Operating Agreement will terminate upon the effective date of this Notice of Exemption.

Eastern States Railroad, LLC
C/O Total Waste Logistics, LLC
7131 Akron Canfield Road
Canfield, Ohio 44406

Applicant's Representative: 49 C.F.R. § 1150.33(b)

ESR's representative to whom correspondence regarding this transaction should be sent is as follows:

Myles L. Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

CQPA, through the Trustee in the CQPA Bankruptcy and pursuant to an order of the Bankruptcy Court in the CQPA Bankruptcy Proceeding, has agreed to sell its operating and lease rights on CCPA as set forth in an agreement dated April 6, 2000, as amended ("CCPA Agreement") to ESR. As part of this purchase of lease and operating rights, ESR has entered into an agreement with CCPA to amend the CCPA Agreement so that, subject to certain specified pre-conditions, ESR agrees to acquire the line from Milepost 0.0 in Youngstown to Milepost 35.7 in Darlington. In addition, as part of the transaction with ESR, CQPA, through the Trustee, and CCPA are also assigning to ESR all agreements and operating rights necessary or useful to enable ESR to operate from milepost 0.0 to interchanges with NS and CSX in Youngstown which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:[2]

[2] On motion of the Trustee in the CQPA Bankruptcy with notice thereof given to all relevant parties, on November 15, 2006, the Bankruptcy Court ordered that CQPA, through its Trustee, is authorized and directed to assign its rights under the CCPA Agreement and all operating agreements including, but not limited to, the

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, "OHPA") and CQPA.

(B) Letter Agreement dated November 30, 2001 between OHPA, CQPA and CCPA.

(C) Interchange Agreement dated July 23, 2002, as amended and in effect, among CSX, OHPA and CQPA and Interline Service Agreement, effective date April 1, 2004, between CSX and CQPA.

(D) Land Lease dated August 8, 2003 between CSX and CQPA.

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NS.

(F) Easements granted by Allied Erecting & Dismantling Company, Inc. ("Allied") to The Pittsburgh and Lake Erie Railroad Company ("PLE") by agreements dated June 3, 1992, and November 10, 1993, and easements retained by PLE in deeds dated June 3, 1992, and November 10, 1993, from PLE to Allied (collectively, the "Allied Easements"), which Allied Easements were conveyed by Youngstown and Southern Railway Company (successor-in-interest to PLE) to Railroad Ventures, Inc. ("RVI") by deed dated November 8, 1996, and by RVI to CCPA by deed dated January 23, 2001, and were included in the rights granted to CQPA in the CCPA Agreement, including rights over the C.P. Graham Interlocking, and which collective rights were also conferred on CCPA by order of the Bankruptcy Court dated March 28, 2002 in In re: Pittsburgh & Lake Erie Properties, Inc., Case No. 96-406 (MFW).

(G) Operating Rights Agreement between Matteson Equipment Company (Matteson) and CQPA.

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agreements listed on (A) through (G) on pages 3-4 herein to ESR.

Also, ESR has entered into a further agreement with Matteson dated July 14, 2006 (Matteson Agreement) for operation on certain tracks as shown in Exhibit A, and this agreement is being made a part of this Exemption.

Prior to closing on the lease and operating rights purchase and on the permanent assignment of the agreements and operating rights as described herein, ESR will receive an interim assignment of all these rights and agreements pursuant to an Interim Operating Agreement with the Bankruptcy Trustee so that it can become a common carrier and commence operations while progressing to the closing.

Operation of the Property: 49 C.F.R. § 1150.33(d)

ESR will be a common carrier on the tracks between Milepost 35.7 at Darlington, Pennsylvania and Milepost 0.0 at Youngstown, Ohio. Once ESR acquires these rights, it will sublease rights on this segment to the Youngstown & Southeastern Railroad Company, Inc. ("Y&S"), a subsidiary of Indiana Boxcar, Inc.

Y&S will be filing the appropriate Notice of Exemption for the right to operate between Milepost 35.7 and Milepost 0.0. Y&S shall then be the operator on the line and have common carrier status, but ESR will retain its common carrier status on the line between Milepost 0.0 and Milepost 35.7.

For the lines in Youngstown east of Milepost 0.0 that are described on pages 3-5 herein and include the lines described in items (A) through (G) and the Matteson Agreement, ESR shall be the common carrier, but Y&S shall operate on the lines solely as an agent of and in the name of ESR (See, decisions in combined Finance Docket Nos. 34145, Bulkmatic Railroad Corporation—Acquisition and Operation Exemption—Bulkmatic Transport Company, and

34179, Bulkmatic Railroad Corporation—Operation Exemption—Bulkmatic Transport Company, served November 19, 2002 and May 15, 2003).

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

ESR intends to obtain the interim assignment of all these rights and agreements described herein pursuant to an Interim Operating Agreement and commence operations on November 29, 2006.

CQPA's address is:
C/O Richard L. Cox, Trustee
835 Central, Suite 510
Hot Springs, Arizona 71901

CCPA's address is:
1250 St. George St.
East Liverpool , Ohio 43920

Pursuant to the agreements already described herein, ESR shall become a common carrier by rail on a line between 0.0 in Youngstown, Ohio and Milepost 35.7 in Darlington, Pennsylvania, a total of approximately 35.7 miles. In addition, in Youngstown, by virtue of purchase and assignment of operating rights and exercise of existing rights, ESR shall become a common carrier by rail on trackage east of Milepost 0.0 in Youngstown on tracks and/or property owned, starting at Milepost 0.0 and heading east through Youngstown, by OHPA, then by Allied Erecting & Dismantling, over the C. P. Graham Interlocking with NS, then by OHPA again as the tracks cross the Mahoning River, then by Matteson Equipment Company, and finally again by OHPA to a point of connection with CSX and on property leased from CSX.[3] The operating rights through Youngstown east of Milepost 0.0 facilitate, among other things, interchange with CSX and NS. The length of these operating rights east of Milepost 0.0 in Youngstown is approximately 3 miles.

The total route miles that are the subject of this exemption are approximately 38.7 miles.

[3] OHPA is part of the Ohio Central Railroad System.

Map: 49 C.F.R. § 1150.33(f)

Maps showing the tracks that are the subject of this exemption are attached as Exhibit A to this notice.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual operating revenue of ESR upon consummation of this transaction does not exceed $5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B hereto.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under C.F.R. § 1105.6(c)(2), ESR's proposed operation of the tracks as described herein is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), ESR's exemption herein is also exempt from historic preservation reporting requirements. The proposed transactions are for the purpose of continued rail operations. Further, Surface Transportation Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By: _____

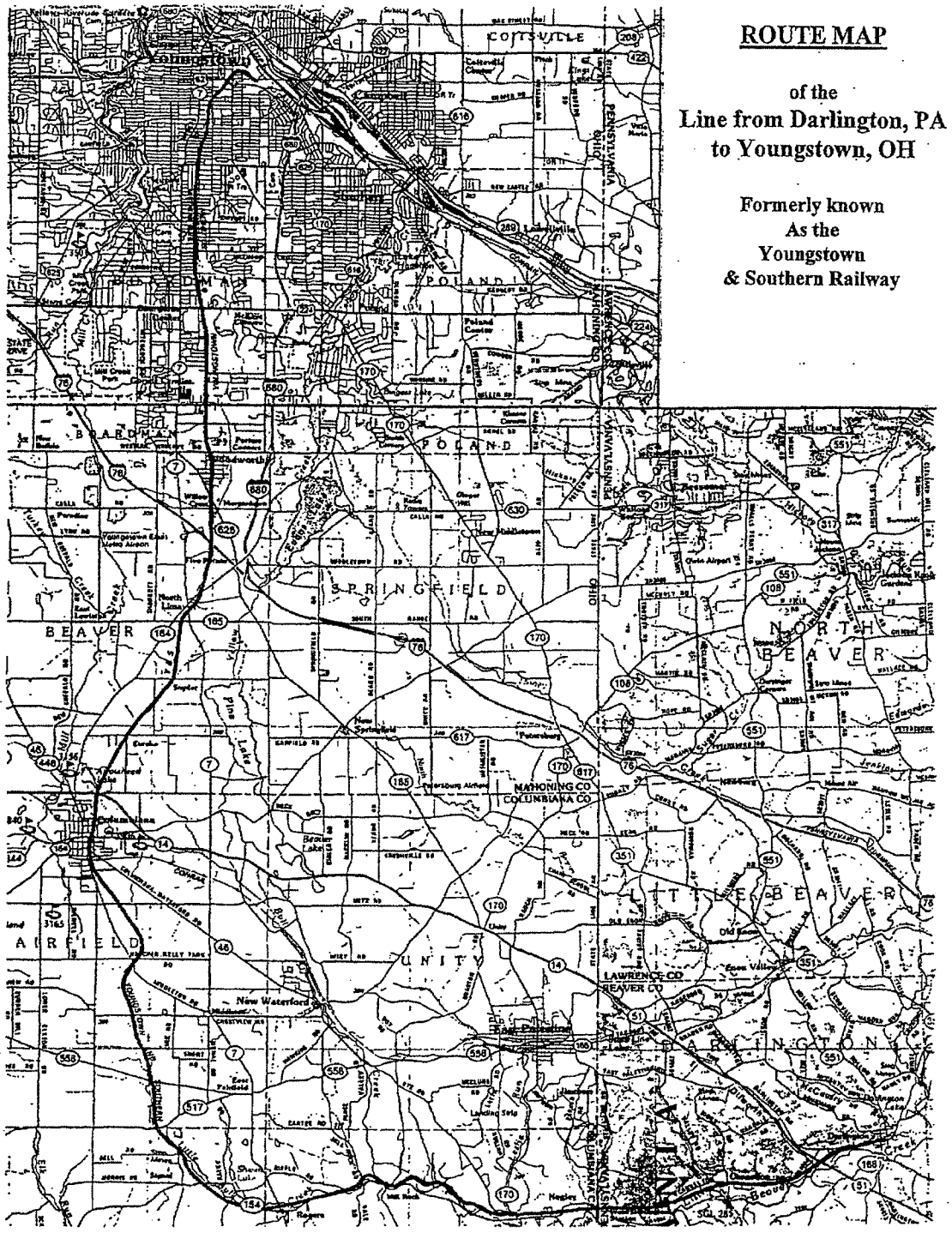
Myles L. Tobin
Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEYS FOR EASTERN STATES RAILROAD, LLC

Dated: November 21, 2006

EXHIBIT A

Page 1 of 2



ROUTE MAP

of the
Line from Darlington, PA
to Youngstown, OH

Formerly known
As the
Youngstown
& Southern Railway

EXHIBIT A

Page 2 of 2

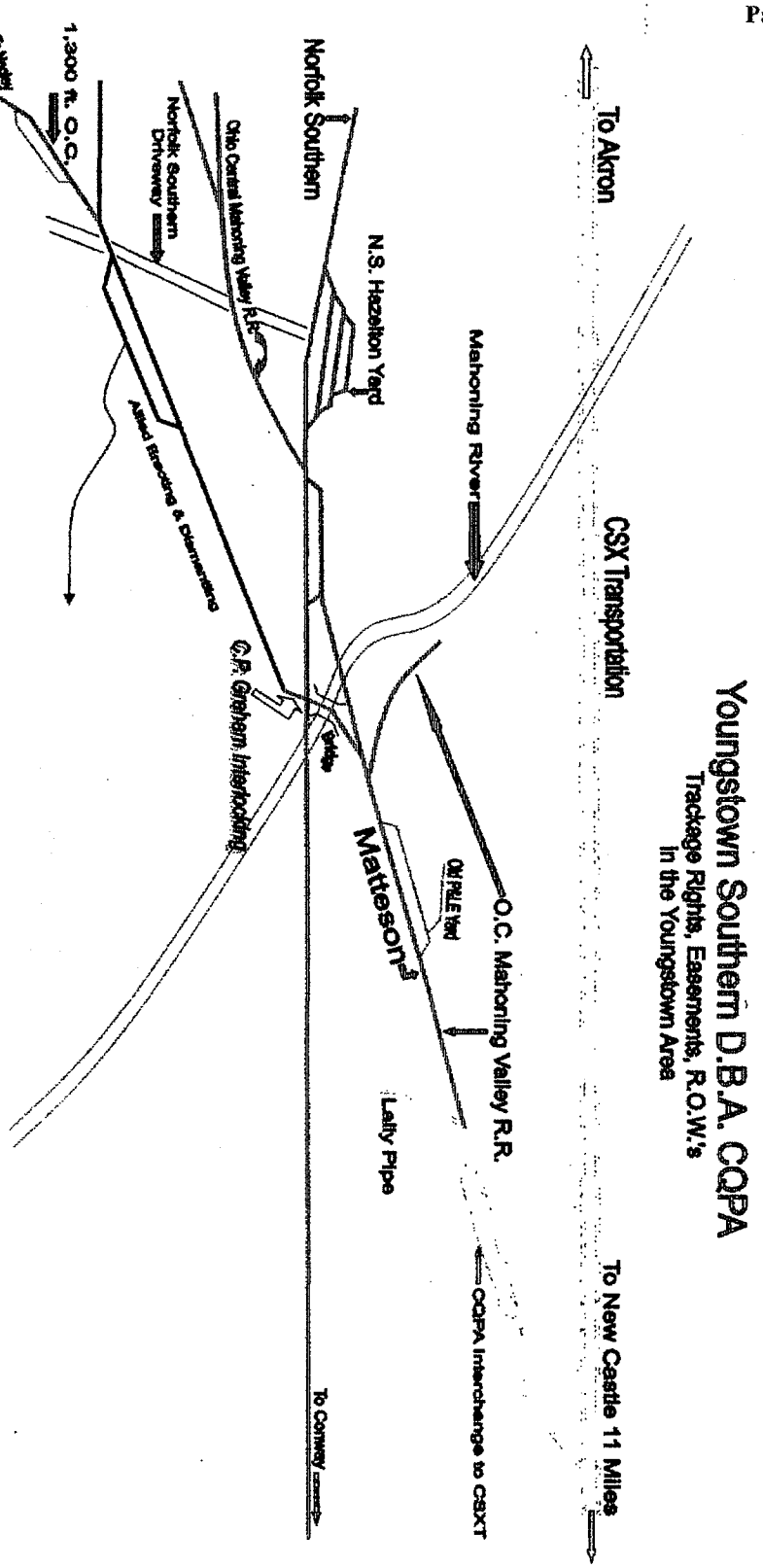


EXHIBIT B

CERTIFICATION

State of Ohio)
) ss:
County of Mahoning)

Guy Fragle, being duly sworn, hereby certifies that the projected annual rail revenue of Eastern States Railroad, LLC does not exceed $5 million and will not result in the creation of a Class II or Class I carrier under the provisions of 49 C.F.R. § 1201(1-1).

Guy Fragle
Managing Director
Eastern States Railroad, LLC

SUBSCRIBED AND SWORN TO
before me this 17th day
of November, 2006

Notary Public

My Commission expires:

JOHN D. VIGLIO
NOTARY PUBLIC, STATE OF OHIO
COMM. EXP. FEB. 27, 2007

EXHIBIT C

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34934

EASTERN STATES RAILROAD, LLC
—EXEMPTION FOR PURCHASE OF LEASE, AGREEMENT
TO ACQUIRE LEASED LINE, AND ASSIGNMENTS OF OPERATING RIGHTS—
CENTRAL COLUMBIANA & PENNSYLVANIA RAILWAY, INC.
AND
COLUMBIANA COUNTY PORT AUTHORITY

EASTERN STATES RAILROAD, LLC ("ESR") a non-carrier, has filed a Verified Notice of Exemption to purchase from Central Columbiana & Pennsylvania Railway, Inc. ("CQPA"), through its Bankruptcy Trustee, CQPA's operating and lease rights on Columbiana County Port Authority ("CCPA") as set forth in an agreement dated April 6, 2000, as amended ("CCPA Agreement"). As part of this purchase of operating and lease rights, ESR has entered into an agreement with CCPA which amends the CCPA Agreement so that, subject to certain specified pre-conditions, ESR agrees to acquire the leased line which runs from Milepost 0.0 in Youngstown to Milepost 35.7 in Darlington. In addition, as part of the transaction with ESR, CQPA, through the Trustee, and CCPA are also assigning to ESR all agreements and operating rights necessary or useful to enable ESR to operate from milepost 0.0 to interchanges with NS and CSX in Youngstown, which agreements and operating rights are made part of this exemption including, without limitation, the following agreements and operating rights:

(A) Overhead Trackage Rights Agreement dated May 7, 2001 between Ohio & Pennsylvania Railroad Company (which, together with its parent and all affiliates, "OHPA") and CQPA.

(B) Letter Agreement dated November 30, 2001 between OHPA, CQPA and CCPA.

(C) Interchange Agreement dated July 23, 2002, as amended and in effect, among CSX, OHPA and CQPA and Interline Service Agreement, effective date April 1, 2004, between CSX and CQPA.

(D) Land Lease dated August 8, 2003 between CSX and CQPA.

(E) Interchange Agreement dated May 1, 2001, and Interline Service Agreement, effective date October 5, 2004 between CQPA and NS.

(F) Easements granted by Allied Erecting & Dismantling Company, Inc. ("Allied") to The Pittsburgh and Lake Erie Railroad Company ("PLE") by agreements dated June 3, 1992, and November 10, 1993, and easements retained by PLE in deeds dated June 3, 1992, and November 10, 1993, from PLE to Allied (collectively, the "Allied Easements"), which Allied Easements were conveyed by Youngstown and Southern Railway Company (successor-in-interest to PLE) to Railroad Ventures, Inc. ("RVI") by deed dated November 8, 1996, and by RVI to CCPA by deed dated January 23, 2001, and were included in the rights granted to CQPA in the CCPA Agreement, including rights over the C.P. Graham Interlocking, and which collective rights were also conferred on CCPA by order of the Bankruptcy Court dated March 28, 2002 in In re: Pittsburgh & Lake Erie Properties, Inc., Case No. 96-406 (MFW).

(G) Operating Rights Agreement between Matteson Equipment Company (Matteson) and CQPA.

Also, ESR has entered into a further agreement with Matteson dated July 14, 2006 for operation on certain tracks as shown in Exhibit A, and this agreement is being made a part of this Exemption.

Prior to closing on the lease and operating rights purchase and on the permanent assignment of the agreements and operating rights as described herein, ESR will receive an interim assignment of all these rights and agreements pursuant to an Interim Operating Agreement with the Bankruptcy Trustee so that it can become a common carrier and commence operations while progressing to the closing.

The line over which ESR shall become a common carrier runs between 0.0 in Youngstown, Ohio and Milepost 35.7 in Darlington, Pennsylvania, a total of approximately 35.7 miles. In addition, in Youngstown, by virtue of assignment of operating rights and exercise of existing rights, ESR shall become a common carrier by rail on trackage east of Milepost 0.0 in Youngstown on tracks and/or property owned, starting at Milepost 0.0 and heading east through Youngstown, by OHPA, then by Allied Erecting & Dismantling, over the C. P. Graham Interlocking with NS, then by OHPA again as the tracks cross the Mahoning River, then by Matteson Equipment Company, and finally again by OHPA to a point of connection with CSX and on property leased from CSX.[1] The operating rights through Youngstown east of Milepost 0.0 facilitate, among other things, interchange with CSX and NS. The length of these operating rights east of Milepost 0.0 in Youngstown is approximately 3 miles.

The total route miles that are the subject of this exemption are approximately 38.7 miles.

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[1] OHPA is part of the Ohio Central Railroad System.

ESR intends to obtain the interim assignment of all these rights and agreements described herein pursuant to an Interim Operating Agreement and to commence operations on November 29, 2006.

Comments must be filed with the Board and served on:

Myles L.Tobin
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: _____, 2006

By the Board

Vernon A. Williams
Secretary

VERIFICATION

State of Ohio)
) ss:
County of Mahoning)

Guy Fragle, being duly sworn, deposes and says that he is Managing Director of Eastern States Railroad, LLC, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

Guy Fragle
Managing Director
Eastern States Railroad, LLC

SUBSCRIBED AND SWORN TO
before me this 17th day
of November, 2006

Notary Public

My Commission expires:

JOHN D. VIGLIO
NOTARY PUBLIC, STATE OF OHIO
COMM. EXP. FEB. 27, 2007

EXHIBIT
STB 27
12740 CN

LexisNexis®

15 of 15 DOCUMENTS

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29658 (Sub-1)]

46 FR 40097

August 6, 1981

Mahoning Valley Railway Co.; Operation of a Line of Railroad in Mahoning County, OH; Notice

TEXT: Mahoning Valley Railway Company (Applicant), represented by Mr. J. L. Hadley, Vice President, The Mahoning Valley Railway Company, P.O. Box 920, Youngstown, OH 44501, hereby gives notice that on the 5th day of June, 1981, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to *49 U.S.C. 10901* for a decision approving and authorizing it to operate a line of railroad consisting of approximately eighteen (18) miles of track owned or leased my Mahoning Valley, with operations also over approximately twenty-five (25) miles owned by industries being served in Mahoning County, OH. No new construction is anticipated in the operation of this railroad, which will serve industrial concerns along the Mahoning River in the Cities of Youngstown, Campbell and Struthers, all located in Mahoning County, OH.

Applicant does not propose to construct a new line of railroad. Applicant does propose to acquire industrial rail facilities owned by Jones & Laughlin Steel Corporation and not presently being operated by a common carrier, and to operate over additional railroad tracks owned by industries being served. Applicant proposes to service Jones & Laughlin Steel Corporation, Youngstown Steel Corporation, Casey Equipment Corporation, Monroe & Sons Manufacturing Corporation, Hilti Steel Industry Products Corporation, and any other industries that may choose to locate along the tracks over which Applicant proposes to operate.

In accordance with the Commission's regulations (*49 CFR 1108.8*) in Ex Parte No. 55 (Sub-No. 4), *Implementation -- National Environmental Policy Act, 1969, 352 ICC 451 (1976),* as amended by the Commission's decision in Ex Parte No. 55 (Sub-No. 22), *Revision of National Environmental Policy Act Guidelines, 363 ICC 653 (1980), 45 FR 79810* (December 2, 1980), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation -- National Environmental Policy Act, 1969, supra, at p. 487.*

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of publication of this notice in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-22959 Filed 8-5-81; 8:45 am]

BILLING CODE 7035-01-M

EXHIBIT
tabbies
N

EXHIBIT
STB 26
19110

THE OHIO CENTRAL RAILROAD SYSTEM
Youngstown Division

OPERATIONS BULLETIN No. 01

Date Issued: 0001, January 1st, 2007

Operations Bulletins will be issued as necessary with regard to the addition, deletion and/or modification of information contained therein. Operations Bulletins will contain, but not be limited to, information pertaining to the daily operation of the entire Youngstown Division. Each Operations Bulletin will be identified in chronological order by number, beginning at 0001 on January 1st of each year and will become effective at 0001 on the date shown on the Operations Bulletin as "Date Issued".

Information added to the current Operations Bulletin, but not included in the previous Operations Bulletin, will be printed in ***boldface italics*** and included along with information remaining in effect and therefore carried over to the current Operations Bulletin from the immediately previous Operations Bulletin.

When necessary the chronological order by number, beginning with January of each year, may be modified to restart at 01 with another month of the year in order to correspond with various changes in organization of the railroad territories, etc.

Operations Bulletin Supplements will be issued for information that is to be added, deleted and/or modified by the next chronological Operations Bulletin but which becomes effective prior to issuance of the next chronological Operations Bulletin and subsequent to the current Operations Bulletin.

Operations Bulletin Supplements will be identified with the same number as the current Operations Bulletin together with an alphabetic letter beginning with the first letter of the alphabet for the first Supplement to any current Operations Bulletin. Subsequent Supplements to the same Operations Bulletin will follow in alphabetic order.

Information included in Operations Bulletin Supplements will be included in the next chronological Operations Bulletin as applicable, and such Operations Bulletin Supplements will automatically be cancelled upon publication of the next chronological Operations Bulletin

EXHIBIT
tabbies
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Effective Immediately:

GENERAL

1) All previous Operations Bulletins and Operations Bulletin Supplements pertaining to the Ohio Central Railroad System Eastern Region, Northern Lines and Youngstown Division are cancelled.

2) ***All territory of the Ohio Central Railroad System currently identified as the "Youngstown Division" of the "Eastern Region" is designated as simply the "Youngstown Division.***

3) ***The Ohio Central Railroad System lines comprising the Youngstown Division are as follows:***

   (a) The Mahoning Valley Railway
   (b) The Ohio & Pennsylvania Railroad
   (c) The Warren & Trumbull Railroad
   (d) The Youngstown & Austintown Railroad
   (e) The Youngstown Belt Railroad

4) For information that is to be included in either an Operations Bulletin or Supplement and that is of a nature that requires its immediate dissemination, the Youngstown Division Main Office in Youngstown, Ohio will ensure that such information is provided verbally to each effected Ohio Central Railroad System person performing service on the Youngstown Division. The Youngstown Division Main Office will also make written note in the Daily Log Book of the information, date, time and to whom such information was verbally conveyed.

5) ***The former Northern Lines MVRY Office is now officially referred to as the "Youngstown Division Main Office". For the purposes of two-way radio communication with the Youngstown Division Main Office, such office will be addressed as the "Ohio Central MV Base".***

6) Each Operations Bulletin will remain in effect until cancelled by a subsequent new Operations Bulletin. All Ohio Central Railroad System persons performing service on the Youngstown Division must retain a copy of the most current Operations Bulletin and all applicable Operations Bulletin Supplements in effect while on duty and performing service on any territory of the Youngstown Division. When needed, the number and date of issue of the current Operations Bulletin and Supplement in effect will be secured by contacting the Youngstown Division Main Office. Supply of the current Operations Bulletin and Supplements will be maintained at the Youngstown Division Main Office and Brier Hill Office.

10) Information contained in the Operations Bulletins will be organized by applicable Youngstown Division railroad entity in addition to a "GENERAL" category for information applicable to all Youngstown Division territories.

11) As with all written and verbal instructions pertaining to the operation of the Youngstown Division, all information included in the Operations Bulletin is confidential and for the use of Ohio Central Railroad System employees only.

12) Effective 0001, Tuesday November 22nd, 2005, Federal Railroad Administration (FRA) Emergency Order (EO) No. 24 is effective. All Ohio Central Railroad System (OCRS) Youngstown Division persons involved with the movement of trains must have in his/her possession a copy of such EO when on duty and in such service anytime thereafter that date. While formal instruction of each OCRS Youngstown Division person involved with the movement of trains regarding FRA EO No. 24 has been performed prior to the effective date of such EO, any person needing additional explanation or information regarding FRA EO No. 24 must immediately make contact with the proper OCRS authority for such explanation or information. Supply of FRA EO No. 24 will be maintained at the Youngstown Division Main Office and the Brier Hill Office.

    FRA Emergency Order No. 24 is applicable to all operations only on the following OCRS Youngstown Division Track Sections:

    (a) Ohio & Pennsylvania Railroad Industrial Track;

    (b) Warren Running Track;

    (c) Warren & Trumbull Railroad Industrial Track;

    (d) Warren & Trumbull Railroad Leavittsburg Line Industrial Track;

    (e) Youngstown & Austintown Industrial Track;

13) The normal position of all switches located on the Ohio & Pennsylvania Railroad Industrial Track, the Warren Running Track, the Warren & Trumbull Railroad Industrial Track, the Warren & Trumbull Railroad Leavittsburg Line Industrial Track and the Youngstown & Austintown Railroad Industrial Track is lined and locked for straight-away movement on the applicable Industrial Track, unless specified otherwise by Special Instructions.

14) Effective immediately all Ohio Central Railroad System (OCRS) Youngstown Division employees must have in their possession when on duty a copy of the current OCRS Security Plan which became effective June 1st, 2005. Supply of the

current OCRS Security Plan will be maintained at the Youngstown Division Main Office.

15) Effective immediately all Ohio Central Railroad System (OCRS) Youngstown Division employees must have in their possession when on duty a copy of the current OCRS Hazardous Materials Training Requirements Book. Supply of the current OCRS Hazardous Materials Training Requirements Book will be maintained at the Youngstown Division Main Office and the Brier Hill Office.

16) Please add the following phone numbers to your Hazardous Materials Training Requirements book:

Struthers Police: Emergencies—911; Non-emergencies—330-755-9849
Campbell Police: Emergencies—911; Non-emergencies—330-755-1411

17) Unless directed otherwise by the Youngstown Division Main Office, each crew will take only one (*1*) Company-issued cell phone for their tour of duty.

18) When operating multiple unit (*MU'd*) locomotive consists, any unit(*s*) not needed to handle the tonnage will be shut-down to conserve fuel. When outdoor temperatures prohibit the shut-down of applicable unit(*s*), such unit(*s*) will be then isolated to conserve fuel.

19) Whenever two or more locomotives are coupled, all multiple unit (MU) appurtenances will be properly coupled and set-up in order that all electrical and air systems on the locomotives may be operated and/or controlled from the controlling unit of the multiple unit consist. This instruction is effective whether units are all running as power, idling isolated or dead-in-tow (DIT).

20) When locomotive(s) is/are running and/or being used as power, all ground, gauge, platform, cross-walk and engine room lights will be illuminated day and night.

21) Locomotive cab awnings, wing glasses and/or rearview mirrors must be properly folded down or back on all trailing units of multiple unit locomotive consists.

22) When operating multiple unit locomotive consists, only the unit identifying the train or movement will display lighted number boards.

23) When operating multiple unit locomotive consists, it is the responsibility of the crew in charge of such consist to ensure that all cab windows and doors of all trailing units are securely closed. In addition it is also the responsibility of the crew in charge of such consist to ensure all engine room doors of all units included in the consist are closed and latched.

