

BEFORE THE SURFACE TRANSPORTATION BOARD

300410

FINANCE DOCKET NO. 36368

SOO LINE CORPORATION

ENTERED
Office of Proceedings
February 18, 2020
Part of
Public Record

–CONTROL–

CENTRAL MAINE AND QUEBEC RAILWAY US INC.

**COMMENT, PROTEST, AND REQUEST FOR CONDITIONS
OF ESTATE REPRESENTATIVE OF
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.**

Robert J. Keach, the Estate Representative (the “Trustee”)¹ of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA”), submits this protest, comment and request for conditions in regard to the Application submitted in this proceeding (the “Application,” sometimes cited as the “App.”).²

The Application presents the Board with a request by one of the only two parties potentially responsible for the Lac Mégantic derailment not to have settled and contributed to the fund that compensates the victims of that disaster³ for approval of a change of control whereby that non-settling party will acquire the very lines (formerly owned by MMA and its Canadian subsidiary,

¹ Mr. Keach was originally the chapter 11 trustee for MMA appointed pursuant to 11 U.S.C. § 1163, following a selection process involving the Secretary of Transportation and the United States Trustee. As chapter 11 trustee, the Trustee shepherded confirmation of a plan of liquidation for MMA that resulted in a global settlement of claims related to the Derailment (as defined below) and created a settlement fund of approximately \$500 million. The Trustee later became the Estate Representative of the post-effective date of MMA in connection with the effective date of the chapter 11 plan confirmed by the Bankruptcy Court (because the role of chapter 11 trustee ends at confirmation of a plan). For consistency, the Estate Representative will be referred to throughout this Comment as the Trustee.

² Capitalized terms not defined herein shall have the meanings ascribed in the Application.

³ The other party being its parent corporation.

Montreal Maine & Atlantic Canada (“MMAC”)) where that disaster occurred. Viewed solely from this stark perspective, the proposed acquisition could hardly be more troubling.

Moreover, this request for approval comes as the role of Canadian Pacific Railway Company (“CP”) and its wholly owned and controlled United States subsidiary, Soo Line Corporation (“Soo Line”) in connection with the Lac Mégantic disaster is being actively litigated. CP and Soo Line are defendants multiple lawsuits—four against CP (one in Canada and three in the United States) and too against Soo Line (each in the United States)—seeking to hold them responsible for damages arising out of the Lac Mégantic derailment. Those lawsuits allege that CP and Soo Line were at least negligent in connection with the derailment. While the Trustee appreciates that the Board is technically dealing with only the U.S. aspect of the line, the unique and tragic recent history of these lines (both in the U.S. and Canada), taken together, must not be ignored, and the review of this particular Transaction requires a broad view of the public interest, and an expansive and reasoned application of the Board’s power to impose conditions on transactions to protect the interests of the public and the environment.

The Trustee contends that any approval of the change of control of CMQR US (together with Soo Line, the “Applicants”) should, at a minimum, be conditioned upon measures designed to change the safety culture at CP and Soo Line, given the risk to the public and the environment from the continued transport of crude by rail. However, precisely what changes are needed will likely be determined by the outcome of the pending litigations. Accordingly, approval should be withheld until those litigations conclude. Based on what the Trustee understands to be the current schedules, all four cases should come to judgment in 2020.

As set forth in greater detail below, the allegations in the pending litigations raise concerns with CP’s and Soo Line’s interpretations of and failure to implement regulations applicable to the

transportation of hazardous materials—the haulage of which comprises or will comprise a significant component of the business of CP, Soo Line and CMQR US. The Trustee and other parties in interest have alleged these concerns in the four lawsuits pending in the United States and Canada, seeking to hold Soo Line, CP and certain affiliates (collectively, the “CP Entities”) responsible for their roles in causing the explosion and the resulting death and devastation stemming from the derailment of a crude-hauling, CP originated train in Lac Mégantic in 2013. Indeed, Soo Line and CP are the only entities identified by the Trustee as potentially responsible for the Lac Mégantic disaster to not have settled and contributed to a fund established to compensate the victims of the Lac Mégantic derailment. While CP and Soo Line are certainly within their rights to litigate, if the allegations in the litigations are proven correct, to permit CP and Soo Line to acquire the very railroad that was the site of the derailment—and to have the capacity and the right to operate crude-hauling trains through the town of Lac Mégantic—without the imposition of conditions to further protect the public and the environment, would be contrary to the public interest under any commonsense definition of that term.

Worse, recent derailments (and accompanying explosions and fires) in Saskatchewan involving CP-controlled trains, including trains using the supposedly safer tank cars, potentially raise new concerns about CP’s safety culture and the overall safety of crude by rail. The investigations into those incidents have just begun. Rather than permitting the web of road that the CP Entities control to grow by virtue of the Transaction, the Board should exercise its authority to consider the public interest and decline to approve the Application at this time. The Board should delay approval of the Transaction until there has been a final resolution in all currently pending actions against the CP Entities and the investigations into the most recent incidents in Canada have concluded. Based upon the outcome of those litigations and investigations, which

will determine whether the CP Entities were negligent in connection with the Lac Mégantic derailment, explosion and fire or in connection with the most recent derailments, the Board will be in a much better position to consider what conditions to impose upon the Transaction to ensure the safety of the public and the environment.

RELEVANT BACKGROUND⁴

A. The Lac Mégantic Derailment, the Combined Canadian Litigation and MMA's Chapter 11 Case

On July 6, 2013, an unmanned eastbound train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailement”). The transportation of the crude oil had begun in New Town, North Dakota and continued across Canada by CP. MMAC later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick—a route currently owned and operated by CMQR US.

The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. (Two subsequent suicides have been tied to the Derailment and its aftermath.) A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against MMA, MMAC and other parties in both the United States and Canada.

On July 15, 2013, certain parties seeking to represent Derailment victims in Québec filed a *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative* in the Québec Superior Court for the Judicial District of Mégantic (the “Quebec Superior Court”).

⁴ Copies of all pleadings, orders, and other documents referenced in this Background section are available upon request to the Trustee.

The Québec Superior Court later certified a class of plaintiffs having suffered a loss in relation to the Derailment (the “Québec Class Action”). Other litigation in Canada originated by the province of Quebec, certain subrogated insurers, and certain so-called opt-out plaintiffs was combined with the Quebec Class Action into a single suit for litigation and trial (the “Combined Canadian Litigation”). CP is a defendant in the Combined Canadian Litigation, which involves, *inter alia*, allegations of CP’s negligence in connection with the Derailment. The Trustee understands that the Combined Canadian Litigation is scheduled to go to trial in September 2020 in Quebec.

On August 7, 2013, MMA filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”). Simultaneously, MMAC filed for protection under Canada’s Companies’ Creditors Arrangement Act. On August 21, 2013, the Office of the United States Trustee appointed the Trustee to serve as trustee in MMA’s chapter 11 case.

B. The Sale of MMA’s Assets to RAH, Parent of CMQR US

On January 24, 2014, the Bankruptcy Court entered an order approving the sale of substantially all of MMA’s and MMA Canada’s assets to Railroad Acquisition Holding LLC (“RAH”). The sale of MMA’s assets closed on May 15, 2014, and upon final regulatory approval, the sale of MMA Canada’s assets closed on June 30, 2014.

RAH is the parent of CMQR US. *See* App. at 1 n.2. The rail assets sold by MMA to RAH were transferred to CMQR US. *See id.* Soo Line now seeks to acquire the equity interests in RAH, which continues to indirectly own the former MMA rail assets. *See* App. at 6.

C. Commencement of Additional Litigation Against CP and Soo Line and Confirmation of the Trustee’s Chapter 11 Plan

In connection with negotiation of a chapter 11 plan and the accumulation of funds to compensate the victims of the Derailment, the Trustee and various other constituents, including

MMAC and its monitor, engaged in settlement discussions with parties identified as potentially responsible for damages arising from the Derailment. While several discussions resulted in prompt settlement (all conditioned upon the approval of plans in both the US and Canada providing global releases and injunctions), the Trustee was forced to file a complaint against several parties in the Bankruptcy Court (the “Trustee’s Litigation”). CP was named a defendant in January 2015 and Soo Line was named a defendant in September 2016. In his complaint, the Trustee asserted damages on behalf of MMA’s estate resulting from, *inter alia*, CP’s and Soo Line’s negligence in failing to comply with applicable safety regulations, which the Trustee asserts would have required CP and Soo Line to have stopped the Derailment train for known or reasonably knowable classification issues. The Trustee alleges that stopping the train would have prevented the Derailment.

Ultimately, the negotiations with all parties except CP and Soo Line culminated in a global settlement, whereby settling parties agreed to contribute to a fund for the benefit of the victims of the Derailment and, in exchange, received the benefit of global releases and channeling injunctions preventing the assertion of Derailment-related claims against any settling party. In the settlement agreements executed by the shipper and consignee for the Derailment train, part of the settlement consideration proffered was the assignment to the chapter 11 estate of statutory causes of action arising under the so-called Carmack Amendment in Title 49 of the United States Code (the “Assigned Carmack Claims”). Following the earlier sanction of a plan of arrangement for MMAC in its CCAA proceedings (such plan also approving the global settlement of Derailment-related claims), on October 9, 2015, the Bankruptcy Court entered an order confirming the Trustee’s chapter 11 plan of liquidation (the “Plan”), pursuant to which, *inter alia*, the global settlement became effective. Pursuant to the authority granted in the Plan, the Trustee designated the trustee

of the trust formed under the Plan for the benefit of holders of wrongful death claims (the “WD Trustee”) to prosecute the Assigned Carmack Claims for the benefit of certain stakeholders entitled to distributions under the Plan.

In furtherance of consummation of the Plan, the WD Trustee filed a complaint asserting the Assigned Carmack Claims in the United States District Court for the District of North Dakota (the “ND District Court”) in April of 2016 (the “Carmack Litigation,” and together with the Trustee’s Litigation and the Combined Canadian Litigation, the “Litigations”). In short, the WD Trustee seeks to recover from CP, Soo Line and certain of their affiliates damages arising from the Derailment to which the shipper and consignee assignees are statutorily entitled.⁵

CP and Soo Line are the only remaining defendants in the Trustee’s Litigation, and the CP Entities were the only named defendants in the Carmack Litigation. Discovery is coming to a close in both the Trustee’s Litigation and the Carmack Litigation, the latter of which is scheduled for trial in August 2020.

D. Recent CP and Soo Line Safety and Environmental Issues

Since July 2013, trains operated by the CP Entities have suffered twenty-two (22) derailments, of which eleven involved trains hauling dangerous goods, serious or fatal injury, or evacuation. *See* Summary of CP Entities’ Derailments Post-Lac Mégantic Derailment, attached hereto as Exhibit A. The recent derailments of crude-by-rail trains operated by CP in Saskatchewan have captured the interests of both the media and regulators in Canada. *See*

⁵ The fourth litigation pending against the CP Entities related to the Derailment was brought by parties holding causes of action for the wrongful death of individuals killed in the Derailment. Those cases originated in state court in Texas and Illinois, were removed to federal court in those states by the defendants, were transferred to the United States District Court for the District of Maine (the “Maine District Court”), and ultimately were consolidated and dismissed by the Maine District Court on jurisdictional and *forum non conveniens* grounds. No decision on the merits has yet been reached, and even if the decision is upheld, the action could be revived in a suit in Canada. An appeal of the Maine District Court’s dismissal is currently pending before the United States Court of Appeals for the First Circuit. *See* In re: Lac Megantic Train Derailment Litigation, No. 17-1108 (1st Cir. 2017).

compendium of recent media coverage of the CP Entities' major incidents and this Transaction attached hereto as Exhibit B.

COMMENT, PROTEST, AND REQUEST FOR CONDITIONS

Contrary to the representation of the Applicants, *see* App. at 5 n.5, the Board has broad discretion to—and should—consider the public interest in approving even a minor transaction. *See, e.g., Vill. of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 657-58, 667 (D.C. Cir. 2011) (upholding the Board's interpretation of 49 U.S.C. § 11324(c) to permit consideration of the public interest even in considering a minor transaction). In particular, the Board has the unquestioned authority to impose, even in a minor transaction, conditions with respect to public safety, including environmental safety. *Id.* Here, consideration of the public interest in ensuring the safe operation of the railway over which crude oil and other hazardous materials will be transported weighs in favor of, at bare minimum, delaying consideration of the Application until full and final resolution of the Litigations and the pending investigations noted above. Only then will the Board be able to consider which, if any, conditions to impose upon the Transaction to ensure the public interest is served and that public and environmental safety has been maximized.

A. Discovery to Date in the Litigations Raises Concerns About the Safety Culture of CP and Soo Line.

Through depositions of CP employees in connection with the Trustee's Litigation and the Carmack Litigation, the Trustee has learned that despite CP's annual shipment of tens of thousands of carloads of crude oil through the time of the Derailment, CP apparently had no means of complying with its apparent classification duties under U.S. and Canadian regulations. On the U.S. hazardous materials front, 49 C.F.R. § 171.2(f) provides (emphasis supplied):

No person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter, or an exemption or special permit,

approval, or registration issued under this subchapter or subchapter A of this chapter. Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, ***unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect.***

Thus, the Trustee asserts that U.S. regulations impose duties on *both* the shipper and the carrier to ensure that materials are properly classified: the shipper must determine the correct classification in the first instance, and the carrier can rely on that classification only if, exercising reasonable care, the carrier lacks knowledge that the classification is incorrect. *See id.*; 49 C.F.R. § 173.22.

CP had no written policies or procedures aimed at discharging what the Trustee asserts to be their duties under the U.S. hazardous materials regulations to, for example, ensure that it exercised reasonable care to identify a misclassification of hazardous materials such as crude oil.⁶ CP provided no training to employees to comply with any such duty.⁷ Indeed, none of CP's operations individuals were ever trained or advised of what the Trustee asserts to be CP's duty to ensure the correct classification of hazardous materials.⁸ The same was true for Soo Line.⁹

Similarly, CP had no policies, procedures, or training aimed to comply with the analogous Canadian Dangerous Goods regulation.¹⁰ The same was true for Soo Line.¹¹ Section 2.2(6) of the Canadian Transportation of Dangerous Goods Act (the "TDGA") provides, "a carrier who notices an error in classification, or has reasonable grounds to suspect an error in classification while the

6 *See* Trans. of Dep. of Corporate Representative of CP and Soo Line Glen Wilson pursuant to Fed. R. Civ. P. 30(b)(6) ("Wilson Dep."), attached hereto as Exhibit C, at 153:16 – 155:20.

7 Wilson Dep. 155:18 – 24.

8 Wilson Dep. 159:12 – 160:4.

9 Counsel to Soo Line and CP did not timely indicate that Soo Line would have answered any question posed to the CP corporate representative differently, and is thus deemed to have testified in the same manner. *See* Wilson Dep. 280:15-281:18.

10 Wilson Dep. 172:6 – 173: 25.

11 *See supra* n. 9.

dangerous goods are in transport must advise the consignor and must stop transporting the dangerous goods until the consignor verifies or corrects the classification.” *Id.* at § 2.2(6).

Moreover, the individuals charged with ensuring compliance with these regulations for CP and Soo Line, Jim Kozey and Darlene Nagy,¹² had almost no experience with the transportation of crude oil. In 2012 into 2013, Kozey “had very little experience or exposure to the transportation of crude oil.”¹³ Nagy did not know of the relevant regulations, 49 C.F.R. 171.2(f) and 2.2(6).¹⁴ Indeed, in 2013, Nagy did not understand how crude oil would be designated Packing Group I, II, or III, and did not learn until after Lac Mégantic that crude oil was non-homogenous and could have different properties.¹⁵

CP’s position instead was that the responsibility to ensure the correct classification of dangerous goods begins and ends with the shipper. In CP’s view, “in its position as a transporter[, CP] is reliant upon the declaration and classification made by the shipper of the goods.”¹⁶ Soo Line shared that view.¹⁷ In other words, as stated by Kozey and Nagy—who had responsibility to ensure compliance with the hazardous materials regulations—“it’s the shipper’s responsibility” to classify hazardous materials.¹⁸

In the case of the Lac Mégantic Derailment, the Trustee contends that the CP Entities *did* have reason to know that the train’s cargo was misclassified. In short, prior to the Derailment, the CP Entities’ employees received and forwarded amongst themselves Material Safety Data Sheets

¹² Wilson Dep. 147:5 – 148:9.

¹³ Wilson Dep. 150:9 – 11.

¹⁴ *See* Trans. of Dep. of Darlene Nagy (“Nagy Dep.”), attached hereto as Exhibit D, at 83:10 – 13; 88:22 – 89:2. 97:22 – 98:13.

¹⁵ Nagy Dep. 49:25 – 51:20.

¹⁶ *See* Wilson Dep. at 130: 7 – 9.

¹⁷ *See supra* n. 9.

¹⁸ Nagy Dep. 61:4 – 6; 154:13-19; Trans. of Jim Kozey, attached hereto as Exhibit E, at 183:4-18.

(“MSDSs”) for Bakken Crude—the cargo involved in the Derailment—that demonstrated it should have been classified as Packing Group I or II—Packing Group I being the most volatile and flammable of its class—and that handling Bakken Crude was “going to be a problem.”¹⁹ And yet the cargo hauled by the Derailment train was classified as Packing Group III—the least volatile and dangerous of its class—a designation that permitted the crude to be hauled in available, less safe tank cars, in accordance with procedures that provided fewer safeguards. The former CEO of MMA has stated that had he been informed by CP of the proper classification, the Derailment train would not have been left unattended, and thus would not have derailed.

As the sworn testimony elicited from CP’s and Soo Line’s representatives and agents demonstrates, the CP Entities apparently did not train the employees responsible for ensuring safe transportation of dangerous goods about relevant regulations, and believe that as carriers, they have no responsibility to stop the haulage of dangerous goods when they know, have reason to know or reasonably should have known of a misclassification issue. The Trustee contends that this is at odds with both U.S. and Canadian regulations, which are imposed with the public interest in mind. Should the Trustee’s position be accepted in the Trustee’s Litigations and the Carmack Litigation, that outcome would raise serious questions about the safety culture at CP and Soo Line and suggest the need for safety culture-related conditions on the Transaction.

B. Recent Events Raise Fresh Concerns About the Safety Culture of CP and Soo Line

Since the Derailment, CP and Soo Line have suffered at least twenty-two safety incidents, eleven of which involved the transportation of dangerous goods, human injury or evacuation. *See Exhibit A*. Attached hereto as Exhibit B is a compendium of recent press coverage of derailments

¹⁹ *See, e.g., Exhibit F, Exhibit G* (documents produced by CP and Soo Line in the Trustee’s Litigation and the Carmack Litigation).

and fires involving CP-operated crude by rail trains, as well as media coverage for the Transaction. A video of coverage of one of those incidents—the February 6, 2020 derailment near Guernsey, Saskatchewan, which resulted in *inter alia* a massive spill and fire—can be found at <https://www.cbc.ca/fifth/episodes/2019-2020/runaway-train-investigating-a-fatal-cp-rail-crash>. If the Litigations or the pending investigations determine that the safety culture at CP and Soo Line is deficient, these events further confirm the necessity of safety- and environment-related conditions on approval of the Transaction.

CONCLUSION

The Board should delay consideration of the Application until full and final resolution of the Litigations and the pending investigations in Canada. At this point, the Board lacks sufficient information to make an informed decision about whether Soo Line’s acquisition of CMQR US would be in the public interest without the addition of necessary safety- and environment-related conditions. The Board and the public would be best served by waiting for an adjudication or other resolution in each of the pending Litigations and the conclusion of the pending investigations in Canada—which will bear on the CP Entities’ regulatory responsibilities—so that it can best determine which conditions should be imposed upon the Transaction to ensure the safety of the public and the environment.