24) Unless directed specifically to do so by the Youngstown Division Main Office, locomotives will never be left standing blocked-in in any track by Maintenance of Way equipment or other equipment that will preclude train crews from moving the locomotive(*s*) from the track as necessary.

25) Reminder: The normal (*unattended*) position for all derailers is lined and locked in the derailing position whether or not the track is occupied by cars, locomotives or on-track-equipment. Locks on switches and derailers will always be locked appropriately when switch and/or derailer is unattended.

26) At various locations specified in Special Instructions on the Youngstown Division the use of wheel skates is required in addition to hand brakes to secure unattended car(s). The proper positioning of wheel skates requires that the leading wheel of the extreme downgrade end of the unattended car(s) be rolled completely into the wheel pocket of the skate. All persons involved with the process of positioning wheel skates, and all persons within one hundred (100) feet, must position themselves so as to not be in the potential path of a skate in the event it is ejected during the process of properly positioning such skate. Skates will also be used per the judgment of employees at locations not specified in Special Instructions.

27) Before connecting or disconnecting locomotive Hot-Start cables, be sure circuit breakers and lock-out switches are open (*off*). Do not close (*turn-on*) circuit breakers and lock-out switches until you are certain the Hot-Start cables are securely connected. Where applicable, cables must be stowed in the container provided and such container locked when cables are unattended and not in use.

28) To disconnect Locomotive Hot-Start Equipment prior to starting unit:

(a) Turn off the electric power (480volts, 3 phase) by unlocking the the electrical switch breaker handle and pulling the handle down. At Hot-Start locations equipped with multiple Hot-Start receptacles for simultaneous operation of more than one Hot-Start, cables, breaker box receptacles and switch handles are color-coded to ensure the proper breakers are turned on or off, whichever is applicable;

(b) Unlock the plug securement bracket and disconnect the plug from the receptacle on the locomotive and (if applicable) the electrical breaker box;

(c) Roll the cable onto the hanger provided on the pole or place rolled cable inside lockable box (whichever is applicable) located in the pole vicinity;

(d) Lock the box, if applicable;

(e) Lock the electrical switch breaker handle, if applicable.

29) To connect the Locomotive Hot-Start Equipment following unit shut-down:

(a) Unlock cable storage box (if applicable) and remove cable or unroll cable as needed from the hanger provided on the pole (if applicable). At Hot-Start locations equipped with multiple Hot-Start receptacles for simultaneous operation of more than one Hot-Start, cables, breaker box receptacles and switch handles are color-coded to ensure the proper breakers on turned on or off, whichever is applicable;

(b) Insert cable plug into receptacle on breaker box (if applicable) and receptacle on locomotive and attach plug securement bracket(s) and lock into place;

(c) Unlock the electrical switch breaker handle and move handle upward to the "ON" position;

(d) Lock the electrical switch breaker handle (if applicable) in the "ON" position to prevent the system from being turned "OFF" by an unauthorized person;

(e) Open the locomotive engine room doors on the left side and nearest the Hot-Start receptacle;

(f) Confirm that the breaker switch on the Hot-Start control panel is in the "ON" position and the red light is on;

30) By observation and touch, confirm that the Hot-Start water pump is operating and the water heating element is warming up in the heating cylinder;

31) If any problem is encountered or suspected, please contact Nick Mundisev by cell phone at 330-770-5923 or John Hancock at 330-770-6447 immediately, or the MVRY office for further instructions in the event contact cannot be made with Nick Mundisev or John Hancock.

32) Any time weather conditions exist that would likely promote the formation of frozen conditions, extreme caution must be exercised at road crossings at grade and/or other paved or filled areas such as customer driveways to prevent wheels from being lifted off the rail (derailed) account flange-ways being filled with ice and/or other frozen debris.

33) In general, and during any type of weather conditions, extreme caution must be exercised to prevent derailment caused by build-up of foreign materials in flange-ways at locations such as gravel roadways and/or customer driveways, etc., or where ever such conditions are present.

34) Train crews may make brief stops at appropriate times and locations in order to purchase food items on a take-out basis for consumption while on duty. However, under no conditions will train crews make stops for the purpose of ordering a meal for consumption at the restaurant without specific prior authority received from the Youngstown Division Main Office.

35) Effective immediately and until further advised, no locomotives, railcars or on-track-equipment of any type will be left standing on any track in position to foul movement on any adjacent track.

Leaving locomotives, railcars or on-track-equipment of any type in a position on any track so as to foul movement on any adjacent track creates a fixed obstruction that may contribute to other circumstances ultimately precipitating a collision, personal injury and/or substantial damage to equipment.

Of course personal injury of any nature is of paramount importance to prevent, but the disruption to our service, tangible and intangible costs and the domino effects of a collision are also very important to prevent for the preservation of the continuity and overall success of our operation. We must each take an active part in assuring immediate and 100% compliance with these instructions.

36) Because one of our Company's primary sources of revenue is the haulage of various scrap materials, it is not uncommon for pieces of such materials to be left-over from the unloading process in the respective cars we handle daily.

Please be aware and understand clearly that such materials are absolutely not the property of our Company, nor the property of any individual or entity other than the shipper of record as listed on the latest waybill for movement of the car.

This means that no one is to be removing these materials from "empty" cars for any reason.

37) Per our existing rules and procedures for mounting and dismounting railroad equipment, whether such equipment is moving or standing still, we are all aware we must always exercise care, judgment and common sense in order to do so safely. Occasionally specific conditions exist or develop that require an extra measure of those virtues, and such is the case with various cars moving in Construction & Demolition Debris (C&DD) service to our Negley and Girard customers. Primarily

one of our C&DD origins on the East Coast of the United States utilizes a slurry material sprayed onto the top layer of C&DD in the railcar to control dust, etc., while en route from the origin to our customers here on our Youngstown Lines. During the application process this slurry material is over-sprayed to other areas on the railcar including, but not limited to, ladders, step treads, hand brakes and platforms.

When dry this material may flake-off and become airborne and when wet it may produce slippery conditions. Whether wet or dry, these conditions may pose a challenge to being able to safely mount, dismount and/or ride the railcar involved or railcar being handled closely with a railcar so involved.

Be mindful of these conditions and govern yourself accordingly when involved in handling these effected railcars. If you detect conditions caused by the slurry material to be present and it is your judgment that your safety is improved by refraining from mounting, dismounting and/or riding such cars, you must take the safe course and follow your judgment and common sense. Action has been initiated to cease use of this slurry material as soon as possible.

Remember that no service is so urgent or task so important that it should not be performed to the safest possible degree.

38) Radio frequency use will be as follows:

(a) The Haselton Job, Brier Hill Job, Y&S Job, MV1 & MV2 Jobs, YARR Job, West End Job and any extra train assignments will all use OHCR Channel 1 (AAR Channel 07) unless specifically authorized to use another channel;

(b) The Stone Train Crew will use OHCR Channel 1 (AAR Channel 07) until the loaded train is spotted for unloading. At that point the Stone Train Crew will change to OHCR Channel 2 (AAR channel 49) for the unloading work. When ready to move the empty train back to interchange at Ohio Junction, the crew will change back to OHCR Channel 1 (AAR Channel 07) to communicate as necessary with other crews and the MV Office.

(c) Crews working either Mahoning Valley Job will use OHCR Channel 4 (AAR Channel 27) when performing switching duties in the Mahoning Valley Railway yard area, Phoenix Logistics, or Castlo Industrial Park, etc.;

(d) When operating on CSXT or NS property, the engineer must monitor the applicable road channel of the foreign line road. In compliance with this instruction, the locomotive radio must be set on the applicable foreign line

road channel and a hand-held radio will be used to receive and transmit communication with the conductor. Locations where this instruction must be applied includes, but is not limited to, YANDA (CSXT/AAR Channel 08); Ohio Junction (CSXT/AAR Channel 08); NS Hasleton Yard, Youngstown Line and Lordstown Secondary Track (NS/AAR Channel 46).

39) Consistent with good judgment and compliance with all applicable rules, special instructions and equipment restrictions, and together with awareness of the ground conditions and equipment involved, employees may exercise the option to mount and/or dismount moving equipment as they see fit while operating within the confines of Ohio Central Railroad System, Youngstown Division property.

40) Approved safety glasses and ear plugs are provided by the Company for use by employees in order to comply with the requirements of connecting carriers. Where stipulated by connecting carrier instructions, use of the safety glasses and ear plugs is mandatory but is optional while operating within the confines of Ohio Central Railroad System, Youngstown Division property.

41) When operating Company-owned vehicles, the employee operating the vehicle is responsible for ensuring that the vehicle is in proper operating order including engine lube oil level, engine coolant level, transmission fluid level, windshield washer fluid, tire inflation and lighting, etc., prior to beginning the trip or use of vehicle.

Beginning on July 1, 2006, all drivers of company vehicles will be required to complete a Vehicle Mileage Report. A Vehicle Report Form will be provided for each vehicle. It is printed on yellow card stock and protected by a plastic slide-in envelope. Entries should be made on this form at the beginning and end of each day the vehicle is driven. These mileage reports are to be completed on a daily basis.

Fuel purchases should also to be entered on the report form, indicating the amount of fuel purchased and how much the fuel cost. Drivers are also required to complete a weekly report on the status of various vehicle fluids, such as oil, water, transmission fluid, window washer fluid, etc. A space has been provided on the mileage report form for this information.

If a vehicle requires repairs, those entries will be made on the back of the form. Please make sure to inform me about any vehicles needing repair so I can assist in the logistics of getting the vehicle to the shop and make preparations to pay for the repairs. These forms must be submitted to the Youngstown Division Main Office on or about the 1st of every month.

42) All train and switching movements on the OCRS Youngstown Division will be performed with total trainline air brake continuity maintained at all times throughout the entire train or cut of cars being handled. However, this does not preclude "kicking" cars and/or executing gravity "roll-bys" when and where conditions ensure such moves are able to be completed in a safe and prudent manner.

43) Unless directed otherwise by the proper authority, cars to be left standing in any tracks will be coupled solid with all trainline air hoses coupled and trainline angle cocks positioned properly for trainline air brake continuity. In addition, the trainline angle cock on at least one end of the cars to be left standing must be positioned open to the atmosphere to ensure trainline air cannot become "bottled".

44) Anytime a cut of one or more cars is left standing, a sufficient number of effective handbrakes must be applied. Unless specified otherwise in Special Instructions, the minimum required percentage of effective hand brakes is ten (10) per cent, or at least one (1) effective hand brake per block of ten (10) cars or any fraction thereof. When various conditions (grade; rail conditions; type of brake, etc.) render it prudent or when in the judgment of the employee that additional hand brake application is warranted, such action must be taken to ensure the car(s) will remain securely standing.

    Also, certain locations require a higher percentage of hand brake application and are so noted in Special Instructions.

45) When locomotives are left standing unattended, each locomotive in the consist must have an effective hand brake applied. In the event that a locomotive hand brake is found to be ineffective or inoperative, an immediate report must be made by cell phone or radio to the Youngstown Division locomotive department and the Youngstown Division Main Office. The affected locomotive must be secured by use of a wheel skate, chock or other substantial wooden item placed on the lead wheel of the downgrade end of the unit. Also, in order that the wheel chock cannot be removed by a vandal, employees must have the engineer move slightly enough to position the wheel so that it is pinching the wheel chock securely.

    Locomotive hand brakes are not to be included when calculating the total number of brakes necessary to properly secure one or more cars left standing.

46) In general daily practice, when ever and where ever cars are left standing, and when specifically designed wheel chocking devices are not available, employees must make a reasonable effort to locate a substantial wooden item to place ahead of the lead wheel of the downgrade end of the car(s) to provide the same effect as a specifically designed wheel chocking device. Also, in order that the wheel chock cannot be

removed by a vandal, employees must have the engineer move slightly enough to position the wheel so that it is pinching the wheel chock securely.

MAHONING VALLEY RAILWAY *(MVRY)*

1) Derails have been installed on No.3 Main Shop. This is the track that was used in 2004 by AMERIGAS to unload propane tank cars.

2) Loaded and/or empty gondolas exceeding 52 feet in length must not be handled individually or in multiples to Quality Bar in the Casey Building.

3) The easternmost five (5) car lengths (50 ft/car) of Track No. 280 must not be used or occupied.

4) Loaded and/or empty 89 foot container flats will be restricted to MVRY tracks as follows: No. 4 Main, No. 3 Main-Shop, No. 262, Dravo, No. 239, No. 240, No. 292-east end only.

5) Effective immediately and until further advised, all trackage associated with the Mahoning Valley Railway *(MVRY)* is designated as "Excepted Track". All requirements associated with tracks designated as such are also effective immediately. Speed must not exceed ten *(10)* miles per hour on any track associated with the MVRY and these instructions will not supercede any previous instructions in effect which set forth a lower speed for any given track associated with the MVRY.

6) The Struthers Industrial Track (OHPA) and the Shortline Track (MVRY) have been reconfigured and connected as follows: Proceeding northward on the Struthers Industrial Track between CP 61 and the Sheet & Tube Runner Switch, immediately prior to entering the right-hand curve in advance of the Mahoning River bridge, a right-hand facing point switch has been installed approximately nine-hundred (900) feet north of the southward absolute signal at CP 61. This switch will be referred to as "The Woodburn Connection Switch" and is in service effective immediately. The right-hand diverging route of this switch forms a new connection to the Shortline Track and this new connection track will be referred to as the "Woodburn Connection" and is also in service effective immediately.

   The normal position for the Woodburn Connection Switch is lined and locked for straight-away movement on the Struthers Industrial Track;

   That part of the Shortline extending southward from the Woodburn Connection to the southward absolute signal at CP 61 is removed from service and is now disconnected and inaccessible. The remaining portion of the Shortline Track extending northward

between the Woodburn Connection and the CASTLO Industrial Park gate remains in service and will continue to be referred to as the Shortline Track.

7) The following MVRY tracks must not be used for holding any cars, locomotives or on-track-equipment: No.220; No.1 Main; No.2 & No.3 Main east of the Center Street bridge; No.4 Main Pocket.

8) The east end of No.292 has been restored to service therefore making the entire track available for service.

OHIO & PENNSYLVANIA RAILROAD *(OHPA)*

1) ***This line is divided into three segments defined as follows:***

   (a) The southern-most segment of this line is referred to as the "LE&E Lead" and extends between its southern-most point 300 feet south of Jones Street at OHPA MP 0.35 and its northern-most point at the fouling point of the Darlington Junction Switch;

   (b) The middle segment of this line is referred to as the "Struthers Lead" and extends between its southern-most point at the absolute signal governing entrance to the Norfolk Southern CP 61 and its northern-most point at its end-to-end connection with the "River Track" at the south switch of the Gateway Cab Track;

   (c) The northern-most segment of this line is referred to as the "River Track" and extends between its southern-most point at its end-to-end connection with the "Struthers Lead" at the south switch of the Gateway Cab Track and its northern-most point at the fouling point of the Lally Pipe Switch;

2) ***Authority for Movement on all three track segments associated with the Ohio & Pennsylvania Railroad will be as follows: Trains, engines and on-track-equipment may occupy any of the track segments with permission received from the MV Base.***

3) ***Maximum Authorized Speed on all three track segments associated with the Ohio & Pennsylvania Railroad will be as follows: Proceed able to stop within one-half the range of vision, not exceeding 25 MPH. Speed restrictions for this track section will be listed below:***

   (a) Speed on the LE&E Lead will be restricted to: Able to stop within one-half the range of vision not exceeding 10 MPH;

OPERATIONS BULLETIN No. 01, Date Issued: 0001, January 1st, 2007, OHPA, No.3, continued

(b) Speed on the Struthers Lead will be restricted to: Able to stop within one-half the range of vision not exceeding 10 MPH;

(c) Speed on the River Track will be restricted to: Able to stop within one-half the range of vision not exceeding 10 MPH;

4) Maximum Authorized Speed on all sidings and spur tracks associated with the Ohio & Pennsylvania Railroad will be: Able to stop within one-half the range of vision, not exceeding 5 MPH.

5) Approach all road crossings at grade equipped with Automatic Grade Crossing Warning Devices prepared to stop before any portion of the movement fouls such crossings in the event such devices fail to properly activate. In the event activation failure occurs, flag protection per the operating rules must be provided prior to any portion of movement fouling the crossing and a report must be made of such occurrence to the MVRY Office as soon as possible.

6) Until further advised all track associated with the "Ohio & Pennsylvania Railroad" is designated as Excepted Track.

7) The Center Street Pocket Track is out-of-service.

8) ***The section of former Lake Erie & Eastern Railway (LE&E) track extending between the Darlington Junction Switch and its connection to the NS CP 61 is not owned nor controlled by the Ohio Central Railroad System (OCRS). The owning entity has provided written authority to multiple entities for use of this section of the former LE&E as a thoroughfare and such use must be considered to be on a "first-come, first-served" basis only. Use of any trackage appurtenant to this section of track is prohibited. Any OCRS use of this track must be performed at a speed which will allow stopping within one-half the range of vision not exceeding 10 MPH.***

9) The Struthers Industrial Track (OHPA) and the Shortline Track (MVRY) have been reconfigured and connected as follows: Proceeding northward on the Struthers Industrial Track between CP 61 and the Sheet & Tube Runner Switch, immediately prior to entering the right-hand curve in advance of the Mahoning River bridge, a right-hand facing point switch has been installed approximately nine-hundred (900) feet north of the southward absolute signal at CP 61. This switch will be referred to as "The Woodburn Connection Switch" and is in service effective immediately. The right-hand diverging route of this switch forms a new connection to the Shortline Track and this new connection track will be referred to as the "Woodburn Connection" and is also in service effective immediately;

The normal position for the Woodburn Connection Switch is lined and locked for straight-away movement on the Struthers Industrial Track;

That part of the Shortline extending southward from the Woodburn Connection to the southward absolute signal at CP 61 is removed from service and will eventually be physically removed. The remaining portion of the Shortline Track extending northward between the Woodburn Connection and the CASTLO Industrial Park gate remains in service and will continue to be referred to as the Shortline Track;

WARREN & TRUMBULL RAILROAD *(WTRM)*

1) Car spots at Bloom Industries are numbered from the Mahoning Avenue road crossing Nos. 1 through 5.

2) The Vernon Street Crossing has been permanently closed and abandoned. The Automatic Grade Crossing Warning Devices located at Vernon Street are out-of-service and retired also.

3) The Automatic Grade Crossing Warning Devices located at North Park Street are in-service but are activated only by an island circuit extending a short distance to each side of the crossing. All movements must first stop within the limits of this island circuit and allow the Automatic Grade Crossing Warning Devices to operate for a minimum of twenty (20) seconds prior to any portion of movement fouling the crossing.

4) The main track is out-of-service from the immediate east side of the Mahoning Avenue crossing, adjacent to Bloom Industries, the entire distance to derailer at MP 183.3, near Lover's Lane in Ravenna. A barricade has been installed across the track at this location in order to prevent any movement to this section of track;

5) Atlantis Plastics cars will not be stored on the Paige Avenue Siding but rather in the Dana Avenue Spur Track;.

6) The main track is out-of-service from the connection switch with the Bloom Industries Track to the north End-of-Track north of Refractories Drive. A portion of rail has been removed immediately north of the connection switch in order to prevent any movement to this section of track. The switch has been spiked for movement only to and from the main track crossover;

7) The entire K Mart Lead is out of service. The diverging switch point at the K Mart Lead switch on the main track near Paige Avenue has been removed and the straight side switch point spiked for movement straight-away on the main track only;

OPERATIONS BULLETIN No. 01, Date Issued: 0001, January 1st, 2007, WTRM, continued

8) The west switch of the Bloom Industries Track is out-of-service.

YOUNGSTOWN & AUSTINTOWN RAILROAD *(YARR)*

1) Any car(s) left unattended on the Stambaugh Siding or YARR Connection Track must have the northern-most wheel set properly positioned on a wheel skate in addition to 100% of the hand brakes applied. Wheel skate is provided at this location.

2) The Y&A Connection Track bridge over the Mahoning River has been removed for reconstruction. Any movements made on the Y&A Connection Track from either end will be very limited and must be made with extreme caution account this condition.

3) Derailer has been installed at the north (*downhill*) end of the Stambaugh Siding

4) The outside light located on the building over the entrance door to the YARR Locomotive Shop office must be left "on" at all times. In addition, the fluorescent ceiling light fixtures in the office portion of the building and similar lighting in the south end of the locomotive stall will be left "on" at all times.

5) When unattended, the Main Steel switch will be left lined for movement straight-away on the Industrial Track instead of movement from the Industrial Track to the Main Steel track, and the Main Steel rail entrance gate must be closed and locked.

6) Watch for irregular walking conditions in the vicinity of the Main Steel switch on the Industrial Track.

7) Recently Penn-Ohio Logistics expanded their operations and opened a new rail transload center in the former Youngstown Steel Door (YSD) facility on our Youngstown & Austintown Railroad (YARR).

   The YARR trackage providing access to this new customer had been informally known as the "GE Lead" and had been out-of-service for many years but was completely rehabilitated in order to accommodate this new customer. This lead will now be referred to as the "Penn Ohio Lead".

   Derailers were installed on the Penn Ohio Lead at its clearance point with the YARR main track and on the Penn Ohio Lead at the clearance point of the spur accessing the Penn Ohio (YSD) facility.

   In the course of servicing Penn-Ohio, railcars will not be left standing unattended at points on the Penn Ohio Lead other than between the derailer at the clearance point of

the Penn-Ohio spur and the End-of-Track. Under no circumstances will cars be left unattended on the Penn-Ohio spur between the switch and the overhead door accessing the Penn-Ohio facility.

The usual move will be to pull the cars up from YANDA and run-around them in the Stambaugh Siding. This is the double-ended siding that lies to the west of the main track between Meridian and Henricks Road.

Cars left standing unattended in the Stambaugh Siding during the run-around move and/or for later handling require 100% hand brake application. Also, the northernmost wheel of the northernmost car will be placed on a skate anytime cars are left unattended, whether work is finished or you are simply spotting Penn Ohio. No exceptions to this instruction.

The skate which is to be used at the Stambaugh Siding, as stipulated above, will be carried aboard the locomotive until needed. This is a high-theft area and the skate will not be left on the ground when the Stambaugh Siding is empty and the skate is not needed per the instructions above.

The move to spot cars at Penn Ohio involves a shove move across Henricks Road. Per the operating rules, this will require proper flagging procedures to be applied.

There is a 260 foot-long tail beyond the Penn Ohio switch on the Penn Ohio Lead. The track existing beyond the 260 foot point is out-of-service and cannot be used. A large pile of earthen material has been placed on the track at the 260 foot point. Empty and loaded cars may be placed on this track as needed, however no more than four (4) cars are able to be accommodated on this track. 100% handbrake application is required on this tail track also. No exceptions.

All cars left unattended must be properly secured to prevent movement per all applicable operating rules and special instructions pertaining to general circumstances and those specific to the YARR and/or Penn-Ohio.

8) When unattended, the YARR Austintown Shop Lead switch will be left lined and locked for movement straight-away on the Industrial Track instead of movement from the Industrial Track to the Shop Lead.

YOUNGSTOWN BELT RAILROAD *(YBRR)*

1) Switch locks on the Girard Cut-Off, FIT Track-West End and the Canal Branch (*C&D Lead*) switches will be left locked onto the switch latch whenever the switches are left unattended.

OPERATIONS BULLETIN No. 01, Date Issued: 0001, January 1st, 2007, YBRR, No.7, continued

2) Effective immediately and until further advised, certain track sections associated with the Youngstown Belt Railroad (YBRR) are designated as "Excepted Track". All requirements associated with track designated as such are also effective immediately.

   The track sections effected are as follows:

   (a) The entire Ward Track, located in Niles, Ohio, from its connection with the Norfolk Southern Railway Niles Industrial Track to its connection with the YBRR former Erie Lackawanna main track near Pratt Street;

   (b) The entire YBRR former Erie Lackawanna main track, located in Niles, Ohio, from its east end at Depot Street to its west end of track Approximately two hundred (200) feet west of the Champion Injection Mould Switch;

3) We occasionally leave a locomotive at Genmak for use in making repetitive spot moves as needed. When doing so the locomotive must be left properly secured on the straight track west of (toward Midwest Steel) the Genmak switch.

4) When performing switching service at General Electric in Niles, only the cars applicable to the General Electric spot will be handled into the General Electric facility.

5) When applicable, any SPAF forms (Switch Position Awareness Forms) used in conjunction with compliance with FRA Emergency Order No.24 must be telefaxed or hand-delivered to the MV Office promptly at the completion of the tour of duty to which the SPAF form pertains.

6) We have found that overall the most prudent and effective procedure for handling and controlling the City Stone Unit Stone Train (CSUST) includes maintaining a light (5-10 lb) trainline brakepipe reduction continuously during the unloading process. However, we have also experienced that in unloading approximately the last one-third of the train that the combination of grade and tonnage changes causes the available motive power to have difficulty moving the train against the trainline brake pipe reduction.

   In view of this condition CSUST crews are authorized to employ a modified method of unloading the remainder of the train when experiencing this condition as follows: Upon closure of the V&M Star main entrance road crossing for the day (approximately 1500) the entire CSUST may be pulled west of the under-track dumper and then shoved back (eastward) to spot the rear (easternmost) car for unloading. A light trainline brake pipe reduction must be made prior to this shove for

spot and then held continuously to properly control the train and provide the necessary precision for spotting. Then each remaining loaded car from the rear toward the head of the train will be shoved to spot in lieu of pulled to a spot

CSUST crews must make prior arrangements with City Stone unloading personnel well prior to employing this modified method of unloading the remainder of the train.

7) The Automatic Grade Crossing Warning Devices located at Furnace Lane, approximately MP 62.95 on the former Erie Main, are in-service but are activated only by an island circuit extending a short distance to each side of the crossing. All movements must first stop within the limits of this island circuit and allow the Automatic Grade Crossing Warning Devices to operate for a minimum of twenty (20) seconds prior to any portion of movement fouling the crossing.

8) Atlantis Plastics cars will not be stored on the Packard Lead or Stub

9) When spotting C&D loads for unloading on the west end of the FIT Track, the west car must be one (*1*) car length from the road crossing. This will allow four (*4*) coupled cars to be unloaded. A fifth car, separated from the other four, will then be placed for unloading east of the overhead wires.

10) Concord Steel cannot accept 65 foot gondolas for outbound loading. Their destination customer cannot unload them. Unless specifically instructed by the Youngstown Division Main Office otherwise, crews will not spot 65 foot gondolas for loading at Concord Steel.

11) Do not exceed ten (*10*) MPH between the Division Street (*SR 711*) overhead bridge and the east end of the City Stone unloading pit.

12) The oldest C&D loads will always be placed for unloading at Total Waste Logistics (*TWL*) unless otherwise instructed in writing by TWL.

13) Train crews, whether traveling by train or highway vehicle, will not depart Warren without first receiving verbal clearance to do so from the MVRY Office.

14) The entire Eastbound Main Track from the crossover at the west end of Brier Hill to VO will be kept clear, except in the case of emergencies.

15) All loaded cars destined to General Electric in Niles received from connecting carriers must be inspected for leaks, open/unsecured top hatches, etc., and other defects prior to being brought on-line and/or accepted in interchange. If any such defects are found, the car(*s*) must not be accepted in interchange or brought on-line.

OPERATIONS BULLETIN No. 01, Date Issued: 0001, January 1st, 2007, YBRR, continued

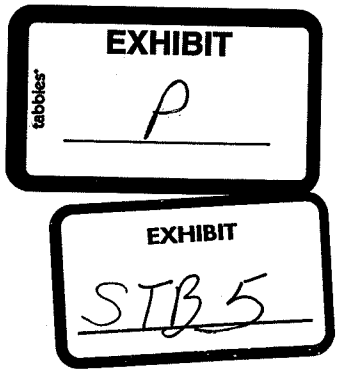
16) Unless directed otherwise by the Youngstown Division Main Office, loaded pipe cars delivered to the Norfolk Southern Railway at Haselton will be delivered in one (1) solid block positioned southern-most in the train being delivered. When the southern-most loaded pipe car is a gondola without an end-of-car bulkhead extending above the highest layer of pipe, an approved "cover car" must be coupled immediately south of the southern-most loaded pipe car.

17) The Y&A Connection Track bridge over the Mahoning River has been removed pending eventual reconstruction. Any movements made on the Y&A Connection Track and/or Leadville Connection Track will be very limited by the absence of this bridge and must be made with extreme caution account this condition.

18) The Sherman Lead Track is out of service from the Sherman Spur Track to the east End-of-Track account large volume of debris on track from failure of adjacent retaining wall.

Terry L. Feichtenbiner
General Manager
Youngstown Division

EXHIBIT D



TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT ("Agreement"), dated as of this 3rd day of May 2001, by and between THE MAHONING VALLEY RAILWAY COMPANY (hereinafter called "Railroad"), an Ohio corporation with offices at 136 South Fifth Street, Coshocton, Ohio 43812 ("Railroad"), and LTV STEEL COMPANY, INC., a New Jersey corporation with offices at 200 Public Square, Cleveland, OH 44114 ("LTV"). (Railroad and LTV are referred to herein together as the "Parties," and individually as a "Party").

W I T N E S S E T H:

WHEREAS, The Cuyahoga Valley Railway Company ("CVR"), which is an affiliate of LTV, has entered into that certain Stock Purchase Agreement among Railroad, CVR and Summit View, Inc. ("Summit") dated March 30, 2001 (the "Purchase Agreement"), whereby CVR has sold and transferred to Summit all of the issued and outstanding capital stock of Railroad (the "Transaction");

WHEREAS, following the Transaction, LTV has a continuing need for transportation services at its LTV Copperweld facilities at Youngstown, Ohio, and/or at new facilities that may be built on the real property occupied by LTV Copperweld in Youngstown, Ohio (together, the "Youngstown Facilities," a map of which is appended hereto as Exhibit A);

WHEREAS, Railroad desires and is able to provide the levels of service set forth herein, and LTV desires such service; and

WHEREAS, pursuant to Section 2.5 of the Purchase Agreement, and as part of the consideration for the Transaction, Railroad and LTV are entering into this Agreement.