Dated: February 18, 2020

/s/ Robert J. Keach

Robert J. Keach, Esq.
BERNSTEIN SHUR SAWYER & NELSON, P.A.
100 Middle Street, P.O. Box 9729
Portland, ME 04104

Counsel for

ROBERT J. KEACH, THE ESTATE REPRESENTATIVE
OF THE POST-EFFECTIVE DATE ESTATE OF
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comment, Protest, and Request for Conditions of Estate Representative of Montreal Maine & Atlantic Railway, Ltd. has been served by First Class Mail, postage prepaid, this 18th of February 2020 on the following:

The Honorable Elaine L. Chao
Secretary of Transportation
Office of the Secretary
United States Department of Transportation
1200 New Jersey Ave., S.E. 9th Floor
Washington, DC 20590

The Honorable William P. Barr
Attorney General of the United States
c/o Assistant Attorney General,
Antitrust Division, Room 3109
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

David F. Rifkind, Esq.
Representative of Soo Line Corp.
Stinson LLP
1775 Pennsylvania Ave., N.W.
Suite 800
Washington, DC 20006

Terence M. Hynes, Esq.
Representative of CMQR US
Sidley Austin LLP
1501 K Street, N.W. # 600
Washington, DC 20005

Tim Baade
Representative of Irving Consumer Products Limited
102 Dawson Ave.
Dieppe, NB
E1A 6R3
Canada

Ron Clow
Representative of Cavendish Farms
100 Midland Drive
Dieppe, NB
E1A 6X4
Canada

Robert B. Culliford
Representative of Springfield Terminal Railway Company
1700 Iron Horse Park
North Billerica, MA 01862

Mark Mosher
Representative of Lake Utopia Paper; Irving Pulp and Paper, Limited; and Irving Paper, Limited
300 Union Street
Saint John, NB
E2L 5B6
Canada

Jerome Pelletier
Representative of J.D. Irving Limited Sawmills
300 Union Street
Saint John, NB
E2L 4M2
Canada

David Saucy
Representative of Atlantic Wallboard Limited
30 Jervis Lane
Saint John, NB
E2J 0A9
Canada

James A. Therriault
Representative of Sprague Energy
185 International Drive
Portsmouth, NH 03801

Bruce A. Van Note
Representative of the State of Maine Department of Transportation
State of Maine
Department of Transportation
16 State House Station
Augusta, ME 04333

Peter F. Young
Representative of Washington County Railroad Company
One Railway Lane
Burlington, VT 05401

I further certify that a that a copy of the Comment, Protest, and Request for Conditions of Estate Representative of Montreal Maine & Atlantic Railway, Ltd. has been served by electronic mail this 18th of February 2020 on the following:

David F. Rifkind
Soo Line Corporation
david.rifkind@stinson.com

Terence M. Hynes
Central Maine & Quebec Railway US Inc.
Thynes@Sidley.Com

Robert B. Culliford
Springfield Terminal Railway Company
rculliford@panam.com

Bruce A. Van Note
Maine Department of Transportation
Bruce.DOT@maine.gov

Jerome Pelletier
J.D. Irving Limited Sawmills
peters.alyssa@jdirving.com

Peter F. Young
Washington County Railroad Company
pyoung@vrs.us.com

Tim Baade
Irving Consumer Products Limited
Baade.Tim@jdirving.com

Ron Clow
Cavendish Farms
clow.ron@CavendishFarms.com

Mark Mosher
Lake Utopia Paper; Irving Pulp and Paper, Limited; and Irving Paper, Limited
hansenbatten.chelsea@irvingforest.com

James A. Therriault
Sprague Energy
jtherriault@spragueenergy.com

David Saucy
Atlantic Wallboard Limited
snodgrass.krystal@jdirving.com

/s/ Robert J. Keach

Robert J. Keach

EXHIBIT A

Summary of CP Entities' Derailments Post-Lac Megantic Derailment

Source of data: TSB's website (www.tsb.gc.ca)

No.	Date of Derailment	Derailment Information	Description	Involved Dangerous Goods? ¹
1	2020-02-06	Main-track derailment Canadian Pacific Railway Near Guernsey, Saskatchewan	Canadian Pacific crude oil derailment losing 31 cars. The derailed caused a large fire, resulting in the evacuation of a Canadian village. Nearby highways were closed.	Yes
2	2019-12-09	Main-track derailment Canadian Pacific Railway Mile 48.8, Sutherland Subdivision Near Guernsey, Saskatchewan	Canadian Pacific crude oil derailment losing 23 tank cars and of those 19 lost their entire loads, releasing 1.5 million liters of product. The derailment caused a large fire that burned for two days. Highway 16 was closed due to thick smoke from the fire.	Yes
3	2019-09-27	Main-track derailment Canadian Pacific Railway Company Labuma, Alberta	Canadian Pacific train derailed losing 9 dangerous goods tank cars. Approximately 49 779 liters of diesel was released from 2 tank cars and an estimated 188 068 liters of octane was released from 6 tank cars. About 500 feet of track was damaged or destroyed.	Yes
4	2019-09-02	Main-track derailment Canadian Pacific Railway Barons, Alberta	Locomotive and 21 tank cars from Canadian Pacific derailed. Three of the cars were loaded with dangerous goods that leaked octane.	Yes
5	2019-08-02	Main-track derailment Canadian Pacific Railway Irvine, Alberta	Canadian Pacific train derailment lost 22 tank cars, including 5 dangerous goods tank cars.	Yes
6	2019-02-04	Main-track derailment Canadian Pacific Railway Mile 130.6, CP Laggan Subdivision, Field, British Columbia	Canadian Pacific train derailed, losing 99 cars and 2 locomotives. The locomotive engineer, conductor and conductor trainee were fatally injured.	No; but fatal human injuries.

¹ Derailments involving dangerous goods, injury to human life or evacuation noted in red.

No.	Date of Derailment	Derailment Information	Description	Involved Dangerous Goods? ¹
7	2018-07-30	Main-track derailment Canadian Pacific Railway Freight train A13-31 Mile 50.7, Montana Subdivision Stirling, Alberta	Canadian Pacific train derailed losing 16 loaded cars containing canola.	No
8	2018-07-16	Main-track train derailment Canadian Pacific Railway Freight train 142-14 Mile 36.6, Winchester Subdivision Saint-Polycarpe, Quebec	Canadian Pacific train derailed losing 22 tank cars after experiencing an emergency brake application. No release of dangerous goods.	No
9	2018-07-09	Main-track derailment Canadian Pacific Railway Mile 35.83, Adirondack Subdivision Delson, Quebec	Canadian Pacific train derailed and lost 5 tank cars. No release of dangerous goods.	No
10	2018-05-27	Main-track train derailment Canadian Pacific Railway Freight train 112-27 Mile 13.4, Carberry Subdivision Rosser, Manitoba	Canadian Pacific train derailed 13 intermodal cars. One of those cars was loaded with fireworks. No release of dangerous goods.	Yes
11	2017-10-03	Main-track derailment Canadian Pacific Railway Freight train 603-230 Mile 26.4, Maple Creek Subdivision Antelope, Saskatchewan	Canadian Pacific train derailed 37 cars after emergency brake application. No dangerous goods were involved.	No

No.	Date of Derailment	Derailment Information	Description	Involved Dangerous Goods? ¹
12	2017-09-15	Main-track derailment Canadian Pacific Railway Freight train 669-161 Mile 90.21, Sutherland Subdivision Blucher, Saskatchewan	Canadian Pacific train derailed 37 cars loaded with bulk potash.	No
13	2017-08-11	Main-track train derailment Canadian Pacific Railway Freight train 369-377 Mile 53.57, Emerson Subdivision Dominion City, Manitoba	Canadian Pacific train derailed after emergency brake application. 22 hopper cars loaded with corn derailed.	No
14	2016-11-29	Uncontrolled movement, collision and derailment Canadian Pacific Railway Ballast train BAL-27 and Freight train 293-28 Mile 138.70, Weyburn Subdivision Estevan, Saskatchewan	Canadian Pacific train rolled uncontrolled and struck a freight car.	No
15	2015-10-29	Runaway and derailment of cars on non-main track Canadian Pacific Railway Stored cut of cars Mile 2.24, Outremont spur Montréal, Quebec	Empty intermodal cars ran uncontrolled resulting in derailed cars. The cars and railway track were damaged. Occupants of 7 homes were evacuated.	No; residents evacuated.

No.	Date of Derailment	Derailment Information	Description	Involved Dangerous Goods? ¹
16	2015-09-06	Main-track train collision Canadian Pacific Railway Freight trains 602-242 and 113-01 Mile 62.0, Mountain Subdivision Beavermouth, British Columbia	Canadian Pacific train collided with another Canadian Pacific train resulting in the derailment. The conductor of one of the trains sustained a serious injury.	No, but human injury sustained
17	2015-01-13	Main-track derailment Canadian Pacific Railway Freight train 118-10 Mile 42.0, Nipigon Subdivision Dublin, Ontario	Canadian Pacific derailed 21 cars due to an emergency brake situation. 7 of the tank cars contained dangerous goods and 1 of the cars lost its entire load and another tank car released product.	Yes
18	2015-01-13	Main-track train derailment Canadian Pacific Railway Freight Train 199-10 Mile 76.7, Mountain Subdivision Stoney Creek, British Columbia	Canadian Pacific train derailed 6 empty platforms.	No
19	2014-12-26	Main-track train derailment Canadian Pacific Railway Freight train 205-25 Mile 82.1, Laggan Subdivision Banff, Alberta	Canadian Pacific train derailment of 15 cars loaded with fly ash, soybeans and lentils, which spilled product into the waterway. The derailment destroyed a bridge over Forty Mile Creek.	No
20	2014-11-06	Main-track derailment Canadian Pacific Railway Freight train 374-230 Mile 23.40, Crowsnest Subdivision Pearce, Alberta	Canadian Pacific train derailed 17 empty hopper cars. 1000 feet of main track was damaged and additional 600 feet of the main track and an adjacent storage track were destroyed.	No

No.	Date of Derailment	Derailment Information	Description	Involved Dangerous Goods? ¹
21	2014-02-15	Main-track train derailment Canadian Pacific Railway Freight train 490-15 Mile 43.10, Minnedosa Subdivision Keyes, Manitoba	Canadian Pacific train derailed after emergency brake application. 27 hopper cars loaded with potash and grain derailed.	No
22	2013-09-11	Main-track derailment Canadian Pacific Railway Freight train 467-11 Mile 0.30, Red Deer Subdivision Calgary, Alberta	Canadian Pacific train derailed 7 tank cars loaded with liquid hydrocarbons. 600 feet of track was destroyed. No product loss occurred.	Yes

EXHIBIT B

**EXHIBIT**
B

New Brunswick

Canadian Pacific wants back into the Port of Saint John



Canadian Pacific in the process of buying Central Maine and Quebec Railroad

[Connell Smith](#) · CBC News · Posted: Nov 27, 2019 5:00 AM AT | Last Updated: 5 hours ago



CP is promoting access to the Port of Saint John as one of the key reasons for its purchase of Central Maine and Quebec Railroad. (Canadian Press, Ryan Remiorz)

[comments](#)

Twenty-five years after selling off or abandoning its rail operations to the East Coast, Canadian Pacific Railway is moving back into the region with the purchase of close to 800 kilometres of track leading deep into the state of Maine.

A deal to purchase the Central Maine and Quebec Railway is expected to close over the next few weeks.

The operation, with track through Lac Megantic, Que., to Brownville Junction, Maine, has several branch lines.

In a statement, the company specifically mentions access to the Port of Saint John as one of the reasons for the purchase.

"The end-to-end transaction will provide CP customers with seamless, safe and efficient access to ports at Searsport, Maine, and to Saint John, New Brunswick," the release said.

Would work with Irving railways

Access to Saint John would be via Irving-owned Eastern Maine Railway and its sister company, NB Southern Railway tracks that will link to the new CP rail terminus at Brownville Junction.

Mary Keith, spokesperson for the two Irving railways, said in a statement that NB Southern Railway had a "strong" relationship with Central Maine and Quebec Railroad and "will look forward to working with all our supply chain partners."

- [CP Rail to acquire railway that owns tracks involved in Lac-Mégantic disaster](#)

Keith said CP would drop rail cars coming to Saint John at Brownville Junction, where they would be taken over by the Irving railways.

Canadian Pacific's renewed interest in East Coast ports is not surprising to Jim Quinn, the CEO of Port Saint John.

He said there's been talk about it for several years.

"It's an interesting development, there's no mistake about it for us, it's an interesting development that we're just trying to get our heads wrapped around in terms of what they may or may not have in mind," said Quinn.





CP's deal to buy Central Maine and Quebec Railroad is expected to close in the next few weeks. (Youtube)

Benoit Poirier, a Montreal based analyst with Desjardins Capital Markets, applauded CP's move, noting the global port operator DP World runs the container, bulk and breakbulk terminal at the Port of Saint John.

"The acquisition will expand CP's reach in eastern Canada by providing access to three new eastern ports," Poirier said in a report to investors.

"In the long term this should enable CP to diversify its exposure away from China (served by West Coast ports) as manufacturers relocate their factories to European and other Asian countries such as Vietnam, Malaysia, India and Thailand (served by East Coast ports)."

Some of the newly purchased track historically belonged to CP.

Abandoned region in 1990s

The company sold off its operations in the Atlantic Region in the early 1990s.

That included the company's eastern mainline to Saint John, including a Via Rail passenger train, which ended service in December 1994.

In 1995, with most of its business centred in the West, CP then closed its Montreal headquarters and moved to Calgary.

In 2013, the former CP track at Lac Megantic was the scene of a rail disaster that killed 47 people.

At that point, the rail line was owned by the Montreal, Maine and Atlantic Railroad, which later filed for bankruptcy.

The train had 74 tank cars carrying western crude oil to Saint John's Irving Oil Refinery.

POPULAR NOW

1 **CHINA'S POWER**

The man, the myth: How Xi Jinping's rise from village life explains China's ambitions

825 reading now

2 **Toronto police arrest man who allegedly threw feces at 5 people**

716 reading now

3 **Carbon tax must hit \$210 per tonne by 2030 to meet Paris targets, report concludes**

544 reading now

4 **EDITOR'S NOTE**

China is on a mission to re-make the world. CBC News examines the stakes for Canada

501 reading now

5 **Metro Vancouver bus service shutdown averted, tentative deal reached**

©2019 CBC/Radio-Canada. All rights reserved.

Visitez Radio-Canada.ca



TOP STORIES

'Children need to see themselves mirrored back': Black Santa challenges stereotypes in Toronto

DECEMBER 9 **UPDATED**



Canadian Pacific Railway train carrying crude oil derails in Saskatchewan

JUSTIN GIOVANNETTI >

CALGARY

PUBLISHED DECEMBER 9, 2019

UPDATED 11 MINUTES AGO

70 COMMENTS SHARE



Emergency crew respond to CP Rail train hauling crude oil that derailed near Guernsey, Sask. on Monday, December 9, 2019.

Soaring flames and a thick plume of smoke followed the derailment of a Canadian Pacific Railway train carrying crude oil across central Saskatchewan – a crash that comes as Alberta’s government looks to boost oil-by-rail shipments.

The fiery derailment around midnight on Sunday didn’t cause any injuries but led to a tangle of train cars burning alongside a highway about 120 kilometres east of Saskatoon. The fire continued to burn on Monday evening as federal investigators arrived near the community of Guernsey.

Melanie Loessl woke up at about 1:45 a.m. on Monday as firefighters began to fight the blaze, with rail cars on fire near the end of her driveway. “You could hear the hissing and noise from the cars that were on fire and there was just an enormous amount of flames. You couldn't imagine it,” she said.

As acrid smoke filled the air, Ms. Loessl was asked to evacuate for a few hours but returned before dawn. The RCMP shut down a highway in Saskatchewan owing to the thick smoke. The highway was still closed on Monday evening.

“At the end of my driveway, I cannot look across to the east because the smoke is so black you cannot see anything,” Ms. Loessl said.

PLAY VIDEO

1:05

Emergency crews responded to a CP Rail train hauling crude oil that had derailed Sunday. CP said in a statement no

and Plunkett because of smoke from the blaze. CP said an investigation was underway into the cause of the derailment.

THE CANADIAN PRESS

CP and Canada's Transportation Safety Board could not confirm on Monday how many rail cars had derailed or where the oil in the cars came from. Federal investigators will not enter the crash site until the fire is extinguished and dangerous materials are secured.

"Crews are working diligently and will ensure the area is cleaned up and restored after we safely recover from this incident," CP spokesman Andy Cummings said in a statement. The railway says there was no impact to any waterway.

There have been a number of derailments across North America that have seen oil cars catch fire since the 2013 disaster in Lac-Mégantic when an unattended train carrying 74 oil cars derailed in the small Quebec town. That crash killed 47 people and destroyed the core of the once picturesque lakeside town. The disaster also brought the growing volume of oil moving on the rails to the attention of regulators in Ottawa.

After the Lac-Mégantic derailment, the federal government announced that railways would need to carry more insurance, begin using sturdier rail cars to transport oil and could no longer use single-person crews.

The amount of oil being transported by railways has nearly doubled since the crash in Lac-Mégantic, owing in part to the lack of pipeline capacity in Canada as production in Alberta's oil patch has continued to increase. Nearly 320,000 barrels of oil were exported daily by rail in September, according to the latest figures available from the Canada Energy Regulator.

The volume of oil being carried by railways could grow further in the coming months. The Alberta government began allowing oil producers to increase their production levels above the province's quotas on Dec. 1, as long as the additional oil is transported by rail.

Production quotas were introduced in the final weeks of 2018 by the former NDP government of Rachel Notley as a lack of pipeline capacity was causing the price paid for Alberta's oil to plummet on international markets. Alberta Premier Jason Kenney's government has been looking for ways to relax the quotas by shifting more oil to rail cars.

In a statement in October when the new rail program was announced, Alberta Energy Minister Sonya Savage said moving more oil by train would increase production. "The special

allowance program will protect the value of our oil by ensuring that operators are only producing what they are able to move to market,” she said at the time.

The Alberta government is also looking to sell nearly \$3.7-billion in crude-by-rail contracts for 4,400 rail cars. The contracts were signed by the Notley government to increase the amount of oil moving by rail.

With reports from The Canadian Press

We have a weekly Western Canada newsletter written by our B.C. and Alberta bureau chiefs, providing a comprehensive package of the news you need to know about the region and its place in the issues facing Canada. [Sign up today.](#)

© Copyright 2019 The Globe and Mail Inc. All rights reserved.

351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1

Phillip Crawley, Publisher



Saskatoon

ConocoPhillips owned oil on train that derailed in Sask., leaked 1.5M litres



Company says questions about derailment should go to rail line or investigators

[Guy Quenneville](#) · CBC News · Posted: Dec 23, 2019 10:09 AM CT | Last Updated: December 23



ConocoPhillips has confirmed the train that derailed west of Guernsey, Sask., was carrying oil that belong to the Houston-based oil and gas producer. (Mark Triessen/The Associated Press)

[comments](#)



ConocoPhillips has confirmed it owned crude oil on a train that derailed and leaked about 1.5 million litres of oil in rural Saskatchewan two weeks ago.

"I can confirm that it was ConocoPhillips oil that was being transported," Evelyn Ferchuk, a spokesperson for the Houston-based oil company, said via email.

Canadian Pacific Railway (CP), which owns the rail line, had declined to say which oil company was involved.

CP train 516-398 train was carrying the oil to Oklahoma. It left from Rosyth, Alta., east of the Hardisty terminal, a large heavy crude oil storage hub for Canada.

The train's emergency brakes were activated west of Guernsey, Sask., just after midnight on Dec. 9. It's not clear what caused several tank cars to derail. The Transportation Safety Board of Canada is investigating.

ConocoPhillips declined to answer other questions, including whether the incident has the company rethinking the use of 117R retrofitted tank cars.

- [**U.S. rail carrier reportedly cracked down on same retrofitted tank type involved in fiery Sask. derailment**](#)

A former TSB investigator said those tank cars are not as thick as the [brand-new type of car](#) championed by Transport Canada in the wake of the Lac-Mégantic rail disaster.

"Any questions related to last week's incident including clean up, notifications, volume estimates, the derailment, the cause, etc. should be directed to CP or government investigators," the ConocoPhillips spokesperson wrote.

The most complex type of probe

The TSB has called the incident a Class 3 investigation — the most complex type of investigation undertaken by the agency.

"Class 3 investigations are generally completed within 450 days," according to [the incident page for the derailment](#).

Some Class 3 investigations stretch past that timeline, however, such as the one involving the Dec. 13 crash of domestic passenger flight from remote Fond du Lac, Sask.

POPULAR NOW

1 'Renoviction' rates soar due to big-city housing crunch

914 reading now

2 Sask. restaurants had 31,700 health violations in 3 years, but 0 fines were issued

675 reading now

3 **ANALYSIS**

What you can do in 2020 to keep the world from burning up: Don Pittis

433 reading now

4 **UPDATED**

Acclaimed Inuk singer Kelly Fraser was 'fiercely open with her fans,' says family

426 reading now

5 China convicts researcher who claimed to create world's first gene-edited babies

409 reading now

©2019 CBC/Radio-Canada. All rights reserved.

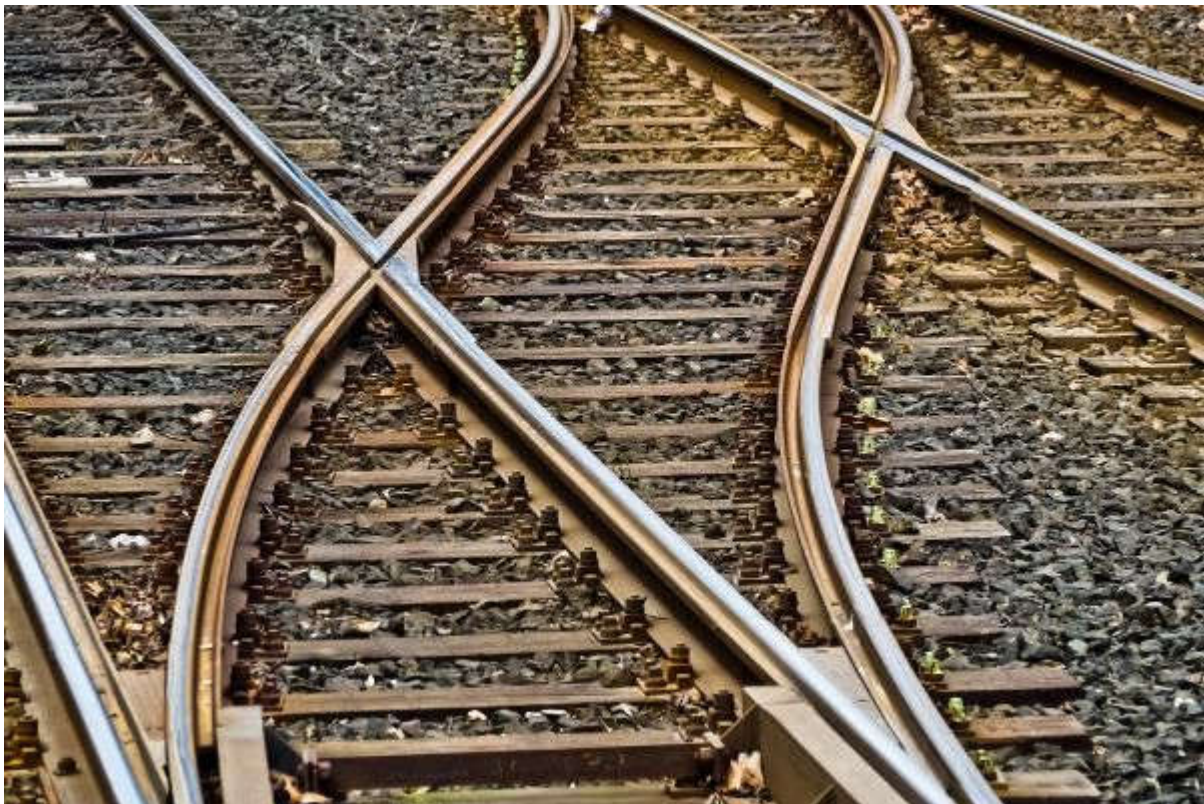
Visitez Radio-Canada.ca

Canadian Pacific Sees Volume Opportunities



FreightWaves

Benzinga January 30, 2020



[Canadian Pacific](#) (NYSE: [CP](#)) is eyeing an anticipated new intermodal offering in eastern Canada and crude-by-rail opportunities in western Canada.

The railway said [its acquisition](#) of the [Central Maine & Quebec](#) (CMQ) short line railroad would not only expand CP's presence in the Maritimes but also would enable it to compete with trucks in eastern Canada.

The acquisition, which was finalized in December, will enable CP to offer routes from the Maritimes to Montreal, Toronto, Chicago and western Canada, according to CP CEO Keith Creel. The routes will be "truck-like reliable and truck-like compatible," Creel told investors during [CP's fourth-quarter earnings call on Wednesday](#).

"After spending time on the [CMQ] railroad the last few weeks, I feel even more compelled and convicted about the addition to our CP family franchise and the value it represents. The value proposition is simply compelling," Creel said.

CP will spend much of 2020 getting CMQ's physical plant up to CP's standards, Creel said. Portions of the CMQ's infrastructure were previously cited for safety violations, according to local news reports, and CMQ's network includes a portion that was involved in the deadly July 2013 train derailment at Lac Mégantic, Quebec.

"There has been a reduction in available shipments in eastern Canada. But at the same time, the strategic value of that port in St. John has not been unlocked," Creel said.

While the time frame for how CP will take advantage of the CMQ is still being developed, CP executives cited growth opportunities for the short line to include expanding service for domestic and international intermodal, automotive parts, lumber and refined fuels.

"One thing ... I'm super excited about is all the new gateway access to the short line partners that we've never reached before as part of the CMQ and to the eastern carriers creating new routes and new markets," said John Brooks, CP's chief marketing officer.

"The level of interest from that part of the northeast U.S. and eastern Canada has frankly been overwhelming in the last 60 days. And I can tell you, my team and our leadership has been out on that property and talking to these folks. ... We'll see if it's a 2020 story, but it sure makes us excited about what 2021 should look like," he said.

Beyond CMQ, Brooks cited other opportunities to develop CP's intermodal franchise, including two long-term agreements it signed with Bison and Consolidated Fastfrate in the fourth quarter. The partnerships will provide opportunities for over-the-road conversion.

"[They are] two leaders in the trucking industry, two leaders in the wholesale industry and we're creating solutions with them without needing to purchase them. We're providing solutions in the marketplace that will drive new first-mile, last-mile innovation that the industry hasn't seen," Brooks said.

Meanwhile, in western Canada, two companies, Gibson and U.S. Development, are developing a diluent recovery unit (DRU) near CP's rail-served terminal in Hardisty, Alberta. It will become operational in 2021.

The unit will enable a more sustainable and safer crude-by-rail shipping model to the U.S. Gulf since the DRU process removes the diluent prior to loading the rail car, Brooks said. Removing the diluent returns the crude to a more concentrated state and the end product is no longer classified as a hazardous commodity, he said.

This process will also allow 30% more crude to be loaded in each tank car, thus making the rail costs more competitive with the pipeline. The capacity for this facility equates to two trains per day and a key set creates a long-term revenue stream for crude by rail, Brooks said.

"This is a game changer for crude [oil] and what is a unique and innovative development that will enable our franchise to enjoy sustainable crude by rail revenues that are safer and

more efficient to move for the long term, which is unique to CP's franchise in Canada," Creel said.

As for crude-by-rail in 2020, CP said it has the people and assets to handle increased crude-by-rail volumes from Alberta. CP has previously said it has a quarterly capacity of about 36,000 carloads for crude-by-rail.

On Wednesday, CP announced that net profits for the fourth quarter of 2019 rose nearly 22% amid a quarterly record for overall revenue.

Fourth-quarter net income for 2019 totaled C\$664 million, or C\$4.82 diluted earnings/share, compared with C\$545 million, or C\$3.83 diluted earnings/share, in the fourth quarter of 2018.

Image Sourced from Pixabay



TOP STORIES

Canada's job market blows past forecasts in January, unemployment rate falls

FEBRUARY 7



Ottawa orders trains carrying dangerous goods to reduce speed after fiery crash in Saskatchewan

EMMA GRANEY > ENERGY REPORTER

ERIC ATKINS > TRANSPORTATION REPORTER

PUBLISHED FEBRUARY 6, 2020

UPDATED 12 HOURS AGO

35 COMMENTS SHARE



00:00

Voice

1x



Smoke billows up from a derailed Canadian Pacific Railway train near Guernsey, Sask., on Feb. 6, 2020.

MATT SMITH/THE CANADIAN PRESS

The federal government has ordered lower speed limits for all trains carrying dangerous goods on Canada's railway lines after a train jumped the tracks in rural Saskatchewan early Thursday morning, bursting into flames and causing the evacuation of a small community.

A Canadian Pacific Railway freight train carrying crude oil derailed around 6:15 a.m. near Guernsey, 115 kilometres southeast of Saskatoon. Thirty-one of 104 cars left the tracks and a dozen caught fire, the Saskatchewan Public Safety Agency said. CP said in an e-mailed statement there were no injuries and no impacts to waterways.

Black smoke billowing over Guernsey on Thursday marked the second derailment in a matter of weeks near the tiny community of about 85 people. On Dec. 9, a CP train with 19 cars ran off the tracks about 10 kilometres to the west, causing a major blaze and leaking 1.5 million litres of oil.

Jack Gibney, reeve of the Rural Municipality of Usborne, which includes Guernsey, told The Globe and Mail he wants Prime Minister Justin Trudeau to know the incident had residents worried for their safety.

"You tell Mr. Trudeau down there that a pipeline needs to be put in place, because this CP rail line ... is the main line for oil cars," Mr. Gibney said. "The concerning part is that you see them out doing repairs on this line, but how come it's happening in this area so bad."

The speed limit for trains hauling dangerous goods – including oil, propane and chemicals – is 40 miles an hour (64 km/h) in cities and 50 mph (80 km/h) in other areas. Transport Minister Marc Garneau issued a ministerial order in response to the derailment on Thursday, cutting by half the speed limit for trains pulling 20 or more cars of dangerous goods.

The order is in effect for 30 days beginning on Feb. 7, he said, "although we are asking the railways to implement it immediately."

"I want to say we could shorten that," Mr. Garneau told reporters in Ottawa on Thursday. "We're looking for the causes to see if there's a common pattern, or we could lengthen it, depending on how things are progressing." He said he is aware the economy could be affected, "but it is very, very important that we do not sacrifice safety."

On Thursday morning, a makeshift evacuation centre was set up at Lanigan town hall, about 12 kilometres east of Guernsey.

As members of the Lanigan fire department went door-to-door in Guernsey telling residents they would have to leave, volunteers descended on the town hall. There they cooked breakfast for those who would soon arrive from Guernsey on buses supplied by the local school district and the nearby BHP Billiton Jansen potash mine.

Mr. Gibney said a few older residents were taken to Lanigan hospital.

“They were on oxygen. It was a real stress to move them out of their houses,” he said. “We still have a few [Guernsey] residents that refuse to go, but there’s not a lot we can do about it.”

By Thursday afternoon, all evacuees had been placed for the evening.

For an industry that tracks and publishes the average speed of its trains on a weekly basis, lower speed limits are unwelcome. Railways are under pressure from customers, investors and, when it comes to grain, the government, to move more goods quickly. Much of Canada’s rail network is single-track, and other than the occasional siding, has no passing lanes. This means when an oil train slows down, so does the grain train behind it.

The amount of oil moving on the rails has risen sharply in the past few months, driven by a shortage of pipeline capacity and the easing of production curtailments in Alberta.

In the final three months of 2019, CP said it moved a record 36,000 rail cars of oil, and expects to beat that pace this year.

Jonathan Abecassis, a spokesman for Canada’s largest rail carrier, Canadian National Railway Co., said on Thursday the new speed limit will have a “significant impact on our operations.”

In 2014, the late Hunter Harrison, then chief executive officer of CP Rail, complained about calls for tougher regulations, including lower speed limits, after the Lac-Mégantic oil-train disaster killed 47 people in 2013.

“Regulators, legislators, shippers are saying you gotta move more stuff, you gotta move it faster, you gotta move it safer. But, by the way, you gotta slow down,” Mr. Harrison said. “It doesn’t work.”

CP did not answer questions about the new speed limits' effects on its operations, but said it "fully supports this action."

"Until we better understand the facts relating to today's incident, it is prudent to operate with an abundance of caution. We equally share Minister Garneau's concerns, and remain committed to safe operations, as we always have been," Keith Creel, CP's chief executive officer, said in the company statement.

With a report from The Canadian Press

Our Morning Update and Evening Update newsletters are written by Globe editors, giving you a concise summary of the day's most important headlines. [Sign up today.](#)

© Copyright 2020 The Globe and Mail Inc. All rights reserved.

351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1

Phillip Crawley, Publisher



Saskatoon

2 CP crude oil train crashes 2 months apart in same Sask. area: 'Coincidence' or 'deeper problem'?

'It is a concern that 2 derailments happened in that vicinity, absolutely,' safety agency says

[Guy Quenneville](#) · CBC News · Posted: Feb 07, 2020 5:00 AM CT | Last Updated: an hour ago



A CP crude oil train derailed east of the small Saskatchewan hamlet of Guernsey Thursday morning. Photos from the afternoon show leaked oil on the ground. (Submitted by Philippe Gaudet)

[comments](#) A blue speech bubble icon with three horizontal lines inside, representing a comment or message.

The images were strikingly familiar: A dark stretch of rural Saskatchewan land, a fiery blaze and thick smoke billowing from train cars gone topsy-turvy.

"Another train by Guernsey!!" read the tag on one social media post.

[Thursday's early-morning train derailment](#) two kilometres east of Guernsey, Sask., was the second Canadian Pacific Railway crude oil crash to happen near the small hamlet in less than two months.

The first occurred on Dec. 9, 2019, just after midnight. A Canadian Pacific Railway train hauling oil derailed west of Guernsey. At least 19 of its train cars leaked an estimated 1.5 million litres of crude — [more than six times](#) the amount of product that poured into the North Saskatchewan River from a Husky Energy pipeline in July 2016.

[Drone footage of the second](#) derailment on Thursday clearly showed at least two large pools of black sludge staining the snow-covered ground alongside Highway 16. Thirty-one of the train's 104 cars derailed.

But no estimate of the latest spill has been released yet. The Transportation Safety Board deployed two investigators to the site on Thursday, but firefighters were still battling the blaze as of early Thursday afternoon, according to the Saskatchewan Public Safety Agency (SPSA).

Still, the clustering of two similar incidents only a few kilometres apart on the rail line's Sutherland subdivision quickly drew notice and alarm.



Elaine

@ElaineS41103933

Wow just a couple of months ago another one happened!!

twitter.com/gqinsk/status/...

Guy Quenneville @gqinsk

Replying to @gqinsk

Drone footage of today's CP crude oil train derailment east of Guernsey, courtesy of Philippe Gaudet. #sask #saskatchewan #trains #skpoli



1 2:18 PM - Feb 6, 2020

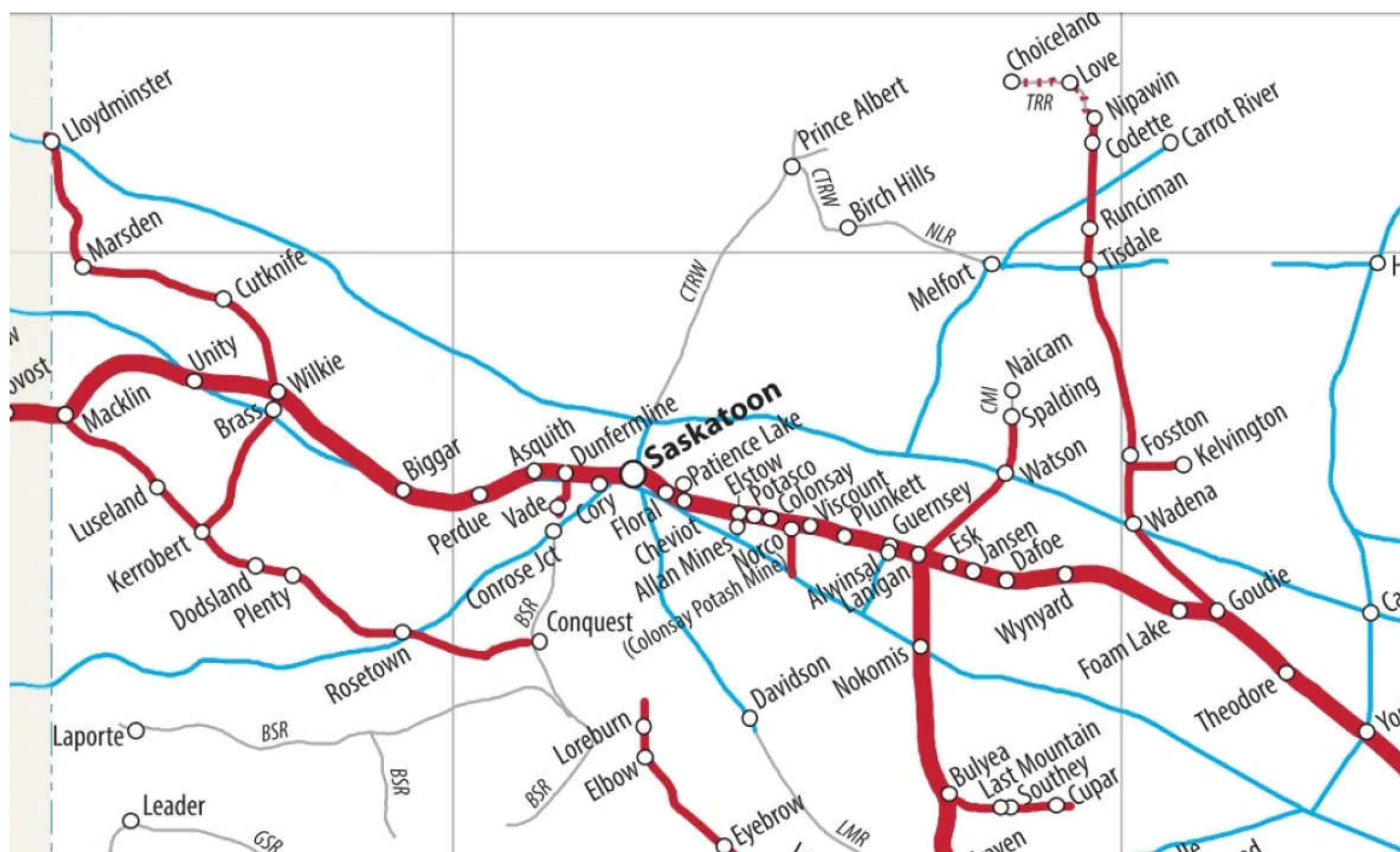
[See Elaine's other Tweets](#)

"It is a concern that two derailments happened in that vicinity, absolutely," said Marlo Pritchard, the president of SPSA.

Federal Transport Canada Marc Garneau simultaneously ordered that all large trains carrying dangerous goods on federal rail lines slow down their speeds — even as the speed of Thursday's crashed train remained unclear.

December's train was travelling about 72 km/h, which is the maximum speed on that section of the subdivision, according to the TSB.

Garneau's countrywide order called for trains going through metropolitan areas like Saskatoon to cap their speed at 32 km/h.



The train was headed eastbound toward Guernsey, according to information shared with the Transportation Safety Board of Canada by CP. (CP Rail)

On tracks everywhere else — including the portion of the Sutherland subdivision near Guernsey — trains can now only travel up to 40 km/h — a nearly 50 per cent reduction in maximum speed for that area.

"I am very concerned about the derailments of railway cars containing dangerous goods in the past 12 months," Garneau said of his 30-day order.

In its own statement Thursday afternoon, CP said it had already slowed down its trains but fully supported Garneau's directive.

"Until we better understand the facts relating to today's incident, it is prudent to operate with an abundance of caution," CP president and CEO Keith Creel said in the statement.

During a Thursday press conference held by the Saskatchewan Public Safety Agency, Pritchard was asked if all train activity on the Sutherland subdivision ought to be halted until the TSB's latest investigation wraps.

"It's way too early to even talk about that," Pritchard said. "We have to wait to see what the cause is because it might not have anything to do with the one that happened before [in December]."



"It is a concern that two derailments happened in that vicinity, absolutely," said Marlo Pritchard, president of the Saskatchewan Public Safety Agency. (CBC)

According to [the TSB's first update on the December derailment](#), "initial site examination determined that the covered hopper car in position two and the following 33 tank cars had derailed."

Ian Naish, a former director of rail investigations for the TSB, said that could point to one potential factor.

"Usually when there's a derailment and the first car off is just behind the locomotive, something like three times out of four that's because of a broken rail," he said. "It's highly likely it's a broken rail."

John Herbert, the director of communications for the U.S. Railway Supply Institute (RSI), declined to comment on Thursday's derailment, saying the organization was waiting for more information to come out.

But he shared an RSI table showing crude oil derailments in North America since 2006. Several were caused by broken rails.

NOTABLE CRUDE OIL AND ETHANOL DERAILMENTS SINCE 2006

Incident	Date	Release (gallons)	Fatalities	Cause of Derailment
New Brighton, PA	Oct. 2006	485,278		Rail
Shepherdsville, KY	Jan. 2007	69,402		Stiff Truck
Painesville, OH	Oct. 2007	76,153		Rail
Luther, OK	Aug. 2008	80,746		Irregular Cross Level
Cherry Valley, IL	Jun. 2009	232,963	1	Washout/Rail
Arcadia, OH	Feb. 2011	834,840		Rail
Tiskilwa, IL	Oct. 2011	143,534		Broken Rail
Columbus, OH	Jul. 2012	53,347		Broken Rail
Plevna, MT	Aug. 2012	245,336		Buckled Track
Lac-Mégantic, QC	Jul. 2013	1,500,000	47	Run Away
Aliceville, AL	Nov. 2013	700,000		Rail
Casselton, ND	Dec. 2013	476,000		Collision/Broken Axle
Plaster Rock, NB	Jan. 2014	60,800		Broken Wheel
Lynchburg, VA	Apr. 2014	29,000		Broken Rail
Dubuque, IA	Feb. 2015	53,785		Broken Rail
Gogama/Timmins, ON	Feb. 2015	450,000		Joint Bar Failure
Mt. Carbon, WV	Feb. 2015	378,000		Broken Rail
Galena, IL	Mar. 2015	110,543		Broken Wheel

Gogama, ON	Mar. 2015	692,000		Broken Rail
Heimdal, ND	May 2015	96,000		Broken Wheel
Culberton, MT	Jul. 2015	27,000		Broken Track
Lesterville, SD	Sep. 2015	50,000		Broken Rail
Moiser, OR	Jun. 2016	47,000		Wide Gauge
Graettinger, IA	Mar. 2017	322,000		Broken Rail
Plainfield, IL	Jun. 2017	84,000		Subsidence
Doon, IA	Jun. 2018	160,000		TBD

*All data reflect best understanding as of the date of the file - 7/11/18
Sources - FRA, PHMSA, NTSB, TSB, Railroads, Safety Project

Eight of the crude oil derailments listed in this document were caused by a broken rail. (Railway Supply Institute)

Testing and inspections could reveal if there's something wrong with the track, Naish said.