NOW, THEREFORE, in consideration of the premises, the Purchase Agreement and the mutual undertakings set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

SCOPE

Section 1.01. Scope. This Agreement sets forth the understandings of the Parties concerning rail service to be provided by Railroad to, from and in the Youngstown Facilities, following the closing of the Transaction.

Section 1.02. Prior Transportation Agreements. All oral and written agreements between LTV and Railroad for transportation services that also are the subject of this Agreement or for services ancillary to transportation services (including, without limitation, rail car repair, maintenance of rail facilities, rail car leasing and the like), that were in effect prior to the date hereof shall be and hereby are terminated and of no further effect as of 11:59 p.m. on the day immediately prior to the date hereof; *provided*, that with respect to any such agreements (i) prior to the date hereof, each Party shall pay all amounts due under such agreements on account of services rendered by one Party to the other, (ii) to the extent that a Party has received consideration prior to the date hereof on account of services that have not been rendered as of the date hereof, such Party shall render services as agreed or shall refund the consideration in full, and (iii) each Party shall be responsible for any contractually allocated liability arising prior to the date hereof. Nothing in this Section 1.02 shall be construed as terminating or otherwise affecting agreements between LTV and Railroad regarding matters other than transportation services and services ancillary thereto.

ARTICLE II

TERM

Section 2.01. This Agreement shall be effective as of the date first above written and shall remain in effect for an initial term consisting of the period from such date through December 31, 2040 (the "Initial Term"), and thereafter unless and until terminated by either of the Parties upon ninety (90) days' written notice (the "Extended Term"); *provided*, that if LTV sells all or any portion of the Youngstown Facilities ("Transferred Facilities") to one or more third parties ("Acquirer(s)"), and if LTV makes a full or partial assignment of this Agreement to the Acquirer(s) pursuant to Section 12.01 hereof, the Initial Term of this Agreement, to the extent of such assignment, shall end upon the earlier of (i) the fifth (5th) anniversary of the closing date of the sale of the Transferred Facilities, or (ii) December 31, 2040.

Section 2.02. The termination of this Agreement shall not cause the termination of any transportation agreements or other agreements between LTV and Railroad entered into pursuant to the terms of this Agreement or otherwise (except to the extent that an agreement expressly provides for termination upon termination of this Agreement).

ARTICLE III

SERVICES

Section 3.01. Rail Service.

(a) During the term of this Agreement, Railroad shall provide rail services to, from and in the Youngstown Facilities (together, the "Service") as set forth in Sections 3.02 through 3.05 hereof.

(b) For purposes of this Article III, the term "interchange" shall be broadly construed to include any dealings between railroads that result in the delivery of rail cars by one railroad to the other, for handling by the other, irrespective of whether such cars remain in the account of the delivering railroad or a third party.

Section 3.02. Switching Service.

(a) Railroad shall (i) pick up loaded and empty rail cars at the locations in or adjacent to the Youngstown Facilities identified on Schedule 3.02(a), or at any such other locations in or adjacent to the Youngstown Facilities as LTV shall designate from time to time (together, the "Set-Out/Delivery Tracks"), for movement to and interchange with connecting carriers (including, without limitation, the successors and assigns of the connecting carriers as of the date of this Agreement) at its interchange locations with connecting carriers, including, without limitation, at Hazelton Yard with Norfolk Southern Railway Company ("NS"), on such tracks in Hazelton Yard as identified by NS from time to time, at the CSXT Tail Track with CSXT Transportation, Inc. ("CSXT"), and at the west portion of the old LE&E with Ohio & Pennsylvania Railroad ("O&P") (the "Existing Interchanges"), and (ii) pick up loaded and empty rail cars at the Existing Interchanges for movement and delivery to the Set-Out/Delivery Tracks (together, the "Switching Service"). NS, CSXT and O&P shall be referred to herein together as the "Connecting Carriers," and such term shall include the successors and assigns of such entities and any railroad that following the date of this Agreement obtains physical access to the rail lines of Railroad (including, without limitation, access obtained by constructing rail lines or by entering into operating or marketing arrangements with other carriers) and with which Railroad has the ability to interchange traffic. If Railroad acquires or obtains operating rights over rail line(s) that are contiguous to the rail lines owned and/or operated by Railroad as of the date of this Agreement, and if such

acquisition or operating rights requires a change of interchange locations with one or more Connecting Carriers, then (x) subject to clause (y) below, the interchange locations shall be changed in a manner that minimizes any adverse effect on LTV, and (y) Railroad shall not change the interchange location unless Railroad secures the necessary rights to ensure that LTV (or its designee) can utilize the trackage rights set forth in the Interim Trackage Rights Agreement appended hereto as Exhibit D to access such new interchange locations.

(b) The Switching Service will be provided with the frequency set forth on the Service Schedule, as defined in Section 4.03(a) hereof.

(c) During the term of this Agreement, (x) Railroad shall maintain and keep open the Existing Interchanges, and (y) Railroad shall not initiate or facilitate any change in the location of its interchanges with Connecting Carriers from the Existing Interchanges if such change would have a material adverse effect on service to the Youngstown Facilities or on Railroad's ability to provide service in accordance with the Service Schedule; *provided*, that nothing in this Section 3.02(c) shall be construed as prohibiting Railroad from imposing a lawful embargo (subject to LTV's rights in Section 4.02 and 9.02 hereof, and as otherwise provided in this Agreement). If a Connecting Carrier refuses to interchange at an Existing Interchange, Railroad will support any regulatory or judicial action initiated by LTV to prevent the change of interchange location and/or to secure some other remedy in connection therewith.

(d) For the Switching Service, LTV shall pay to Railroad the fees and charges set forth in Section 5.01(a) hereof.

Section 3.03. Local Service.

(a) Railroad shall (i) pick up loaded and empty rail cars at the Set-Out/Delivery Tracks for movement from the Youngstown Facilities to all stations, sidings, team tracks and industries

that may be served directly by Railroad, and (ii) pick up loaded and empty rail cars at such stations, sidings, team tracks and industries for movement from such locations to the Set-Out/Delivery Tracks (the "Local Service"). If Railroad acquires, or obtains operating rights over, rail line(s) that are contiguous to the rail lines owned and/or operated by Railroad as of the date of this Agreement, then the Local Service shall include service to and from any additional stations, sidings, team tracks and industries served by Railroad; *provided, however*, that if Railroad's cost of providing such service to such additional stations, sidings, team tracks and industries increases relative to the cost of providing the Local Service to the stations, sidings, team tracks and industries that can be served by Railroad as of the date of this Agreement, then Railroad and LTV shall negotiate in good faith for an increase in the applicable fees and charges for service to and from such additional stations, sidings, team tracks and industries, prior to the commencement of the new service.

(b) The Local Service will be provided by Railroad with the frequency set forth on the Service Schedule.

(c) For the Local Service, LTV shall pay to Railroad the fees and charges set forth in Section 5.01(b) hereof.

Section 3.04. Intra-Plant Service.

(a) Upon request from LTV from time to time, Railroad shall perform the following services on behalf of LTV within the Youngstown Facilities (together, the "Intra-Plant Service"): (i) re-railing of derailed rail cars or locomotives; (ii) track repair service for track and related facilities within the Youngstown Facilities; and (iii) switching of rail cars into, out of and within the Youngstown Facilities (other than Switching Service).

(b) The Intra-Plant Service will be provided by Railroad with the frequency set forth on the Service Schedule.

(c) The Intra-Plant Service shall be contract service and not common carriage, and neither Party shall take the contrary position in any regulatory or judicial proceeding or arbitration.

(d) For the Intra-Plant Service, LTV shall pay to Railroad the fees and charges set forth in Section 5.01(c) hereof.

Section 3.05. Ancillary Services.

(a) During the term of this Agreement, Railroad shall provide the following maintenance and other services (together, the "Ancillary Services"):

(i) Repair of the rail cars leased by LTV from Railroad pursuant to Article VII hereof; and

(ii) Cleaning of rail cars.

(b) For the Ancillary Services, LTV shall pay to Railroad the fees and charges set forth in Section 5.01(d) hereof.

(c) The Ancillary Services will be provided by Railroad with the frequency set forth on the Service Schedule.

ARTICLE IV

SERVICE COMMITMENTS

Section 4.01. General. In addition to, and not in limitation of, the service commitments of Railroad more specifically set forth below, Railroad covenants and agrees that, during the term hereof, it shall at all times keep and maintain its track and related infrastructure, locomotives and equipment and employment levels such that it can meet the service obligations set forth herein.

Section 4.02. Maintenance. Railroad shall maintain: (i) the main line tracks identified in Schedule 4.02 and any other rail lines of Railroad necessary to effect interchange with the Connecting Carriers (collectively, "Main Line") to FRA class 1 standards or better; and (ii) the yard

tracks identified in Schedule 4.02 ("Yards") to the condition set forth in Schedule 4.02 hereof (together, the "Maintenance Standards"). In the event that a casualty loss or *force majeure* event shall cause the Main Line and/or Yards not to be in compliance with the Maintenance Standards, Railroad shall promptly take reasonable, appropriate steps to bring the facilities into compliance. If Railroad is out of compliance with the Maintenance Standards for five (5) consecutive days following written notice from LTV, LTV shall have the right (but not the obligation), in addition to all other remedies available to LTV under this Agreement or otherwise, to perform the repairs itself or cause a third party to perform such repairs, in each case at LTV's expense, and Railroad shall cooperate in good faith to facilitate the performance of the repairs. If LTV performs repairs pursuant to this Section 4.02, Railroad shall have the right, at its option, either to (i) reimburse LTV for the full cost of such repairs within thirty (30) days after receipt of an invoice for same, or (ii) not reimburse LTV for the full cost of the repairs, in which case LTV shall have the right to exercise the remedy in Section 9.02 for up to two (2) years.

Section 4.03. Transportation Service Requirements and Commitments.

(a) During the Initial Term and any Extended Term, Railroad shall provide Switching Service, Local Service, Intra-Plant Service and Ancillary Services to the Youngstown Facilities as set forth on the service schedule appended hereto as Schedule 4.03(a) (the "Service Schedule"). Railroad acknowledges and agrees that time is of the essence with respect to providing service as set forth on the Service Schedule. Railroad's performance under the Service Schedule shall be measured separately on a monthly basis for Switching Service, Local Service, Intra-Plant Service and Ancillary Services. If Railroad's on-time performance for any of the Switching Service, Local Service, Intra-Plant Service or Ancillary Services is less than ninety-five percent (95%) in two (2) consecutive full months, or if Railroad's on-time performance for any such category is less than

ninety percent (90%) in any single full month, and in neither case is the cause (i) an event of *force majeure*; (ii) acts of LTV; (iii) wrongful acts or other rail carriers beyond the control of Railroad; or (iv) the material failure of LTV to provide timely forecasts under Section 4.03(b), or a material understatement by LTV in a forecast of the actual volume of traffic tendered, then such performance shall constitute a service failure ("Service Failure"). In the event of a Service Failure, LTV shall have the right (but not the obligation) to exercise the remedy set forth in Section 9.02 hereof. Beginning on the first (1st) anniversary of this Agreement, and on each anniversary thereafter, representatives of the Parties shall meet to review and discuss the Service Schedule. The frequency of service shall be increased to the extent warranted by traffic levels to and from the Youngstown Facilities. Service levels on the Service Schedule shall be reduced only if annual revenue carloads handled by the Railroad to and from the Youngstown Facilities fall below one thousand (1,000) carloads during any traffic year (each 12-month period commencing the first day of the month in which the date of the Agreement falls, which shall be referred to herein as a "Traffic Year"). The Service Schedule shall be reviewed and adjusted to the extent appropriate following any Traffic year in which the revenue carloads handled by Railroad to and from the Youngstown Facilities exceeds three thousand (3,000).

(b) Each week during the term of this Agreement, LTV shall provide to Railroad by facsimile or email transmission, on a good faith efforts basis, a written forecast of the anticipated transportation service requirements of the Youngstown Facilities for the ensuing week. Such forecasts will include (i) proposed loading and unloading schedules and other relevant schedules and related information for Switching Service, Local Service, Intra-Plant Service and Ancillary Services (and any additional services that LTV may desire from time to time), and (ii) biweekly and weekly empty car requirements by car type. Such forecasts shall, where necessary or

appropriate, be updated daily by written or oral adjustments communicated by LTV to Railroad. Such adjustments shall be communicated, if in writing by facsimile, email or by hand, and if orally by telephone or in person, to the local office or individual from time to time designated by Railroad. Railroad shall provide to LTV on a daily basis trunkline railroad car movement information related to the forecasted categories of Service.

Section 4.04. Data Access and Information Services. Railroad shall provide LTV with loaded and empty car movement data, in the format and frequency provided to LTV as of the date of this Agreement.

Section 4.05. Car Supply. Upon request by LTV and subject to availability, Railroad shall provide to LTV, empty rail cars of the appropriate type for loading by LTV. Notwithstanding the foregoing, if Railroad is unable or unwilling to provide appropriate cars in a timely manner, and Railroad fails to cure such situation within the time frame set forth in Section 8.01(a) hereof, then LTV shall have the right (but not the obligation) to purchase, lease or otherwise procure rail cars for use in handling traffic to, from and in the Youngstown Facilities.

ARTICLE V

FEES AND CHARGES

Section 5.01. Fees. During the term of this Agreement, LTV shall pay Railroad the following fees and charges (the "Fees") for the respective Services:

(a) (i) For the Switching Service. Railroad's compensation shall be in the amount of the Switch Charge set forth in Freight Tariff MVRY 8015-I (the "Tariff," a copy of which is appended hereto as Exhibit B), as adjusted annually pursuant to Section 5.02 hereof. Railroad shall secure such compensation through absorption of the Switch Charge by the carrier(s) that participate

in a line haul move to and from the Youngstown Facilities. Only in the event that such carriers decline to absorb the Switch Charge, or cancel such absorption and Railroad is not successful in restoring such absorption through available legal means, Railroad may assess the Switch Charge directly upon LTV for services rendered hereunder, and LTV shall pay the same when and as due; *provided*, that Railroad shall use good faith efforts to cause the carrier(s) participating in the line haul move to continue to absorb the Switch Charge, and shall cooperate with LTV in its efforts to cause Connecting Carrier(s) participating in the line haul move to do so (including without limitation regulatory or judicial actions). During the term of this Agreement, Railroad shall keep the Tariff in full force and effect. If at any time statutory or regulatory changes render it impracticable for Railroad to establish the Switch Charge in the form of the Tariff, or if carriers participating in a line haul move to or from the Youngstown Facilities refuse to absorb the Switch Charge, then Railroad and LTV shall take all appropriate steps (including, without limitation, entering into a contract) to ensure that its compensation for the Switching Service does not exceed the amount set forth in the Tariff (as adjusted annually pursuant to Section 5.02 hereof). Subject to Section 5.03, in connection with the Switching Service, Railroad shall not impose upon LTV, a Connecting Carrier or any third party any fees or charges over and above the Switch Charge, whether in the form of surcharges, interchange fees or other types of fees or charges.

(ii) So long as revenue carloads handled by the Railroad to and from the Youngstown Facilities exceeds one thousand (1,000) during the immediately preceding Traffic Year, if Railroad sells, leases or otherwise transfers any portion of its rail line to a third party, or if any portion of its rail line is abandoned or otherwise is taken out of service, and the result of such sale, lease, transfer or out-of-service line is that Railroad cannot directly access the Set-Out/Delivery Tracks or directly interchange with the Connecting Carriers, Railroad shall make the

necessary arrangements, and pay any intermediate switching charge, division or transload charge that must be incurred in order to effect interchange with the Connecting Carriers or to obtain access to the appropriate Set-Out/Delivery Tracks.

(b) For the Local Service, Railroad's compensation shall be on the basis of a switching charge assessed by Railroad either to the consignor or the consignee (the "Local Service Charge"). The amount of the Local Service Charge shall be as set forth in the Tariff, as adjusted annually pursuant to Section 5.02 hereof, and subject to Section 5.03.

(c) For the Intra-Plant Service, the Fees for services shall be as set forth on Schedule 5.01(c) hereto, as adjusted pursuant to Section 5.02 hereof, and subject to Section 5.03.

(d) For the Ancillary Services, the Fees for services shall be as set forth on Schedule 5.01(d) hereto, as adjusted pursuant to Section 5.02 hereof, and subject to Section 5.03.

(e) To the extent that the Tariff conflicts with this Agreement, the terms and provisions of this Agreement shall control.

Section 5.02 Annual Adjustment. (a) The Fees shall be revised upward or downward each year, as of the anniversary of the date of this Agreement, by the percentage change in the Rail Cost Adjustment Factor, unadjusted for productivity "(RCAF-U"), published by the Surface Transportation Board (the "Board"), or if the RCAF-U ceases to be published by the Board or successor agency, by some other similar rail cost index. If the RCAF-U ceases to be published, and if LTV and Railroad are unable to agree on a substitute index, the selection of the substitute index shall be resolved by arbitration pursuant to Section 9.05 hereof.

(b) The Fees shall be adjusted annually by calculating the percentage increase or decrease in the RCAF-U for the most recently completed calendar year (*i.e.*, the RCAF-U for calendar year 2001 for the adjustment made as of the first anniversary of this Agreement) as

compared to the RCAF-U for the immediately preceding year (*i.e.*, the RCAF-U for calendar year 2000 for the adjustment made as of the first anniversary of this Agreement), and applying it to the then-prevailing Fees. By way of example, if "A" is the final RCAF-U for 2000; "B" is the final RCAF-U for 2001; "C" is the then-prevailing Fee; and "D" is the percentage increase or decrease; the adjusted Fee, effective as of the first anniversary of this Agreement, would be computed as follows:

1. $(B-A)/A = D$

2. $C + C \times D =$ adjusted Fee

Section 5.03 Renegotiation. The Parties intend that the annual adjustment mechanism set forth in Section 5.02 will generally reflect the changes in railroad operating costs over time, and that the annual adjustment mechanism will result in the Fees generally reflecting over the Initial Term and any Extended Term of this Agreement the balance of economic value to the Parties that exists as of the effective date of this Agreement. The Parties acknowledge and agree that over the Initial Term or any Extended Term of this Agreement, the annual adjustment mechanism set forth in Section 5.02 may unduly favor one Party or the other because the RCAF-U reflects class I railroad cost data rather than class III railroad cost data (an "Adjustment Distortion"). In the ninety (90) day period commencing on the seventh (7th) anniversary of the date of this Agreement, and in the ninety (90) day period commencing on each seventh (7th) anniversary thereafter, either Party may provide written notice to the other Party (an "Adjustment Request") that it believes there exists an Adjustment Distortion, and that the Fees should be adjusted as a result. The Adjustment Request shall include proposed revised Fees, and a justification for such Fees. Railroad shall also have the right to include in an Adjustment Request a proposed adjustment based upon unanticipated capital expenditures made by Railroad to rebuild, replace or repair the rail line on the Railroad

("Unanticipated Capital Expense") as a direct result of a *force majeure* event (and not as a result of capital expenditures incurred in the ordinary course of business, regardless of the magnitude of those expenses). Any adjustment on the account of Unanticipated Capital Expenses shall be reasonable and shall take into account insurance proceeds, if any, available to Railroad, and shall not (i) shift the risk of ownership of the Railroad to LTV, or (ii) deprive LTV of the benefit of the long-term arrangement on Fees set forth in this Agreement.

Should the Parties, within ninety (90) days after the date of the Adjustment Request, fail to reach agreement on (i) whether an Adjustment Distortion and/or Unanticipated Capital Expenses exists, or (ii) the appropriate adjustment to the Fees if an Adjustment Distortion and/or Unanticipated Capital Expenses exists, then at the written election of either Party made within fifteen (15) days after the expiration of such 90-day period, the matter shall be determined by arbitration pursuant to Section 9.05 hereof. The adjusted Fee(s), if any, whether set by agreement or by arbitration, shall be effective retroactively as of the date of the Adjustment Request, and the Parties thereafter may invoice one another for any resulting balances or refunds due.

ARTICLE VI

CAR HIRE REIMBURSEMENT

Section 6.01. No Demurrage. During the term of this Agreement, Railroad shall not impose upon LTV, by tariff or otherwise, demurrage or any other charge or fee on account of detention of loaded or empty rail cars delivered to or constructively placed at the Set-Out /Delivery Tracks, except as set forth in Section 6.02 hereof.

Section 6.02 Net-Car Hire Reimbursement. As to empty rail cars (ordered by LTV) and loaded rail cars, delivered to, or constructively placed at, the Set-Out/Delivery Tracks as a result of a car order by LTV, the charges assessed by Railroad shall be as follows:

(a) For the first one hundred twenty (120) hours after delivery or constructive placement of a loaded car to the Set-Out/Delivery Tracks, and for the first one hundred twenty (120) hours after delivery or constructive placement on the Set-Out Delivery Tracks of an empty car ordered by LTV, there shall be no charge assessed to LTV; *provided*, that, if Railroad delivers or constructively places a rail car to the Set-Out/Delivery Tracks from 4:01 p.m. Friday through 5:59 a.m. Monday and the Youngstown Facilities are not open and operating for production and loading during such period, the 120-hour period during which no charge applies shall commence at 6:00 a.m. on Monday. The period described in this Section 6.02 during which no charge will be assessed to LTV is referred to herein as the "Free Time Period."

(b) In the event that LTV does not release an ordered car prior to the expiration of the Free Time Period, then for the period from the end of the Free Time Period through the release of the car by LTV (the "Detention Period"), LTV shall be reimburse Railroad for the actual car hire charges paid by Railroad to a third party for such car for the Detention Period, net of all free time provided to Railroad by the car owner (or party whose reporting marks are on the car) in the form of reclaim, rebate, reimbursement or other form of payment in cash or in kind. LTV shall pay car hire reimbursement due under this Section 6.02 within fifteen (15) calendar days after receipt of invoices (and appropriate supporting documentation) from Railroad. For any cars bearing the marks of Railroad or any carrier that controls, is controlled by, or is under common control with Railroad ("Affiliates"), LTV shall pay car hire reimbursement at a rate equal to the lowest rate (net

of free time in the form of reclaim, rebate, reimbursement or other form of payment in cash or in kind) that Railroad or any of its Affiliates charges for the type and age of the car in question.

(c) Railroad shall negotiate car hire rates for cars supplied by it to LTV in good faith, in the ordinary course of business and consistent with small railroad industry practices. LTV shall have the right, at its own cost and with reasonable prior notice, to audit Railroad's car hire records.

ARTICLE VII

CAR LEASE

Section 7.01. Car Lease. Railroad shall lease to LTV the fifty-five (55) rail cars identified on Schedule 7.01 pursuant to the terms and conditions of the Equipment Lease Agreement appended hereto as Exhibit C.

ARTICLE VIII

DEFAULT

Section 8.01. Each of the following shall constitute an event of default by Railroad:

(a) Breach of Agreement. Except to the extent expressly provided otherwise hereto, failure by Railroad to observe or to timely perform any obligation under this Agreement, which failure is not cured by Railroad within fifteen (15) days after receipt of written notice from LTV describing in reasonable detail the failure by Railroad to observe or perform its obligation; *provided*, that nothing in this Section 8.01(a) shall be construed as providing Railroad with a 15-day cure period prior to LTV's exercise of its rights under Section 9.02 hereof.

(b) Breach of Railroad Transportation Contracts. Failure by Railroad to observe or timely perform any obligation under any transportation agreement between Railroad and LTV which failure is not cured by Railroad within fifteen (15) days (or such longer period provided in

the transportation agreement in issue) after receipt of written notice from LTV describing in reasonable detail the failure by Railroad to observe or perform its obligation.

(c) Unauthorized Assignment. Any assignment of this Agreement or of the interest of Railroad hereunder without compliance with any and all requirements therefor set forth in this Agreement.

Section 8.02. Breach of Agreement. Failure by LTV to observe or timely perform any obligation under this Agreement, which failure is not cured by LTV within fifteen (15) days after receipt of written notice from Railroad describing in reasonable detail the failure by LTV to observe or perform its obligation, shall constitute an event of default by LTV.

ARTICLE IX

REMEDIES IN THE EVENT OF DEFAULT

Section 9.01. Indemnity. The defaulting Party ("defaulter") shall indemnify and hold harmless the other Party against all claims, damages, judgments, demands, losses, liabilities or expenses (including without limitation reasonable attorneys' fees) ("Losses") arising out of or in connection with any breach or event of default by the defaulter. In furtherance of the foregoing indemnity and not in limitation thereof, each Party agrees that:

(a) The non-defaulting party shall be entitled to all incidental damages resulting from a breach or default by the defaulter, including, but not limited to, any commercially reasonable charges, expenses or commissions incurred in effecting cover, and any other reasonable expenses incident to such breach or default; *provided*, that in no event shall the defaulter be liable for consequential damages, including, without limitation, economic loss or loss of profits.

(b) In addition to and not in limitation of the remedies set forth herein or otherwise available to the Parties hereunder in the event of a default, a non-defaulting Party shall be entitled to terminate this Agreement, upon written notice to the defaulter, if the defaulter fails to cure an event of default within thirty (30) days after written demand from the non-defaulting Party that it do so.

Section 9.02. Cover. (a) In addition to and not in limitation of the remedies set forth herein or otherwise available to LTV, in the event that Railroad fails to provide service to the Youngstown Facilities for three (3) consecutive days, other than for reasons of *force majeure* or a cause attributable to LTV, or in the event of a Service Failure, LTV (or LTV's designee) shall have the right upon written notice from LTV, to exercise interim trackage rights to serve the Youngstown Facilities (including without limitation the right to conduct the Switching Service, Local Service, Intra-Plant Service and Ancillary Services, to the extent provided in the Interim Trackage Rights Agreement) until such time as Railroad is ready, willing and able to restore service to the levels of service required under this Agreement; *provided*, that if LTV or its designee exercises the interim trackage rights pursuant to this Section 9.02(a), it shall have the right (but not the obligation) to serve the Youngstown Facilities for a minimum of thirty (30) days. LTV or its designee shall exercise such rights in accordance with the terms and conditions set forth in the Interim Trackage Rights Agreement.

(b) In addition to and not in limitation of the remedies set forth herein or otherwise available to LTV, in the event that Railroad fails to provide service to the Youngstown Facilities for five (5) consecutive days as a result of *force majeure* event, LTV (or LTV's designee) shall have the right, upon written notice from LTV, to exercise the interim trackage rights, pursuant to the Interim Trackage Rights Agreement, until such time as Railroad is ready, willing and able to

restore service to the levels of service required under this Agreement; *provided*, that if LTV or its designee exercises the interim trackage rights pursuant to this Section 9.02(b), it shall have the right (but not the obligation) to serve the Youngstown Facilities for a minimum of fifteen (15) days.

(c) Railroad shall cooperate with LTV (or its designee) in obtaining such Board authorization or exemption as is necessary, if any, for LTV (or its designee) to exercise the rights set forth in the Interim Trackage Rights Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, if LTV has the right to exercise the remedies in this Section 9.02 more than three (3) times in any eighteen (18) month period during the Initial Term or Extended Term, then, in addition to all remedies available to LTV hereunder, LTV (or its designee) shall have the right (but not the obligation) to exercise the rights under the Interim Trackage Rights Agreement for a minimum of one (1) year.

Section 9.03 Specific Performance. In addition to and not in limitation of the remedies set forth herein or otherwise available to LTV, Railroad agrees that LTV shall be entitled to the equitable remedy of specific performance with regard to Railroad's obligation to permit the exercise by LTV of its rights hereunder to provide service under the Interim Trackage Rights Agreement.

Section 9.04. Remedies Cumulative. LTV's remedies hereunder shall be cumulative and in addition to any other or further remedies provided by law or equity or by this Agreement (including the agreements appended hereto as exhibits or schedules) in respect of any breach or event of default.

Section 9.05. Arbitration. All disputes arising between LTV and Railroad with respect to this Agreement shall be submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall take place in Cleveland,

Ohio. The Parties shall attempt to agree upon an arbitrator knowledgeable and experienced in transportation agreements between shippers and railroads ("Transportation Agreements"). If the Parties are unable to agree on an arbitrator within thirty (30) days after the Party initiating the arbitration provides written notice of the commencement of the arbitration to the other Party and to the AAA, then either Party may request that the AAA select an arbitrator knowledgeable and experienced in Transportation Agreements and the AAA's selection shall be binding and nonreviewable. The arbitration shall be "baseball style," with each Party presenting its proposed resolution of the dispute, and with the arbitrator selecting the proposed resolution (without material modification) that it determines is the most consistent with the terms and conditions of this Agreement. The arbitrator's award shall be rendered within one hundred eighty (180) days after the aforedescribed written notice of the commencement of arbitration. Each Party shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs, fees and expenses of the arbitrator will be borne as determined by the arbitrator. The arbitrator shall not have the power to award consequential or punitive damages, to reform this Agreement, or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement (or termination of this Agreement pursuant to Section 9.01(b) hereof), and all payments in respect thereto shall be made in the same manner as prior to the dispute until the matter in dispute shall be finally determined by the arbitrator, and thereupon such payment or restitution shall be made in accordance with the decision or award of the arbitrator.