Melanie Loessl, whose home was near the site of the December derailment, said CP had done some work on the track throughout 2019 and as recently as a week or so ago. CBC has asked CP what work was done and why.

"I have nightmares of it happening here again," Loessl said Thursday.

CP has asked to test Loessl's water, she said.

The company has said neither derailment affected waterways.

'Why did those two trains derail?'

In addition to the speed of the train, another factor that remains unclear about Thursday's derailment is which types of tank cars the train was hauling.

December's CP train was carrying a mix of jacketed CPC-1232 cars and TC-117R cars, CP previously confirmed.

TC-117R cars are retrofitted to meet [the same standards as brand new, Transport Canada-endorsed TC-117s](#). The new TC-117s are meant to be less prone to rupturing during crashes in the wake of the Lac-Mégantic, Que., rail disaster.



Photo source: Transport Canada

A diagram of the new TC-117 tank type endorsed by Transport Canada. (Transport Canada/CBC)

But a major rail carrier of crude oil in the United States has [reportedly cracked down on](#) the retrofitted 117R tank type following a June 2018 derailment in Iowa that leaked 870,645 litres of oil into a waterway.

- [U.S. rail carrier reportedly cracked down on same retrofitted tank type involved in fiery Sask. derailment](#)

The shells on retrofitted 117R cars are slightly thinner than those on new 117 cars: 7/16th of an inch thick, versus 9/16th of an inch thick, according to Naish. CBC has asked CP what type of tank cars were on Thursday's train.

Regardless of which type of tank Thursday's train was pulling, "the tank cars don't seem to be able to contain anything and they do pile up and there's big releases," Naish said.



Thirty-one of the train's 104 cars derailed Thursday. Twelve were still on fire as of early afternoon. (Submitted by Philippe Gaudet)

Jean-Pierre Gagnon, a retired Transport Canada engineer, said the tank type must ultimately take a backseat to what caused Thursday's crash, however.

"The damage or hazard from crude oil is secondary to the main issue, which is the derailment," he said. "If you don't derail the train, then there's no crude oil problem."

"So why did those two trains derail? What's the cause?"

The TSB has said the two derailments will remain separate investigations for now.

Naish said he's never before seen two crashes by the same company, in the same area, in such a small period of time.

"Is it a coincidence," he said, "or is it a systemic deeper problem?"

POPULAR NOW IN NEWS

1 ANALYSIS

Trump impeachment ends with a whimper — and a bang

1866 reading now

2 Cost of Trans Mountain expansion soars to \$12.6B

897 reading now

3 MARKETPLACE

'Whiter skin in 14 days': Tracking the illegal sale of skin-whitening creams in Canada

727 reading now

4 Chinese doctor who sounded the alarm about coronavirus dies from the illness

566 reading now

5 Plane carrying Canadians who left China amid coronavirus outbreak lands at CFB Trenton

548 reading now

©2020 CBC/Radio-Canada. All rights reserved.

Visitez Radio-Canada.ca



Toronto

'An explosion could be catastrophic': City councillor says new rail safety measures don't go far enough

Coun. Josh Matlow says while he welcomes new speed rules, much more needs to be done

CBC News · Posted: Feb 09, 2020 6:37 PM ET | Last Updated: February 9



New speed reductions for trains carrying dangerous goods across the country have come into effect after a train carrying crude oil derailed in Saskatchewan. But one Toronto city councillor says while he welcomes the move, much more needs to be done. (Greg Bruce/CBC)

[comments](#)



Should freight trains filled with potentially explosive goods be freighted through some of this country's most densely populated cities?

That's the question one Toronto city councillor hopes will prompt further changes to rules around the transport of dangerous goods by rail in Canada after the federal government

announced new measures that would cut in half the speed limits for trains carrying such goods.

The changes came just days after a train carrying crude oil derailed in Saskatchewan, bursting into flames and forcing people to evacuate their homes. But while Coun. Josh Matlow says he welcomes the new speed rules, much more needs to be done.

"We wouldn't expect that any car company wouldn't recall a typical vehicle on our roads. Why would we expect anything less by cars that are carrying dangerous materials?"

- [**No one injured after freight train carrying industrial chemical derails in Toronto**](#)
- [**No injuries after 2 cars from CP freight train derail in Toronto**](#)

The new federal order, which took effect Friday at midnight, will require trains travelling through metropolitan areas to limit their speed to a maximum of 32 km/h, and 40 km/h everywhere else. Before the order, trains were required to limit their speed to 64km/h in metropolitan areas, and 80 km/h everywhere else.

String of derailments in Toronto

But it isn't just speed that needs to be addressed, says Matlow.

Toronto has seen its share of derailment scares over the past several years.

In 2016, two Canadian Pacific trains collided at a rail crossover near Howland Avenue and Dupont Street, spilling about 2,500 litres of diesel fuel near a residential midtown neighbourhood.





Toronto city councillor Josh Matlow hopes the federal government will beef up its rules around the transport of dangerous goods by rail in Canada after announced new measures that would cut in half the speed limits for trains carrying such goods. (Angelina King/CBC)

A year later, there was another derailment in the same spot. No one was injured.

Then, in November 2018, five cars of a freight train carrying an industrial chemical derailed in Scarborough. No one was hurt in that incident either and nothing harmful leaked.

- **'A failure in the system': How 2 trains derailed in midtown Toronto**

And of course there was the Mississauga train derailment of 1979 when a tanker car carrying propane exploded, forcing 240,000 people to flee their homes and sending a massive fireball into the sky. One of the tankers in that incident had been carrying chlorine, which — if it had ruptured — could have easily been deadly for nearby residents.

But many residents worry it's just a matter of time before disaster hits, says Matlow.

"Within half a mile either side of the tracks that go through the heart of Toronto an explosion could be catastrophic," he said.

New exhibit honours 40th anniversary of Canada's largest peacetime evacuation 6:00

Among the measures Matlow wants to see implemented are transparency around exactly what hazardous materials might be being transported and how much and getting rid of the

remaining DOT-111 tank cars involved in the deadly rail disaster in Lac-Mégantic, Que. in 2013.

The federal government moved to phase out the cars beginning in 2016, and said in a statement to CBC News that it has accelerated the timeline to remove them twice in recent years.

It has also increased the number of dangerous goods and rails safety inspectors, and increased the number of inspections and directed railways to provide municipalities and first responders with more dangerous goods information among other measures among other measures.



Two Canadian Pacific trains collided in Toronto in August 2016, causing cars to derail. One of the train's engines leaked diesel fuel. (CBC)

"Minister Garneau is concerned about the safety of railway operation and has put the Ministerial Order in place as a precautionary measure. He has instructed Transport Canada officials to examine all issues related to this and past accidents to determine if additional safety measures are required," the statement from Transport Canada said.

"We are continuously looking at ways to make further improvements and will not hesitate to take immediate action if necessary to protect Canadians."

In Ontario, CP and CN lines are shared with the provincial transit agency Metrolinx. Spokesperson Anne Marie Aikins says the new speed rules for trains carrying dangerous goods haven't affected transit service yet but that the situation is being monitored.

Aikins says it's difficult to predict disruptions to service because Metrolinx doesn't know which of the cars are carrying dangerous goods.

The new speed reductions are in place for 30 days. That timeframe could change as the government looks at similarities between different derailments to see if even more safety precautions need to be implemented.

- [Why is Canada phasing out the DOT-111 rail cars early?](#)
- [Mississauga Miracle: Remembering the disaster that forced 240,000 people to flee](#)

With files from Angelina King

POPULAR NOW IN NEWS

1 Award-winning journalist Christie Blatchford dead at 68

1761 reading now

2 ANALYSIS

Did a 'socialist' win New Hampshire? Can anyone but an 'oligarch' catch him?

823 reading now

3 Why doctors find fighting the coronavirus so challenging

776 reading now

4 Complaints pour in from passengers denied compensation for delayed flights

596 reading now

5 Police prepare to end Mohawk demonstration along railway

522 reading now

RECOMMENDED FOR YOU





Award-winning journalist Christie Blatchford dead at 68

News - Canada - Toronto



ANALYSIS

Did a 'socialist' win New Hampshire? Can anyone but an 'oligarch' catch him?

Keith Boag

News - World



Why doctors find fighting the coronavirus so challenging

Amina Zafar

News - Health



Complaints pour in from passengers denied compensation for delayed flights

Sophia Harris

News - Business



Police prepare to end Mohawk demonstration along railway

Jorge Barrera

News - Indigenous

©2020 CBC/Radio-Canada. All rights reserved.

Visitez Radio-Canada.ca



Saskatoon

Sask. crude oil train that crashed and burned had new puncture-resistant cars endorsed by feds

'The cars were TC-117J cars, which meet all Transport Canada standards,' CP Rail says

[Guy Quenneville](#) · CBC News · Posted: Feb 09, 2020 11:27 AM CT | Last Updated: February 10



Smoke billows up from a derailed Canadian Pacific Railway train near Guernsey, Sask., last Thursday. (Matt Smith/The Canadian Press)

[comments](#)



The Canadian Pacific Railway train that derailed, leaked crude oil and ignited a large fire in rural Saskatchewan on Thursday was using new, industry-standard tank cars meant to be more puncture-resistant than their predecessors, the ones that [exploded in Lac-Mégantic, Que.](#), in 2013.

Both CP and ConocoPhillips, which owned the bitumen on board, confirmed the train was made up of TC-117J cars [endorsed by Canadian regulators](#) in 2016.

"The 117Js are newly built," a ConocoPhillips spokesperson said. "[They] meet or exceed the standard required for crude transportation."

[Footage from Thursday's crash site](#), west of the small hamlet of Guernsey, Sask., about 100 kilometres southeast of Saskatoon, shows large puddles of black sludge staining the prairie ground next to the train track that runs parallel to Highway 16.

There have been no reports of injuries after a train derailed near a Saskatchewan hamlet. Emergency response says 12 of the 31 cars that derailed are on fire. 0:33

The Transportation Safety Board of Canada (TSB) is investigating the early-morning crash but has not yet released an estimate of the amount of oil spilled. Nobody was injured and there was no impact to waterways, according to CP Rail.

By 9 p.m. CST Friday — more than 36 hours after the train jumped the tracks — the fires were contained and the rail line's Sutherland subdivision was reopened to traffic.

According to CP, 32 of the train's tank cars had derailed.





The fires from the crash took more than 36 hours to contain. (Matt Smith/The Canadian Press)

That's just one car short of the 33 that derailed in [a separate CP-Conoco crude oil train derailment](#) in early December on the other side of Guernsey.

- [Derailed crude oil train cars leaked, ignited despite enhanced safety features](#)
- [2 CP crude oil train crashes 2 months apart in same Sask. area: 'Coincidence' or 'deeper problem'?](#)

Approximately 1.5 million litres of oil leaked out of the train's tanks in that crash. That's [more than six times](#) the amount of product that poured into the North Saskatchewan River from a Husky Energy pipeline leak in July 2016.

Enhanced features

The train that derailed in December used [a mix of jacketed TC-117R cars and CPC-1232 cars](#), which are not quite the same as the new TC-117J tanks involved in Thursday's derailment.

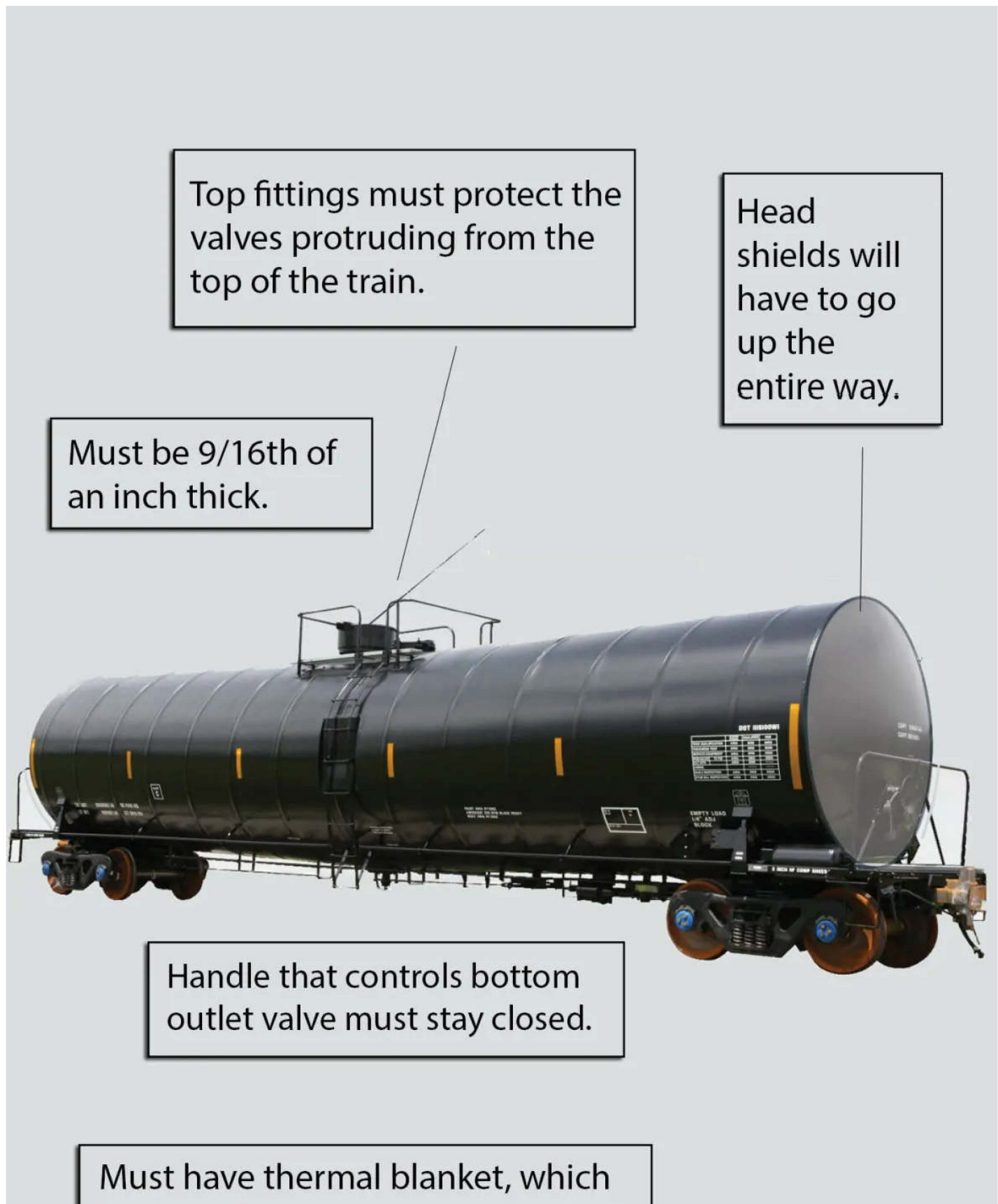
TC-117R cars are older cars retrofitted to meet [the same standards as the brand new TC-117Js](#) touted by Transport Canada in the years following the Lac-Mégantic rail disaster. In that tragedy, an unmanned crude-carrying train derailed and exploded in the town's core, killing 47 people.

CPC-1232 cars are industry-sponsored and meant to be safer than the DOT-111 tank cars involved in Lac-Mégantic, according to the U.S. Bureau of Rail Statistics.

The shells on retrofitted 117R cars are slightly thinner than those on new 117 cars, according to Ian Naish, a former director of rail investigations for the TSB — as are the shells on jacketed CPC-1232s, according to the bureau.

In the wake of Lac-Mégantic, Transport Canada called for the new TC-117 rail cars to become the new standard for transporting flammable liquids. The cars feature several enhanced safety features, including:

- A jacket for improved puncture resistance.
- Thermal protection that can withstand exposure to a 100-minute fire without rupturing.
- Shields on the ends of each tank to prevent a breach from collisions with adjacent tanks.
- Mandatory top fitting protection covers for the valves on top of the tank car.



helps the cars withstand heat if fire breaks out.

Photo source: Transport Canada

(Transport Canada/CBC)

Still, even with new TC-117 tank cars in use Thursday, "again the tank cars don't seem to be able to contain anything and they do pile up and there's big releases," Naish said.

"It does raise the question of how much better they perform in derailments than the other tank cars. Is there really much difference at higher speeds?"

The speed question

Naish wonders at what maximum speed the new 117 cars can survive a derailment without a breach or serious leak.

It's not known how fast the train was going Thursday before it crashed; the TSB has yet to issue its first written update on the investigation. But the TSB has previously reported the maximum speed on that part of the line was 72 km/h.

Hours after Thursday's derailment, federal Transport Minister Marc Garneau ordered that all trains with 20 or more cars carrying dangerous goods must slow down their speeds for the next month.

For the Sutherland subdivision, Garneau's directive means a speed reduction of nearly 50 per cent.

- [**Federal transport minister orders trains to slow down after fiery crash in Sask.**](#)
- [**Experts weigh in on rail slowdown imposed following fiery crash in Sask.**](#)

Garneau's country-wide order is already expected to have broader impacts, such as longer wait times for car drivers at train intersections.

More steps may be taken, Garneau said.

"I have asked my officials to examine all issues related to these accidents to determine if additional safety measures will be required."

ConocoPhillips said Friday it was closely monitoring the situation.

"[The safety of the community](#) and the protection of the environment is our primary concern," the company said.

Thursday's derailment re-stoked the political debate on trains vs. pipelines for transporting crude.



Tony Millar
@a_miller16

Replying to @CBCNews @gqinsk
This is why we need pipelines

3 2:17 PM - Feb 7, 2020

[See Tony Millar's other Tweets](#)



The Seitanist
@antaganostic

Replying to @CBCNews @gqinsk
At least when trains full of oil derail or crash, we know right away and can start cleanup. Some pipeline leaking away for months or years in some remote corner of B.C. with only the word of the oil companies to say how bad it is? Let me think...

1 10:28 PM - Feb 7, 2020

[See The Seitanist's other Tweets](#)

It also reinforced the possibility that such a fiery derailment could happen in a large population centre.

"We are aware that any derailment raises concerns for our citizens," Saskatoon Mayor Charlie Clark tweeted on Thursday.

Charlie Clark



We are aware that any derailment raises concerns for our citizens. We are monitoring this situation and remain engaged with CN and CP on the critical need to ensure rail safety in our community. [#yxe globalnews.ca/news/6514826/t...](https://www.globalnews.ca/news/6514826/t...)

Guernsey, Sask. being evacuated after CP freight train derail...

Saskatchewan RCMP said a train derailed Thursday morning just west of Guernsey.

[globalnews.ca](https://www.globalnews.ca)

2 6:00 PM - Feb 6, 2020

[See Charlie Clark's other Tweets](#)

Pamela Goulden-McLeod, the director of emergency management for the Saskatoon Fire Department, said the city has response plans in place for a potential "derailment emergency" within city limits.

"We've planned and collaborated with many agencies, including rail companies, for such an event," she said.

The City of Saskatoon has also expressed a desire to have rail lines moved outside of the city. An update on that effort is expected some time this year.

- [**'Anything can happen': Guernsey, Sask. residents want answers after 2nd derailment**](#)

POPULAR NOW IN NEWS

1 Award-winning journalist Christie Blatchford dead at 68

1798 reading now

2 ANALYSIS

Did a 'socialist' win New Hampshire? Can anyone but an 'oligarch' catch him?

809 reading now

3 Why doctors find fighting the coronavirus so challenging

780 reading now

4 Complaints pour in from passengers denied compensation for delayed flights

567 reading now

5 Police prepare to end Mohawk demonstration along railway

539 reading now

©2020 CBC/Radio-Canada. All rights reserved.

Visitez [Radio-Canada.ca](https://radio-canada.ca)



Saskatoon

Latest CP derailment spilled 5 times as much oil as Husky pipeline leak in 2016

Significant amount of oil believed to have burned off, spokesperson says

[Guy Quenneville](#) · CBC News · Posted: Feb 11, 2020 12:57 PM CT | Last Updated: February 11



"The amount of recovered oil is currently being determined and is complicated by the fact that a significant portion burned off during the incident," a Saskatchewan government spokesperson said Tuesday. (Submitted by Philippe Gaudet)

[comments](#)



The Saskatchewan government says an estimated 1.2 million litres of oil leaked from a Canadian Pacific Railway train that derailed near the hamlet of Guernsey last week.

That's less than the estimated 1.5 million litres that is believed to have leaked in [a separate train derailment, also near Guernsey](#), last December.