Section 9.06. Abandonment Rights. (a) Prior to making any regulatory filing seeking authority (including an exemption) to abandon or discontinue service on all or any portion of the rail lines owned and/or operated by Railroad (a "Filing") that are necessary to effect interchange

with any Connecting Carriers, Railroad shall notify LTV in writing of its intention to do so ("Abandonment Notice"), and provide LTV (or its designee) with an opportunity to negotiate in good faith for the purchase of the rail line(s) in question. So long as the process set forth in this Section 9.06 is ongoing, Railroad shall refrain from making a Filing. If within fifteen (15) days following receipt of an Abandonment Notice, LTV notifies Railroad of LTV's desire to acquire (or to have its designee acquire) the rail line(s) in question, then Railroad shall refrain from making any regulatory filing related to the line(s) in question pending a thirty (30)-day period (the "Negotiation Period") during which the parties shall attempt to negotiate for purchase of the line(s).

(b) If Railroad and LTV do not agree upon the terms for purchase of the line(s) in question within the Negotiation Period, then LTV shall have the right, by providing written notice to Railroad within ten (10) days after the end of the Negotiation Period, to commence an arbitration pursuant to Section 9.05 hereof (as modified by this Section 9.06(b)), to establish the net liquidation value ("NLV") of the line(s) in question. The arbitrator shall be instructed to adopt an arbitration schedule no longer than ninety (90) days, including the issuance of the arbitration decision establishing the NLV. The sale of the line(s) in question shall incorporate the following terms: (i) the conveyance of the subject line(s) shall be by quitclaim deed, free and clear of all liens and encumbrances (other than Permitted Liens, as that term is defined in the Purchase Agreement); (ii) Railroad shall provide representations and warranties concerning the subject line(s) and related contractual rights substantially similar to the representations and warranties provided by CVR to Summit in the Purchase Agreement (with appropriate adjustments to account for the fact that the line(s) in question will be conveyed as an asset sale and not as part of a stock sale); and (iii) the Parties will provide indemnification to each other substantially as provided in the indemnification provisions in the Purchase Agreement (with Railroad providing the seller indemnification and LTV

providing the buyer indemnification). The sale of the subject line(s) shall be consummated within forty-five (45) days after the decision of the arbitration establishing NLV.

ARTICLE X

WAIVER OF BREACH

Section 10.01. The failure of either Party, in any one or more instances, to insist upon performance of any of the terms, covenants or conditions of this Agreement, shall not operate or be construed as a waiver or relinquishment of same or any future right to performance of such term covenant or condition and the other Parties' obligations with respect to future performance of the same and all other terms, covenants and conditions shall continue in full force and effect.

ARTICLE XI

NOTICES

Section 11.01. All notices, demands and other communications ("Notice") to be given or delivered by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been received on the date such Notice is personally delivered, on the first business day following the date on which such Notice is sent by a national overnight delivery service, on the third business day following the date such Notice is mailed by registered or certified mail, return receipt requested, or on any date using any other method of delivery as the Parties agree. A Notice to Railroad or LTV shall, unless another address is specified in writing, be sent to the address indicated below:

If to LTV:

The LTV Corporation
200 Public Square
Cleveland, OH 44114
Attention: General Counsel

With a copy to:

Weiner Brodsky Sidman Kider PC
1300 19th Street, NW 5th Floor
Washington, D.C. 20036-1609
Attention: Mark H. Sidman

If to Railroad:

The Mahoning Valley Railway Company
136 South Fifth Street
Coshocton, OH 43812
Attention: W.A. Strawn

With a copy to:

Slover & Loftus
1224 Seventh Street, NW
Washington, D.C. 20036
Attention: Kelvin J. Dowd

ARTICLE XII

ASSIGNMENT

Section 12.01. (a) This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto. Subject to Section 12.01(b) hereof, this Agreement may not be assigned by either Party except upon the prior written consent of the other Party. Without limiting the foregoing, in any sale, lease or other disposition by Railroad of all or any portion of its rail lines to a third party, Railroad shall require as a condition of sale that the buyer, lessee or transferee assume the obligations of Railroad hereunder.

(b) In the event that LTV transfers, leases or assigns to a third party all or a portion of the Youngstown Facilities, LTV shall have the right to assign this Agreement in whole (in the event of a transfer, lease or assignment of all of the Youngstown Facilities) or in part (in the event of a transfer, lease or assignment of part of the Youngstown Facilities) to the transferee, lessee or

assignee, as applicable. If there is a partial assignment of this Agreement, and such assignment causes Railroad to incur additional expense, the parties shall negotiate an equitable adjustment to the Fees.

ARTICLE XIII

INDEMNITY AND INSURANCE

Section 13.01. Indemnity. Railroad shall keep LTV, its successors and assigns, free and harmless from and indemnify them against any and all claims for or in respect of injury (including death) or damage of any kind or nature to the person or property of each of them or of any employee thereof or of any other person caused by or arising out of acts or omissions by Railroad in the course of the performance of services hereunder, including, without limitation, any and all claims under Federal Employers' Liability Act or similar statutes, for or in respect of injury to or death of any employee of Railroad or of any representative of Railroad suffered or incurred while in or on the premises of LTV, its successors or assigns, in the course of the performance of services hereunder. The term "LTV" as used in this paragraph, shall be deemed to include LTV Steel, Inc. and companies and corporations that are from time to time subsidiary to, or affiliated with, LTV Steel, Inc.

Section 13.02. Insurance. Railroad shall procure and maintain in force at its expense during the term hereof the following policies of insurance:

(a) Federal Employers' Liability Act insurance in the amount of not less than Five Hundred Thousand Dollars ($500,000) for each accident.

(b) Commercial General Liability insurance with limits of not less than Ten Million Dollars ($10.000.000) per occurrence and Twenty-Five Million Dollars in annual aggregate, and a

self-insured retention of not more than One Hundred Thousand Dollars ($100,000). The policy shall include the following coverages: bodily injury or death; property damage; independent contractors coverage; personal injury; contractual liability; products and completed operations; broad form property damage; and sudden and accidental. The policy shall have an additional insured endorsement naming LTV as an additional insured.

(c) Property insurance covering property owned by LTV and in Railroad's care, custody and control, with limits of not less than Ten Million ($10,000,000), and a deductible not to exceed One Hundred Thousand Dollars ($100,000).

(d) Automobile Liability insurance in a combined single limit of not less than One Million Dollars ($1,000,000) covering owned, non-owned, leased or hired vehicles for each occurrence for bodily injury or death of persons and/or loss of or damage to property.

The terms and coverage of the foregoing insurance shall be evidenced by certificates to be furnished to LTV. Such certificates shall provide that (i) the insurance listed above is in full force and effect, (ii) the insurer insures against the liability assumed by Railroad under the provisions of Article XIII hereof, (iii) LTV is an additional insured , and (iv) not less than thirty (30) days' prior written notice shall be given to LTV prior to cancellation or material change of any policy. Prior to Railroad's entering upon the Youngstown Facilities, Railroad shall cause such certificates to be delivered to LTV at the address set forth in Section 11.01 hereof or at such address as LTV may from time to time specify.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Entire Agreement. This Agreement constitutes the full and complete agreement of the Parties with respect to the subject matter hereof, and supercedes all prior understandings or agreements, oral or written, with respect to the subject matter hereof that have not been set forth in this Agreement.

Section 14.02. Amendments. This Agreement shall not be amended or modified except by an instrument in writing executed by both Parties.

Section 14.03. Severability. If any of the provisions of this Agreement are deemed or adjudicated to be invalid, void or unenforceable under any applicable statute or rule of law, they are, to that extent deemed omitted from this Agreement, without invalidating or rendering unenforceable or ineffective the remainder of such provisions or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 14.04. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Ohio, without regard to doctrines of conflict of laws.

Section 14.05. Headings. The Article and Section headings in this Agreement are for convenience only and shall not be deemed to alter or affect the meaning or interpretation of the provisions thereof.

Section 14.06. Product of Negotiation. This Agreement is the product of negotiation and no one Party shall be deemed to be the drafter of this Agreement or any part hereof.

Section 14.07. Authority. Each Party represents to the other that it has full power and authority to enter into this Agreement and that the person signing below on behalf of it has been duly authorized to execute this Agreement.

Section 14.08. Condition. This Agreement is conditioned upon the contemporaneous consummation of the Transaction.

Section 14.09. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns.

Section 14.10. No Third Party Beneficiary. This Agreement and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing in this Agreement shall be construed as creating or expanding any right of any third party to recover by way of damages or otherwise against either of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

THE MAHONING VALLEY RAILWAY COMPANY

By _____

Title PRESIDENT

ATTEST:

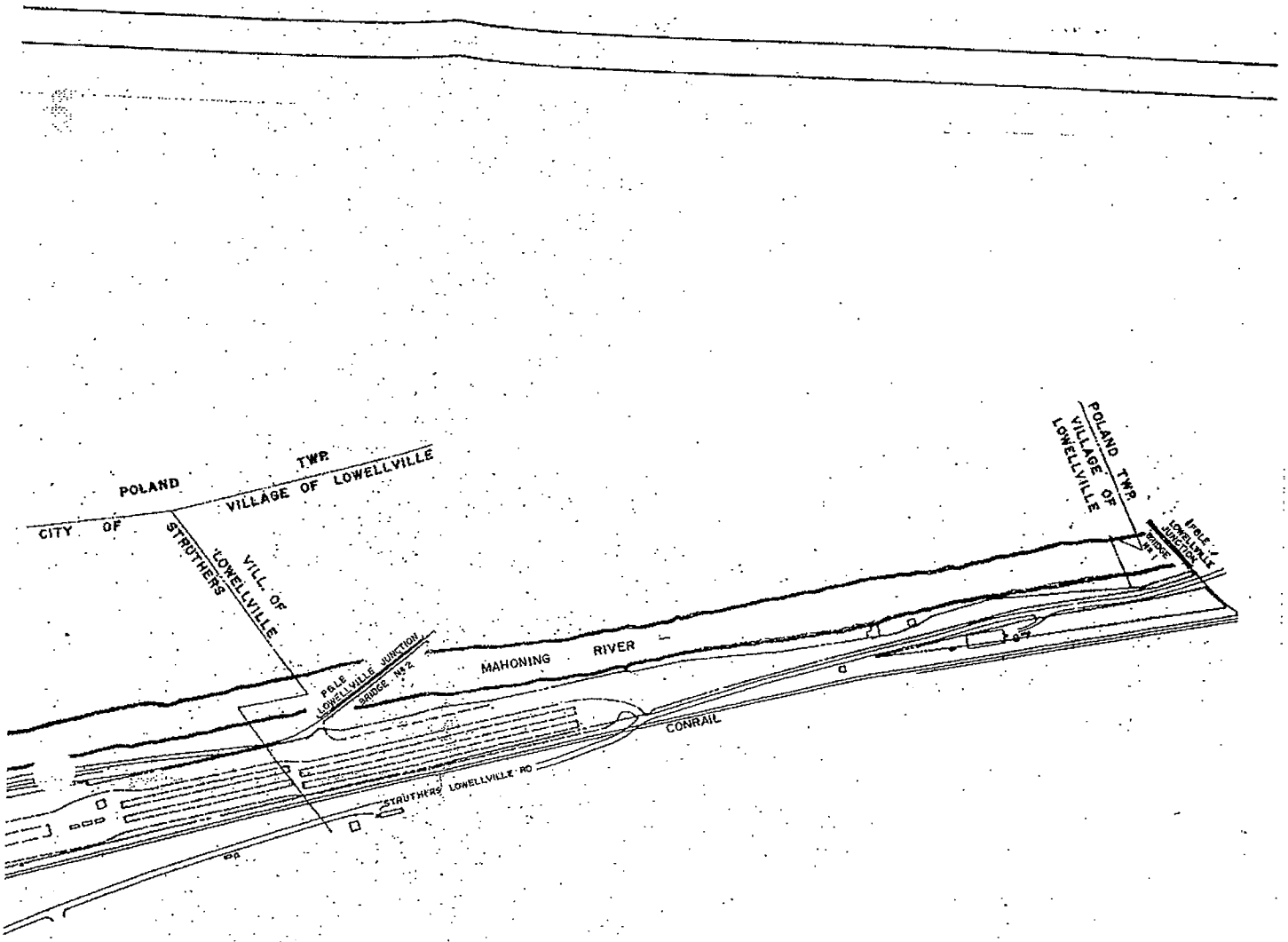
Barbara Draugh

LTV STEEL COMPANY, INC.

By _____

Title V.P. & CFO

EXHIBIT A
TO EXHIBIT D



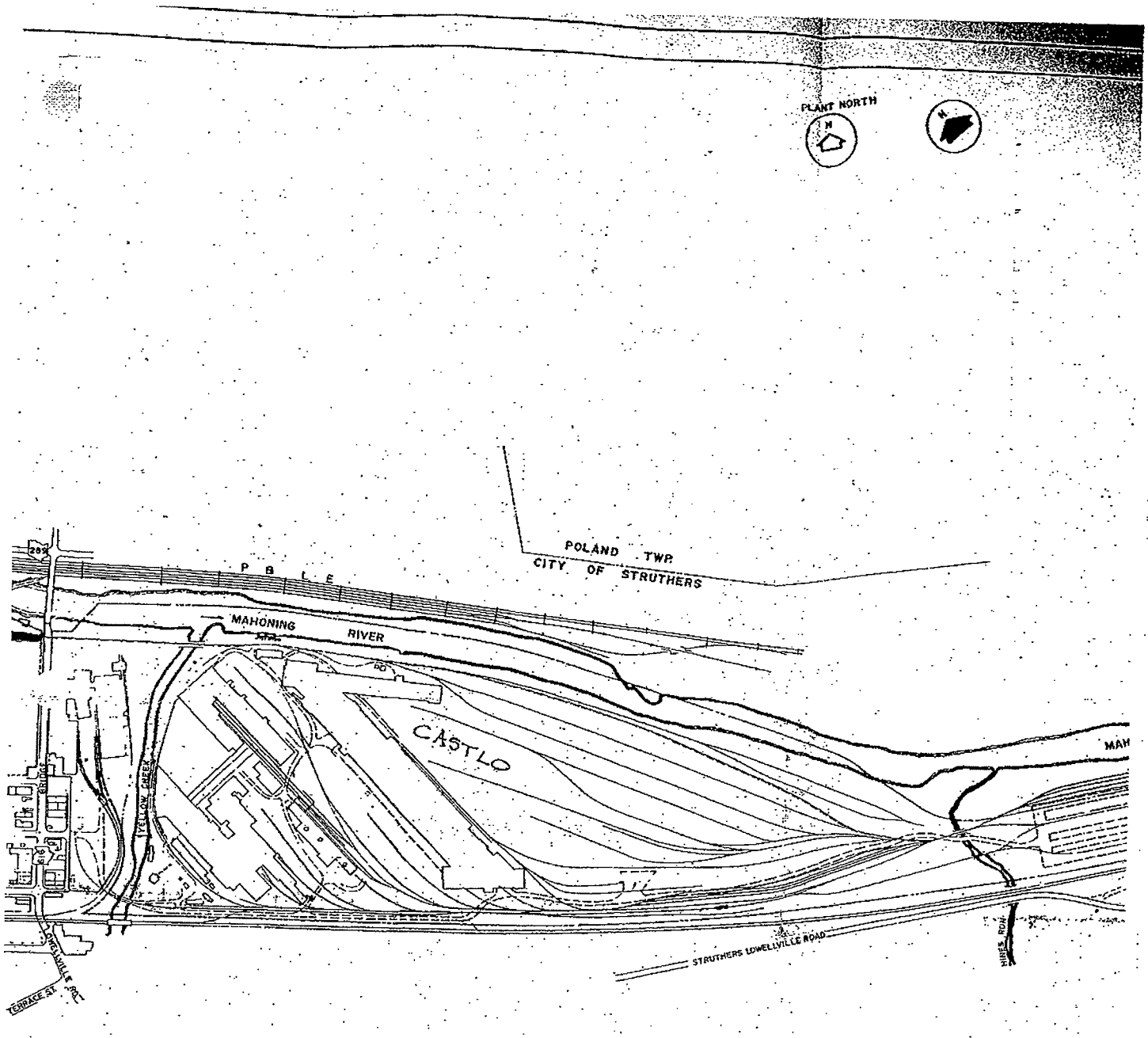
T-3

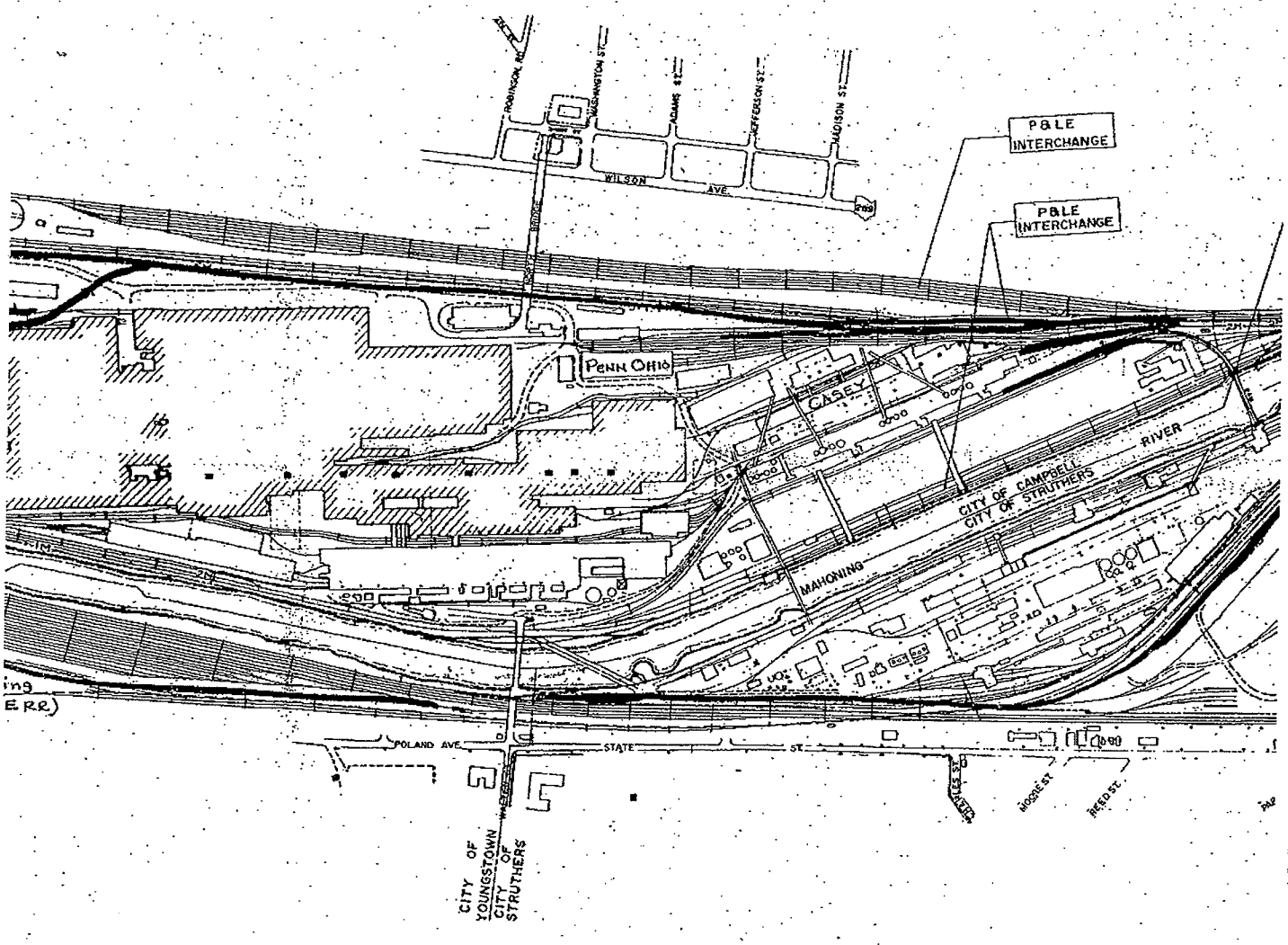
TRACK MAP

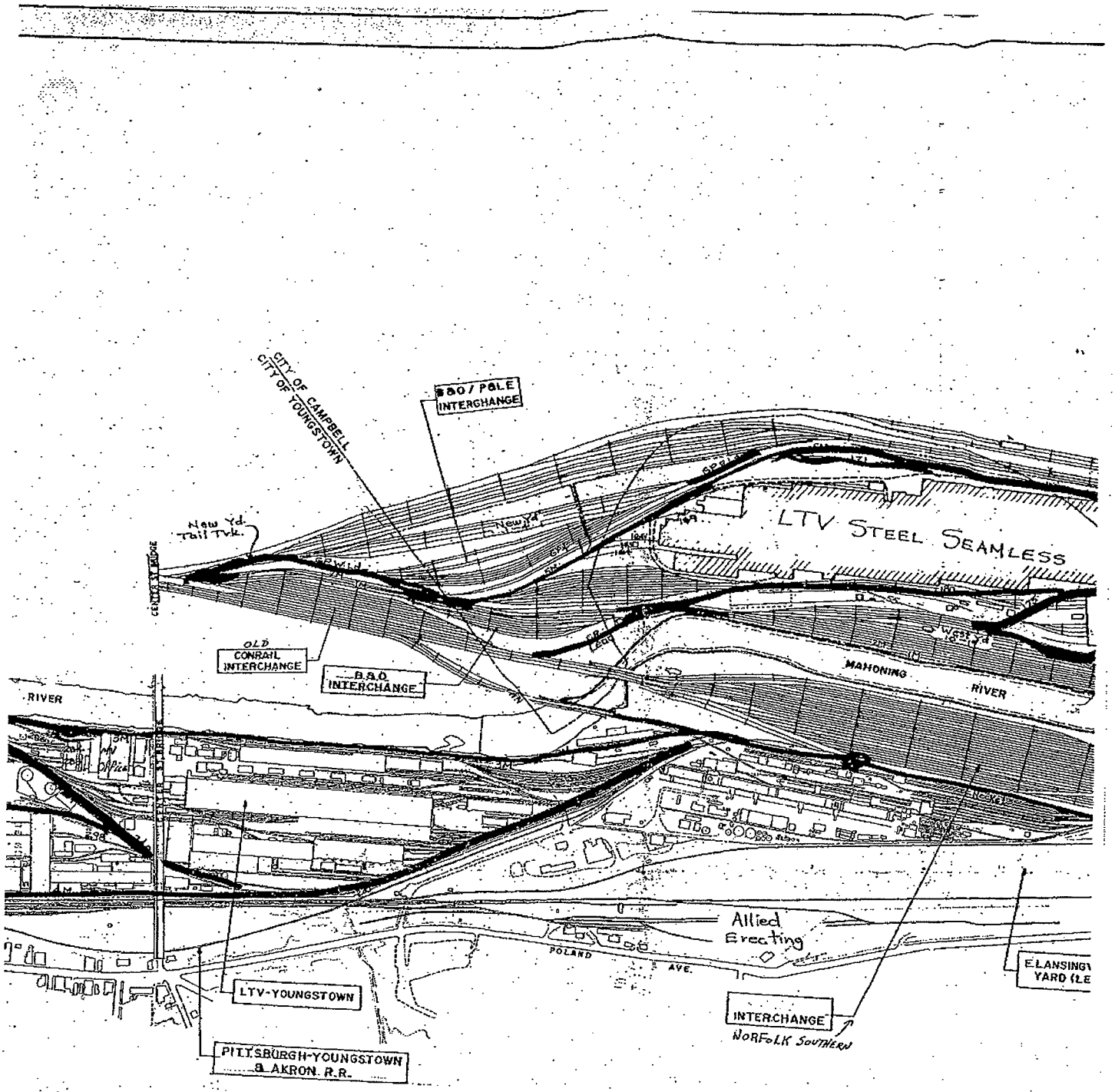
MAHONING VALLEY RAILWAY C

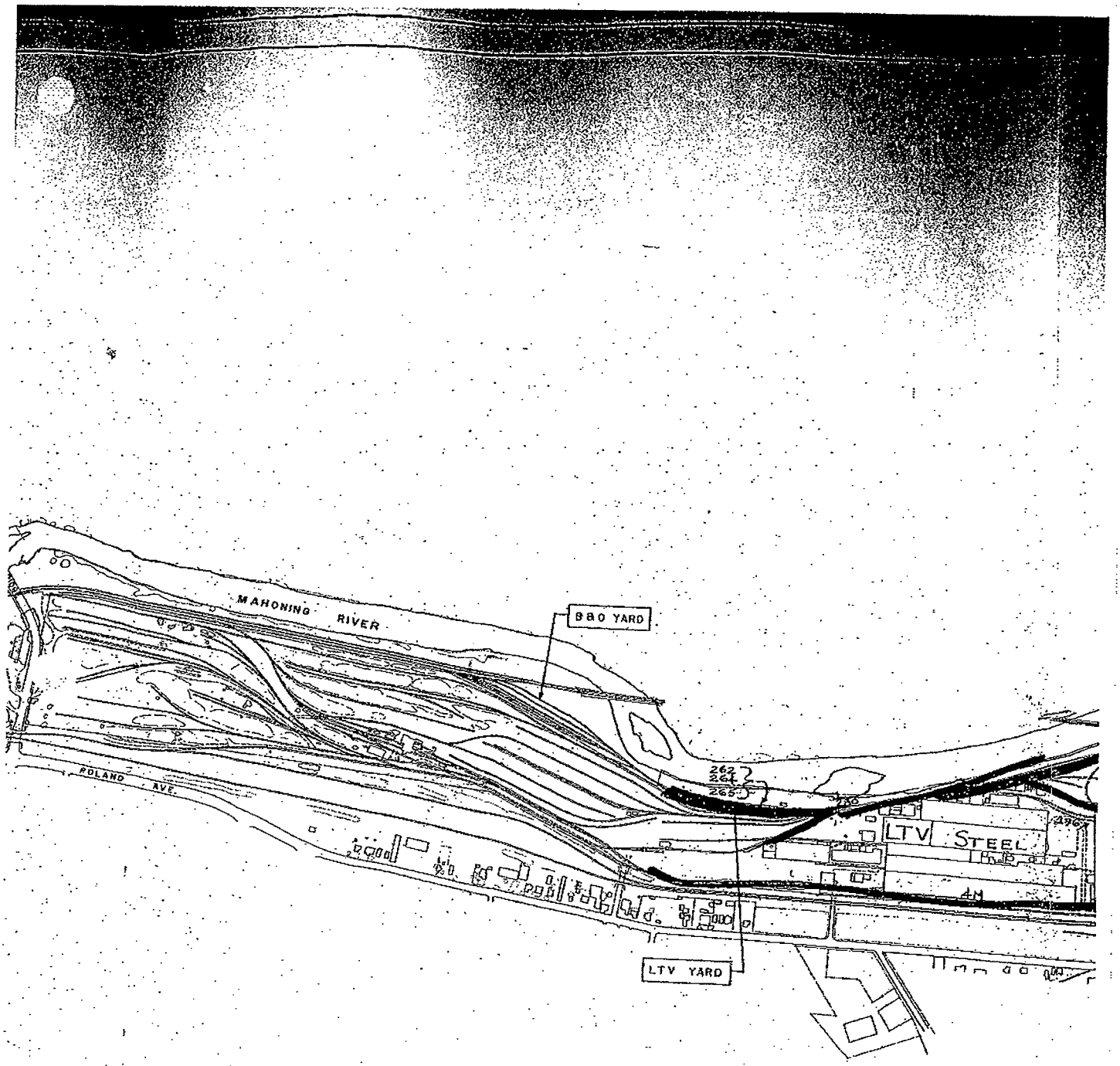
YOUNGSTOWN, MAHONING CO. OHIO

SCALE 1"=300' DATE 1-27


PLANT NORTH
N
POLAND TWP.
CITY OF STRUTHERS
P B L E
MAHONING RIVER
CASTLO
MAH
YELLOW CREEK
BRIDGE
STRUTHERS LOWELLVILLE ROAD
TERRACE ST
HINES ROAD


P&LE INTERCHANGE
P&LE INTERCHANGE
WILSON AVE
PENN OHIO
CASEY
MAHONING
RIVER
CITY OF CAMPBELL
CITY OF STRUTHERS
POLAND AVE
STATE ST
CITY OF YOUNGSTOWN
CITY OF STRUTHERS


CITY OF CAMPBELL
CITY OF YOUNGSTOWN
B&O / P&LE INTERCHANGE
New Yd.
Trail Trk.
LTV STEEL SEAMLESS
OLD CONRAIL INTERCHANGE
B.&O. INTERCHANGE
MAHONING
RIVER
RIVER
Allied Erecting
POLAND
AVE.
E. LANSING YARD (LE
LTV-YOUNGSTOWN
PITTSBURGH-YOUNGSTOWN & AKRON R.R.
INTERCHANGE
NORFOLK SOUTHERN


MAHONING RIVER
880 YARD
ROLAND AVE.
LTV STEEL
LTV YARD

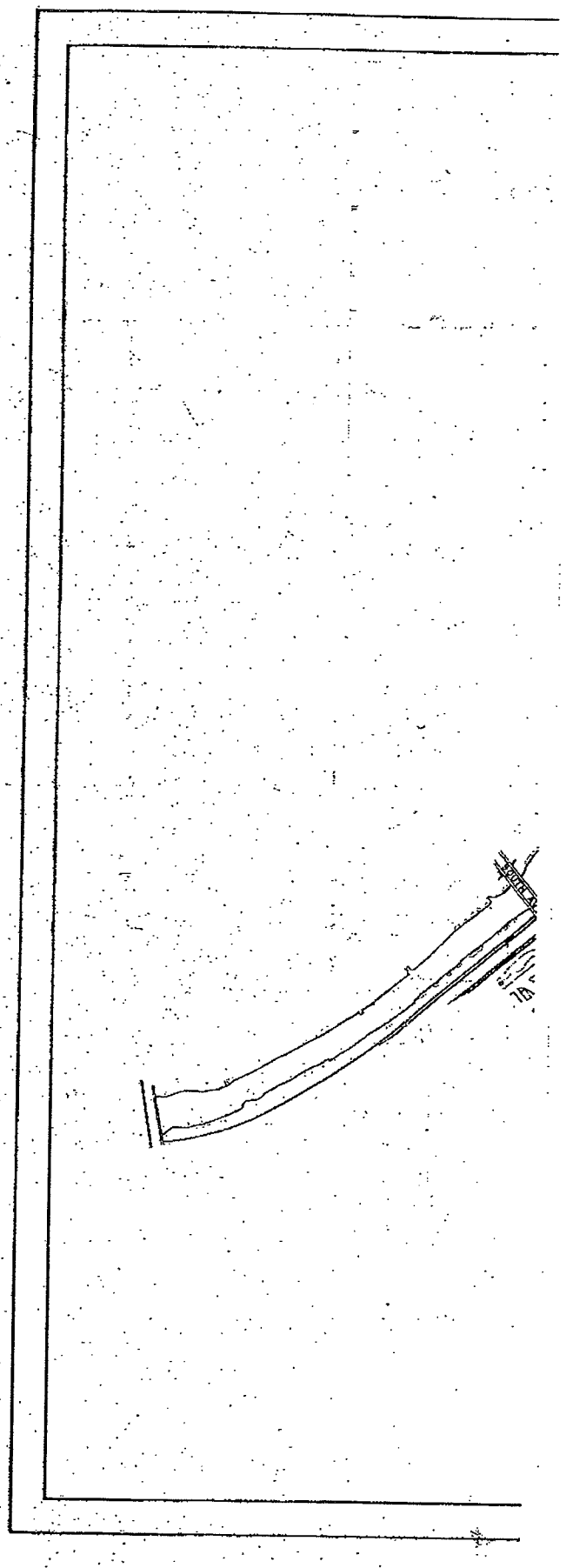


EXHIBIT B
TO EXHIBIT D

The rates in this tariff are NOT subject to RCCR TARIFFS.

MVRY 8015-I

Cancels

ICC MVRY 8015-H + Supp I, II–III

EXHIBIT B

THE MAHONING VALLEY RAILWAY COMPANY

FREIGHT TARIFF MVRY 8015-I

LOCAL AND INTERCHANGE FREIGHT TARIFF

NAMING SWITCHING RATES ON ALL TRAFFIC

BETWEEN
INDIVIDUAL SIDINGS, PUBLIC TEAM TRACKS AND INDUSTRIES
LOCATED ON
THE MAHONING VALLEY RAILWAY COMPANY
(SECTION 1)

ALSO

TO AND FROM JUNCTIONS WITH CONNECTING CARRIERS
(SECTION 2)

ALSO

SPECIAL AND STAND-BY LOCOMOTIVE SERVICE
(SECTION 3)

This tariff is governed by itself.

ISSUED: November 26, 1996

EFFECTIVE: January 1, 1997

ISSUED BY:
D. C. Curtis
Manager, Traffic and Marketing
P. O. Box 589
Campbell, OH 44405-0024

FREIGHT TARIFF MVRY 8015-H

RULES AND REGULATIONS

GENERAL RULES AND REGULATIONS

5 **GENERAL APPLICATION**

The rules and charges published in this tariff will apply for the detention of all cars consigned to, or ordered by, subscribers served by the Mahoning Valley Railway Co.

The disposition of a car at its point of detention determines the purpose for which the car is held and rules applicable thereto, except where there are specific tariff provisions to the contrary.

10 **STATION LIST AND CONDITIONS**

This tariff is governed by the Official List of Open and Prepay Stations ICC OPSL 6000 Series, to the extent shown below:

PREPAY REQUIREMENTS AND STATION CONDITIONS

For additions and abandonments of stations, and except as otherwise shown herein, for prepay requirements, changes in names of stations, restrictions as to acceptance or delivery of freight, and changes in station facilities.

GEOGRAPHICAL LIST OF STATIONS

For geographical locations of stations referred to in this tariff.

15 **EXPLOSIVES, DANGEROUS ARTICLES**

The rates in this tariff, insofar as same are to apply on explosives and other dangerous articles, will be applied in connection and in compliance with regulations governing the transportation thereof, as published in Freight Tariff ICC BOE 6000 Series.

20 **REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC.**

A. Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

▲B. Where reference is made in this tariff to another tariff, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic.

22 **CONSECUTIVE NUMBERS**

Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" or a hyphen they will be understood to include both of the numbers shown.

If the first number only bears a reference mark, such reference mark also applies to the last number shown and to all numbers between the first and last numbers

▲45 **CAPACITIES AND DIMENSIONS OF CARS**

For marked capacities, lengths, dimensions and cubical capacities of cars, see Official Railway Equipment Register.

▲60 **NATIONAL SERVICE ORDER TARIFF**

This tariff is subject to provisions of various General Permits as shown in National Service Order Tariff, ICC NSO 6100 Series

For explanation of abbreviations and reference marks, see last page of tariff.

FREIGHT TARIFF MVRY 8015-H

RULES AND REGULATIONS

75 **METHOD OF CANCELING ITEMS**

As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with "A". Example: Item 445-A cancels Item 445, and Item 300-B cancels 300-A, in a prior supplement, which in turn, cancelled Item 300.

100 **METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS**

Matter brought forward with change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number or letter, the number (or letter in the case of intrastate supplements), the number (or letter, or number and letter) being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date, consult the supplement in which the reissued matter first became effective.

SPECIAL RULES AND REGULATIONS—UNLIMITED

▲105 **APPLICATION OF RATES**

When the rates as published in Section 2 are not absorbed, in whole or in part, by Connecting Lines as provided in their individual tariffs, such unabsorbed portion of rates published in Section 2 will be in addition to line-haul rates applicable to point of interchange.

⊖110 **CAR DEMURRAGE RULES AND CHARGES**

The car service rules as provided in Freight Tariff ICC ASLG 6004 Series, published by The American Short Line Railroad Association, Agent, will govern all cars handled or switched under this tariff.

This space intentionally left blank.

For explanation of abbreviations and reference marks, see last page of tariff.

FREIGHT TARIFF MVRY 8015-H

Section 1
LOCAL SWITCHING RATES

ITEM	APPLICATION	RATES
200	All commodities, other than shown in Item 205, between all individual sidings, public team tracks and industries reached directly by Mahoning Valley Railway Company.	$140.00 per car
205	EMPTY CARS, (railway standard gauge, on own wheels):	
	(a) Of private or railroad ownership, placed for loading and not loaded, the charge per round trip will be:	$140.00 per car
	(b) Of private or railroad ownership, moved at request of industries, not in connection with a loaded revenue movement, the charge per movement will be:	$140.00 per car

Section 2
INTERCHANGE SWITCHING RATES

Covering all traffic, interchanged with CSX Transportation, Consolidated Rail Corporation and ▲the Ohio & Pennsylvania Railroad, or from all individual sidings, public team tracks and industries reached directly by Mahoning Valley Railway Company.

ITEM	APPLICATION	RATES
300	ALL COMMODITIES, other than shown in Items 301 and 302 coils	♦$99.00 per car
301	ALL COMMODITIES, Destined to or originating at industries in Struthers, Ohio	♦$170.00 per car
302	ALL COMMODITIES, Destined to or originating on ▲the Ohio & Pennsylvania Railroad	♦$170.00 per car

Section 3
SPECIAL AND STAND-BY LOCOMOTIVE SERVICE

ITEM	SUBJECT
400	SPECIAL LOCOMOTIVE SERVICE Special locomotive service is that service requested by an industry necessitating the assignment of a locomotive and crew for purposes other than routine switching of this Railroad, including such service rendered on the tracks of such industry and, or the tracks of this Railroad Company.
405	STAND-BY LOCOMOTIVE SERVICE Stand-by locomotive service is the standing-by or waiting of a locomotive during the performance of routine or special switching service, when such stand-by or waiting is required for the convenience of the industry.

For explanation of abbreviations and reference marks, see last page of tariff

FREIGHT TARIFF MVRY 8015-H

RATES

ITEM	SUBJECT	RATES
410	**CONTINUOUS SERVICE:**	
	When special locomotive service or stand-by locomotive service is required, on a full turn basis, including rerailment of cars or other equipment, or for any purpose agreed to by the Railroad, the charge for each locomotive, including crew, will be:	
	For each eight (8) hours or less	♦$931.96
	For each additional one-half (½) hour or less in excess of the first eight (8) hours	♦$77.69
	See Notes 1 and 3.	
415	**OCCASIONAL OR SHORT TIME SERVICES:**	
	When special locomotive service or stand-by locomotive service including rerailment of cars or other equipment or for any purpose other than switching is required for less than one (1) eight (8) hour turn, such service will be furnished, at the discretion of the Management of this Railroad, at the following charges:	
	Per hour	♦$116.50
	For each five (5) minutes or less	♦$9.72
	See Notes 2 and 3.	

NOTE 1: Time will commence when crew reports for duty and will continue until crew is released by the industry and has returned to its starting point.

NOTE 2: Time will commence when crew is instructed to proceed to point where special locomotive service or stand-by service is required and will continue until locomotive and crew are released for other service.

NOTE 3: Charges named herein will be in addition to all other applicable tariff charges of this railroad.

FREIGHT TARIFF MVRY 8015-G

EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS

Abbreviation	Participating carrier
CSXT	CSX Transportation, Inc.
CR	Consolidated Rail Corporation
⊕OHPA	Ohio & Pennsylvania Railroad

Abbreviation	Explanation
BOE	Bureau of Explosives
MVRY	Mahoning Valley Railway Company
NSO	National Service Order
OPSL	Open and Prepay Stations
RER	Railway Equipment Register
RPS	Railroad Publication Services

Reference mark	Explanation
▼	Reduction
♦	Increase
●	No change in rate
▲	Change in wording which results in neither an increase nor reduction in rate
⊕	New or Addition
Z	Cancel
O	Intrastate

For explanation of abbreviations and reference marks, see last page of tariff.

Provisions herein will not result in an effect on the quality of the human environment.

The rates in this tariff are NOT subject to RCCR TARIFFS.

MVRY 8015-I

Supplement No. 1

THE MAHONING VALLEY RAILWAY COMPANY

SUPPLEMENT NO. 1 TO FREIGHT TARIFF MVRY 8015-I

Item 115 INTERCHANGE ERROR DELIVERIES

Cars, empty or loaded, delivered to the MVRY in error will be returned to the delivering carrier at a charge of $99.00 per car.

NOTE: For cars, empty or loaded, delivered to Struthers, OH that must be returned due to the delivering carrier's error, the charge will be $170.00 per car.

Item 120 EMPTY CARS, UNFIT FOR LOADING

Empty cars furnished on orders for return loading and subsequently:

1. Rejected by the shipper, account unsuitable for loading as specified when ordered.
2. Refused, account cancellation of order; or
3. Refused, account other causes for which railroads are responsible

will be returned to the railroad furnishing the car or the car owner, and a charge of $99.00 per car will be made against the railroad furnishing the car.

ISSUED: March 27, 1997

EFFECTIVE: March 27, 1997

ISSUED BY:
D. C. Curtis
Manager, Traffic and Marketing
P. O. Box 589
Campbell, OH 44405-0024

Provisions herein will not result in an effect on the quality of the human environment or on energy consumption.

The rates in this tariff are NOT subject to RCCR TARIFFS.

MVRY 8015-I
Supplement No. 2

THE MAHONING VALLEY RAILWAY COMPANY

SUPPLEMENT NO. 2 TO FREIGHT TARIFF MVRY 8015-I

ITEM	APPLICATION	RATES
300	ALL COMMODITIES, other than shown in Items 301 and 302	$99.00 per car
	⊕NOTE 1: Cars interchanged with Conrail at their Hazelton Yard	$129.00 per car
301	ALL COMMODITIES destined to or originating at industries in Struthers, OH	$170.00 per car
	⊕NOTE 1: Cars interchanged with Conrail at their Hazelton Yard	$200.00 per car

Section 5

TERMINAL SWITCHING CHARGES

⊕On traffic interchanged with connecting lines and on traffic originating at points located on or connecting with the track of this Railroad, the following charges will be made in addition to all other applicable tariff charges.

ITEM	APPLICATION	RATES
	HOLDING LOADED CARS	
⊕500	For loaded cars ordered from loading point and either designated by shipper to "HOLD" or held by this Railroad account of insufficient billing instructions to move cars to destination, the charge for setting off and holding will be	$60.00 per car

ISSUED: September 17, 1997 EFFECTIVE: September 18, 1997

ISSUED BY:
D. C. Curtis
Manager, Traffic and Marketing
P. O. Box 589
Campbell, OH 44405-0024

Provisions herein will not result in an effect on the quality of the human environment.

The rates in this tariff are NOT subject to RCCR TARIFFS.

MVRY 8015-I
Supplement No. 3

THE MAHONING VALLEY RAILWAY COMPANY

SUPPLEMENT NO. 3 TO FREIGHT TARIFF MVRY 8015-I

Interchange Switching Rates

ITEM	APPLICATION	RATES
8303	ALL COMMODITIES, destined to or originating at industries in Campbell, OH	$200.00 per car

ISSUED: March 16, 1999 EFFECTIVE: March 16, 1999

ISSUED BY:
T. H. Shank
Manager, Traffic and Marketing
P. O. Box 589
Campbell, OH 44405-0024

EXHIBIT C
TO EXHIBIT D

EXHIBIT C

EQUIPMENT LEASE AGREEMENT

THIS LEASE, dated as of _____, 2001, between THE MAHONING VALLEY RAILWAY COMPANY, an Ohio corporation ("Lessor"), and LTV STEEL COMPANY, INC., a New Jersey corporation ("Lessee"). (Lessor and Lessee are referred to herein together as the "Parties," and individually as a "Party").

W I T N E S S E T H:

WHEREAS, The Cuyahoga Valley Railway Company ("CVR"), which is an affiliate of Lessee, has entered into that certain Stock Purchase Agreement among Lessor, CVR and Summit View, Inc. ("Summit") dated _____ (the "Purchase Agreement"), whereby CVR has sold and transferred to Summit all of the issued and outstanding capital stock of Lessor (the "Transaction");

WHEREAS, pursuant to Section 2.5 of the Purchase Agreement, and as part of the consideration for the Transaction, Lessor entered into that certain Transportation Services Agreement between Lessee and Lessor dated _____ (the "Services Agreement"), whereby Lessor agreed to provide Lessee with common carrier freight rail service at the levels of service set forth in the Services Agreement.

WHEREAS, following the consummation of the Transaction, Lessee will have a continuing need for rail cars for storage and intraplant movements;

WHEREAS, pursuant to Section 7.01 of the Services Agreement, and as part of the consideration for the Transaction, Lessor and Lessee are entering into this Lease.

NOW, THEREFORE, in consideration of the premises, the Purchase Agreement and the mutual undertakings set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Lease of Equipment. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the railroad cars set forth on Schedule 1 attached hereto ("Rail Cars"), subject to the terms and conditions of this Lease. Title to the Rail Cars shall be vested in Lessor to the exclusion of Lessee, and the delivery of the Rail Cars to Lessee and Lessee's possession thereof shall constitute a letting only. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Services Agreement.

2. Use of Rail Cars. The Rail Cars shall be used by Lessee solely for (i) intraplant transportation of material within the Youngstown Facilities, and/or (ii) storage of LTV material within the Youngstown Facilities or on the MVR tracks identified on Schedule 2 hereto (the "MVR Tracks"). Lessor shall perform, at the appropriate tariff or contract rate (as set forth in the Services Agreement), all movements of the Rail Cars on Lessor's Main Line and all movements from the MVR Tracks to the Youngstown Facilities; *provided, however,* that, at Lessee's option, Lessee shall be permitted to move Rail Cars from the MVR Tracks to the Youngstown Facilities.

3. Commencement of Lease. This Lease shall become effective as to each Rail Car upon the date of this Lease, and shall remain in effect for an initial term of three (3) years (the "Initial Term"). Unless either Party terminates this Agreement upon written notice to the other not more than ninety (90) days nor less thirty (30) days prior to the end of the Initial Term (or Extended Term, as applicable), this Agreement shall roll over for successive one (1) year extended terms (each of which shall be referred to herein as an "Extended Term"). As to any

particular Rail Car, this Lease shall terminate upon an Event of Loss and payment by Lessee of the Residual Value for such Rail Car in accordance with Section 11 hereof. Upon termination of the Lease, whether in whole or in part, Lessee shall no longer be responsible for rent as to the Rail Car(s) subject to such termination, and Lessor shall remove such Rail Cars(s) from the Youngstown Facilities within five (5) days after the termination date.

4. Rent.

(a) During the Initial Term, Lessee agrees to pay Lessor rent in the amount of Three Dollars ($3.00) per Rail Car for each day during which such Rail Car is used either for the intraplant movement of materials or the storage of materials (the "Rent"). The Rent shall include the use by LTV of the MVR Tracks. The Rent shall be payable monthly, in arrears, by the fifth (5th) day of each month.

(b) During each Extended Term, the Rent shall be an amount negotiated by the Parties. If the Parties fail to negotiate a new Rent amount prior to the commencement of an Extended Term, then the Rent during that Extended Term shall be the Rent amount in effect during the immediately preceding Initial Term or Extended Term, as applicable.

(c) Lessee shall keep written records, in a format mutually agreeable to the Parties, that show which Rail Cars are loaded for storage and intraplant movements each day. Such daily records shall be made available to Lessor, at Lessor's request, during normal business hours at the Youngstown Facilities. With each Rent payment, Lessee shall include a summary of the daily records for that month.

(d) This is a true lease. Lessee's obligation to pay Rent and any other amount payable under this Lease shall be as set forth herein.

5. Maintenance and Repairs. Lessee, at its sole expense, shall provide the necessary maintenance and repairs to preserve the Rail Cars in the same condition, ordinary wear and tear excepted, as when delivered to Lessee by Lessor pursuant to this Lease. Lessor acknowledges that the Rail Cars do not meet the applicable AAR Interchange Rules.

6. Indemnification.

(a) Lessee shall indemnify and hold harmless Lessor, its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims, losses, liabilities, damages, judgments, and any and all costs and expenses in connection therewith (including reasonable attorneys' fees) (collectively, "Loss") arising out of or in connection with the possession, use, maintenance and repair of Rail Cars during the period of time when such Rail Cars are subject to this Lease, including without limitation, claims for injury to or death of persons, for damage and loss to property, and for violation of any law, rule or regulation of any public authority; *provided*, that Lessee's indemnity obligation under this Section 6(a) shall not apply to the extent that a Loss is caused by the negligence or wrongful intentional act of Lessor.

(b) If any suit or action shall be brought against Lessor for Loss which under the provisions of this Lease is the responsibility of Lessee, Lessor shall promptly notify Lessee in writing, and Lessee shall have the right and be obligated to take over the defense of such suit or action.

7. Demurrage. Lessor shall not impose upon Lessee, by tariff or otherwise, any demurrage, storage or other charge or fee on account of detention of loaded or empty Rail Cars within the Youngstown Facilities or on the MVR Tracks.

8. No Warranties. LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, OPERATION OR CONDITION OF THE RAIL CARS OR ANY PART THEREOF, ITS MERCHANTABILITY, ITS FITNESS FOR A PARTICULAR PURPOSE, OR WITH RESPECT TO PATENT INFRINGEMENT, TITLE OR THE LIKE. Lessor assumes no liability for and makes no representations as to the treatment by Lessee of this Lease, Rail Cars or Rent for financial statements or tax purposes.

9. Liens. Lessee shall not directly or indirectly, create or incur or suffer to be created or incurred or to exist any lien, mortgage, charge, encumbrance, security interest or other adverse claim (a "Lien") on any Rail Car or on any of its rights under this Lease, and if any such Lien shall come to exist, Lessee shall, at its sole cost and expense, promptly remove the same and provide Lessor written evidence of such removal as Lessor may reasonably request. Notwithstanding the foregoing, Lessor hereby agrees that Lessee may make collateral assignment of this Lease to its lender ("Lender"); *provided,* that such assignment shall obligate Lender to assume, in writing, all of Lessee's obligations under the terms of this Lease in the event that Lender forecloses on Lessee's interests hereunder.

10. Sole Possession. So long as No Event of Default (as defined in Section 12 hereof) has occurred and is continuing, Lessee shall have sole possession and peaceful enjoyment of the Rail Cars.

11. Loss/Condemnation. Lessee shall be solely responsible for any loss, theft, condemnation, governmental seizure or damage to any Rail Car. If a Rail Car is lost, stolen, condemned, seized by a governmental authority or damaged beyond repair or is otherwise not useful for any purpose (each event being an "Event of Loss"), then Lessee shall, not later than

thirty (30) days after such occurrence, pay Lessor or cause Lessor to be paid the Residual Value set forth in Schedule 11 hereto opposite the number of the affected Rail Car. On receipt of such payment and all other amounts due under this Lease with respect to the Rail Car subject to the Event of Loss, Lessee's obligations to pay Rent for such Rail Car shall cease, and Lessor shall convey to Lessee title to the Rail Car "AS IS, WHERE IS," WITHOUT REPRESENTATION OF, OR RECOURSE TO, LESSOR, its agents, servants, employees or representatives, except for the warranties of good, indefeasible and unencumbered title.

12. Events of Default. The following shall constitute Events of Default:

(a) Lessee shall fail to pay all or any part of Rent due within five (5) business days after Lessee's receipt of written notice thereof from Lessor; or

(b) Lessee shall fail to perform or shall breach any of the other covenants herein and shall continue to fail to observe or perform the same for a period of thirty (30) days after Lessee's receipt of written notice thereof from Lessor; or

(c) Without Lessor's consent, Lessee, sells, leases or transfers any Rail Car to a third party; or

(d) Lessee creates, incurs, suffers to exist any Lien upon or affecting the Rail Cars, and fails to remove such Lien within thirty (30) days after Lessee's receipt of written notice thereof from Lessor; or

(e) Lessee becomes insolvent, makes an assignment for the benefit of creditors, ceases or suspends its business, admits in writing its inability to pay its debts as they mature; or bankruptcy, reorganization or other proceedings for the relief of debtors or benefit of creditors shall be instituted by or against Lessee.

13. Remedies upon Default. Upon the occurrence of any Event of Default and at any time thereafter, Lessor may do any one or more of the following with or without terminating this Lease:

(a) Accelerate the due date so that all outstanding Rent owed by Lessee to Lessor shall be due five (5) days after Lessee's receipt of written notice from Lessor that specifies the Event of Default;

(b) Upon five (5) days' written notice to Lessee, sell or lease any Rail Cars or otherwise dispose, hold or use such Rail Cars at Lessor's sole discretion;

(c) Upon five (5) days' written notice to Lessee, demand payment of all reasonable, additional costs incurred by Lessor in the course of correcting any default;

(d) Upon five (5) days' written notice to Lessee, terminate this Lease and, upon such termination, take immediate possession of the Rail Cars;

(e) Enforce performance by Lessee of the terms hereof; and

(f) Exercise any other right or remedy available to Lessor under any applicable law.

14. Assignment.

(a) With the exception of collateral assignment of this Lease by Lessee to its Lender in accordance with the provisions of Section 9 hereof, to which Lessor hereby agrees, Lessee may not, without Lessor's prior written consent, sublease, transfer, dispose of or assign any part of its rights or interest in and to this Lease (or any obligations thereunder) or the Rail Cars, except to a successor in interest to all or substantially all of the business of Lessee to which the Rail Cars relate.

15. Taxes. Lessee shall be responsible for payment of all local, state, and federal taxes (other than net income taxes) and other fees or assessments imposed upon or with respect to Lessee's acceptance, possession, lease, or return of the Rail Cars (collectively, "Taxes"). Without limiting the foregoing, Lessee shall promptly pay all sale, use or similar taxes imposed on the leasing (but not on Lessor's acquisition) of the Rail Cars hereunder. Lessee may contest any Taxes *provided* that: (a) Lessee does so in its own name and at its own expense unless it is necessary to join Lessor in the contest or bring the contest in Lessor's name; (b) the contest does not and will not result in any Lien attaching to any Rail Car or otherwise jeopardize Lessor's rights to any Rail Car; and (c) Lessee indemnifies Lessor for all expenses (including reasonable legal fees and costs), liabilities and losses that Lessor incurs as a result of any such contest. Lessee does not warrant, or indemnify Lessor against the loss of the availability of cost recovery deductions, tax credits or other tax benefits associated with Lessor's ownership of the Rail Cars.

16. STB Filing. Within forty-five (45) days of the closing of the Purchase Agreement, Lessee shall record with the Surface Transportation Board notice of this Lease, in accordance with 49 U.S.C. § 11301.

17. Notice. All notices, demands and other communications ("Notice") to be given or delivered by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been received on the date such Notice is personally delivered, on the first business day following the date on which such Notice is sent by a national overnight delivery service, on the third business day following the date such Notice is mailed by registered or certified mail, return receipt requested, or on any date using any other method of delivery as the Parties agree. A Notice to Lessee or Lessor shall, unless another address is specified in writing, be sent to the address indicated below:

If to Lessee:

The LTV Corporation
200 Public Square
Cleveland, OH 44114
Attention: General Counsel

With a copy to:

Weiner Brodsky Sidman Kider PC
1300 19th Street, NW, 5th Floor
Washington, D.C. 20036-1609
Attention: Mark H. Sidman

If to Lessor:

The Mahoning Valley Railway Company
136 South Fifth Street
Coshocton, OH 43812
Attention: W.A. Strawn

With a copy to:

Slover & Loftus
1224 Seventh Street, NW
Washington, D.C. 20036
Attention: Kelvin J. Dowd

18. Governing Law. This Lease shall be governed by the laws of the State of Ohio, without regard to doctrines of conflict of laws.

19. Headings. All section headings in this Lease are inserted for convenience only and shall not be deemed to alter or affect the meaning or interpretation of the provisions thereof.

20. Interpretation. This Lease is the result of mutual negotiations of the Parties hereto, neither of whom shall be deemed the drafter of this Lease or any portion hereof.

21. Severability. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective, valid and enforceable under applicable statute or rule of law. If any of the provisions of this Lease are deemed or adjudicated to be invalid, ineffective or unenforceable under any applicable statute or rule of law, they are, to that extent, deemed omitted from this Lease, without invalidating or rendering unenforceable or ineffective the remainder of such provisions or the remaining provisions of this Lease, which shall remain in full force and effect.

22. Entire Agreement. This Lease constitutes the entire agreement between the Parties hereto and supercedes any and all understandings or agreements, whether oral or written, between the Parties with respect to the subject matter hereof that have not been set forth in this Lease.

23. Survival. Lessee's and Lessor's obligations hereunder shall survive the termination of the Lease to the extent required for full performance and satisfaction thereof.

24. Counterparts. This Lease may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument; *provided, however,* that to the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code, as adopted by the State of Ohio) no security interest in this Lease may be created through the transfer or possession of any counterpart of this Lease other than the original executed counterpart of this Lease, which shall be identified as such counterpart.

25. Amendments and Waivers. None of the provisions of this Lease may be amended, modified or waived except in writing signed by Lessor and Lessee.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date first above written.

LTV STEEL COMPANY, INC.

By: _____

Its: _____

THE MAHONING VALLEY RAILWAY COMPANY

By: _____

Its: _____

Schedule 1

NO.	CAR INITIAL	CAR NUMBER
1	MV	900
2	MV	901
3	MV	903
4	MV	904
5	MV	905
6	MV	906
7	MV	907
8	MV	908
9	MV	909
10	MV	910
11	MV	911
12	MV	912
13	MV	913
14	MV	914
15	MV	915
16	MV	916
17	MV	917
18	MV	918
19	MV	919
20	MV	920
21	MV	921
22	MV	922
23	MV	923
24	MV	924
25	MV	925
26	MV	926
27	MV	927
28	MV	928
29	MV	929
30	MV	930
31	MV	931
32	MV	932
33	MV	933
34	MV	934
35	MV	935
36	MV	936
37	MV	937
38	MV	938
39	MV	940
40	MV	941
41	MV	942
42	MV	943
43	MV	944
44	MV	945
45	MV	946
46	MV	947
47	MV	948
48	MV	949
49	YS	317
50	YS	316
51	YS	3019
52	YS	227
53	YS	202
54	YS	217
55	YS	319

Schedule 2

MVR TRACKS

All tracks identified on Schedule 4.02 of the Transportation Services Agreement between The Mahoning Valley Railway Company ("MVR") and LTV Steel Company, Inc., dated as of _____, 2001 that are In-Service tracks, which tracks may change from time to time in MVR's reasonable discretion.

Schedule 11

RESIDUAL VALUE FOR RAIL CARS

Two Thousand Dollars ($2,000) per Rail Car

EXHIBIT D
TO EXHIBIT D

EXHIBIT D

INTERIM TRACKAGE RIGHTS

THIS AGREEMENT is made as of _____, 2001, by and between Mahoning Valley Railway Company, an Ohio corporation with offices at 136 South Fifth Street, Coshocton, Ohio 43812 ("Railroad") and LTV Steel Company, Inc., a New Jersey corporation with offices at 200 Public Square, Cleveland, OH 44114 ("LTV"). (Railroad and LTV are referred together herein as the "Parties" and individually as a "Party").

WITNESSETH:

WHEREAS, The Cuyahoga Valley Railway Company ("CVR"), which is an affiliate of LTV, has entered into that certain Stock Purchase Agreement among Railroad, CVR and Summit View, Inc. ("Summit"), dated _____ (the "Purchase Agreement"), whereby CVR has sold and transferred to Summit all of the issued and outstanding capital stock of Railroad (the "Transaction");

WHEREAS, following the consummation of the Transaction, LTV has a continuing need for transportation services at its LTV Copperweld facilities at Youngstown, Ohio (the "Youngstown Facilities, as that term is further defined in the Services Agreement"), which are served by Railroad;

WHEREAS, pursuant to Section 2.5 of the Purchase Agreement, and as part of the consideration for the Transaction, Railroad entered into that certain Transportation Services Agreement between LTV and Railroad dated _____ (the "Services Agreement"),

whereby Railroad has agreed to provide LTV with common carrier freight rail service at the levels of service set forth in the Services Agreement. and to provide LTV with certain remedies in the event that Railroad fails to fulfill its service commitments; and

WHEREAS, pursuant to Section 9.02 of the Services Agreement. and as part of the consideration for the Transaction, Railroad and LTV are entering into this Agreement.