But it's still five times the amount of oil spilled during the [2016 Husky Energy pipeline disaster](#) near Maidstone, Sask.

The cause of both train derailments is under investigation by the Transportation Safety Board of Canada. The TSB has yet to issue its first update on the investigation into Thursday's crash.

The province said the estimated spill figure for Thursday's derailment came from CP.

"The amount of recovered oil [in Thursday's crash] is currently being determined and is complicated by the fact that a significant portion burned off during the incident," a spokesperson for the provincial government said Tuesday.

The oil caught fire in the crash and continued to burn into the next day.

"Fortunately, in both cases, the spill was fully contained to the railway and highway ditches and impacted a relatively small area."

Frozen ground likely helped reduce the risk of contaminants penetrating too deeply into the ground, the spokesperson said.

Tank manufacturer monitoring situation

Thursday's train crash happened shortly after 6:15 a.m. CST. Thirty-two cars jumped the tracks west of Guernsey, a small hamlet located 116 kilometres east of Saskatoon.

ConocoPhillips said the train was carrying a type of diluted bitumen called Surmont Heavy DilBit (SHD).

At least 12 of the train cars caught fire, according to the Saskatchewan Public Safety Agency. Drone footage showed at least two large pools of spilled oil staining the ground next to the railway.

There have been no reports of injuries after a train derailed near a Saskatchewan hamlet. Emergency response says 12 of the 31 cars that derailed are on fire. 0:33

CP has confirmed the train was using a newly built type of tank car meant to have better puncture resistance than the ones that [exploded in the deadly Lac-Mégantic, Que.](#), train derailment in 2013.

- [Train that crashed and burned had new puncture-resistant cars](#)

Trinity Rail, the Texas-based company that manufactured the train cars involved in Thursday's derailment, said Tuesday it's monitoring the situation.

"Trinity is committed to the safety of its employees, subcontractors, customers and community as a matter of top priority," a company spokesperson said.

Cleanup to take several months

According to the province, CP has hired contractors and environmental consultants to develop a remediation plan.

It's not clear how much soil was impacted.

"It is not known exactly how long the cleanup will take to complete but can be expected to take up to several months," the government spokesperson said.

Transport Canada, which regulates Canada's rail industry, said Tuesday it has appointed a minister's observer to oversee the TSB's probe.

"Transport Canada has also sent remedial measures specialists, inspectors and tank car specialists to the site to verify compliance with the Transportation of Dangerous Goods Act and regulations, provide advice to the TSB and examine the tank cars," a spokesperson said.

POPULAR NOW IN NEWS

1 Award-winning journalist Christie Blatchford dead at 68

1798 reading now

2 ANALYSIS

Did a 'socialist' win New Hampshire? Can anyone but an 'oligarch' catch him?

809 reading now

3 Why doctors find fighting the coronavirus so challenging

780 reading now

4 Complaints pour in from passengers denied compensation for delayed flights

567 reading now

5 Police prepare to end Mohawk demonstration along railway

539 reading now

RECOMMENDED FOR YOU

?



Award-winning journalist Christie Blatchford dead at 68

News - Canada - Toronto



ANALYSIS

Did a 'socialist' win New Hampshire? Can anyone but an 'oligarch' catch him?

Keith Boag

News - World



Why doctors find fighting the coronavirus so challenging

Amina Zafar

News - Health



Complaints pour in from passengers denied compensation for delayed flights

Sophia Harris

News - Business



Police prepare to end Mohawk demonstration along railway

Jorge Barrera

News - Indigenous

©2020 CBC/Radio-Canada. All rights reserved.

Visitez Radio-Canada.ca

Weighing the risks of fuel transportation

Updated: 02/12/2020 7:00 AM

EDITORIAL

The coincidence last week was striking. As Winnipeggers joined a Canadawide protest against a planned pipeline, 31 rail cars carrying crude oil derailed and burst into flames in rural Saskatchewan.

The juxtaposition of the anti-pipeline demonstrations and yet another train crash gave vivid focus to the complex reality of transporting crude oil and natural gas: these dangerous but necessary fossil fuels have to be moved somehow, and it's safer to move them by pipelines

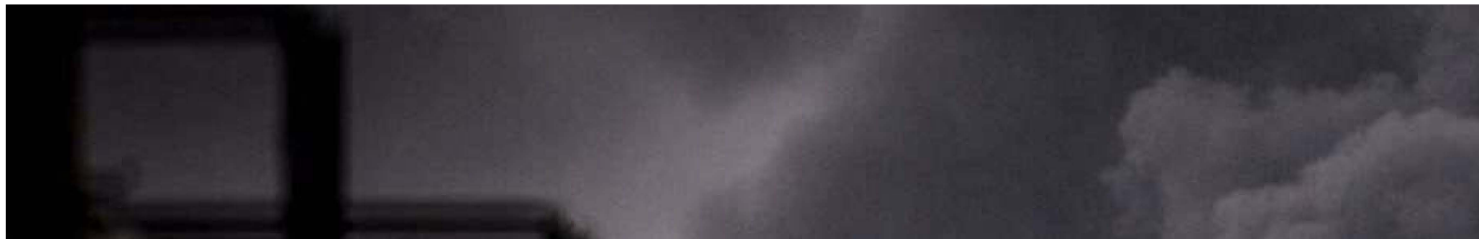




The issue is particularly concerning to Winnipeg because, thanks partly to public resistance to building new pipelines, an increased number of rail cars that contain oil and gas rolls through this city, close to residential areas and past motorists who are lined up behind rail-crossing arms.

That's why many Winnipeggers paid grim attention to last Thursday's derailment that sent a cloud of black smoke high into the air near Guernsey, Sask., about 115 kilometres southeast of





Canada in 2018, the latest year for which numbers are available. There were 25 railway accidents involving dangerous goods — defined as flammable or corrosive substances that either exploded or leaked — including two in Manitoba.

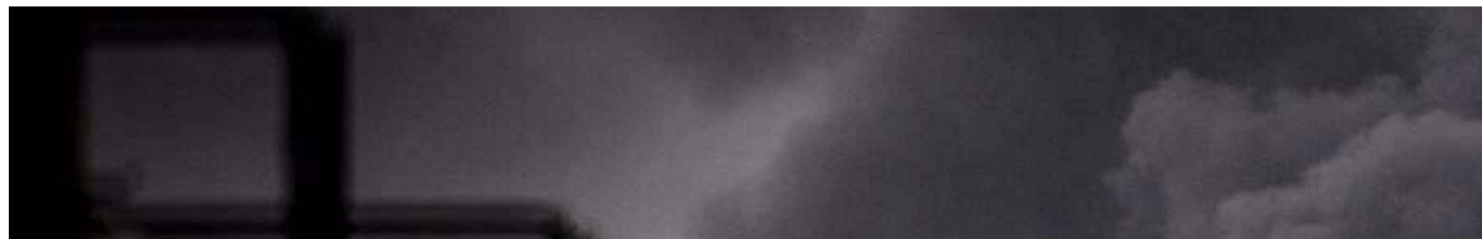
Want to get a head start on your day?

Get the day's breaking stories, weather forecast, and more sent straight to your inbox every morning.

The reason oil and gas companies use rail cars for transport is that current pipelines are full to capacity. The development of pipelines — Trans Mountain, Keystone XL and Enbridge's Line 3 — has been stalled by public opposition, lawsuits and protracted negotiations with First Nations.

The current protests against a natural-gas pipeline through Wet'suwet'en territory in British Columbia should not necessarily be regarded as a sweeping condemnation of pipelines. Most of the protesters — including hundreds in Winnipeg who have twice blocked traffic on Portage Avenue — are motivated by what they see as a violation of Indigenous rights; although Coastal GasLink has signed agreements with all 20 elected First Nations councils along the 670-kilometre pipeline's path, the Wet'suwet'en hereditary clan chiefs, who are leaders under the traditional form of governance, haven't consented.





method of transportation is the least problematic.

The view from Winnipeg, a city of nearly 780,000 where increasing numbers of rail cars full of highly combustible substances creak through densely populated areas, is that pipelines are the preferred option.

The Canadian Press



Feb 12, 2020: Chiefs head to court over pipeline as supporters take to streets in protest

Michelle McQuigge, The Canadian Press



Feb 11, 2020: Further rail restrictions after oil spill derailment

The Canadian Press



Feb 6, 2020: Manitobans take notice of Saskatchewan derailment

Dylan Robertson



Feb 6, 2020: Slowdown ordered after train carrying crude derails

The Canadian Press



Jan 20, 2020: Railways report more accidents with dangerous goods

Dylan Robertson



Feb 17, 2019: CN cleaning up crude spill, has reopened railway after derailment



Feb 16, 2019: CN working to clean up oil tanker spill near St-Lazare

Dylan Robertson





By submitting your comment, you agree to abide by our Community Standards and Moderation Policy. These guidelines were revised effective February 27, 2019. Have a question about our comment forum? Check our frequently asked questions.

ABOVE THE FOLD

^ Previous Article

^ Next Article



EXHIBIT C

EXHIBIT**C**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In RE:	)	
	)	
MONTREAL, MAINE &	)	
ATLANTIC RAILWAY, LTD.,	)	Chapter 11
	)	Bk. No. 13-10670
Debtor	)	
	)	
-----	)	
	)	
ROBERT J. KEACH, solely	)	
in his capacity as the	)	
estate representative	)	
of the post-effective	)	
date estate of	)	
MONTREAL, MAINE &	)	
ATLANTIC RAILWAY, LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc. No.
	)	14-1001
CANADIAN PACIFIC	)	
RAILWAY COMPANY and	)	
SOO LINE RAILROAD	)	
COMPANY,	)	
	)	
Defendants.	)	

DEPOSITION

OF

GLEN DONALD WILSON

December 5, 2019

8:59 a.m.

Reported By: Claire M. Forster, CSR(A)

Job No: 172890

Page 2 1 TAKEN AT: GOWLING WLG 2 1600, 421 - 7 Avenue SW 3 Calgary, Alberta T2P 4K9 4 5 6 7 8 9 10 11 REPORTED BY: CLAIRE M. FORSTER, CSR(A) 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 3 1 APPEARANCES 2 3 PAUL McDONALD, ESQ. 4 JACK WOODCOCK, ESQ. 5 6 BERNSTEIN SHUR 7 100 Middle Street 8 Portland, ME 04104 9 COUNSEL FOR PLAINTIFF 10 11 12 PAUL HEMMING, ESQ. 13 14 BRIGGS & MORGAN 15 80 South Eighth Street 16 2200 IDS Center 17 Minneapolis, MN 55402 18 COUNSEL FOR DEFENDANTS 19 20 ALSO PRESENT: 21 22 CHRISTINE PLANTE, In-house counsel for Defendants 23 24 25
Page 4 1 INDEX 2 3 WITNESS: PAGE 4 Glen Donald Wilson 5 Examination by Mr. McDonald 7 6 7 EXHIBITS 8 EXHIBIT 1 - The estate representative's 19 9 notice pursuant to FED. R. CIV.P.30(b)(6) of 10 deposition upon oral examination of Canadian 11 Pacific Railway Company 12 EXHIBIT 2 - Copy of the Canadian Pacific 40 13 2013 annual report 14 15 EXHIBIT 3 - PowerPoint presentation entitled 43 16 "Hydrocarbons By Rail," dated July 2012 17 EXHIBIT 4 - Organizational chart for safety, 66 18 environment and regulatory as of January 25, 19 2013 20 EXHIBIT 5 - Organizational chart dated 89 21 April 26th, 2013 for marketing and sales 22 23 EXHIBIT 6A - PowerPoint entitled "Safe 127 24 Transport of Hydrocarbons Standing Senate 25 Committee on Energy, the Environment, & Natural Resources," dated March 6, 2013, with speaking notes EXHIBIT 6B - PowerPoint entitled "Safe 128 Transport of Hydrocarbons Standing Senate Committee on Energy, the Environment, & Natural Resources," dated March 6, 2013, without speaking notes EXHIBIT 7 - Document entitled "Crude by Rail 140 Frequently Asked Questions" EXHIBIT 8 - 49 C.F.R. section 171.2 146 EXHIBIT 9 - Consolidated Transportation of 160 Dangerous Goods Regulations including Amendment SOR/2012-245	Page 5 1 EXHIBIT 10 - Email chain that occurred on 177 2 January 4, 2013 between Keegan Loxam and 3 others 4 EXHIBIT 11 - Email from Chris Bunce to 184 5 Mr. Wilson, cc'ing Ms. Nagy and Mr. Kozey, 6 dated July 19, 2013, with additional emails 7 EXHIBIT 12 - Petition for rulemaking 198 8 EXHIBIT 13 - Letter from the National 211 9 Transportation Safety Board to The Honorable 10 Cynthia L. Quartermann, dated March 2, 2012 11 EXHIBIT 14 - PowerPoint presentation 215 12 entitled "Design Considerations" 13 14 EXHIBIT 15 - October 28, 2011 email from 227 15 Mike Bleackley to Keegan Loxam and others 16 EXHIBIT 16 - Email chain between several 233 17 representatives of CP, beginning with an 18 email from Bill Hay to Jim Kozey on 19 December 13, 2011 20 21 EXHIBIT 17 - Email chain involving 245 22 Dave Moisey, Eli Jasso, and others, ending 23 with an email dated August 2, 2013 24 25 EXHIBIT 18 - Bill of lading for Train 282 256 EXHIBIT 19 - Tariff 265 EXHIBIT 20 - Email from Jim Kozey to a 268 number of recipients, dated December 23rd, 2013, with an attachment EXHIBIT 21 - Document from the Region 8 272 hazardous materials team inspection for the Bakken Formation in North Dakota EXHIBIT 22 - Email chain that ends and 275 begins on April 3rd, 2013

1 REQUESTS MADE
2 REQUEST NO. 1 - To advise whether or not 38
Canadian Pacific has any US-based employees
3
4 REQUEST NO. 2 - To advise if 39
Canadian Pacific had any employees in the
United States in 2013
5
6 REQUEST NO. 3 - To advise which transload 49
facilities CP operated in the calendar years
2012 and 2013
7
8 REQUEST NO. 4 - To advise whether or not CP 50
ever operated a crude oil transload facility
9 REQUEST NO. 5 - To advise whether or not 85
Mr. Pielak became a Soo Line employee when
he transferred to the United States
10
11 REQUEST NO. 6 - Re the individuals whose 101
names are listed on item number 4 of
Attachment A of Wilson Exhibit 1, to advise
whether they were employees of Soo Line or
CP
12
13 REQUEST NO. 7 - To advise which of the two 103
individuals listed on item 4 of Attachment A
of Wilson Exhibit 1 were the two that took
the train out of New Town
14
15 REQUEST NO. 8 - To advise who was the person 104
who was responsible for the track at the
New Town spur
16
17 REQUEST NO. 9 - To advise which crew crossed 124
the border to handle the exchange of
operators of Train 282
18
19 REQUEST NO. 10 - To advise who Alain Dupere 228
is
20
21
22 REQUEST NO. 11 - To advise if Mr. Feygelson 236
was an employee of Soo Line
23
24 REQUEST NO. 12 - To confirm if Kristy Jared 248
is a Soo Line employee
25

1 GLEN DONALD WILSON
2 Q. -- we'll be operating under today, okay?
3 A. Yeah.
4 Q. All right. So I guess the first thing I
5 would mention to you is that as you see Claire, the
6 court reporter, is taking down the testimony
7 stenographically so it's important that all of your
8 answers be oral, okay?
9 A. Okay.
10 Q. Oftentimes in conversation you will nod
11 your head or wave your hand and I will see across
12 the table what you mean, but that won't show up on
13 the transcript.
14 A. Understood.
15 Q. So I will try to remind you if you don't
16 follow that rule. But I'd like you to try and keep
17 that in front of your mind throughout the
18 proceedings today.
19 It's difficult for the court
20 reporter to take down an accurate transcript when
21 we're speaking over each other, so what I'm going
22 to ask you to do is to wait until I have finished
23 my entire question and pause before you give your
24 answer, okay?
25 A. Very well.

1 GLEN DONALD WILSON
2 (Proceedings commenced at 8:59 a.m.)
3 GLEN DONALD WILSON, sworn, questioned by
4 Mr. McDonald:
5 Q. Good morning, Mr. Wilson.
6 A. Good morning.
7 Q. Have you ever given deposition testimony
8 before?
9 A. Not in the United States. Or not for a
10 United States-based proceeding.
11 Q. You have given testimony in Canada-based
12 proceedings?
13 A. Yes.
14 Q. How many times?
15 A. I've testified in proceedings probably
16 three or four times. Examination for discovery
17 just this case would be the first time.
18 Q. Okay. I imagine --
19 A. Related case.
20 Q. All right. I imagine that you have been
21 given some instructions by your counsel that I just
22 wanted to take a few minutes before we actually
23 begin with the substance and talk about the ground
24 rules and the procedures --
25 A. Sure.

1 GLEN DONALD WILSON
2 Q. Oftentimes you are going to know where I
3 am going with the question, and you will
4 undoubtedly from time to time be prompted to just
5 give the answer but it's -- again, it's important
6 that we have an accurate transcript, so if you can
7 wait till I'm finished, I'll try to do the same and
8 not interrupt you when you are giving your answers,
9 okay?
10 A. Very good.
11 Q. So if at any point during the
12 questioning today you don't understand one of my
13 questions or if it is in any way unclear to you,
14 I'm going to ask you to let me know that, okay?
15 A. Yes.
16 Q. If you don't, I'm going to assume that
17 you have understood the question and that you are
18 going to respond with your most truthful and
19 accurate answer. Is that fair?
20 A. That's fair.
21 Q. We probably will be going for most, if
22 not all, of the day today. But this is not an
23 endurance test, so if at any point during the
24 proceedings you need to take a break, just let us
25 know and we will try to accommodate your request.

Page 10 1 GLEN DONALD WILSON 2 A. Thank you. 3 Q. All right. Is there any reason 4 physically, mentally, or emotionally that you are 5 not able to give full and complete answers to the 6 questions I pose to you today? 7 A. No. 8 Q. Are you taking any medication? 9 A. No, I'm not. 10 Q. Okay. All right. Throughout the course 11 of the questioning today, I may use some 12 abbreviations or shorthands, and I just want to 13 make sure that we have an understanding before we 14 go forward with the questioning on some of these. 15 I may refer to Canadian Pacific 16 Railway as "CP." Is that fair? 17 A. Yeah. 18 Q. Okay. I may refer to the defendants in 19 this case, Canadian Pacific Railway Company and 20 Soo Line Railroad Company, as "the defendants." 21 You understand that? 22 A. Understood. 23 Q. I may refer to Montreal, Maine & 24 Atlantic Railway as MMA. Is that fair? 25 A. Yes.	Page 11 1 GLEN DONALD WILSON 2 Q. All right. You mentioned earlier that 3 you had given some testimony in Canadian-based 4 proceedings; right? 5 A. Yes. 6 Q. Were -- was that testimony in any way 7 related to the derailment that is the subject of 8 this lawsuit? 9 A. Not when I've testified in -- in a 10 proceeding. The examination for discovery that I 11 referred to was. 12 Q. Okay. Am I correct in understanding 13 that an examination and discovery in Canada is 14 similar to a deposition under United States 15 proceedings? 16 A. That -- that's my understanding. 17 Q. You were in a conference room at a law 18 firm -- 19 A. Yes. 20 Q. -- answering questions? 21 A. Yes. Very similar. 22 Q. All right. Did you give more than one 23 examination for discovery in connection with the 24 derailment? 25 A. I gave -- it was one proceeding over two
Page 12 1 GLEN DONALD WILSON 2 days with three different plaintiff attorneys 3 questioning me. 4 Q. Okay. Just to step to the side for a 5 minute, back to shorthands. When I refer to "the 6 derailment," it seemed obviously to me that you 7 understood what I was talking about. I'm referring 8 to -- when I say "the derailment," the derailment 9 of the train in Lac-Mégantic that occurred in 10 summer of 2013. Do you understand that? 11 A. I do. And I assume if we're talking 12 about any other derailment at any point, we would 13 describe that differently? 14 Q. Yes, yes. 15 What's your address, Mr. Wilson? 16 A. My home address? 17 Q. Yes. 18 A. 119 Wentworth, W-E-N-T-W-O-R-T-H, Lane, 19 South West, in Calgary. 20 Q. And what's your date of birth? 21 A. December 20th, 1968. 22 Q. Have you ever been convicted of a crime? 23 A. No. 24 Q. Did you grow up in the Calgary region? 25 A. No. I grew up in southern Manitoba,	Page 13 1 GLEN DONALD WILSON 2 just outside of Winnipeg. 3 Q. Would you tell us your educational 4 experience, if any, since high school? 5 A. Okay. I attended the University of 6 Manitoba and attained an arts degree with history 7 and political science, and then went on to law 8 school and attained a degree in law from the 9 University of Manitoba in 1992. 10 And then started my work career 11 after that as an articling student at 12 Canadian Pacific in Winnipeg. 13 Q. Did you say "articling student"? 14 A. Yes. 15 Q. What is an articling student? 16 A. It's -- it's the first year that a -- 17 post-law school is referred to as "articles" and 18 then you are called to the bar, provided you 19 satisfy the law society of their admission 20 requirements during your articles. 21 Q. So if I'm understanding you, you went 22 out of law school and joined the Canadian Pacific 23 in-house legal department? 24 A. Yes. First as a student, and then I was 25 called to the bar in 1993 and retained as a lawyer.

Page 14 1 GLEN DONALD WILSON 2 Q. In 1993 you were retained as a lawyer? 3 A. Yes. 4 Q. And have you worked at Canadian Pacific 5 since 1993? 6 A. Technically since 1992, but yes. 7 Q. Would you tell me the progression of 8 your employment history at Canadian Pacific 9 beginning in 1993, when you were retained as a 10 lawyer? 11 A. Sure. That was -- in 1993 I was -- I 12 started as a lawyer in Winnipeg in a regional law 13 office. One year later, in 1994, I was relocated 14 to Montreal and joined our corporate headquarters, 15 which were then located in Montreal. And worked as 16 a lawyer in Montreal for two years. 17 Then in 1996, the -- the company 18 relocated its headquarters to Calgary. I was part 19 of that move. And stayed in the law department and 20 doing various functions from that point until 2005. 21 And then in 2005, I was offered and 22 accepted a developmental opportunity so I went out 23 and qualified as a conductor, did various 24 management functions approximately for 13 or 25 14 months in the operations side of the business,	Page 15 1 GLEN DONALD WILSON 2 and then was offered a position in the latter part 3 of 2006 in -- as general manager of safety. It was 4 actually a different title than that, but the 5 function was safety and regulatory. 6 I was promoted in -- basically I 7 stayed in that function overall since 2006 and had 8 various roles. I was promoted in 2010 to the level 9 of vice president. Safety, environment and 10 regulatory was the name of the department. And I 11 stayed in that capacity through the time of the 12 derailment in 2013. 13 Q. You mentioned that there was a name 14 change in this department that you were working 15 for, at least that's what my notes reveal. 16 A. It was -- it was a -- more of a change 17 in title, although I think we did sort of give the 18 department -- we were -- I was part of the 19 mechanical department in 2006, and then in 2010 the 20 safety, environment, regulatory department was -- 21 was hived off, I guess you can say, to be more of a 22 stand-alone department. 23 Q. And what have you been doing at CP since 24 the derailment? 25 A. Various functions that continue to be in
Page 16 1 GLEN DONALD WILSON 2 the -- in that space. My current function is -- is 3 titled "environmental risk," so I lead the 4 environmental and hazardous materials and 5 regulatory teams. 6 Q. And were you leading the environmental, 7 hazardous materials, and regulatory teams at the 8 time of the derailment? 9 A. Yes. 10 Q. And how far prior to the derailment had 11 you been performing that function? 12 A. That was really 2010. 13 Q. What news -- which side of the law 14 department -- I think you said something along the 15 lines of you were offered a development 16 opportunity? 17 A. Hmm-hmm, yes. 18 Q. What do you mean by that? 19 A. I had -- at that point I had been in the 20 law department for approximately 12 to 13 years, 21 and I had a lot of exposure through my role to our 22 chief operating officer, so he approached me. And 23 because of my age and experience told me that he 24 thought I could make a good operating officer in 25 the company but he would want me to get some	Page 17 1 GLEN DONALD WILSON 2 exposure to life on the ground in the -- in the 3 railway. So, yeah, he described it to me as a 4 developmental opportunity. And we saw it as that. 5 Q. And so for that first year you were 6 basically sent out in the field to learn what the 7 operations -- 8 A. Yes. 9 Q. -- people did? 10 A. Yeah. Essentially that would sum it up. 11 Q. And you said you qualified as a 12 conductor? 13 A. Yes. 14 Q. What did that -- 15 A. Well, I left the law department on a 16 Friday and I was conductor trainee on a Monday. So 17 I went through the -- I joined a class of new-hire 18 conductors and went through the training programme 19 with them, which includes both classroom and then 20 field experience as well. 21 And ultimately, I qualified on the 22 Laggan subdivision, which runs from Calgary west to 23 Field, British Columbia. So I took a lot of trips 24 with train crews up and down that subdivision until 25 I could pass a familiarization test to demonstrate

Page 18 1 GLEN DONALD WILSON 2 that I knew the subdivision. 3 Q. And what is the role of a conductor on 4 the train? 5 A. The conductor has sometimes described as 6 charge of the train. So the locomotive engineer in 7 contrast is the driver of the train. The conductor 8 has more -- a broader scope. He's supposed to 9 understand the train consist, the restrictions that 10 train might have, the upcoming restrictions over 11 the track, if there's any track blocks that our 12 engineering employees might have. Those kind of 13 things. Typically the conductor does the radio 14 communications with the rail traffic controllers. 15 Q. And during your year of you said field 16 experience, were you ever part of a crew on a train 17 that hauled crude oil? 18 A. I don't believe so, but I don't -- I 19 don't recall for certain. 20 Q. Do you know what I'm referring to when I 21 use the term "DOT 111"? 22 A. Yes. 23 Q. It's a type of a railcar? 24 A. Yes. 25 Q. When you were doing your fieldwork, did	Page 19 1 GLEN DONALD WILSON 2 you ever operate or serve as a member of a crew on 3 a train that hauled cargo in DOT 111 cars? 4 A. I have no specific recollection, but I 5 would presume I must have because that car is 6 proliferate in the railway industry. There are 7 hundreds of thousands of them. So if there were 8 tank cars on a train that I was part of, I assume 9 there would have been some DOT 111s. 10 Q. You just don't have a recollection 11 specifically? 12 A. I just don't specifically recall, yeah. 13 MR. MCDONALD: Off the record. 14 (DISCUSSION OFF THE RECORD) 15 MR. MCDONALD: I'm going to have 16 the court reporter mark as an exhibit which we will 17 call Wilson Exhibit 1, the estate representative's 18 notice pursuant to FED. R. CIV.P.30(b)(6) of 19 deposition upon oral examination of 20 Canadian Pacific Railway Company. 21 EXHIBIT 1 - The estate 22 representative's notice pursuant to 23 FED. R. CIV.P.30(b)(6) of 24 deposition upon oral examination of 25 Canadian Pacific Railway Company
Page 20 1 GLEN DONALD WILSON 2 Q. MR. MCDONALD: I will ask you to 3 take a look at that when it's marked, Mr. Wilson. 4 A. Sure. 5 Q. Have you seen this document before? 6 A. Yes, I have. 7 Q. What do you understand it to be? 8 A. A notice listing topics that will be the 9 subject matter of this deposition. 10 Q. And have you been designated by CP to 11 testify on its behalf with respect to any of the 12 subject matters identified on Attachment A? 13 A. Yes, I have. 14 Q. Which ones? 15 A. Other than those that -- I'm not sure if 16 any of these are subject to legal objection, but 17 apart from that, any such objection, all of them. 18 Q. Okay. So there will be no other 19 representative of Canadian Pacific testifying with 20 respect to any of these topics? 21 A. No, there will not. 22 Q. And are you prepared to testify today 23 about each and every one of the topics that are 24 listed on Attachment A to Wilson Exhibit 1? 25 A. Yes, I am.	Page 21 1 GLEN DONALD WILSON 2 Q. Did you do any preparation to get 3 yourself ready to talk about the different topics 4 that are listed on Attachment A to Wilson 5 Exhibit 1? 6 A. I met with our counsel two separate 7 occasions to prepare for this. 8 Q. Did you review documents? 9 A. Yes. 10 Q. Were these documents that were selected 11 by your counsel? 12 A. In some cases, yes. In other cases I -- 13 I went and found things on my own. Apart from 14 those preparation meetings. 15 Q. Did you meet with anyone else besides 16 your counsel to prepare for your testimony here 17 today? 18 A. No, I did not. 19 Q. Did you have email or telephone 20 communications with anyone else as part of your 21 preparation for your testimony here today? 22 A. Nothing more than the mention of where I 23 would be today. 24 Q. And did you spend time outside of the 25 meetings with your counsel getting yourself

Page 22 1 GLEN DONALD WILSON 2 prepared to present your testimony here today? 3 A. Some, yes. 4 Q. How much time? 5 A. I would estimate six hours. 6 Q. And can you tell me how long in total 7 these meetings with your counsel lasted? 8 A. I would say in total, between the two 9 eight hours, estimating. 10 Q. So if my addition is correct, you spent 11 approximately 14 hours preparing to testify here 12 today? 13 A. Yeah, that's fair. 14 Q. During these meetings you had with your 15 counsel, was anybody else present? 16 A. In -- I would -- as long as we're 17 including in-house counsel with counsel, then yes. 18 There was also one meeting where a member of our 19 information -- IT, information technology, 20 department was present. 21 Q. Who was that person? 22 A. His name escapes me at the moment. 23 There was a -- there was a gentleman on the phone 24 named Dave Moisey, and the name -- the name of the 25 individual in the room escapes me.	Page 23 1 GLEN DONALD WILSON 2 Q. Just so that I'm clear, was there 3 anybody physically present at this meeting -- at 4 these meetings beside your counsel? 5 A. Yeah, there -- there was one IT person 6 present in the room and one that was participating 7 via phone. 8 Q. And the one that was in the room is the 9 person whose name you can't remember? 10 A. Yeah. I apologize. 11 Q. The person on the phone's name was 12 Dave Moisey? 13 A. Yes. 14 Q. Okay. Why were they present at that 15 meeting? 16 MR. HEMMING: I'll object on the 17 ground of privilege. 18 You don't have to answer that. 19 A. Okay. 20 Q. MR. MCDONALD: Did you review any 21 of the deposition transcripts that have been 22 produced in the case thus far? 23 A. I reviewed in part the transcript of 24 Eli Jasso. 25 Q. Is that the only transcript?
Page 24 1 GLEN DONALD WILSON 2 A. Yes. I -- I've seen small excerpts of 3 Jim Kozey's, but I believe that was actually the 4 Canadian proceeding. 5 Q. Did you take any other steps to prepare 6 for your testimony here today beyond what we've 7 already discussed? 8 A. No. 9 Q. I'm going to ask you now some questions 10 about Canadian Pacific's operations in general, and 11 I'm really not -- hoping not to get bogged down in 12 a lot of detail. Just if you could give me some 13 high-level responses to the questions that I put to 14 you. 15 And, again, I'm not trying to tell 16 you how to answer, I'm just telling you that I 17 don't want to spend a -- an inordinate amount of 18 time on the subject. 19 A. Fair enough. 20 Q. So would you just tell me what are CP's 21 current major business operations? 22 A. CP is effectively just a 23 transcontinental railway. It includes many 24 subsidiary companies and operates a 12,500-mile 25 network approximately from Vancouver,	Page 25 1 GLEN DONALD WILSON 2 British Columbia all the way east to Montreal, 3 Quebec; and through Soo Line subsidiary into the 4 United States, Midwest. 5 Q. Is Soo Line the only United States 6 subsidiary of Canadian Pacific? 7 A. No. There's also the Dakota, Minnesota 8 and Eastern, which is a subsidiary of Soo Line, and 9 the Delaware and Hudson, also a subsidiary of 10 Soo Line. But operated as distinct companies. 11 Q. Are those the only three US 12 subsidiaries? 13 A. Yes. I believe so. 14 Q. Have CP's operations changed between the 15 date of the derailment and today? 16 A. Sure. Yes. 17 Q. How? 18 A. It's a very broad question, so I would 19 say the -- you know, in six years there's -- 20 there's always an evolving mix of traffic. There's 21 always a continual evolution of technologies. 22 There are many, many ways in which that affects how 23 the business operates. 24 Q. But am I correct that CP was operating 25 as a transcontinental railway at the time of the

Page 26 1 GLEN DONALD WILSON 2 derailment? 3 A. Yes. 4 Q. Has the nature of the cargo that CP 5 hauls changed between 2013, the day of the 6 derailment, and today? 7 A. You would have to say yes, because it's 8 -- it's -- there's always change in that there are 9 new customers coming on and customers that moved to 10 other modes of transportation or ceased to exist. 11 So it -- there is a constant change. 12 Overall, there are still large 13 volumes of bulk commodities. There are large 14 volumes of intermodal traffic, and merchandise 15 would be another area. 16 Q. Can you give me a narrative description 17 of CP's corporate structure beginning with 18 Canadian Pacific Railway Company? 19 A. Sure. 20 Q. And maybe we can start this way: Are 21 there any entities above the chain from 22 Canadian Pacific Railway Company? 23 A. Canadian Pacific Railway Limited sits 24 above Canadian Pacific Railway Company. 25 Q. And does any company sit above	Page 27 1 GLEN DONALD WILSON 2 Canadian Pacific Railway Limited? 3 A. No. That's the publicly held entity. 4 Q. All right. Now let's move downward from 5 Canadian Pacific Railway Company. 6 A. Okay. So Canadian Pacific Railway 7 Company is the wholly owned operating -- railway 8 operating company of Canadian Pacific Railway 9 Limited. It holds many different subsidiaries for 10 many different reasons. 11 But the ones that are most relevant 12 to the operation of the railway are Soo Line, and I 13 -- I don't remember the exact sequence of corporate 14 entities, but there's a Soo Line Corporation and a 15 Soo Line Railroad Company. 16 There are also subsidiaries for, as 17 I mentioned a minute ago, the Dakota, Minnesota and 18 Eastern, and the Delaware and Hudson. And put all 19 together, those would comprise the vast majority of 20 the CP Railway network. 21 Q. Forgive me; what's the proper name of 22 the Dakota subsidiary? 23 A. Dakota, Minnesota and Eastern, often 24 summed up as "DM&E." 25 Q. So am I understanding the organizational
Page 28 1 GLEN DONALD WILSON 2 structure from a railway operations' perspective as 3 being Canadian Pacific Railway Company handles the 4 railway operations in Canada, and then the 5 Soo Line, the Delaware and Hudson, and Dakota, 6 Minnesota and Eastern handle the railway operations 7 in the United States? 8 A. That's a fair summary, yes. 9 Q. Is Canadian Pacific Railway Limited the 10 only publicly traded company within the corporate 11 family? 12 A. Yes. There are some companies with -- 13 that are -- have other shareholders, but they're 14 not publicly traded, to my knowledge. 15 Q. And Canadian Pacific Railway Limited is 16 the ultimate parent for every one of those -- 17 A. Yes. 18 Q. -- subsidiaries below it? 19 A. Yes. 20 Q. Why does CP operate its railway 21 operations in this manner from a corporate 22 perspective? 23 A. I think a lot of the answer to that has 24 to do with the history. North American railways 25 generally have a -- a complex and extensive history	Page 29 1 GLEN DONALD WILSON 2 of typically being built. The Class I networks 3 that exist today have typically been built as an 4 assembly of many other railway companies that once 5 existed, so each of those can bring unique 6 corporate challenges. Some of them have 7 independent shares held in them. 8 And it's -- it's a bit of a complex 9 web to patch them all together into a -- into a 10 single overarching network. 11 Q. Am I correct that the Soo Line companies 12 were independent of CP until some point in time in 13 the past? 14 A. Correct. 15 Q. And when did CP acquire the Soo Line 16 entities? 17 A. There -- there are different points in 18 time. I can say with some confidence that the 19 DM&E, the Dakota, Minnesota and Eastern, was 20 acquired in 2007, I believe it was, by the Soo Line 21 Corporation. 22 The Soo Line itself goes back much 23 further than that. I would estimate about 24 40 years. 25 The Delaware and Hudson closer to

Page 30 1 GLEN DONALD WILSON 2 30 years. 3 Q. And Delaware and Hudson is a subsidiary 4 of Soo Line -- 5 A. Of Soo Line. 6 Q. -- railway company? 7 A. Yes, correct. And it's the northeastern 8 United States operation. 9 Q. As is DM&E a subsidiary of Soo Line -- 10 A. Yes. 11 Q. -- railway company? 12 A. Yes. 13 Q. Do you know that there's going to be a 14 -- what we call a 30(b)(6) corporate deposition of 15 Soo Line -- 16 A. Yes. 17 Q. -- tomorrow? 18 A. I understand. 19 Q. Are you the designate for Soo Line as 20 well? 21 A. I am as well. 22 Q. Am I correct in the organizational 23 structure that Canadian Pacific Railway Company is 24 the direct parent of Soo Line Railroad Company? 25 A. No. There -- there may be some --	Page 31 1 GLEN DONALD WILSON 2 technically some corporate entities in between. 3 They would just be holding companies, I think. 4 It's Soo Line Corporation that I 5 believe is the top of the -- the closest to 6 Canadian Pacific Railway Company in the 7 organizational structure, and then Soo Line 8 Railroad Company is the operating entity of 9 Soo Line Corporation. 10 Q. Okay. So if we're moving down the 11 chain, it's Canadian Pacific Railway Company which 12 owns Soo Line Corporation, which owns Soo Line 13 Railroad Company? 14 A. Yes. 15 Q. All right. 16 A. And there may be -- I believe there are 17 some corporate entities in that structure between 18 Canadian Pacific Railway Company and Soo Line 19 Corporation. 20 Q. Does any person or entity own any of the 21 shares of the Soo Line chain of entities besides 22 CP? 23 A. I -- not -- Soo Line Corporation I 24 believe is -- has no other shareholding. I believe 25 the Dakota, Minnesota and Eastern may have a very
Page 32 1 GLEN DONALD WILSON 2 small number of shares owned elsewhere. 3 Q. So there is no person or entity or 4 persons or entities who hold more than -- more 5 shares in any of these entities than ultimately 6 Canadian Pacific? 7 A. Certainly not, no. 8 Q. And is it fair to say that 9 Canadian Pacific holds more than a majority 10 interest in each and every one of those entities? 11 A. Yes. 12 Q. And -- 13 A. Even a vast majority. In the cases 14 where it's not exclusive, it would be a vast 15 majority. 16 Q. So ultimately Canadian Pacific has full 17 and absolute control over the -- 18 A. Yes. 19 Q. -- Soo Line chain of entities? 20 A. Yes. 21 Q. Now, do each of the Soo Line entities 22 have separate boards of directors? 23 A. Yes, they do. 24 Q. And are separate board meetings 25 conducted for each one of the Soo Line entities?	Page 33 1 GLEN DONALD WILSON 2 A. They are often combined. The Soo Line 3 board meeting will -- will quite often be -- and I 4 don't know if it would be paired with or just it -- 5 inclusive of the DM&E and D&H board meetings. 6 Q. Is it fair to say that the board 7 meetings for all of the Soo Line entities are held 8 on a consolidated basis? 9 A. I -- I believe that's the case, yes. It 10 may not be the case every single year. I -- but I 11 believe it's generally the case. 12 Q. And are you aware of any particular 13 reasons why it's sometimes different from having a 14 consolidated board meeting for all entities? 15 A. I'm honestly not certain that it is. 16 I'm just -- I'm speaking for a broad range of time, 17 so I'm trying to leave some contingency that it may 18 have been at times. I believe it might have been 19 separate, and I don't -- I don't know why that 20 would have been if it -- if it was the case. 21 Q. And does Canadian Pacific Railway 22 Company have separate board of directors' meetings 23 from Canadian Pacific Railway Limited? 24 A. No. 25 Q. They're held on a consolidated basis as

GLEN DONALD WILSON

well?

A. Yes.

Q. Since 2012, have there been any directors of Soo Line Corporation who also served as directors of Canadian Pacific? And I mean at the same time?

A. No. I don't believe so. Since 2012, each of Canadian Pacific's CEOs over the course of time is also a member of the CP board, but that individual, to my knowledge, has never sat on the Soo Line board.

Q. Are there any other members of the board of CP who have simultaneously served on the board of one or more of the Soo Line entities?

A. No, I don't believe so.

Q. So the boards have always been independent, with the exception of the CEO of CP sometimes sitting on the board of the Soo Line entities?

MR. HEMMING: Objection. I think that misstates his testimony, but go ahead.

Q. MR. MCDONALD: If it does -- I'm really just trying to clarify. That's what I thought you had said.

GLEN DONALD WILSON

A. No. I said the CEO has I believe always consistently been on a member of the CP board, the Canadian Pacific Railway Company board.

Q. Okay.

A. I'm trying to be -- I don't believe the CEO has ever sat on the Soo Line board, but I was allowing that there may have been some --

Q. All right.

A. -- period.

Q. And I'm --

A. I recall --

Q. I misunderstood what you said.

A. -- Fred Green at one point being at a Soo Line board meeting, but he -- and he was our -- the CEO of Canadian Pacific Railway Company. I don't think he was a member. I think he attended the Soo Line board meeting.