NOW, THEREFORE. in consideration of the premises. the Purchase Agreement and the mutual undertakings set forth herein. and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged. the Parties agree as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Services Agreement. For purposes of this Agreement. Youngstown Facilities shall also include Transferred Facilities. as applicable.

2. Scope.

(a) This Agreement sets forth the understandings of the Parties concerning the grant of limited. non-exclusive trackage rights by Railroad to LTV (" Trackage Rights"). to become effective in the event that Railroad fails to provide the Youngstown Facilities with rail service at the service levels set forth in the Services Agreement.

(b) The Trackage Rights may be exercised by LTV. or at LTV's election. by either (i) any common carrier railroad company affiliate of LTV. or (ii) with the prior consent of Railroad. a common carrier railroad company that is unaffiliated with LTV. If and when LTV elects a designee. such designee shall assume all the rights and obligations of LTV under this Agreement that are related or incidental to its exercise of the Trackage Rights; *provided, however.* that. for administrative convenience. Railroad shall satisfy any notice or payment obligation to LTV's designee by providing such notice or payment to LTV. Nothing in this

Agreement shall restrict LTV's right to replace, substitute or otherwise change designees at any time; *provided*, that LTV shall not change designees more than once within any 6-month period.

3. Grant of Trackage Rights. The grant of Trackage Rights hereunder shall be for the sole purpose of LTV providing rail service to, from and in the Youngtown Facilities, including, without limitation, the rail service described in Sections 3.02 through 3.05 of the Services Agreement ("Rail Service"). This Agreement shall not confer on LTV either the right or the obligation to provide any rail services to any rail customers, other than to the Youngstown Facilities.

4. Effectiveness of Trackage Rights. The Trackage Rights will be effective only in the event that a Service Failure occurs or that Railroad otherwise fails to provide Rail Service as set forth in Sections 9.02(a) and (b) of the Services Agreement (collectively, "Trigger Events").

5. Commencement of Trackage Rights. Should a Trigger Event occur, the Trackage Rights shall become effective upon Railroad's receipt of written notice by LTV, and upon the issuance of such regulatory authority or exemption as may be necessary to permit the exercise of said Trackage Rights. Should Railroad dispute the occurrence of a Trigger Event, Railroad may initiate arbitration in accordance with Section 13 of this Agreement, *provided*, that LTV shall have the right to exercise the Trackage Rights pending the arbitrator's decision. If the arbitrator determines that a Trigger Event had not occurred, then LTV immediately shall cease operating under the Trackage Rights, and LTV shall pay Railroad liquidated damages in an amount equal to the difference between (A) the product of (i) thirty–five one hundredths (0.35), multiplied by (ii) the freight revenue that Railroad would have been entitled to had it handled the traffic to and from the Youngstown Facilities that was handled by LTV pursuant to this Agreement during the

timeframe in question, and (B) the amount expended by LTV on account of maintenance pursuant to Section 8 hereof during the timeframe in question.

6. No Railroad Fees or Charges. Railroad shall not be entitled to collect (i) any fees in connection with the use by LTV of the Main Line and Yards under this Agreement, including but not limited to any type of trackage rights fees, or (ii) any fees or charges in connection with the performance of Rail Service, including, but not limited to, any Switch Charges, Local Service charges, Intra-Plant Service fees and Ancillary Service fees, as further described in Section 5.01 of the Services Agreement.

7. Rail Operations.

(a) When operating over the Main Line and Yards pursuant to the Trackage Rights, the locomotives and crews of LTV will be equipped to communicate with Railroad on radio frequencies normally used by Railroad in directing train movements on the Main Line and Yards.

(b) LTV shall exercise the Trackage Rights in accordance with all safety rules, operating rules and other regulations of Railroad, and the movement of trains, locomotives, cars and equipment by LTV pursuant to its exercise of the Trackage Rights shall at all times be subject to the orders of the transportation officers of Railroad; *provided* that such transportation officers will use reasonable efforts to facilitate the performance of Rail Service by LTV.

(c) During its exercise of the Trackage Rights, LTV shall comply with any applicable federal, state and local laws, regulations and rules regarding the operation, condition, inspection and safety of its trains, locomotives, cars, cabooses, vehicles, machinery and other equipment (the "Equipment").

(d) In the event that a train or locomotive of LTV shall be forced to stop on the Main Line, due to a mechanical failure of its equipment, or any cause not resulting from an accident or derailment, and such train or locomotive is unable to proceed, or if in emergencies, crippled or otherwise defective cars are set out of trains of LTV on the Main Line, Railroad shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Main Line, and LTV shall reimburse Railroad for the cost of rendering any such assistance.

8. Maintenance. In any period during which LTV is exercising the Trackage Rights, if Railroad is not performing necessary maintenance and/or repairs on the Main Line and Yards consistent with the Maintenance Standards, LTV shall have the right, but not the obligation, to perform, or arrange for the performance of, any maintenance and repairs that are necessary to restore the Main Line and Yards to, or maintain the Main Line and Yards at, the Maintenance Standards. In such event, Railroad shall cooperate in good faith to facilitate the performance of such maintenance and repairs and reimburse LTV for the reasonable cost of the maintenance and repairs within thirty (30) days after receipt of an invoice for the same.

9. Liability Definitions.

(a) During the exercise of the Trackage Rights by LTV, the responsibility and liability as between Railroad and LTV for (i) any personal injury to or death of any person (including employees of the Parties and third persons); (ii) any damage to or destruction of real or personal property of any person; (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), (iv) any claims of third parties for damages, and (v) all cleanup and remediation expenses, court and regulatory costs, litigation and administrative proceeding expenses and reasonable attorneys' fees resulting from the use of rail line by either

Party, all of which (and all costs, judgments and expenses incurred in connection therewith) are collectively referred to as a "Loss," shall be apportioned as set forth in Section 10 hereof.

(b) As used in this Agreement, whenever reference is made to the Equipment of one of the Parties hereto, such expression means the Equipment in the possession of or operated by one of the Parties and includes Equipment which is owned by, leased to, or in the account of such Party. Whenever such Equipment is owned or leased by one Party to this Agreement and is in the possession or account of the other Party to this Agreement, such Equipment shall be considered that of the other Party under this Agreement.

(c) For purposes of Section 10, hereof, Employees shall be defined to include employees, officers, agents and contractors.

(d) For purposes of Section 10, hereof, the Main Line and Yards shall be deemed property of Railroad.

10. Allocation of Liability

(a) Each Party shall bear all Losses in connection with injury to or death of its own Employees, or in connection with damage to or destruction of its property and Equipment; *provided*, that to the extent that injuries to or death of one Party's Employee(s), or damage to or destruction of one Party's property or Equipment is caused solely by the negligence or intentional act of the other Party, then such other Party shall bear all Losses in connection therewith.

(b) For Losses to third parties where only the Employees, property and Equipment of LTV are involved, all such Losses shall be apportioned to LTV. For Losses to third parties where only the Employees, property and Equipment of Railroad are involved, all such Losses shall be apportioned to Railroad.

(c) For Losses to third parties where the Employees, property or Equipment of both Railroad and LTV are involved, such Losses shall be apportioned equally between the Parties; *provided*, that to the extent Losses to third parties are caused solely by the negligence or intentional act of either Railroad or LTV, then such Party shall bear all Losses in connection therewith.

(d) Solely as between Railroad and LTV, Railroad shall be responsible for any Loss that is not apportioned to LTV under Section 10(a) through (c).

(e) Whenever any Loss or any other damage is apportioned to a Party hereto under the provisions of this Agreement, that first Party shall forever protect, defend, indemnify and save harmless the other Party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that Loss or other damage apportioned to that first Party.

(f) In every case of death or injury suffered by an employee of Railroad or of LTV, where compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either Railroad or LTV, under the provisions of this Agreement, is required to pay said compensation, and such compensation is required to be paid in installments over a period of time, the paying Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(g) If a claim or suit is made against either Party hereto, the liability of which under the Agreement is allocated solely to the other Party, such Party (the "Indemnitee") shall notify immediately in writing the other Party to whom the liability is allocated hereunder (the

"Indemnitor"), and the Indemnitor shall bear all Losses in connection with such claim or suit; *provided*, that the Indemnitee shall have the right to participate in the defense of the claim or suit at its own expense, and that the Indemnitee shall have the right to control the defense of such claim or suit at Indemnitor's expense, if an adverse outcome would threaten its continued existence (but not the existence of the Indemnitor.)

(h) If a judgment is recovered against and satisfied by one Party, but involves liability that should under this Agreement be borne entirely by the other Party, then all Losses connected with such judgment and with the prosecution of the suit or other proceeding upon which it was based, shall be settled between the Parties in strict accordance with the provisions of this Agreement, and the Party against which such judgment is recovered shall be promptly reimbursed by the other Party.

11. Cessation of Trackage Rights.

(a) If a Trigger Event of the type described in Section 9.02(a) of the Services Agreement occurs, LTV shall have the right (but not the obligation) to serve the Youngstown Facilities for the longer period of (i) thirty (30) days, or (ii) five (5) days after LTV receives written notice from Railroad, with appropriate supporting documentation, stating that Railroad is ready, willing and able to provide Rail Service in accordance with the requirements of the Services Agreement. Thereupon, LTV's exercise of the Trackage Rights shall cease and LTV shall vacate the Main Line and Yards. LTV shall secure any regulatory approval or exemption incident to such cessation as may be necessary, as promptly as possible.

(b) If the Trigger Event of the type described in Section 9.02(b) of the Services Agreement occurs, LTV shall have the right (but not the obligation) to serve the Youngstown Facilities for the longer period of (i) fifteen (15) days, or (ii) five (5) days after LTV

receives written notice from Railroad, with appropriate supporting documentation, stating that Railroad is ready, willing and able to provide Rail Service in accordance with the requirements of the Services Agreement. Thereupon, LTV's exercise of the Trackage Rights shall cease and LTV shall vacate the Main Line and Yards. LTV shall secure any regulatory approval or exemption incident to such cessation as may be necessary, as promptly as possible.

(c) The cessation by LTV of the right to exercise the Trackage Rights, in accordance with this Section 11, shall in no way prohibit the subsequent exercise of the Trackage Rights by LTV if another Trigger Event occurs.

12. Termination. Except as otherwise provided in this Agreement, this Agreement shall terminate upon the termination of the Services Agreement. To the extent that regulatory approval or exemption is necessary in connection with the termination of this Agreement, each Party shall promptly file the appropriate pleadings, and cooperate with the other Party in connection with its pleadings.

13. Arbitration. All disputes arising between LTV and Railroad with respect to this Agreement shall be submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall take place in Cleveland, Ohio. The Parties shall attempt to agree upon an arbitrator knowledgeable and experienced in transportation agreements between shippers and railroads ("Transportation Agreements"). If the Parties are unable to agree on an arbitrator within thirty (30) days after the Party initiating the arbitration provides written notice of the commencement of the arbitration to the other Party and to the AAA, then either Party may request that the AAA select an arbitrator knowledgeable and experienced in Transportation Agreements and the AAA's selection shall be binding and nonreviewable. The arbitration shall be "baseball style," with each Party presenting its proposed

resolution of the dispute, and with the arbitrator selecting the proposed resolution (without material modification) that it determines is the most consistent with the terms and conditions of this Agreement. The arbitrator's award shall be rendered within one hundred eighty (180) days after the aforedescribed written notice of the commencement of arbitration. Each Party shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs, fees and expenses of the arbitrator will be borne as determined by the arbitrator. The arbitrator shall not have the power to award consequential or punitive damages, to reform this Agreement, or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement (or termination of this Agreement), and all payments in respect thereto shall be made in the same manner as prior to the dispute until the matter in dispute shall be finally determined by the arbitrator, and thereupon such payment or restitution shall be made in accordance with the decision or award of the arbitrator.

14. Regulatory Approval. Prior to, and as a condition of, the closing of the Transaction, LTV shall file, or shall cause one of its rail affiliates to file, with the Surface Transportation Board (the "Board") for regulatory approvals or exemptions necessary for LTV or its designee to exercise the Trackage Rights pursuant to the Agreement (the "Filing"). Railroad agrees to assist and support the efforts of LTV to obtain such authority. The Filing shall be substantially in the form attached hereto as Exhibit A. At any time, irrespective of whether a Trigger Event has occurred, LTV may submit, as it deems appropriate, additional regulatory filings with the Board (or its successor agency) in connection with its rights and obligations under this Agreement, and Railroad shall support such filings (including, without limitation, one

or more filings in which LTV takes the position that the Trackage Rights are not regulated under the ICC Termination Act of 1995).

15. Notice. All notices, demands and other communications ("Notice") to be given or delivered by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been received on the date such Notice is personally delivered, on the first business day following the date on which such Notice is sent by a national overnight delivery service, on the third business day following the date such Notice is mailed by registered or certified mail, return receipt requested, or on any date using any other method of delivery as the Parties agree. A Notice to Railroad or LTV shall, unless another address is specified in writing, be sent to the address indicated below:

If to LTV:

The LTV Corporation
200 Public Square
Cleveland, OH 44114
Attention: General Counsel

With a copy to:

Weiner Brodsky Sidman & Kider PC
1300 19th Street, NW, 5th Floor
Washington, D.C. 20036-1609
Attention: Mark H. Sidman

If to Railroad:

Mahoning Valley Railway Co.
136 South Fifth Street
Coshocton, OH 43812
Attention: Mr. W.J. Strawn

With a copy to:

Slover & Loftus
1224 Seventeenth Street, NW

Washington, DC 20036
Attention: Kelvin J. Dowd

16. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto. To the extent the Parties hereto are permitted or required to assign the Services Agreement, they shall be so permitted or required to assign this Agreement.

17. General Provisions.

(a) This Agreement and each provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties hereto; *provided, however*, that this Section 17(a) shall not apply to a designee elected by LTV pursuant to Section 2(b) of this Agreement.

(b) This Agreement contains the entire understanding of the Parties hereto and supercedes any and all understandings or agreements, whether oral or written, between the Parties with respect to the subject matter hereof that have not been set forth in this Agreement.

(c) All words, terms and phrases used in this Agreement that are not capitalized or otherwise defined in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(d) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties to this Agreement.

(e) All section headings in this Agreement are inserted for convenience only and shall not be deemed to alter or affect the meaning or interpretation of the provisions thereof.

(f) This Agreement is the result of mutual negotiations of the Parties hereto, neither of whom shall be deemed the drafter of this Agreement or any portion hereof.

(g) Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective, valid and enforceable under applicable statute or rule of law. If any of the provisions of this Agreement are deemed or adjudicated to be invalid, ineffective or unenforceable under any applicable statute or rule of law, they are, to that extent, deemed omitted from this Agreement, without invalidating or rendering unenforceable or ineffective the remainder of such provisions or the remaining provisions of this Agreement, which shall remain in full force and effect.

(h) This Agreement shall be governed by and construed under the laws of the State of Ohio, without regard to doctrines of conflict of laws.

(i) Each Party represents to the other that it has full power and authority to enter into this Agreement and that the person signing below or on behalf of it has been duly authorized to execute this Agreement.

(j) This Agreement is conditioned upon the contemporaneous closing of (i) the Purchase Agreement; and (ii) the Services Agreement.

(k) This Agreement shall be binding upon and inure to the benefit of the Parties hereto.

(l) The failure of either Party, in any one or more instance, to insist upon performance of any of the terms, covenants or conditions of this Agreement shall not operate or

be construed as a waiver or relinquishment of same or any future performance of the same and all other terms, covenants and conditions shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

LTV STEEL COMPANY, INC.

By: _____

Its: _____

MAHONING VALLEY RAILWAY COMPANY

By: _____

Its: _____

Schedule 3.02(a)

LTV TUBULAR
SET-OUT/DELIVERY TRACKS

Set-out/Delivery Tracks

#243 Tracks
#296 Tracks
#298 Tracks

Schedule 4.02
1 OF 5

Mahoning Valley Railway

LTV's Welded Tube Track

TRACK NUMBER	TRACK LENGTH				REMARKS SEE NOTE 1	SEE NOTE 2
	MV RWY LEASED TRACK	LTV TRACK OWNED	TENANT TRACK	TOTAL		
1 - Main	3,680			3,680	I/S - Easement on Allied R/W	X
Heckett	1,800			1,800	O/S - Easement on Allied R/W	
2 - Main	4,400			4,400	I/S - Easement on Allied R/W	X
3 - Main	9,163			9,163	I/S - Easement Allied/LTV/Ygntown	X
4 - Main	9,163			9,163	I/S - Easement Allied/LTV/Ygntown	X
220	2,200			2,200	I/S - Easement on Allied R/W - 60' O/S	X
239	2,100			2,100	I/S - Part Easement on Allied R/W	X
240	700			700	I/S - LTV R/W	X
243		1,000		1,000	I/S - LTV R/W	
245 - West	1,000			1,000	I/S - LTV R/W	
262	1,000			1,000	I/S - Easement on Ygntown	X
264	650			650	I/S - Easement on Ygntown	X
265	700			700	I/S - Easement on Ygntown	X
273	1,200			1,200	I/S - LTV R/W	
275	1,050			1,050	I/S - LTV R/W	
276	1,000			1,000	I/S - LTV R/W	
277	950			950	I/S - LTV R/W	
278	750			750	I/S - LTV R/W	
280	1,800			1,800	I/S - Easement on LTV/Ygntown	
281	250			250	I/S - LTV R/W	
282	150			150	I/S - LTV R/W - Shop	
283	500			500	I/S - LTV R/W - Shop	
284	200			200	I/S - LTV R/W - Shop	
285	300			300	I/S - LTV R/W - Shop	
286	200			200	I/S - LTV R/W - Shop	
292	2,200			2,200	I/S - LTV R/W	X
295		1,050		1,050	O/S - Part LTV & R/W?	
296		800		800	I/S - Part LTV & R/W?	

Mahoning Valley Railway
LTV's Welded Tube Track

TRACK NUMBER	TRACK LENGTH				REMARKS SEE NOTE 1	SEE NOTE 2
	MV RWY LEASED TRACK	LTV TRACK OWNED	TENANT TRACK	TOTAL		
298		900		900	I/S - LTV R/W	
TAL FEET	47,106	3,750	0	50,856		

Note 1 I/S = In Service
O/S = Out of Service
R/W = Right of Way

Note 2 Indicates Track to be Maintained to Strict Class I FRA Track Standards

Mahoning Valley Railway

LTV's Seamless Tube Track

TRACK NUMBER	TRACK LENGTH				REMARKS SEE NOTE 1	SEE NOTE 2
	MVRWY LEASED TRACK	LTV TRACK OWNED	TENANT TRACK	TOTAL		
1 - Main	6,358			6,358	O/S	
2 - Main	5,628			5,628	O/S - West End	
4 - Buster	1,120			1,120	I/S - Part under Ground	X
4 - Main East		1,690	525	2,215	I/S - Easement on Casey R/W	X
4 - Main/118			946	946	O/S - Easement on Casey R/W	
5 - Main	11,452			11,452	O/S - LTV R/W	
1 - New Yard	2,150			2,150	O/S - Vegetation	
2 - New Yard	1,539			1,539	O/S - Vegetation	
3 - New Yard	1,493			1,493	O/S - Vegetation	
4 - New Yard	1,629			1,629	O/S - Vegetation	
4 - Gorilla Park	1,822			1,822	O/S - Vegetation	
10 - West Yard	2,067			2,067	O/S - Vegetation	
11 - West Yard	1,915			1,915	O/S - Vegetation	
12 - West Yard	1,829			1,829	O/S - Vegetation	
13 - West Yard	1,680			1,680	O/S - Vegetation	
14 - West Yard	1,534			1,534	O/S - Vegetation	
15 - West Yard	1,433			1,433	O/S - Vegetation	
16 - West Yard	1,257			1,257	O/S - Vegetation	
17 - West Yard	1,757			1,757	O/S - Vegetation	
19 - West Yard	1,351			1,351	O/S - Vegetation	
55		136		136	Stub to Seamless Sludge - In Ground	
59	2,878			2,878	I/S - Repairs Needed for 1 Panel	X
66		836		836	In Ground - Into LTV Upset	
67		549		549	In Ground - Into LTV Upset	
82			901	901	Easement on Casey R/W (Quality Bar)	
83			913	913	O/S - Easement on Casey R/W	
84			1,651	1,651	O/S - Easement on Casey R/W	
87			845	845	I/S - Easement on Casey R/W	

Case: 4:09-cv-01904-JG Doc #: 73-4 Filed: 02/08/10 81 of 88. PageID #: 1444

Mahoning Valley Railway
LTV's Seamless Tube Track

TRACK NUMBER	TRACK LENGTH				REMARKS SEE NOTE 1	SEE NOTE 2
	MV RWY LEASED TRACK	LTV TRACK OWNED	TENANT TRACK	TOTAL		
88			562	562	I/S - Easement on Casey R/W	
105	426			426	I/S - LTV R/W (Sand Tower)	
108	428			428	I/S - Car Shop - LTV R/W	
109	345			345	I/S - Car Shop - LTV R/W	
115		300	90	390	I/S - Easement on LTV/Munroe R/W	
117			960	960	I/S - Easement on Casey R/W	
118			1,138	1,138	I/S - Easement on Casey R/W (Penn Ohio)	
120	1,795			1,795	O/S - Easement on Casey R/W	
121		1,455	292	1,747	I/S - Lead to 118 - Easement on Casey R/W	X
126			700	700	O/S - Switch Only - Easement on Casey R/W	
127			473	473	O/S - Switch Only - Easement on Casey R/W	
128			573	573	O/S - Switch Only - Easement on Casey R/W	
131		450		450	O/S - Lead to 83/84 - Easement on Casey R/W	
164		673		673	I/S - LTV R/W - Rounds Unloading	
165		97		97	I/S - LTV R/W - Switch Only	
166		464		464	I/S - LTV R/W - Rounds Unloading	
169		586		586	I/S - LTV R/W	
171	1,860			1,860	I/S - LTV R/W	X
172		865		865	I/S - LTV R/W	
172 1/2	675			675	I/S - LTV R/W	X
174		839		839	I/S - LTV R/W - Shipping	
175	2,269			2,269	I/S - LTV R/W - Running Track	X
176		450		450	I/S - LTV R/W - Shipping	
179		726		726	I/S - LTV R/W - Shipping	
180		453		453	I/S - LTV R/W - Shipping	X
181		323		323	I/S - LTV R/W	
182		433		433	I/S - LTV R/W	
183		493		493	I/S - LTV R/W	

Case: 4:09-cv-01904-JG Doc #: 73-4 Filed: 02/08/10 82 of 88. PageID #: 1445

Mahoning Valley Railway

LTV's Seamless Tube Track

TRACK NUMBER	TRACK LENGTH				REMARKS SEE NOTE 1	SEE NOTE 2
	MVRWY LEASED TRACK	LTV TRACK OWNED	TENANT TRACK	TOTAL		
184		298		298	I/S - LTV R/W - Roll Shop	
215	858			858	I/S - Easement to CASTLO	X
218 -Short Line	3,361			3,361	I/S - Easement to CASTLO	X
225	1,492			1,492	I/S - Easement to CASTLO	X
CR Lead	288			288	I/S - LTV R/W	X
Ladder	1,239			1,239	O/S - LTV R/W - Vegetation	
Leg	957			957	O/S - LTV R/W - Vegetation	
Gorilla Park East Lead	177			177	I/S - LTV R/W	X
Gorilla Park West Lead	674			674	I/S - LTV R/W	X
New Yard Tail Track	520			520	O/S - Stub - Part in Ground - LTV R/W	
Westbound Main			2,145	2,145	In Ground - Casey R/W	
Eastbound Main			1,556	1,556	In Ground - Casey R/W	
X-over (1x2M)	140			140	I/S - LTV R/R	X
X-over (1x2M)	125			125	I/S - LTV R/R	X
5 - Main Runaround	1,300			1,300	O/S - Easement on LTV/Casey R/W	
TOTAL FEET	69,821	12,116	14,270	96,207		

Note 1: I/S = In Service
O/S = Out of Service
R/W = Right of Way

Note 2 Indicates Track to be Maintained to Strict Class I FRA Track Standards

Case: 4:09-cv-01904-JG Doc #: 73-4 Filed: 02/08/10 83 of 88. PageID #: 1446

Schedule 4.03(a)

SERVICE SCHEDULE

1. The LTV Copperweld facility in Youngstown, Ohio (the "Facility") is operated in eight (8) hour shifts (a "Shift"). As of October 2000, the Facility is being operated one Shift per day, Monday through Friday, fifty-two (52) weeks per year. Historically, there have been periods in which the Facility has been operated two (2) Shifts per day, and it is possible that the Facility could be run three (3) shifts per day. It is also possible that the Facility could be operated six (6) or seven (7) days per week. The Mahoning Valley Railroad (the "Railroad") has been operated to accommodate the schedule of the Facility, and the willingness of the Cuyahoga Valley Railway Company to sell the stock of the Railroad to Summit View, Inc. is based, in part, on the agreement of the Railroad, following the sale of the stock, to continue to tailor its service schedule to the needs of the Facility.

2. The Facility may be operated up to three (3) Shifts per day, up to seven (7) days per week, fifty-two (52) weeks per year. During each Shift, LTV may request service from Railroad by facsimile, email or telephone (a "Request"), which service may consist of Switching Service, Local Service, Intra-Plant Service and/or Ancillary Services. Within two (2) hours after receipt of a Request, Railroad shall provide the necessary crews, power and/or equipment, and commence providing the services requested. Railroad shall be deemed to have "commenced" providing service upon its arrival at the Set-Out/Delivery Tracks, Existing Interchanges or the Facility, as

applicable, with appropriate crew, power and/or equipment. Railroad shall dedicate the necessary crew, power and/or equipment to perform the services set forth in a Request until such services have been completed.

3. As of the date of the Transportation Services Agreement, the Facility is being operated one Shift per day, 7:00 a.m. to 3:00 p.m., Monday through Friday, fifty-two (52) weeks per year. If the schedule of operations at the Facility changes, Railroad shall adjust its service schedule to accommodate the schedule of operations at the Facility, within (i) thirty (30) days after receipt of written notice of the change in schedule if the change is anticipated to be long-term (*i.e.*, more than thirty (30) days), and (ii) five (5) days after receipt of written notice of the change in schedule if the change is anticipated to be short-term (*i.e.*, up to thirty (30) days).

4. Railroad shall use best efforts to provide service as soon as possible following a Request from LTV, and shall diligently complete all services following commencement of such services. For purposes of computing Railroad's on-time performance, the Railroad will be on-time only if both (i) Railroad commences the service within the time frames set forth in this Schedule 4.03(a), and (ii) the service is completed during the business day on which the service is commenced (unless the service in question, by its nature, could not be completed the same day, in which case it shall be completed as soon as practicable).

5. All capitalized terms in this Schedule shall have the meanings ascribed to them in the Transportation Services Agreement, unless such terms are defined herein.

Schedule 5.01(c)

FEES FOR INTRA-PLANT SERVICE

1. Re-railing of derailed cars or locomotives, and track maintenance and repair: $30/hour/employee, adjusted annually pursuant to Section 5.02 of the Transportation Services Agreement ("TSA").

2. In-plant switching: the rate shown in the Tariff (as defined in Section 5.01 of the TSA), adjusted annually pursuant to Section 5.02 of the TSA.

3. Special equipment and materials used for intra-plant service will be billed on the invoice at cost plus additives not to exceed fifteen (15) percent.

Schedule 5.01(d)

FEES FOR ANCILLARY SERVICE

The actual hourly rate paid by The Mahoning Valley Railway Company to the employees performing the services, multiplied by two and two-tenths (2.20)

Schedule 7.01

NO.	CAR INITIAL	CAR NUMBER
1	MV	900
2	MV	901
3	MV	903
4	MV	904
5	MV	905
6	MV	906
7	MV	907
8	MV	908
9	MV	909
10	MV	910
11	MV	911
12	MV	912
13	MV	913
14	MV	914
15	MV	915
16	MV	916
17	MV	917
18	MV	918
19	MV	919
20	MV	920
21	MV	921
22	MV	922
23	MV	923
24	MV	924
25	MV	925
26	MV	926
27	MV	927
28	MV	928
29	MV	929
30	MV	930
31	MV	931
32	MV	932
33	MV	933
34	MV	934
35	MV	935
36	MV	936
37	MV	937
38	MV	938
39	MV	940
40	MV	941
41	MV	942
42	MV	943
43	MV	944
44	MV	945
45	MV	946
46	MV	947
47	MV	948
48	MV	949
49	YS	317
50	YS	316
51	YS	3019
52	YS	227
53	YS	202
54	YS	217
55	YS	319

PURCHASE AGREEMENT

1. **Agreement.** This Agreement is made and entered into as of March 26, 2009, between Allied Industrial Development Corporation, an Ohio corporation ("**Buyer**") and Gearmar Properties, Inc., an Ohio corporation ("**Seller**"), constitutes escrow instructions to Bauman Land Title Agency, Inc. ("**Escrow Agent**"), and represents the agreement (the "**Agreement**") on the part of the Seller to sell and on the part of the Buyer to purchase the property described below. As used herein, the term "**Effective Date**" shall be the latest date both Seller and Buyer have executed this Agreement.

2. **Property.** The Property which is the subject of this Agreement is comprised of the following (collectively, the "**Property**"):

(a) **Land**. The real property described on Exhibit A attached to this Agreement, and depicted on the site plan attached hereto as Exhibit "B" (the "**Land**");

(b) **Easements**. All easements, if any, benefiting the Land or the Improvements (as hereinafter defined);

(c) **Rights and Appurtenances**. All rights and appurtenances, if any, pertaining to the Land, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way;

(d) **Improvements**. Seller's interest, if any, in and to all improvements to and structures in and upon the Land (the "**Improvements**").

(e) **Tangible Personal Property**. Seller's interest, if any, in and to all , trade fixtures, equipment, machinery, furniture, and other personal property located on or about the Land and the Improvements and used in the operation or maintenance thereof as described on Schedule 1 attached hereto (the "**Tangible Personal Property**").

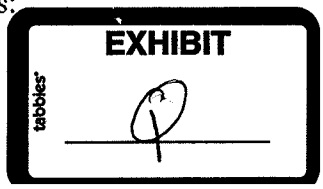
Subject to the representations and warranties of Seller set forth in this Agreement, Buyer acknowledges and agrees that it is purchasing the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS".

3. **Opening Of Escrow; Closing.**

(a) For purposes of this Agreement, the opening of escrow (the "**Opening of Escrow**") shall occur on the date on which a counterpart original of this Agreement, executed by Buyer and Seller, is delivered to Escrow Agent.

(b) The Closing of Buyer's acquisition of the Property (the "**Closing**") shall occur on, or at Buyer's election (on not less than three (3) business days notice to Seller), before the date thirty (30) days following the Feasibility Termination Date (the "**Closing Date**").

(c) The Closing shall occur at the office of Escrow Agent or at such other place as Seller and Buyer may otherwise agree in writing. The obligation of Buyer to consummate the transaction contemplated by this Agreement and to purchase the Property is subject to the satisfaction of each of the following conditions:



(i) Buyer shall not have elected to terminate this Agreement pursuant to and in accordance with a right of termination expressly given to Buyer by the terms of paragraphs 5, 6, 16, or 20 of this Agreement.

(ii) Seller shall have performed each and every agreement to be performed by Seller under this Agreement and Seller's representations, warranties and covenants set forth in this Agreement shall be true and correct in all material respects as of the Closing.

4. **Purchase Price**.

(a) The purchase price ("**Purchase Price**") for the Property shall be Nine Hundred Thousand Dollars ($900,000).

(b) The Purchase Price shall be payable as follows:

(i) Within three (3) business days following the Effective Date, Buyer shall deposit with Escrow Agent an earnest money deposit of Forty-Eight Thousand Dollars ($48,000.00) (the "**Initial Deposit**"). For convenience, the Initial Deposit and any additional deposits are sometimes collectively referred to in this Agreement as the "**Deposit**".

(ii) On or before the Closing, Buyer shall deposit with Escrow Agent the balance of the Purchase Price, increased or reduced as required to take into account the prorations and other adjustments required by this Agreement.

(c) All funds deposited in Escrow on account of the Purchase Price or otherwise shall be deposited by Escrow Agent in a demand account in a federally insured commercial bank.

(d) The Purchase Price shall be allocated with Five Hundred Thousand Dollars ($500,000) to the Land and Improvements and Four Hundred Thousand Dollars ($400,000) to the Tangible Personal Property and Other Personal Property.

5. **Review Contingency**.

(a) **Feasibility Termination Date**. Seller hereby acknowledges that there are several material contingencies to Buyer's acquisition of the Property. Accordingly, notwithstanding anything to the contrary contained in this Agreement, at any time on or before the date (the "**Feasibility Termination Date**") which is thirty (30) days after the Opening of Escrow, Buyer shall have the right, in its sole discretion, to determine whether it will proceed with this transaction or terminate this Agreement for any reason whatsoever. If, on or before the Feasibility Termination Date, Buyer delivers written notice to Seller and Escrow Agent that it has determined not to proceed with this transaction, then this Agreement shall automatically terminate on the date of Buyer's delivery of written notice of its election not to proceed. Upon such termination, Seller, Buyer and Escrow Agent shall take the actions required pursuant to paragraph 8 below. If Buyer does not deliver written notice exercising this contingency by the Feasibility Termination Date, Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this paragraph 5(a).

(b) **Property Information**. If it has not already done so, then not later than five (5) days after the Opening of Escrow, Seller shall deliver to Buyer copies of any of the

following documents or information pertaining to the Property which Seller has in its possession (the "**Due Diligence Documents**"): preliminary title report and all underlying documents; all existing environmental reports, studies or remediation plans regarding the Property or neighboring properties that may affect the Property, a report for all or part of the Property titled the Limited Phase II Environmental Site Assessment and Response Program Evaluation dated April 16, 2003 and prepared by MECX, and to the extent that any actions regarding environmental remediation were undertaken while in the control of Seller, copies of all remediation documentation and manifests associated therewith; copies of all site plans, architectural drawings and engineering plans and specifications including structural, civil, mechanical, electrical and plumbing, drawings; building permits for the Improvements; as built plans for the improvements; any reports or studies from architects, engineers, consultants, appraisers or analysts regarding the Property; all warranties and guarantees with respect to the Property in Seller's possession; any existing survey of the Property ("**Existing Survey**"); copies (or a summary) of any communications between Seller and employees, officials, or agents of any City, State, County or Federal agency or department regarding all or any portion of the Property within the past five (5) years as to any environmental issues or remediation, building code violations, proposed repairs, improvements, development or redevelopment plans or condemnation; details regarding any threatened or pending litigation involving the Property; copies of the most recent real estate tax bills and any notices relating to the assessed valuation of the Property; Exhibit A to the Lease (defined below) as described in Sections 1.01(d) and (e) of the Lease; and any other information in Seller's possession regarding the Property that may reasonably be requested by Buyer.

6. **Title Review Contingency.**

(a) As soon as possible following Opening of Escrow, but in no event later than seven (7) days after the Effective Date, Escrow Agent shall prepare and deliver to Buyer, Seller and their respective counsel a preliminary title report pertaining to the Property leading to the issuance of an ALTA extended coverage owner's policy of title insurance form, together with legible copies of all Schedule B items and all other recorded items referred to in such report (the "**Title Report**"). The Title Report shall include such endorsements as required by Buyer (the "**Endorsements**").

(b) Buyer shall be entitled to approve or object to any matters disclosed by the Title Report which may interfere with Buyer's proposed use of the Property in Buyer's sole discretion, by delivering written notice (the "**Objection Notice**") of such approval or objection to Seller and Escrow Agent within fifteen (15) days after receipt of the Title Report, but in no event later than ten (10) days prior to the Feasibility Termination Date, said notice to specify in reasonable detail any matter to which Buyer objects, and the reason for such objection.

(c) If Buyer delivers any notice of objection to any matter contained in the Title Report, Seller shall, within ten (10) days after receipt of Buyer's Objection Notice, notify Buyer and Escrow Agent in writing, whether Seller is willing or unwilling to remove or satisfy such matter objected to by Buyer on or before Closing. If Seller indicates its unwillingness to remove any matter objected to by Buyer, or if Seller fails to respond to Buyer's notice of objection, Buyer may, within seven (7) days after receipt of such written notice from Seller, notify Seller and Escrow Agent in writing of Buyer's election either to (i) terminate this Agreement, whereupon this Agreement shall terminate and Buyer, Seller and Escrow Agent shall

take such actions as set forth in paragraph 8 below, or (ii) proceed with this transaction and waive Buyer's objections. If, however, Seller indicates its willingness to attempt to remove any matter objected to by Buyer, Seller shall use commercially reasonable efforts to cause such matter to be removed on or before the Closing. If at or before the Closing such matter has not been removed by Seller, Buyer may notify Seller and Escrow Agent in writing of Buyer's election to either (i) terminate this Agreement whereupon this Agreement shall terminate and Buyer, Seller and Escrow Agent shall take such actions as are set forth in paragraph 8 below, or (ii) proceed with this transaction and waive Buyer's objections.

(d) Notwithstanding anything contained to the contrary herein, if Buyer fails to timely notify Seller and Escrow Agent of any objections to the Title Report or any amendment or modification thereto, or if Buyer fails to timely notify Seller and Escrow Agent of its election to either terminate or proceed with this transaction after delivery by Seller to Buyer of notice of its unwillingness to remove any matter objected to by Buyer, then Buyer shall be deemed to have approved the Title Report, or any modification thereto, or to have elected to proceed with this Agreement, as applicable.

(e) From and after the Opening of Escrow, Seller shall not cause or permit the Property to be subjected to any liens, encumbrances or other exceptions to title without the prior written consent of Buyer, except for an exception for taxes and assessments which are due and payable following the Closing. The foregoing prohibition shall not include those liens, encumbrances or exceptions to title which are initially disclosed on the Title Report. At the Closing, Seller shall, with the proceeds of the Purchase Price, cause to be released of record any mortgage liens, judgment liens, mechanic's liens, tax liens (other than liens for real estate taxes and assessments which are not yet payable and which are being paid by the Tenant) and other liens of definite or ascertainable amounts which are capable of being cleared from title by the payment of a sum certain encumbering the Property ("**Monetary Liens**"). As such, Buyer shall have no obligation to object to and, in no event shall Buyer be deemed to have approved, as an exception to title, any Monetary Liens encumbering the Property. All matters of record accepted or deemed accepted by Buyer pursuant to this Section 6 and the Lease (defined below) are hereinafter referred to as the "**Permitted Encumbrances**".

(f) Title Agent shall deliver to Buyer, prior to Feasibility Termination Date, current searches (dated no more than thirty (30) days prior to the Feasibility Termination Date) of all Uniform Commercial Code financing statements, tax and judgment liens filed with the Secretary of the State of Ohio or other appropriate county official, against the Property (the "**Searches**"). If such Searches reveal claims or liens against Seller or the Property encumbering all or any portion of the Property, then if Seller fails to remove such filings to Buyer's reasonable satisfaction, by the date of Closing, then Buyer may terminate this Agreement by written notice to the Seller, in which Escrow Agent shall take such actions are described in paragraph 8 below, and neither party shall have any further liability to the other hereunder.

(g) Buyer, at its option and at its expense, may obtain a current survey of the Property. Such updated survey, if any, shall be completed prior to the Feasibility Termination Date. Buyer shall be entitled to object to any matters disclosed by the updated survey which indicates the presence of any encroachments by or upon the Land, or other matters which do or could adversely affect Buyer's use, development, operation or financing of the Land, by delivering written notice (the "**Survey Objection Notice**") of such objection to Seller and

Escrow Agent within fifteen (15) days after receipt of the Title Report, but in no event later than three (3) days prior to the Feasibility Termination Date, said notice to specify in reasonable detail any matter to which Buyer objects, and the reason for such objection. If Buyer delivers any Survey Objection Notice, Seller shall, on or before the Feasibility Termination Date, notify Buyer and Escrow Agent in writing, whether Seller is willing or unwilling to remove or satisfy such matter objected to by Buyer on or before Closing. If Seller indicates its unwillingness to remove any matter objected to by Buyer, or if Seller fails to respond to Buyer's notice of objection, Buyer may, within two (2) days after receipt of such written notice from Seller, notify Seller and Escrow Agent in writing of Buyer's election either to (i) terminate this Agreement, whereupon this Agreement shall terminate and Buyer, Seller and Escrow Agent shall take such actions as set forth in paragraph 8 below, or (ii) proceed with this transaction and waive Buyer's objections. If, however, Seller indicates its willingness to attempt to remove or satisfy any matter objected to by Buyer, Seller shall use commercially reasonable efforts to cause such matter to be removed or satisfied on or before the Closing. If at or before the Closing such matter has not been removed or satisfied by Seller, Buyer may notify Seller and Escrow Agent in writing of Buyer's election to either (i) terminate this Agreement whereupon this Agreement shall terminate and Buyer, Seller and Escrow Agent shall take such actions as are set forth in paragraph 8 below, or (ii) proceed with this transaction and waive Buyer's objections.

7. **Seller's Covenants**.

(a) **Notices, Litigation**. Seller shall promptly advise Buyer of any litigation, arbitration or administrative hearing or proceeding concerning the Property arising or threatened of which Seller receives notice. Seller shall deliver to Buyer written notice of any notice or information relating to the Property received by Seller from any and all governmental or quasi-governmental authorities or entities or third parties after Opening of Escrow within three (3) business days after receipt thereof by Seller.

(b) **Leases**. Seller shall not, without the consent of Buyer, enter into any lease for the Property, except that the Property is subject to that certain Lease dated as of May 1, 2005 entered into by Ohio and Pennsylvania Railroad Company, Inc., as landlord, and MHF-LS Equipment, Inc., as tenant (the "Lease").

(c) **Zoning**. Seller shall not apply for or consent to any change to or modification with respect to zoning, development or use of the Property without Buyer's prior written consent.

(d) **Alterations**. Seller shall not materially alter the Property or make any material alterations or improvements thereon without Buyer's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. As used herein, "material" shall mean alterations or improvements costing in excess of $25,000.00.

(e) **Solicitation of Backup Offers**. Neither Seller nor Seller's agents officers, director and employees, shall offer, accept an offer to sell, or negotiate any offer to sell or lease the Property, or otherwise market or show the Property during such time as this Agreement is in effect.

(f) **Pre-Closing Expenses**. Seller or tenant has paid or will pay in full, prior to Closing (i) all bills and invoices for labor, goods, material and services of any kind relating to the Property, for the period prior to Closing; and (ii) utility charges, relating to the period prior to Closing. Any alterations, installations, decorations and other work required to be performed under any and all agreements affecting the Property have been or will, by the Closing, be completed and paid for in full.

(g) **No Lien or Encumbrance**. After the Effective Date and prior to Closing, Seller shall not create any new liens or encumbrances over all or any part of the Property or any interest therein, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned.

(h) **Change in Conditions**. Seller shall promptly notify Buyer of any substantive or material change in any condition with respect to the Property or of the occurrence of any substantive or material event or circumstance which makes any representation or warranty of Seller to Buyer under this Agreement untrue or misleading, or any covenant of Seller under this Agreement incapable or less likely of being performed.

8. **Termination of Agreement and Escrow; Nondefault**. If this Agreement is terminated by Buyer prior to the Closing as permitted by the provisions of paragraphs 5, 6, 16, or 20 of this Agreement, Buyer shall be entitled to the return of the Deposit. Each party shall return all documents to the party which supplied the documents. Buyer, in its sole discretion, may at any time in writing to Seller and Escrow Agent waive any one or more of the contingencies applicable to it in which case the waived contingency or contingencies shall be deemed to be fully satisfied.

9. **Instruments of Conveyance**. Prior to the Closing, Seller shall execute, acknowledge and/or deliver to Escrow Agent (a) a general warranty deed conveying the Land, Improvements, Easements and Rights and Appurtenances to Buyer, as grantee, subject only to the Permitted Encumbrances; (b) an affidavit of non-foreign person as contemplated by §1445 of the Internal Revenue Code of 1986, as amended; (c) a bill of sale conveying to Buyer the Tangible Personal Property, if any; (d) an assignment of the Lease; (e) an assignment of Intangible Property assigning to Buyer the Intangible Property, if any; (f) an assignment and assumption of contracts assigning to Buyer the Contracts, if any; (g) a Seller's Affidavit in form and substance acceptable to the Escrow Agent to allow for the deletion of the pre-printed exceptions in the owner's title policy; (h) an assignment of any warranties relating to the Property; and (i) such other documents and instruments as may reasonably be required by Buyer, its counsel, its lender, or the Escrow Agent, and which may be reasonably necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto, not inconsistent with the terms of this Agreement. In addition, at the Closing, Seller shall deliver to Buyer (k) any and all keys in Seller's possession relating to the Property; and (ii) the originals of the licenses, permits and approvals issued to Seller to the extent not previously delivered and in Seller's possession. After Closing, Seller shall execute and deliver to Buyer such further documents and instruments as Seller and Buyer may agree, which Buyer shall reasonably request to effect this transaction and otherwise effect the agreements of the parties hereto.

10. **Title Insurance Policy**. At the Closing, Escrow Agent, shall furnish to Buyer an ALTA owner's title insurance policy with extended coverage over the general exceptions and the Endorsements, issued by Escrow Agent, or the unconditional commitment of Escrow Agent to

issue such policy (which commitment shall be deemed made upon the recordation by Escrow Agent of the deed provided for above) with a limit of liability in the amount of the Purchase Price, insuring that title to such Property is held by Buyer in fee simple subject only to the Permitted Encumbrances.

11. **Right of Entry**. Buyer and its engineers and agents shall have access to the Property at reasonable times after reasonable prior written notice (including email) after Opening of Escrow for the purpose of conducting geological, soil, drainage, engineering, building inspection, environmental tests and other studies which Buyer, in its reasonable discretion, deems necessary to determine whether the Property is suitable for Buyer's contemplated use; Seller shall have the right to have a representative present at any time Buyer intends to access the Property. Buyer and Buyer's agents shall be subject to all reasonable requirements of Seller with respect to their access to and testing of the Property (including without limitation, the obligation to provide insurance and to indemnify Seller with respect to such access and testing). Buyer shall thereafter restore the Property to substantially the condition which existed prior to performing such tests and studies and indemnify Seller for, from and against any liability deriving therefrom including, without limitation, personal injury or property damage, liability from and against any mechanics', materialmen's and professional service liens against the Property, which indemnification shall survive the Closing or the termination of this Agreement. Buyer shall not be obligated to indemnify Seller for any personal injury or property damage arising out of Seller's actions or the existing condition of the Property.

12. **Brokerage**. Buyer and Seller represent and warrant to the other that neither has engaged with any broker or finder in connection with this transaction. Buyer and Seller shall each indemnify, protect, defend and hold the other harmless for, from and against any expense, including, without limitation, attorneys' and accountants' fees, claims, actions, suits or demands for payment of any commission, finder's fee or other sum initiated by any broker, commission agent or other person concerning the transaction contemplated by this Agreement. Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth in this paragraph shall survive any termination of this Agreement.

13. **Buyer's Representations and Warranties**. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

(a) Buyer is an Ohio corporation and has the full legal power and authority to enter into this Agreement. On or before the Closing, all necessary action will have been taken to duly authorize the execution and delivery of this Agreement and all documents and instruments contemplated by this Agreement, and the performance by Buyer of the covenants and obligations to be performed and carried out by him hereunder.

(b) Buyer is not prohibited from consummating the transactions contemplated by this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

14. **Seller's Representations and Warranties**. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

(a) Seller is a corporation duly formed and validly existing pursuant to the laws of the State of Ohio, is qualified to do business in the State of Ohio, and has the full

corporate power and authority to enter into this Agreement. The person(s) signing this Agreement and any documents and instruments in connection herewith on behalf of Seller have full power and authority to do so. On or before the Closing, all necessary action will have been taken to duly authorize the execution and delivery of this Agreement and all documents and instruments contemplated by this Agreement, and the performance by Seller of the covenants and obligations to be formed and carried out by it hereunder.

(b) The execution, delivery and performance by Seller of this Agreement and such other instruments and documents to be executed and delivered in connection herewith by Seller does not, and will not, result in any violation of, or conflict with or constitute a default under any provision of any agreement of Seller or any mortgage, deed of trust, indenture, lease, security agreement, or other instrument or agreement to which Seller is a party, or any judgment, writ, decree, order, injunction, rule or governmental regulation to which it is subject.

(c) Seller is not prohibited from consummating the transactions contemplated by this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

(d) Other than the lease, there are no outstanding and enforceable leases, tenancies, options, rights of first refusal, licenses, or operating or other agreements applicable to or affecting the Property to which Seller is a party or as to which Seller has knowledge. Other than under the Lease, no third party has any right to utilize or possess the Property; and other than this Agreement, there are no contracts or agreements relating to the sale, exchange or transfer of the Property or any part thereof.

(e) Except as disclosed in writing to Buyer, Seller has not utilized the Property for the treatment, storage or disposal of hazardous substances or wastes or petroleum products, and, to Seller's actual knowledge, there are no underground storage and septic tanks upon the Property. Seller has not received any written notice of violations of any local, state or federal statutes or laws governing the generation, treatment, storage, disposal, or clean-up of hazardous substances, including, without limitation, under the Environmental Quality Act of 1986, the Toxic Substance Control Act of 1976, or the Resource Conservation and Recovery Act of 1976, as they have been amended from time to time.

(f) Seller is the legal fee simple titleholder of the Land and Improvements and will at Closing have, good, marketable and insurable title to the Land and Improvements.

(g) To the actual, present knowledge of Seller, without inquiry, the Property is in full compliance with all applicable municipal licenses, permits and authorizations.

(h) To the actual present knowledge of Seller, without inquiry, the Property and all improvements constituting a portion of the Property comply with all applicable laws, statutes, ordinances and regulations, including, without limitation, the Americans with Disabilities Act.

(i) There are no pending (or to the Seller's actual knowledge, without inquiry, threatened) judicial, municipal or administrative proceedings affecting the Property or any portion thereof, including, without limitation, proceedings for or involving collections, condemnation, eminent domain, modifications to the public roadways adjacent to the Property, or modifications to

the access points to the Property from said public roadway, alleged building code, environmental or zoning violations or personal injuries or property damage alleged to have occurred on the Property or by reason of the condition, use of, or operations on the Property. Seller has received no written notice from any municipal, state, federal or other governmental authority of zoning, building, fire, water, use, health, environmental or other statute, ordinance, code or regulatory violations issued in respect to the Property. In the event Seller actually receives notice from any municipal, state, federal or other governmental authority of any violation of any zoning, building, fire, water, use, health, environmental or other statute, ordinance, code or regulatory violations with respect to the Property prior to Closing, Seller shall promptly advise Buyer thereof in writing.

(j) There are no contracts or agreements with respect to the Property or any part thereof which cannot be terminated by Seller or Buyer at will without any liability.

15. **Apportionment and Incidental Costs**.

(a) **Closing Costs**. If the transaction contemplated by this Agreement is consummated, Seller will pay the entire cost of the ALTA Extended Coverage Title Policy (but not the cost of any Endorsements), the cost of the searches, the cost of all documentary, state, local and county transfer taxes relating to the instruments of conveyance contemplated herein and ½ of any escrow fees. Buyer and Seller shall divide the cost of any escrows hereunder equally between them.

(b) **Taxes and Assessments**. All real property taxes and assessments shall be prorated as of the date of Closing. Seller shall pay all special assessments, if any, against the Property as of date of this Agreement, unless such special assessments are payable in installments, in which event Buyer shall pay all installments due and payable after the Closing Date.

(c) **Utility and Maintenance Charges**. All charges for water, electricity, gas, trash removal, sewer, telephone or other utility services or landscaping or other maintenance services which are furnished to or in connection with the Property prior to the Closing shall be paid by Seller.

(d) **Limitation of Liability**. Upon the Closing, Buyer shall neither assume nor undertake to pay, satisfy or discharge any liabilities, obligations or commitments of Seller other than those specifically agreed to between the parties and set forth in this Agreement. Except with respect to the foregoing obligations, Buyer shall not assume or discharge any debts, obligations, liabilities or commitments of Seller, whether accrued now or hereafter, fixed or contingent known or unknown.

16. **Changes in the Property**.

(a) **Condemnation**. Should all or any material part of the Property be taken by eminent domain proceedings prior to the Feasibility Termination Date, or, if prior to the Feasibility Termination Date, any governmental authority should issue notice of any taking or proposed taking of any material portion of the Property, Buyer may terminate this Agreement by sending written notice thereof to Seller and Escrow Agent within ten (10) days following notice to Buyer of such taking. If Buyer does not elect to terminate, then this Agreement shall remain

in full force and effect and Seller shall credit to Buyer, at the Closing, all monies received by Seller by reason of the taking of a portion of the Property and shall assign to Buyer all of Seller's claim to such compensation or award. All other awards shall be retained by the Seller, and shall not be assigned to Buyer. In the event Buyer terminates this Agreement pursuant to this paragraph, Buyer shall be entitled to an immediate refund of the Deposit and any other monies paid on account of the Purchase Price, together with any interest earned thereon. If Buyer elects to proceed with the Closing, Buyer shall use the proceeds assigned to Buyer as aforesaid to repair and restore the Property as provided in the Lease.

(b) **Casualty**. Seller shall notify Buyer immediately of the occurrence of any damage to or destruction of the Property or any portion thereof. In the event of any damage to or destruction of any portion of the Property for which Buyer and Seller reasonably determine that the cost to repair exceeds Fifty Thousand and No/100 Dollars ($50,000.00), Buyer at its option may terminate this Agreement by sending written notice thereof to Seller and Escrow Agent within ten (10) days following notice to Buyer of such casualty. If Buyer does not elect to terminate, then this Agreement shall remain in full force and effect and Seller shall credit to Buyer, at the Closing, all insurance proceeds, if any, collected by Seller relating to damage to the Property prior to the Closing, and Seller shall assign to Buyer all rights to all other insurance proceeds, if any, relating to damage to the Property not collected prior to the Closing, plus any rental loss proceeds for any period after the Closing (it being agreed that rental insurance proceeds, if any, for periods prior to the Closing, if not paid to Seller by the Closing, shall be payable to Seller by Buyer in the event Buyer actually receives any such proceeds). In the event Buyer terminates this Agreement pursuant to this paragraph, Buyer shall be entitled to an immediate refund of the Deposit and any other monies paid on account of the Purchase Price, together with any interest earned thereon. If Buyer elects to proceed with the Closing, Buyer shall be entitled to the full amount of the insurance proceeds, if any, plus the deductible portion from the Seller, if any. Buyer has been informed that Seller does not carry any hazard or rental insurance.

17. **Possession.** Exclusive possession of the Property shall be delivered to Buyer upon the Closing, subject, however, to the rights of the tenant under the Lease.

18. **Notices.** Unless otherwise required by law, all notices required to be given hereunder shall be in writing and shall be conveyed by (i) nationally recognized overnight courier service, or (ii) the United States Postal Service by certified or registered mail, postage prepaid, with return receipt requested, or (iii) by fax and first class mail, as follows:

If to Buyer:	Allied Industrial Development Corporation 2100 Poland Avenue Youngstown, Ohio 44502 Attn: John R. Ramun, President Fax: (330) 744-3218
With a copy to:	Nadler Nadler & Burdman CO., LPA 20 Federal Plaza West, Suite 600 Youngstown, Ohio 44503-1423 Attn: Jay M. Skolnick, Esq. Fax: (330) 744-8690
If to Seller:	Gearmar Properties Inc. Post Office Box 209 Portersville, Pennsylvania 16051 Attn: Dean A. Gearhart Fax: (724) 368-9839
With a copy to:	Keating, Keating & Kuzman 170 Monroe Avenue, NW Warren, Ohio 44483 Attn: Leo W. Keating Fax: (330) 394-0101
If to Escrow Agent:	Bauman Land Title Agency, Inc. 108 Main Street, SW, Suite 905 Huntington National Bank Tower Warren, Ohio 44481 Fax: (330) 392-5739

Notice given by personal delivery shall be deemed to have been given upon delivery to the appropriate address (or upon refusal of acceptance), and notice by fax shall be deemed to have been given upon telephonic confirmation of successful transmission prior to 3:00 p.m. EST. Each party may designate from time to time, another address in place of the address hereinabove set forth by notifying the other parties in the same manner as provided in this paragraph.

19. **Default by Buyer.** If Buyer shall default in its obligation to complete the purchase of the Property pursuant to the terms of this Agreement, Seller shall be entitled to retain the Deposit together with any interest earnings thereon as liquidated damages to Seller for such breach by Buyer, Buyer and Seller agreeing that the amount of damages for such breach by Buyer is difficult to determine at this time and that the aforesaid sum is a reasonable estimation of the amount of liquidated damages for such breach under the circumstances existing at the time this Agreement is entered into; provided, the foregoing shall not apply to or limit Buyer's obligation or Seller's rights, with respect to the indemnity provisions of paragraphs 11 and 12. Five (5) business days after Seller delivers to Buyer and Escrow Agent notice of default specifying the nature of the default, provided that such default is not cured within such five (5) business day period or unless Buyer in good faith disputes the existence of an event of default in

which event the Escrow Agent may pay the money into court pending resolution of the dispute, Escrow Agent shall deliver to Seller all such sums then held by Escrow Agent (including all interest earned in accordance with the provisions of paragraph 4(c)), whereupon this Agreement shall be deemed terminated, subject only to any continuing indemnities contained herein.

20. **Default by Seller.** If Seller defaults hereunder prior to the Closing, then, at Buyer's option and as its sole remedies:

(a) Buyer, upon giving written notice to Seller and Escrow Agent, may terminate this transaction and Escrow, whereupon (i) all amounts paid by Buyer under this Agreement and all interest earned in accordance with the provisions of paragraph 4(c) shall be returned to Buyer on the sixth (6th) business day following such notice, unless Seller in good faith disputes the existence of an event of default in which event the Escrow Agent may pay the money into court pending resolution of the dispute, and (ii) Seller shall reimburse Buyer for its actual out of pocket expenses, including but not limited to expenses incurred in negotiating, documenting and administering this Agreement, non-refundable deposits paid to lenders, if any, and third party reports, and for performing its due diligence investigations of the Property. Upon the return of the funds and documents in escrow, neither party shall have any further obligation to the other, subject to any continuing indemnities contained herein; or

(b) Buyer shall be entitled to file a suit in any court of competent jurisdiction in Mahoning County, Ohio for specific performance of the terms and provisions of this Agreement.

(c) For the purposes of this paragraph 20, Seller shall not be in default hereunder unless Seller breaches or fails to perform any term, covenant or provision of this Agreement, which failure is not cured within five (5) business days after delivery by Buyer to Seller and Escrow Agent of written notice specifying such breach or default. The provisions of this paragraph 20 shall not be applicable to any default by Seller under this Agreement that occurs subsequent to the Closing.