Q. So the boards of the companies have always been independent?

A. Yes.

Q. How many employees does Canadian Pacific have today?

A. Are you talking the entire entity under Canadian Pacific Railway Company?

GLEN DONALD WILSON

Q. Yes.

A. Approximately 13,000.

Q. And what was the employee head count in 2013?

MR. HEMMING: Go ahead if you know, Glen.

A. I believe the employee head count would have been about 16,000 at that time.

Q. MR. MCDONALD: So there's been a downsizing?

A. Yes.

Q. And is there an explanation for that downsizing?

A. We went through a significant change in 2013 as a result of a proxy fight for control of Canadian Pacific Railway Limited. Had a new board installed and a new CEO installed, and thereafter drove a lot of efficiency and cost savings that were tied to the reduction in head count.

Q. Does Canadian Pacific have any employees located in the United States?

A. It may. I believe most of the employees who work for -- under the Canadian Pacific Railway Company banner would be employees of the Soo Line

GLEN DONALD WILSON

Corporation.

Q. Well, I want to know yes or no does Canadian Pacific have employees located in the United States?

MR. HEMMING: Objection.

If you -- you can give whatever answer you can, Glen, if you know.

A. I -- I don't know. It may.

Q. MR. MCDONALD: Why are you saying it may?

A. Because I'm not -- I'm not certain that every employee resident in the United States is in fact an employee of Soo Line corporate -- or DM&E or Delaware and Hudson. That is -- to my understanding, that is consistently the case, but I can't say for sure that there's not one employee of Canadian Pacific in the United States.

Q. Have you checked?

A. I have not.

Q. How would we find out whether or not Canadian Pacific has any US-based employees?

A. I would have to enquire internally at CP.

Q. And would you be able to find out an

Page 38 1 GLEN DONALD WILSON 2 answer to that question? 3 A. I -- I expect I would, yes. 4 Q. Will you do that for us? 5 A. I can. Subject to -- 6 MR. HEMMING: Go ahead. Yeah, if 7 you want to make a request to me, I'm happy to -- 8 happy to address it. 9 MR. MCDONALD: Yes. 10 MR. HEMMING: Give the request to 11 me and I'll address it. 12 MR. MCDONALD: Okay. Could you 13 mark that point in the transcript so we can get 14 right to it once it comes out. We don't have to 15 hunt for it. There may be more, so perhaps we can 16 figure out some kind of a marking system. 17 REQUEST NO. 1 - To advise whether 18 or not Canadian Pacific has any 19 US-based employees 20 Q. MR. MCDONALD: Did Canadian Pacific 21 have any employees in the United States in 2013? 22 A. You're asking on the same basis of 23 whether Canadian Pacific Railway Company -- 24 Q. Yes. 25 A. -- employed?	Page 39 1 GLEN DONALD WILSON 2 Q. Yes. 3 A. I would give the same answer. I -- 4 again, the vast majority would have been employees 5 of the American subsidiaries, but I -- I can't say 6 for certain that there were none who were employed 7 by Canadian Pacific Railway Company. 8 Q. And if you wanted to find out an answer 9 to that question, how would you go about doing it? 10 A. I would have to enquire within our 11 human resources department. 12 Q. Do you believe they'd be able to give 13 you the answer to that question? 14 A. I think that one would be more difficult 15 than the current state, but I -- I don't know if 16 they could give me the answer for that point in 17 time or not. 18 Q. Would you be willing to do that for us? 19 A. I can ask. Make the enquiry. 20 MR. MCDONALD: Paul, we're going to 21 make that request as well. 22 And, Claire, I would ask that you 23 mark that portion of the transcript. 24 REQUEST NO. 2 - To advise if 25 Canadian Pacific had any employees
Page 40 1 GLEN DONALD WILSON 2 in the United States in 2013 3 MR. MCDONALD: I'm going to have 4 the court reporter mark as Wilson Exhibit 2 a copy 5 of the Canadian Pacific 2013 annual report. 6 EXHIBIT 2 - Copy of the 7 Canadian Pacific 2013 annual report 8 Q. MR. MCDONALD: Have you seen this 9 document before, Mr. Wilson? 10 A. Yes. I certainly would have seen it. I 11 haven't looked at it recently at all. 12 Q. Do you have any reason to believe that 13 the statements made in the annual report are 14 inaccurate in any way? 15 A. No, I do not. 16 Q. And is it CP's position that the 17 statements made in this annual report are in fact 18 accurate? 19 A. Yes. 20 Q. So, for example, if you just turn over 21 to the second page of the document, which lists 22 financial highlights for the year. 23 A. Oh, okay. 24 Q. Is it true that CP had revenues in 2013 25 of \$6.1 billion?	Page 41 1 GLEN DONALD WILSON 2 A. Yes. 3 Q. And an operating income of \$1.4 billion 4 in that same year? 5 A. Yes. 6 Q. And is it true that at that time CP's 7 total assets were valued at \$17 billion? 8 A. Yes. 9 Q. In 2013, did CP own any transloading 10 facilities? 11 A. Yes. 12 Q. And just for the purposes of the record, 13 would you define a transloading facility? 14 A. A transloading facility is a -- an 15 interface between the railway industry and another 16 method of transportation. Very often trucks. So 17 it is a facility where freight can be -- the term 18 is -- that's often used is "transloaded," but it -- 19 it means transferring that freight from one means 20 of transportation to another. So it could be from 21 rail to truck or it could be from truck to rail, in 22 most cases. 23 Q. And as the owner of a transloading 24 facility, what is CP's role as the owner? 25 A. CP doesn't necessarily own all transload

Page 42 1 GLEN DONALD WILSON 2 facilities on its network. It owns some of them. 3 And in many cases contracts out the operation. So 4 it will tender out the operation of that facility 5 to a third party. 6 And then what follows is it's -- 7 really from a railway operating standpoint is just 8 a -- it's the same as a customer facility anywhere 9 along our network. It's another place where 10 freight traffic must either be picked up or dropped 11 off. 12 Q. What is the reason that CP contracts out 13 the operations of transload facilities? 14 A. Because it's not part of the core 15 business of CP. It's -- we own the facilities 16 sometimes because of the -- the property necessary 17 is by nature adjacent to railways, so it's -- and 18 it's in our interest to have transload facilities 19 as a means of generating railway traffic. 20 But the operation of a transload 21 facility and handling of freight is not something 22 CP is -- is expert in. 23 Q. In 2013, did CP operate any of its 24 transloading facilities on its own? 25 A. I -- I don't know the answer for sure.	Page 43 1 GLEN DONALD WILSON 2 There are -- 3 MR. HEMMING: When in doubt you 4 don't have to guess. 5 A. Okay. 6 MR. HEMMING: If you don't know, 7 you can say that. And if you think you know -- 8 A. I don't know. There -- there have been 9 some that CP has and -- through a subsidiary 10 company, owned and operated, but I don't know the 11 time references to those. 12 MR. MCDONALD: Could you please read 13 back that last answer. 14 THE COURT REPORTER: (By reading) 15 "A. I don't know. There -- there 16 have been some that CP has and -- 17 through a subsidiary company, owned 18 and operated, but I don't know the 19 time references to those." 20 MR. MCDONALD: I'm going to have 21 the court reporter mark as Wilson Exhibit 3 the 22 PowerPoint presentation entitled "Hydrocarbons By 23 Rail," dated July 2012. 24 EXHIBIT 3 - PowerPoint presentation 25 entitled "Hydrocarbons By Rail,"
Page 44 1 GLEN DONALD WILSON 2 dated July 2012 3 Q. MR. MCDONALD: I ask you to take a 4 look at that, Mr. Wilson. 5 What I'd like you to focus on, at 6 least initially, the fifth slide in that PowerPoint 7 deck, which is entitled "Transload Facilities." 8 Are you there, sir? 9 A. Yes. 10 Q. Does this map set forth or depict all of 11 CP's transload facilities that existed as of the 12 date of this PowerPoint, July 2012? 13 A. I believe that was the intention of this 14 in -- at that point in time, yes. It may have 15 excluded some small product-specific transload 16 facilities. It doesn't look like quite enough to 17 me but... 18 Q. How many additional transload facilities 19 do you believe there were that are not shown on 20 this slide? 21 A. I believe there are about 35, if I'm -- 22 yeah, I count 35 that are shown on the slide. And 23 that's consistent with my knowledge of 24 approximately how many there were at that point in 25 time.	Page 45 1 GLEN DONALD WILSON 2 But -- but I know there can be some 3 that are very small and specific to a -- a unique 4 product, and they may not have been represented on 5 here. 6 Q. But sitting here today, you are not 7 aware of any transload facilities owned by CP in 8 the year 2012 that are not depicted on this slide; 9 is that right? 10 A. Certainly not any of any significant 11 size. 12 Q. Well, can you tell me if there are other 13 transload facilities owned by CP in the year 2012 14 that are not shown on this slide? 15 A. The -- 16 MR. HEMMING: I have a question. 17 Are you asking him -- when you are saying CP owning 18 these facilities, who are you mentioning when you 19 are talking about "CP"? I kind of -- I'd just kind 20 of like to be clear. 21 MR. MCDONALD: Canadian Pacific 22 Railroad -- Railway Company. I thought we had 23 clarified that at the beginning. 24 Q. And, Mr. Wilson, I'm not trying to trick 25 you into anything, but your counsel was clear

Page 46 1 GLEN DONALD WILSON 2 earlier he doesn't want you to guess in your 3 answers, nor do I. 4 But what I'm trying to get at is if 5 you know there are other facilities that are not 6 shown on this map, I want you to tell me. If you 7 can't sitting here today tell me there are others, 8 I want you to tell me that. Do you understand what 9 I'm trying to get? 10 A. I do, and I'm trying to give you the 11 best -- 12 Q. Yeah. Sure. 13 A. -- answer that I can. 14 Q. I just want it to be clear. 15 A. I counted that there are 35 facilities 16 here. That's consistent with my recollection of 17 how many -- approximately how many transload 18 facilities would have been on our network at that 19 point in time. 20 But I also am trying to leave open 21 the prospect that -- I know we have had small 22 transload operations that might not have been part 23 of that count, but they would technically be called 24 a transload facility but be very small and not part 25 of what's represented here.	Page 47 1 GLEN DONALD WILSON 2 I also can't say -- 3 Q. Can I stop you there? 4 A. Yes. 5 Q. Sitting here today, though, you can't 6 identify any of those? 7 A. No, I can't, no. 8 Q. Okay. Proceed. 9 A. I was going to add that I can't -- you 10 used the word "ownership," and I don't know that 11 each of these are necessarily owned by CP. I 12 believe -- I'm not certain about the ownership 13 structure for any of them. 14 Q. All right. Well, do you agree with me 15 that at least this slide seems to indicate that any 16 facility that has a red square with a T in the 17 middle is identified as a CP transload facility? 18 A. Yes. It's -- it's meant to indicate 19 that these are transload facilities from which 20 access to CP's network can be gained. 21 Q. Your point is that sitting here today 22 you can't tell me that CP has an ownership interest 23 in every one of them? 24 A. I cannot. Yes, that's my point. 25 Q. Looking at this slide, Mr. Wilson, I'm
Page 48 1 GLEN DONALD WILSON 2 wondering if it refreshes your recollection as to 3 whether or not CP operated any of the transload 4 facilities on its network? 5 A. It -- it doesn't -- it doesn't help me 6 with that, no. 7 Q. How would you find out the answer to the 8 question which transload facilities CP operated in 9 the years 2012, 2013? 10 A. I would have to go and conduct some 11 further internal enquiry. Again, it's the -- it's 12 the point I know we -- we have owned and operated 13 some of them more recently. I -- I don't recall if 14 that goes back to that point in time. 15 Q. Do you believe you'd be able to get an 16 answer to the question after making that enquiry? 17 The question being which transload facilities did 18 CP operate in the calendar years 2012 and 2013? 19 A. I'm hopeful that I could. I can't 20 guarantee it. The passage of time and change in 21 personnel might make that somewhat challenging 22 but -- 23 Q. Will you do that for us? 24 A. I can make the enquiry. 25 Q. Okay.	Page 49 1 GLEN DONALD WILSON 2 MR. HEMMING: And I'll reserve all 3 objections to the enquiry -- 4 MR. MCDONALD: Yes. 5 MR. HEMMING: -- on all this 6 stuff. 7 MR. MCDONALD: Sure. That's 8 absolutely fine, Paul. 9 If you would please mark the 10 transcript there, Claire. 11 REQUEST NO. 3 - To advise which 12 transload facilities CP operated in 13 the calendar years 2012 and 2013 14 Q. MR. MCDONALD: Do you know sitting 15 here today whether or not CP operated any 16 transloading facilities that dealt with crude oil? 17 A. Again, I do not know for certain. I 18 don't believe we did operate any of the crude oil 19 transload facilities. 20 Q. Ever? 21 A. I -- I can't think of a point in time 22 when I've ever been aware of that. 23 Q. And how would you go about finding an 24 answer to the question whether or not CP ever 25 operated a crude oil transload facility?

1 GLEN DONALD WILSON

2 A. Again, I would have to check with -- we
3 have a transload group at CP. I would ask them to
4 check their records.

5 Q. Will you do that for us?

6 A. I can make the enquiry, yes.

7 MR. HEMMING: Subject to our same
8 objections, we reserve.

9 MR. MCDONALD: And would you please
10 mark the transcript there, Claire.

11 REQUEST NO. 4 - To advise whether
12 or not CP ever operated a crude oil
13 transload facility

14 Q. MR. MCDONALD: You mentioned a
15 transload group. What's that?

16 A. It's a group within our marketing
17 function at -- and I'm talking in the current
18 corporate structure -- that deals with -- we have
19 more transload facilities now than we did in 2012.
20 So that group oversees the marketing and the -- and
21 as well there's an operations oversight to those
22 transload facilities.

23 Q. Did this transload group exist in 2012
24 and 2013?

25 A. Certainly not in its current form. I

1 GLEN DONALD WILSON

2 think there may have been -- it was more likely one
3 or two individuals at that point in time who -- and
4 primarily it related to the contracting for the
5 operation of the various transload facilities.

6 Q. Who were the people at CP that were
7 responsible for the marketing and the operation of
8 transload facilities in 2012 and 2013?

9 A. There was a gentleman I recall from that
10 -- approximately that point in time named Steve,
11 and his last name escapes me. He's no longer with
12 CP. But he -- he was the individual I was aware of
13 who at that point in time would have done the
14 contracting for the operation of various transload
15 facilities on CP's network.

16 Q. I think you mentioned there were two
17 people. Do you recall the name of the other?

18 A. I said one or two.

19 Q. Okay.

20 A. I remember the leader of it was -- was
21 a -- this individual named Steve. I don't recall
22 if he had a -- he may have had a second person. I
23 seem to recall that he did, but I -- I can't recall
24 for certain.

25 Q. When did he leave CP, this Steve?

1 GLEN DONALD WILSON

2 A. I would estimate about 2014.

3 Q. Do you know why?

4 A. I do not.

5 Q. Did he operate within your group?

6 A. No, he did not.

7 Q. What group did he operate in?

8 A. I'm not certain as of that point in
9 time.

10 Q. How would we go about finding Steve's
11 last name? How would you go about finding Steve's
12 last name?

13 A. I can look that one up on a break. I
14 can -- that's -- it's just a memory lapse that I
15 don't recall it. He's been gone for five years.

16 Q. Will you do that for us at the next
17 break?

18 A. I can definitely look.

19 Q. Okay, thank you.

20 Just to close the loop on this, you
21 are not aware sitting here today that CP operated
22 at anytime any transloading facility dealing with
23 Bakken-based crude oil?

24 A. No.

25 Q. As an owner -- well, I'll start over

1 GLEN DONALD WILSON

2 again.

3 In 2012 and 2013, did CP have any
4 ownership interest in any transload facilities that
5 dealt with crude oil?

6 A. Yes.

7 Q. Which ones?

8 A. I would be hard-pressed to name
9 specifically which ones. Probably from this map
10 New Town, and Estevan, Scotford. Certainly those
11 three.

12 Q. How about Van Hook?

13 A. Van Hook is not represented on this
14 map --

15 Q. Okay.

16 A. -- as a transload facility.

17 Q. Okay. Did CP have an ownership interest
18 in the Van Hook transload facility?

19 A. I don't know.

20 Q. How about Stoughton, Saskatchewan? Did
21 CP have an ownership interest in the transload
22 facility there?

23 A. I don't know.

24 Q. What was CP's ownership interest in the
25 New Town transload facility?

Page 54 1 GLEN DONALD WILSON 2 A. I believe CP owned the facility and 3 contracted for its operation with a third party. 4 Q. What steps, if any, did CP take to 5 investigate the properties of crude oil in 6 connection with its ownership of the New Town 7 transload facility? 8 A. None. 9 Q. How about the other crude oil transload 10 facilities owned by CP, what steps, if any, did it 11 take to investigate the properties of crude oil 12 with respect to those transload facilities? 13 A. CP would not have taken any steps to 14 investigate that. That's part of the reason that 15 we would contract out the operation of those 16 facilities. The railway is not in a position to 17 analyze the properties of crude oil. 18 Q. Looking back to the fifth slide on 19 Wilson Exhibit 3, does this map set forth in blue 20 and blue hash marks the network of rails on which 21 CP conducts its operations? 22 A. As of -- 23 MR. HEMMING: Just a point of 24 clarification, Paul, before you defined CP as 25 Canadian Pacific Railway Company?	Page 55 1 GLEN DONALD WILSON 2 MR. MCDONALD: Yes. 3 MR. HEMMING: I think at the very 4 beginning you defined it as Canadian Pacific 5 Railway. They are different. I want to bring that 6 to your attention. 7 Q. MR. MCDONALD: Okay. Let's get 8 that cleared up. 9 The operating company we're going 10 to refer to as "CP." 11 A. Okay. 12 Q. Are we all on the same page now? 13 Mr. Wilson? 14 A. Yes, I can -- I can work with that. 15 Q. Did you understand throughout the course 16 of this deposition that when I referred to "CP" I 17 was referring to the operating company? 18 A. I'm -- I may have at times taken it as 19 the -- as the overall operation distinct of the 20 corporate entities. CP is the trade name under 21 which the whole railway operates. 22 Q. Would that include Soo Line? 23 A. That would include Soo Line and its 24 subsidiaries as well. 25 Q. Okay. So let's just make sure that this
Page 56 1 GLEN DONALD WILSON 2 question is clear. Let's go back to this slide. 3 Does this slide set forth the 4 network of the rail operations for CP and its 5 subsidiaries? 6 A. Yes. As of this point in time. 7 Q. In 2012? 8 A. Yes. 9 Q. All right. What are haulage trackage or 10 marketing rights as designated on this slide? 11 A. That means that CP does not own the 12 railway over that, what's indicated by the hashed 13 blue line, but has haulage trackage or marketing 14 rights as a -- as a matter of contract or right to 15 operate over that track. 16 So it's -- it's distinguishing that 17 it is not CP-owned and maintained track but our 18 network allows us to traverse it. 19 Q. And am I correct that over the stretch 20 of this network, CP sometimes interchanges with 21 other rail carriers? 22 A. Yes. 23 Q. And does CP enter into contracts 24 memorializing those interchanges? 25 A. Yes.	Page 57 1 GLEN DONALD WILSON 2 Q. How were those contracts memorialized? 3 Are they negotiated individually? Are they blanket 4 agreements? Is there some way you can generalize 5 or you have to be specific as to each rail carrier? 6 A. We would -- there is a general approach 7 to those. That it would be an interchange 8 agreement that would set out basic terms such as, 9 you know, what -- what is the interchange point for 10 traffic flowing in either direction to or from CP. 11 There's typically agreed-upon terms 12 for service so that -- in notification so the cars 13 are placed by one railway and must be removed by 14 the other railway within a certain designated 15 amount of time. 16 Q. Are there separate interchange 17 agreements for each train exchange? 18 A. For each location, not for each train. 19 Q. And by "location" what do you mean? 20 A. So by way of example, we would 21 interchange with Union Pacific at a location called 22 Kingsgate in British Columbia. Southeastern 23 British Columbia. There would be an agreement 24 related between CP and UP, Union Pacific, related 25 to that interchange point.