21. **Risk of Loss.** The risk of loss or damage to the Property shall, except as otherwise expressly provided herein, be borne by Seller.

22. **Hazardous Substances.**

(a) Seller has not, and did not allow its employees, tenants, agents or invitees to, bring upon, store, dispose of or install in or upon the Property: (i) any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants, as those terms are used in the Resource Conversation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder, or (ii) any "PCBs" or "PCB items" (as defined in 40 C.F.R. §763.63) (collectively, the "Hazardous Materials") except in compliance with all applicable laws.

(b) Notwithstanding anything to the contrary herein, the provisions of paragraph 22(a) above shall apply to any purchase hereunder and prior to the Closing, the Seller shall conduct a survey of all transformers on the Property and make arrangements for and cause the

removal and disposition of any transformer containing PCB's in excess of fifty parts per million, pursuant to a schedule approved by Buyer, in writing, which approval shall not be unreasonably withheld or delayed. Except for the obligations set forth above as to the removal of PCB's, if the Environmental Protection Agency (the "EPA") asserts a direct claim against Seller, its shareholders, officers or directors after the Closing (the "Claim"), Buyer shall indemnify, defend and hold Seller, its shareholders, officers and directors harmless from and against any liability, cost, damage or expense incurred or sustained by Seller (including, without limitation, reasonable attorneys' fees and expenses, court costs and costs incurred in the investigation, settlement and defense of the Claim) as a result of the Claim.

23. **Entire Agreement; Amendment.** All exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part hereof. This Agreement, including all exhibits hereto, is the entire agreement between the parties pertaining to all matters agreed upon or understood in connection with the sale and purchase of the Property. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition may be made to this Agreement except by a written agreement executed by the parties.

24. **Time of Essence.** Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

25. **Further Assurances.** The parties hereto shall execute, acknowledge and deliver such other instruments and documents as may be necessary or appropriate to carry out the full intent and purpose of this Agreement.

26. **Applicable Law.** This Agreement and the rights of the parties hereto shall be interpreted, governed and construed in accordance with the laws of the State of Ohio.

27. **Section Headings.** The section headings in this Agreement are inserted only for convenience and reference and the parties intend that they shall be disregarded in interpreting the terms, covenants, conditions and provisions of this Agreement.

28. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

29. **Waiver.** Either of the parties shall have the right to excuse or waive performance by the other party of any obligation under this Agreement by a writing signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Buyer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

30. **Binding Effect, Nominee.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Buyer may, with the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed,

assign this Agreement or nominate a substitute Buyer provided such assignee or nominee has assumed each and all of Buyer's obligations hereunder in writing delivered to Seller and Escrow Agent at or before the Closing, provided however Buyer shall not be relieved of liability hereunder. Notwithstanding the foregoing, in no event shall Seller's consent be required in connection with Buyer's assignment of this Agreement to an entity in which Buyer, and/or Buyer's members, are the controlling partners, managing members or controlling shareholders.

31. **Construction.** As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part of this Agreement to be drafted. The parties acknowledge that each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel. If any words or phrases in this Agreement are stricken or otherwise eliminated, whether or not other words or phrases have been added, this Agreement shall be construed as if the words or phrases stricken or otherwise eliminated were never included in this Agreement.

32. **No Partnership, Third Person.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Seller and Buyer except as specifically provided herein. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party hereto (including, without limitation, any broker), and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

33. **Time of Performance.** If the date for performance of any obligation hereunder or the last day of any time period provided for herein shall fall on a Saturday, Sunday or legal holiday, then said date for performance or time period shall expire on the first day thereafter which is not a Saturday, Sunday or legal holiday. Except as may otherwise be set forth herein, any performance provided for herein shall be timely made and completed if made and completed no later than 5:00 P.M. (EST) on the day for performance.

34. **IRS Real Estate Sales Reporting.** Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as "**the person responsible for closing**" the transaction which is the subject of this Agreement, pursuant to Internal Revenue Code of 1986 Section 6045(e). Escrow Agent shall prepare and file the informational return (IRS Form 1099-B) required by and otherwise comply with the terms of IRS § 6045(e). Escrow Agent further agrees to indemnify and hold Buyer, Seller and the respective attorneys harmless from and against all claims, costs, liabilities, penalties or expenses resulting from Escrow Agent's failure to file the appropriate reports and otherwise comply with the terms of the Internal Revenue Code pursuant to this paragraph.

35. **Acceptance.** Any offer contained herein shall automatically terminate at 5:00 P.M. (EST), on the date which is five days after the date upon which the first of Seller or Buyer executes this Agreement, unless Opening of Escrow shall have occurred by such time and date.

36. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. A facsimile or electronic counterpart shall be deemed to be an original signature for purposes of

this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

SELLER:

GEARMAR PROPERTIES INC., an Ohio Corporation

By: William E. Marsteller

Name: William E. Marsteller

Its: President

and

By: Dean A. Gearhart

Name: Dean A. Gearhart

Its: Secretary

BUYER:

ALLIED INDUSTRIAL DEVELOPMENT CORPORATION, an Ohio Corporation.

By: John R. Ramun President

Name: John R. Ramun, President

Its: President

STATE OF OHIO)
) ss:
COUNTY OF MAHONING)

Before me, a Notary Public in and for the said County and State, personally appeared the above named ALLIED INDUSTRIAL DEVELOPMENT CORPORATION, an Ohio Corporation, by its President, John R. Ramun, known to be the person whose name is subscribed to the within Purchase Agreement, and he acknowledged that he executed same as President, for the purposes therein contained on behalf of and as President of ALLIED INDUSTRIAL DEVELOPMENT CORPORATION, and that the same is his free act and deed. In testimony whereof, I have hereunto set my hand and official seal this 27th day of March, 2009.

Notary Public

NOTARIAL SEAL STATE OF OHIO

JAY M. SKOLNICK
Notary Public — State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

STATE OF OHIO)
) ss:
COUNTY OF MAHONING)

Before me, a Notary Public in and for the said County and State, personally appeared the above named GEARMAR PROPERTIES INC., an Ohio Corporation, by its President, William A. Marsteller, and its Secretary, Dean A. Gearhart, known to be the same persons whose names are subscribed to the within Purchase Agreement, and each acknowledged that they each executed same as such officer indicated above, for the purposes therein contained on behalf of and as President and Secretary, respectively, of GEARMAR PROPERTIES INC., and that the same is the free act and deed of each such person. In testimony whereof, I have hereunto set my hand and official seal this 26th day of March 2009.

Notary Public

NOTARIAL SEAL STATE OF OHIO

JAY M. SKOLNICK
Notary Public — State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

ESCROW AGENT ACCEPTANCE

Escrow Agent hereby: (i) acknowledges receipt of the Initial Deposit, (ii) agrees to be bound by the provisions hereof applicable to Escrow Agent, (iii) agrees to perform its obligations as set forth herein and (iv) declares that Opening of Escrow has occurred this 26th day of March, 2009.

BAUMAN LAND TITLE AGENCY, INC.

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description

SEE ATTACHED

OR5686 PG 0066

LEGAL DESCRIPTION
New Lot No. 62320

Situated in the City of Youngstown, County of Mahoning, and State of Ohio, and known as being Youngstown City Lot No. 62320 as shown in the Replat Youngstown City Lot No. 62188 and 62320, as recorded in Plat Book / at Page___of the Mahoning County Record of Plats, and being more fully described as follows: OR115 at Page 29

Commencing at a monument found at the intersection of the centerlines of Poland Avenue and Center Street;

thence along the centerline of Center Street by the arc of a curve to the right, having a radius of 1,066.27 feet, a chord bearing of N 30°45'45" E, a chord length of 260.04 feet, for an arc length of 260.69 feet to a point on said Center Street centerline;

thence N 37°46'00" E, along said centerline, for a distance of 132.10 feet to a point on the southerly line of New Lot No. 62188 as appears on said replat;

thence N 52°36'28" W, along said Lot No. 62188, for a distance of 317.10 feet to an iron pin set and being the **TRUE POINT OF BEGINNING** of the parcel herein described;

thence along the southerly line of Lot No. 62320, as appears on said replat by the next three (3) courses and distances;

1) N 52°36'28" W, for a distance of 1,290.96 feet to an iron pin set at a point of curve;

2) on a curve to the right having a radius of 5,689.00 feet, a chord bearing of N 49°52'54" W, a chord distance of 541.11 feet, for an arc length of 541.31 feet to an iron pin set;

3) N 47°09'21" W, for a distance of 80.15 feet to a P.K. nail found at the southwesterly corner of said Lot No 62320;

thence N 38°17'41" E, along the northwesterly line of said Lot No 62320, for a distance of 667.76 feet to an iron pin set between said lot and Lot No. 62188;

thence along the line between Lots 62320 and 62188 by the following twelve (12) courses and distances;

1) on a curve to the left having a radius of 1,066.30 feet, a chord bearing of N 61°11'00" W, a chord distance of 161.69 feet, for an arc length of 161.84 feet to an iron pin set;

2) S 65°31'53" E, for a distance of 165.25 feet to an iron pin set;

EXHIBIT
A
pg 1 of 5

equested By: aaa 12/11/2006

3) on a curve to the right having a radius of 526.11 feet, a chord bearing of N 56°21'38" W, a chord distance of 167.70 feet, for an arc length of 168.42 feet to an iron pin set;

4) S 47°11'23" E, for a distance of 764.07 feet to an iron pin set;

5) on a curve to the left having a radius of 1,543.81 feet, a chord bearing of S 50°12'05" E, a chord distance of 162.22 feet, for an arc length of 162.30 feet to an iron pin set;

6) on a curve to the right, having a radius of 674.44 feet, a chord bearing of S 28°49'25" E, a chord distance of 375.21 feet, for an arc length of 380.22 feet to an iron pin set;

7) on a curve to the right having a radius of 2,957.08 , a chord bearing of S 10°42'53" E, a chord distance of 202.10 feet, for an arc length of 202.14 feet to an iron pin set;

8) S 38°00'27" W, for a distance of 283.27 feet to an iron pin set;

9) N 51°09'55" W, for a distance of 225.01 feet to an iron pin set;

10) S 38°00'27" W, for a distance of 102.27 feet to an iron pin set;

11) S 52°39'13" E, for a distance of 225.00 feet to an iron pin set;

12) S 37°23'32" W, for a distance of 28.18 feet to the **TRUE POINT OF BEGINNING** and containing within said bounds 1,300,469.34 square feet or 29.854 acres, more or less.

'NORTH' for the above description is based on the Ohio State Plane Co-Ordinate System, North Zone NAD83.

All iron pins noted throughout this description as being set are 5/8" x 30" rebar with plastic ID cap inscribed 'ms cons. Inc.'.

The above description was prepared by Richard John Swan, Registered Professional Surveyor No. 6574 in February 2007 and is based on a survey made by ms consultants, inc. in January 2007.

EXHIBIT
A
pg 2 of 5

MS 706 PG 2537

LEGAL DESCRIPTION
New Lot No. 62188

Situated in the City of Youngstown, County of Mahoning, and State of Ohio, and known as being Youngstown City Lot No. 62188 as shown in the Replat of Youngstown City Lot No. 62188 and 62320, as recorded in Plat Book/ at Page___of the Mahoning County Record of Plats, and being more fully described as follows: OR115 at Page 29.

Commencing at a monument found at the intersection of the centerlines of Poland Avenue and Center Street;

thence along the centerline of Center Street by the arc of a curve to the right having a radius of 1,066.27 feet, a chord bearing of N 30°45'45" E, a chord distance of 260.04 feet, for an arc length of 260.69 feet to a point on said Center Street centerline;

thence continuing along said centerline N 37°46'00" E, for a distance of 132.10 feet to a point, said point located on the northerly line of land now or formerly owned by Allied Erecting and Dismantling Inc. as found in volume O.R. 2080 at page 53 of the Mahoning County Official Records of Deeds and on the southerly line of New Lot No. 62188, said point being the **TRUE POINT OF BEGINNING** of the parcel herein described;

thence leaving said centerline of Center Street N 52°36'28" W, along the line between said Allied Erecting and Dismantling Inc. and New Lot No. 62188, for a distance of 317.10 feet to an iron pin set, said iron pin located on the southeasterly corner of New Lot No. 62320 and the southwesterly corner of New Lot No. 62188;

thence leaving the northerly line of said Allied Erecting and Dismantling Inc. N 37°23'32" E, along the line between New Lot No. 62320 and New Lot No. 62188, for a distance of 28.18 feet to an iron pin set;

thence continuing along the line between New Lot No. 62320 and New Lot No. 62188 by the following eleven (11) courses and distances:

1) N 52°39'13" W, for a distance of 225.00 feet to an iron pin set;
2) N 38°00'27" E, for a distance of 102.27 feet to an iron pin set;
3) S 51°09'55" E, for a distance of 225.01 feet to an iron pin set;
4) N 38°00'27" E, for a distance of 283.27 feet to an iron pin set
5) along a curve to the left, having a radius of 2,957.08 feet, a chord bearing of N 10°42'53" W, a chord distance of 202.10 feet, for an arc length of 202.14 feet to an iron pin set;
6) along a curve to the left, having a radius of 674.44 feet, a chord bearing of N 28°49'25" W, a chord distance of 375.21 feet, for an arc length of 380.22 feet to an iron pin set;
7) along a non tangent curve to the right, having a radius of 1,543.81 feet, a chord bearing of N 50°12'05" W, a chord distance of 162.22 feet, for an arc length of 162.30 feet to an iron pin set;
8) N 47°11'23" W, a distance of 764.07 feet to an iron pin set;

EXHIBIT
A
pg 3 of 5

9) along a curve to the left having a radius of 526.11 feet, a chord bearing of N 56°21'38" W, a chord distance of 167.70 feet, for an arc a length of 168.42 feet to an iron pin set;
10) N 65°31'53" W, for a distance of 165.25 feet to an iron pin set;
11) along a curve to the right having a radius of 1,066.30 feet, a chord bearing of N 61°11'00" W, a chord distance of 161.69 feet, for an arc length of 161.84 feet to an iron pin set, said iron pin being located at the northwesterly corner of New Lot No. 62320, the southwesterly corner of New Lot No. 62188, and the southeasterly line of City Lot No. 61996 as recorded in Plat Book 91 at Page 236 of the Mahoning County Record of Plats;

thence leaving said lot line of New Lot No. 62320 N 38°17'41" E, along the line between said City Lot No. 61996 and New Lot No. 62188, and passing over an iron pin found at a distance of 47.24 feet, for a total distance of 148.54 feet to a point, said point lying within the bed of the Mahoning River and on the southerly line of Out Lot No. 680, the northeasterly corner of said City Lot No. 61996, and the northwesterly corner of New Lot No. 62188;

thence along the line between Out Lot No. 680 and New Lot No. 62188 S 68°59'14" E, for a distance of 750.86 feet to a point in the Mahoning River;

thence continuing along the line between Out Lot No. 680 and New Lot No. 62188 S 47°26'09" E, and along the southerly line of Out Lot No. 683 and Out Lot No. 685, for a distance of 1,020.31 feet to a point in the Mahoning River, said point located on the southerly line of said Out Lot No. 685, the northeasterly corner of New Lot No. 62188, and the northwesterly corner of City Lot No. 62189 as recorded in Plat Book 100 at Page 83 of the Mahoning County Record of Plats;

thence leaving said line of Out Lot No. 685 S 42°33'51" W, along the line between New Lot No. 62188 and City Lot No. 62189, and passing over an iron pin found at a distance of 60.00 feet, for a total distance of 349.00 feet to an iron pin found;

thence continuing along the line between New Lot No. 62188 and City Lot No. 62189 by the following three (3) courses and distances:

1) S 47°26'09" E, for a distance of 183.00 feet to an iron pin found;
2) S 42°33'51" W, for a distance of 30.00 feet to an iron pin found;
3) S 47°26'09" E, for a distance of 295.63 feet to an iron pin found, said iron pin located on the southwesterly corner of City Lot No. 62189, northeasterly corner of New Lot No. 62188, and on the westerly right of way line of Center Street;

thence along the line between the westerly right of way of Center Street and New Lot No. 62188 by the following four (4) courses and distances:

1) S 37°46'00" W, for a distance of 204.30 feet to an iron pin found;
2) N 52°14'00" W, for a distance of 9.21 feet to a point;
3) S 37°46'00" W, for a distance of 8.17 feet to a point;
4) S 52°14'00" E, for a distance of 80.21 feet to an iron pin found, said iron pin located on the line between land now or formerly owned by Allied Industrial Development Corp.

EXHIBIT
A
pg. 4 of 5

as found in volume O.R. 1905 at page 134 of the Mahoning County Official Records of Deeds and New Lot No. 62188;

thence along said line between Allied Industrial Development Corp. and New Lot No. 62188 S 37°46'00" W, for a distance of 335.79 feet to an iron pin set, said iron pin located at the southwesterly corner of said land now or formerly owned by Allied Industrial Development Corp., the southeasterly corner of New Lot No. 62188, and on the northerly line of land now or formerly owned by Allied Erecting and Dismantling Inc. as found in volume O.R. 2080 at page 53 of the Mahoning County Official Records of Deeds;

thence along said line between Allied Erecting and Dismantling Inc. and New Lot No. 62188 N 52°36'28" W, for a distance of 31.00 feet to the **TRUE POINT OF BEGINNING** and containing within said bounds 15.879 acres of land, more or less.

Excepting from the above described parcel of land a parcel to Mahoning County for bridge footers as found in volume OR 3505 at page 47 of the Mahoning County Official Records, for 0.068 acres of land, leaving a total area for the above described parcel of 15.811 acres of land, more or less.

Subject to a slope easement to Mahoning County as found in volume OR 3505 at page 60 of the Mahoning County Official Records covering 0.427 acres of land, leaving a total usable area for the above described parcel of 15.384 acres of land.

"NORTH" for the above description is based on the Ohio State Plane Co-ordinate System, north zone NAD 83. Bearings are used to denote angles between adjacent courses only.

All iron pins noted as being set throughout this description are 5/8" X 15" rebar, due to ground conditions, with plastic ID cap inscribed 'ms cons. inc.'.

The above description was prepared under the direct supervision of Richard John Swan, Registered Professional Surveyor No. 6574 in January 2007, and is based on a survey made by ms consultants, inc. in January 2007.

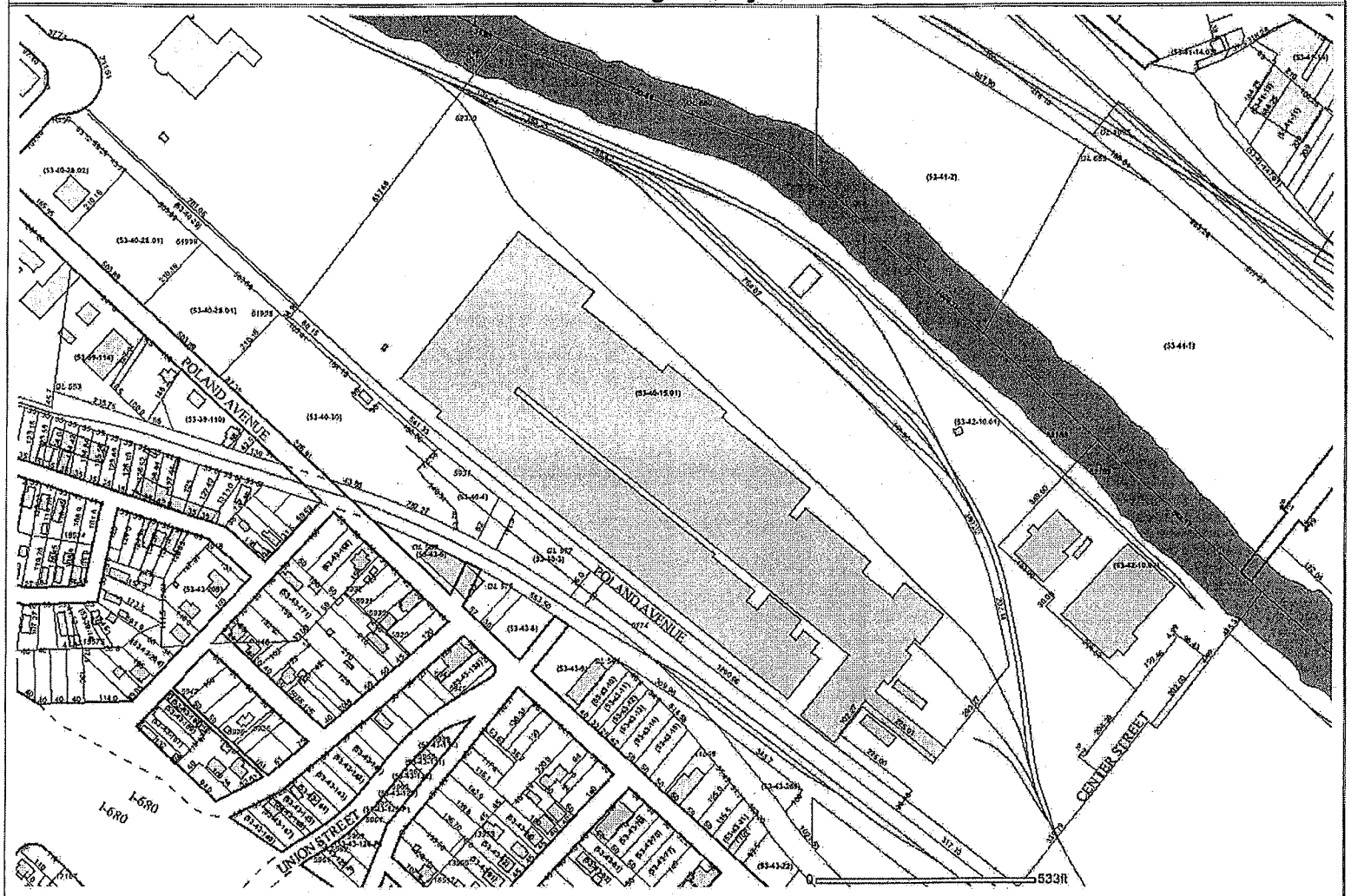
EXHIBIT
A
pg 5 of 5

EXHIBIT B

Site Plan

SEE ATTACHED

Mahoning County GIS



REF#:108-12301512

Legend

- County Boundary
- Great Lot Boundary

District Lines

- City Boundary
- County Boundary
- School Boundary
- Township Boundary
- Village Boundary

Property Lines

- Parcel Boundary
- Condominium
- Road R/W
- Road R/W Other
- Railroad R/W
- Railroad R/W Other
- Building Outline
- Phase Lines
- Parcel Other
- Railroad

Road Name

Lakes and Ponds

- Lake
- River

Structures

- Building
- Ruins
- Tank / Silo
- Trailer

DISCLAIMER: The digital data contained herein was compiled from recorded deeds, survey plats, orthophotography and other public records. Mahoning County does not warrant the accuracy, reliability or timeliness of any of said information and assumes no legal responsibility; persons relying on the information contained herein do so at their own risk. Users should consult public information sources for verification of the information referenced and should notify the Mahoning County GIS Department of any discrepancies.

Print Date:12/30/108

Exhibit B

SCHEDULE 1

Tangible Personal Property

SEE ATTACHED

SCHEDULE 1

TANGIBLE PERSONAL PROPERTY

Pursuant to the Agreement, Seller transfers to Buyer all of its interest in, to and of, all trade fixtures, machinery, furniture, and other personal property located on or about the Land and Improvements or used in the operation or maintenance thereof, ("Seller's Personal Tangible Property"), including but not limited to all the trade fixtures, equipment, machinery, furniture and other personal property listed below which is located in the following areas designated by name below as found on the Mill Area by Buildings/Bay flow chart attached herewith:

1. Station 21
   a. Two (2) 10 ton electrical overhead cranes
   b. Two (2) newly installed ac/dc electrical services with rebuilt rectifier

2. Finishing Floor
   a. Two (2) 15 ton electric overhead cranes with two (2) hooks each
   b. Approximately fifty (50) feet of rigid rack along dividing wall

3. Weld Bay
   a. One (1) 10 ton electrical overhead crane
   b. One (1) 50 ton radio controlled electrical overhead crane (Seller to provide controller)
   c. Two (2) transformers
      i. Serial Number TSP 00419 (green tag number 419)
      ii. Serial Number TSP 1184 (green tag without numerical designation)

4. Steel Coil Bay
   a. One (1) 30 ton electrical overhead crane
   b. One (1) 30 ton radio controlled electrical overhead crane with rotating hook (Seller to provide controller)

5. Air Compressor Room
   a. One (1) 25 ton electrical overhead crane

6. Motor Room
   a. One (1) small 3 rail crane
   b. One (1) used car (make and model unknown)

7. Substation
   a. Two (2) rebuilt transformers
      i. Serial Number TSP 874
      ii. Serial Number TSP 875
   b. One (1) air compressor dryer unit

8. Pipe Storage
   a. One (1) 25 ton electrical overhead crane
   b. One (1) 15 ton electrical overhead crane
   c. One (1) new electrical box service
   d. One (1) delta radial arm saw
   e. One (1) pedestal grinder

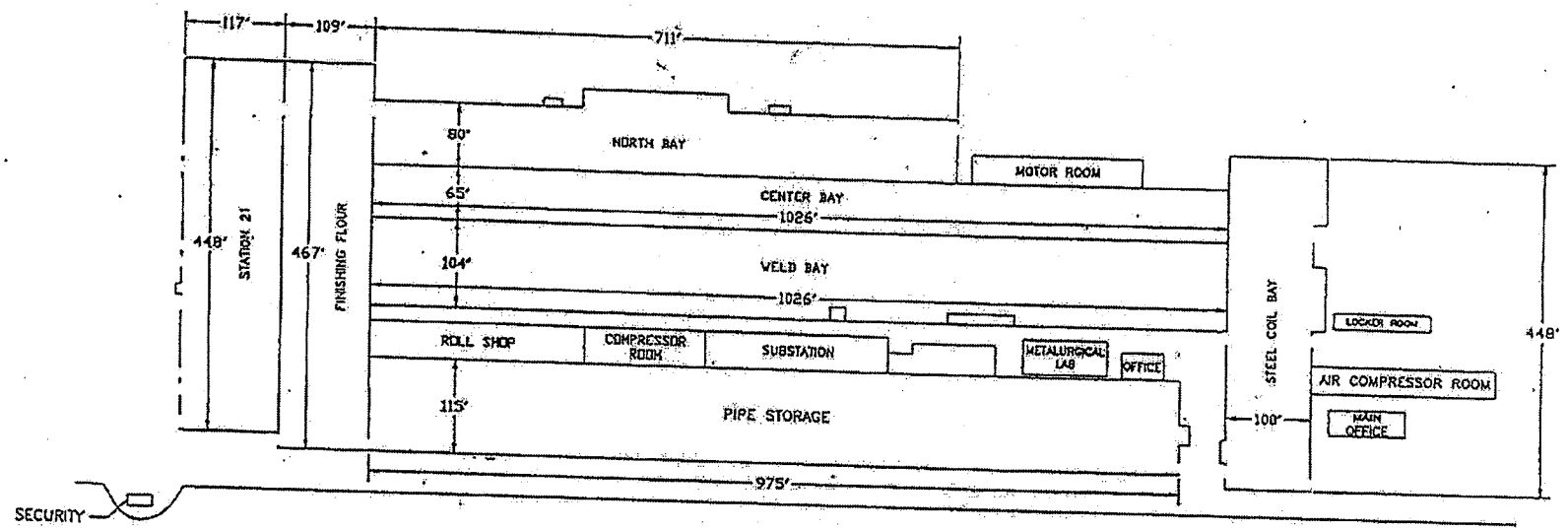
9. North Bay
   a. One (1) 15 ton electrical overhead crane
   b. One (1) 2 ton electrical overhead crane

10. All Drawings, Plans and Specifications.

Seller has designated the following personal property as being specifically excluded from the Seller's Tangible Personal Property being transferred to Buyer:

1. Two (2) C hooks
2. Three (3) fork trucks
3. Two (2) boom lifts
4. One (1) 14 foot aluminum ladder
5. One (1) Ingersol-Rand 1380 CFM compressor with controller
6. All oxygen and acetylene tanks and bottles located on or around the Land or Improvements
7. Any personal property located in the North Bay which belongs to either the Ohio and Pennsylvania Railroad Co, Inc. as sublandlord, or MHF-LS Equipment, Inc. as subtenant under the Lease, as defined in the Agreement.
8. All other trade fixtures, equipment, machinery, furniture and/or other personal property currently located within the Station 21 are the separate tangible personal property of a secured lender under court order of sale and removal within sixty (60) days of execution unless modified by the court or agreed to in writing by the Buyer.
9. Certain other personal tangible property of the Seller specifically segregated in the locked Metallurgical Lab area, which was not available for prior inspection, subject to Buyer's consent upon review.

Mill Area by Building / Bay



Building / Bay	Dimensions (ft.)	Area (sq. ft.)
* Air Compressor Room	220 x 33	7,260
Center Bay	1026 x 65	66,690
Coil Bay	448 x 100	44,800
Finishing Floor	109 x 467	50,903
* Locker Room	116 x 19	2,204
* Main Office Building	91 x 31	2,821
* Maintenance Building	50 x 30	1,500
* Met Lab	101 x 42	4,242

Building / Bay	Dimensions (ft.)	Area (sq. ft.)
Mill Bay	1026 x 104	106,704
* Motor Room	206 x 34	7,004
North Bay	711 x 80	56,880
* Security Building	29 x 14	406
Shipping Bay	975 x 115	112,125
Station 21	117 x 448	52,416
* Substation	223 x 42	9,366

* Areas are not dimensioned in the above drawing.

Total Area: 525,321 sq. ft.

Allied_000140