Page 58 1 GLEN DONALD WILSON 2 We interchange with Burlington 3 Northern Santa Fe in a place called Coutts in 4 southern Alberta. Again, there would be a separate 5 and distinct interchange agreement for that 6 location between CP and Burlington Northern 7 Santa Fe, and that would be the case continuing 8 across the network. I just give those two as 9 examples. 10 Q. Sure. Is there just a single 11 interchange location for each one of the railways 12 with whom you have interchange agreements? 13 A. No. No. Some railways there can be -- 14 with Canadian National, as an example, there would 15 be many interchange agreements. 16 Q. And you have a separate agreement with 17 respect to each one of the locations? 18 A. I'm not sure of the structure. There is 19 probably an overarching agreement, but there would 20 also be a specific set of terms for each because 21 the -- part of the terms relate to the geography of 22 the location. 23 Q. And we've been speaking in the present 24 tense, but I just want to make sure was this 25 arrangement with the interchange carriers and the	Page 59 1 GLEN DONALD WILSON 2 interchange agreements similar in the 2012-2013 3 period? 4 A. It has worked much the same way for a 5 fairly long period of time. 6 Q. How many employees does Soo Line have 7 today? 8 A. I believe it's in the nature of -- or in 9 the order of about 2,000. 10 Q. How about in the 2012-2013 time period, 11 how many employees did Soo Line have? 12 A. It -- I would estimate about 2,500. 13 Q. So there was a downsizing between 2012 14 and '13 and today at Soo Line? 15 A. I -- I don't know for sure. I'm -- I'm 16 surmising that because there was a general 17 downsizing. 18 Q. Within the whole CP family? 19 A. Yes. 20 Q. Operationally how does Soo Line Railroad 21 Company and Canadian Pacific interface with each 22 other? 23 A. The railway operation is generally 24 fairly seamless. The -- there's one -- one billing 25 system to generate the traffic. There's -- our
Page 60 1 GLEN DONALD WILSON 2 chief operating officer would have control over all 3 of the railway operations for -- for each. But 4 there are distinct employees of Soo Line -- 5 practices of Soo Line through some of the operating 6 instructions, some of the requirements that would 7 be distinct in the United States versus being in 8 Canada. 9 Q. What is the management line of authority 10 from Soo Line moving up to Canadian Pacific? 11 A. It -- within the operations world our -- 12 and I'm speaking currently, but it would apply 13 fairly consistently over time. Our chief operating 14 officer or executive vice president of operations 15 would have responsibility for rail operations on 16 the entire network. 17 We would then have senior vice 18 presidents by region. So the current structure as 19 a senior vice president who has responsibility for 20 Eastern Canada and the United States. And then 21 there's a vice president of operations who is a 22 Soo Line-specific employee. 23 Q. And do the Soo Line subsidiaries have 24 management personnel that report directly to that 25 senior vice president at Soo Line that you just	Page 61 1 GLEN DONALD WILSON 2 mentioned? 3 A. Yes. 4 Q. So there's no direct report from the 5 Soo Line subsidiaries to CP? 6 A. The -- there may be in some other 7 departments. What I described was the operations. 8 Q. Yes. 9 A. The field operations sometimes called. 10 In other departments there would be 11 -- there's a general manager in engineering who 12 would have responsibility for the employees as well 13 of the other subsidiary -- US subsidiary companies. 14 In other cases there would be 15 people who would be employed by those subsidiaries 16 that are part of another department. 17 Q. How about the safety, environmental and 18 regulatory department, are there any direct reports 19 from Soo Line personnel to CP? 20 A. That department name is really a 21 dated-time reference. The current structure is -- 22 the overarching department is called "Corporate 23 Risk," and there are subgroups to that. 24 But as of that period of -- leading 25 up to the time of the derailment, the safety,

Page 62 1 GLEN DONALD WILSON 2 environment, regulatory department was -- would 3 have included some Soo Line employees. 4 Q. Direct report? 5 A. Yes. 6 Q. Okay. What are the current subsidiary 7 groups under the corporate risk group? 8 A. Sorry, the corporate -- the current 9 subsidiary groups within corporate risk? 10 Q. Yes. 11 A. Okay. 12 Q. I thought that's what you had -- 13 A. Yes. 14 Q. How you described it. 15 A. Just making sure I heard you correctly. 16 Q. Yes. 17 A. There are a number of them. The 18 CP Police would be one of them. One of the largest 19 in terms of employees. Mine is environmental risk. 20 There is field safety group. There is an 21 enterprise risk group. A claims function. An 22 internal audit group. Regulatory and operating 23 practices. Freight claims in addition to general 24 claims. 25 Q. Is that it?	Page 63 1 GLEN DONALD WILSON 2 A. I think that's it. 3 Q. That's the current structure? 4 A. Yes. 5 Q. When did this reorganization result in 6 the corporate risk department occurring? 7 A. 2014. 8 Q. What was the reason for that 9 reorganization? 10 A. I would go back to our change in -- in 11 board and management that took place in 2012 to 12 '13. 13 Q. Was any of this change related in any 14 way to the circumstances of the derailment? 15 A. No. 16 Q. Does Soo Line do business as 17 Canadian Pacific? 18 A. Yes. 19 Q. Always or just in limited circumstances? 20 A. I would say it's more -- it's in limited 21 circumstances. 22 Q. And do those answers hold true for the 23 time period 2012, 2013? 24 A. Yes. I don't think that's very 25 different than it is today. It's represented to be
Page 64 1 GLEN DONALD WILSON 2 for marketing purposes and external purposes we -- 3 we talk about CP as the operating railway. 4 So in those -- those cases many of 5 the Soo Line employees would be doing business as 6 Canadian Pacific. 7 Q. Can you give me a more complete answer 8 as to in which instances Soo Line does business as 9 Soo Line and Soo Line does business as 10 Canadian Pacific? Maybe you just have. Maybe it's 11 just marketing, but I just want to make sure that 12 we've covered this completely. 13 A. I would say it's primarily marketing, 14 and -- and it's integrated in -- as a result of 15 trying to operate a -- one network. It's -- it's 16 integrated in the ways I described a few minutes 17 ago into operations. 18 So operating employees would 19 typically refer to CP as the -- the railway and the 20 trains that they're operating. 21 Q. Does Soo Line have its own chief 22 operating officer? 23 A. No, it's not identified as that. 24 Q. Is it identified as something else? 25 A. The -- there would -- there has	Page 65 1 GLEN DONALD WILSON 2 typically been a head of you -- we would often 3 refer to it as "US operations" because it's 4 inclusive of the three subsidiary companies that 5 we've talked about. 6 Q. And is that the senior vice president 7 role we had talked about earlier? 8 A. No. Currently that role would also 9 include Eastern Canada. So the vice president of 10 US operations is a Soo Line employee and would be 11 the most senior operating officer that is specific 12 to Soo Line. 13 Q. So you have ahead of US operations, who 14 is over and above the two senior vice presidents 15 for the independent -- 16 A. No. The -- the other way around. 17 Q. -- operations? 18 A. The senior vice president of the -- 19 would include the US plus Eastern Canada. 20 Q. Okay. 21 A. There are then -- there's a vice 22 president for Eastern Canada, and there's a vice 23 president for the United States. 24 Q. Is the head of US operations a title 25 separate from the senior vice president that we've

Page 66 1 GLEN DONALD WILSON 2 been referring to? 3 A. Yes. It's a separate title, different 4 individual. 5 MR. MCDONALD: Okay. I'm going to 6 have the court reporter mark as Wilson Exhibit 4 an 7 organizational chart for safety, environment and 8 regulatory as of January 25, 2013. 9 EXHIBIT 4 - Organizational chart 10 for safety, environment and 11 regulatory as of January 25, 2013 12 Q. MR. MCDONALD: Do you recognize 13 that document, Mr. Wilson? 14 A. Yes, I do. 15 Q. Is it an accurate representation of the 16 personnel who held management positions within the 17 safety, environment and regulatory group as of 18 January 2013? 19 A. Yes, it is. 20 Q. How many similar groups were there 21 across CP in the 2012-2013 time period? 22 A. I'm not sure I understand what you mean 23 by "similar." 24 Q. I figured you didn't. As soon as I said 25 it, it needed clarification.	Page 67 1 GLEN DONALD WILSON 2 What was CP's operations organized 3 into different groups, like safety, environment and 4 regulatory, as of the 2012-2013 time period? 5 A. There would be no other group performing 6 like functions. 7 Q. Right. 8 A. But there would be other groups that I 9 would call supporting operations in a -- in a 10 sense. Or -- the biggest ones in the operations 11 area generally would be the -- the train and engine 12 or field operations group. That's -- those are the 13 -- that's the group that operates the railway. 14 There's an engineering department 15 that maintains the infrastructure. There's a 16 mechanical department that maintains the 17 locomotives and railcars. 18 There's various other support 19 groups which I would characterize as this chart -- 20 safety, environment and regulatory as one of. 21 Q. What are the other support groups that 22 existed in 2012, 2013? 23 A. There was a group for the network plan. 24 They typically designed the -- the operating plan, 25 which trains will operate between which locations.
Page 68 1 GLEN DONALD WILSON 2 The T&E group or the field operations group 3 basically execute that plan. 4 There's a transportation team that 5 is the central control of -- so the rail operation 6 centres, rail traffic controllers in Canada. 7 Dispatchers they are more commonly referred to as 8 in the United States. So we have a -- had at that 9 time, and still have, a large dispatch centre in 10 Minneapolis for the US subsidiaries and a large 11 rail traffic control centre in Canada called -- in 12 Calgary. 13 Q. Are there any other similar support-type 14 groups that you recall existing in 2012, 2013 that 15 you haven't mentioned? 16 A. Yes. 17 Q. Or would you just list them all? 18 A. I'll try. 19 Q. Okay. 20 A. It's a long time ago, and it was a very 21 fluid time. There were a number of changes, so the 22 time references are challenging. 23 Interline would be a small group 24 typically dealing with arrangements with -- that we 25 talked about a little while ago with -- where	Page 69 1 GLEN DONALD WILSON 2 interchange points would be, how we interchange 3 traffic between CP and other railways. They also 4 would deal typically with passenger operations if 5 we have commuter trains that operate on our lines, 6 as we do around Chicago, or Vancouver, Montreal, or 7 Toronto. 8 So there's a -- there's a -- an 9 industrial development group that sort of works on 10 -- as new business is coming on, if we don't have 11 the facilities to handle that, they would work with 12 other groups outside of operations on things such 13 as real estate, for example, and how to acquire a 14 design, or whatever the need may be to make sure 15 that we can service an area of business that's -- 16 that's growing or changing. 17 I think that's about it. 18 Q. Do you recall there being an M&S, energy 19 and merchandise, group in 2012, 2013? 20 A. Yes. That was part of the -- what I 21 would generalize as the commercial or marketing and 22 sales function within the company. 23 Q. Okay. Was that a group or grouping 24 similar to the safety, environment and regulatory 25 group in terms of grouping specific functions

Page 70 1 GLEN DONALD WILSON 2 together? 3 A. Yeah. Again in the sense of there's a 4 large operations function and it had various 5 subgroups, as I just described. 6 There's a large marketing and sales 7 function, and then it had specialized -- much 8 smaller in terms of the numbers of people but 9 various subfunctions within it. And the -- and the 10 energy group that you just mentioned would have 11 been one of those. 12 Q. Within marketing? 13 A. Yes. 14 Q. Are there any other large groupings 15 besides operations and marketing that would have 16 these types of subgroups that you've just 17 explained? 18 A. The finance department has some -- it's 19 not quite as distinct as what we're describing, but 20 some -- definitely there's a controller's office, 21 there's a taxation group. There would be various 22 subgroups that I would say also reside within the 23 finance function. 24 Q. Okay. Any other of these larger groups? 25 Again, 2012-2013 time period?	Page 71 1 GLEN DONALD WILSON 2 A. Yeah, the other big departments would be 3 like human resources or law, and they don't tend to 4 have subgroups per se. 5 Q. Is that it? Have we covered all of the 6 larger groupings? 7 A. The larger ones, yes. 8 Q. Turning back to Wilson Exhibit 4. 9 Again, this is just sort of a nomenclature point. 10 I may, to save some transcript space, refer to the 11 safety, environment and regulatory group as "the 12 SER group." If I do that, will you understand that 13 that's what I'm referring to? 14 A. Yes. 15 Q. When was this SER group organized? 16 A. The -- generally speaking in 2010, but 17 it, like many other corporate organizational 18 charts, went through various iterations. And I'm 19 -- I'm saying that in part because I see the -- the 20 dotted line in the lower right that surrounds the 21 two director of field safety groups, and those were 22 at one point in time part of the SER department. 23 At this particular point in time 24 they reported elsewhere with dotted line reporting 25 into the SER group.
Page 72 1 GLEN DONALD WILSON 2 Q. Did you head up the SER group from its 3 inception? 4 A. Yes. When I refer to that 2010 period, 5 that's the inception that we're talking about. 6 Q. And who did you report to in the 7 2012-2013 time period? 8 A. It wasn't the same individual throughout 9 that time. And, again, I'm -- I'll -- some of the 10 dates may -- I may not get precisely. There was an 11 individual named Brock Winter who was a senior 12 vice president that retired in around that time 13 that I -- I reported to for a period of time. 14 I reported primarily in -- I 15 believe exclusively in 2013 I reported to an 16 individual named Scott MacDonald, who was a senior 17 vice president in operations. 18 Q. During this 2012-2013 time period, do 19 you know how many vice presidents there were across 20 Canadian Pacific? 21 A. Do you mean to include variations on 22 vice president? I'm asking that because there were 23 assistant vice presidents, vice presidents, senior 24 vice presidents, executive vice presidents so... 25 Q. Just vice presidents.	Page 73 1 GLEN DONALD WILSON 2 A. Just vice presidents, I would estimate 3 15. 4 Q. And what was the level above 5 vice president in 2012, 2013? 6 A. It wouldn't have always been the same. 7 In some cases vice presidents would have reported 8 to executive vice presidents. In some cases to see 9 -- if there was a senior vice president -- 10 Q. Okay. 11 A. -- would have reported there. 12 Q. So above the vice president was a senior 13 vice president and/or an executive vice president? 14 A. Yes, but not exclusively. 15 Q. Okay. 16 A. In -- right around this very date, 17 Keith Creel joined CP, and the exact timing I can't 18 recall. But it was very close to this point in 19 time in 2013. His title was president and chief 20 operating officer when he joined us. 21 And I reported to Scott MacDonald, 22 who reported to Mr. Creel from that point on. 23 Q. Okay. Well, let's put Mr. Creel to the 24 side. 25 In 2012, 2013 how many senior vice

GLEN DONALD WILSON

presidents were there at CP?

A. There were three in operations. I don't believe there were any anywhere else at that point in time.

Q. In 2012, 2013, how many executive vice presidents were there at CP?

A. There were three. And it -- again, when you say 2012, 2013, it may not have been the same throughout that entire period.

Q. But it was within the range?

A. Yes.

Q. And who were the CP employees above the executive vice presidents in the 2012-2013 time period?

A. It would have only been the CEO. President and CEO.

Q. Okay. Going back to Wilson Exhibit 4, below you in that chart -- directly below you are three individuals: Chris Bunce, Keith Shearer, and Vanessa Ostafichuk?

A. That's close.

Q. How do you pronounce it?

A. Ostafichuk, I believe.

Q. Ostafichuk, okay.

GLEN DONALD WILSON

This chart is an accurate depiction of the descending levels of responsibility in the SER group?

A. As of that point in time, yes.

Q. Yes, okay. So those three individuals reported directly to you; correct?

A. Yes. As did -- over on the very right there's a lady named Michelle Jacobs. It's just a -- shown slightly lower.

Q. Okay. Yes.

A. But it was a fourth report.

Q. Yes. Thank you.

What was the division of labour between Mr. Bunce and Mr. Shearer?

A. Mr. Bunce had the environmental and hazardous materials functions primarily. Mr. Shearer would have had the safety programmes but not the -- the field execution piece that's shown in the dotted lines in the lower right. As well as the operating standards and rules, and the regulatory function.

Q. Were you responsible for organizing this group in the way it ultimately was organized?

A. To some extent but not -- not

GLEN DONALD WILSON

exclusively.

Q. Can you explain that for everyone?

A. Yeah. The organization of the group changed a number of times in -- again, referring back to the management change that we had in mid-2012 there were a lot of changes that followed from that, and there were various iterations to this.

Just prior to this point, there was a separate safety function, and a -- and a third general manager on -- in this structure. So that was blended together into the -- the organization I just talked about Keith Shearer having at that point in time. I don't remember the date, but that would have been a change that was made.

And I recall being -- it was part of a more general drive for efficiency, and my -- my department had to implement some changes, so that was something that we did.

Q. But from the time you organized the group in 2010 up to this point in time, in 2013, were your direct reports remaining constant in terms of the functions they were providing?

A. No, they -- the individuals and the

GLEN DONALD WILSON

functions changed throughout that time.

Q. Okay. If we stay with Wilson Exhibit 4, we see that, among other people, under Chris Bunce we have Jim Kozey, and under Mr. Kozey, Darlene Nagy.

A. Nagy.

Q. Nagy. And they are working in the Hazmat programmes; am I right?

A. Generally, yes.

Q. So what was the line of work for Mr. Kozey and Ms. Nagy?

A. The hazardous materials -- the transportation of hazardous materials is quite specialized and very regulated, so their work dealt with everything from answering questions sort of day to day from people in our operations world about the various rules or issues with transportation of hazardous materials.

They also dealt a lot with regulators in both Canada and the United States, and industry associations again in both Canada and the United States.

Q. Anything else?

A. No. That would be the primary function

Page 78 1 GLEN DONALD WILSON 2 at that point in time. The field specialists at 3 this point in time again were part of the field 4 group, so they weren't reporting into Mr. Kozey at 5 that -- as of this exact point in time. 6 I'm referring to the Hazmat field 7 specialists that show up in the lower right. Those 8 have -- at other times were part of Mr. Kozey's 9 organization, and just not at this particular time. 10 Q. Just so the record is clear, you are 11 talking about the director of field safety US? 12 A. Yeah. And below that, and the same in 13 the director field safety Canada are -- is a box 14 with Hazmat field specialists. 15 Q. Yes. 16 A. In the US, Dale Bucholtz, Mike Ball. In 17 Canada, William Fairfield, Scott Croome. So those 18 four individuals also worked in hazardous materials 19 but in the -- in the field and with emergency 20 response function. 21 And at dates prior to this and at 22 dates after this are part of Mr. Kozey's 23 organization, but as of this point in time were 24 not. 25 Q. So at this point in time, am I correct	Page 79 1 GLEN DONALD WILSON 2 in understanding that the directors of field safety 3 and their direct reports dealt with incident 4 response? 5 A. Not exclusively. 6 Q. Well, what else did they do? 7 A. The directors dealt with -- they were 8 just -- they were meant to be embedded in 9 operations in Canada and the United States and to 10 deal with supporting them from -- it could be 11 reports on safety. It could be environmental 12 issues, such as waste water, storm water, waste 13 disposition in yards and facilities. 14 So it was -- the concept at this 15 period of time -- and this structure lasted 16 approximately eight or nine months in total was 17 that those functions would take direction from the 18 operations people in the field. 19 Q. Who would take direction from the 20 operations people in the field? 21 A. The -- the director of field safety for 22 each reported into -- I believe it was to the 23 operations senior vice president for each region. 24 Q. Why was that change made? 25 A. That was made to try and embed the
Page 80 1 GLEN DONALD WILSON 2 knowledge of -- that the specialists in safety and 3 environment and hazardous materials had in -- 4 better integrated in the operation. 5 MR. MCDONALD: Let's go off the 6 record. 7 (DISCUSSION OFF THE RECORD) 8 (ADJOURNMENT) 9 Q. MR. MCDONALD: What were the Hazmat 10 programmes that Mr. Kozey was directing in 2013? 11 A. Programmes is probably a bit of a 12 misnomer in that context. In the safety area we 13 would refer to programmes, and there would be 14 50-plus programmes for ergonomics and various 15 things like that. 16 In Hazmat there's really not that 17 -- that degree of -- it's -- it's really just about 18 the transportation of hazardous materials 19 generally. Whatever falls under that. The 20 programmes, I guess, might include some of our -- 21 our emergency response planning, those kind of 22 things. 23 Q. And am I correct that crude oil falls 24 under the heading of "Hazardous Materials"? 25 A. Yes.	Page 81 1 GLEN DONALD WILSON 2 Q. Was -- 3 A. In most cases I should say, because 4 there are some crude oil that is -- is not 5 technically a regulated hazardous material. 6 Q. And which crude oil is that? 7 A. Just it -- well, depends on its 8 classification, but some of it can be classified as 9 non-dangerous or non-hazardous. Now that doesn't 10 mean Mr. Kozey wouldn't deal with it necessarily, 11 but it's -- I'm distinguishing it from the 12 regulated term "hazardous materials." 13 Q. Okay. So he was responsible for all of 14 the crude oil issues? 15 A. No. The crude oil issues could include 16 the commercial or marketing or other -- other 17 things that he wouldn't have dealt with. 18 Q. But operationally? 19 A. The transportation of it, the -- the 20 approach that we take to -- you know, what are the 21 standards by which it needs to be moved, yes. 22 Q. Okay. So am I correct, then, that it 23 was Mr. Kozey's responsibility to ensure that CP 24 was in compliance with all relevant hazardous 25 material regulations?

Page 82 1 GLEN DONALD WILSON 2 A. No. Because the -- a lot of that falls 3 to the -- the operation on a day-to-day basis. 4 Mr. Kozey sits in our head office. He interprets 5 the regulatory requirements. He ensures that there 6 are -- that those are -- as required. Those are 7 part of the instructions that go into our -- our 8 business. But the compliance to all of that falls 9 to managers, crews, and employees around the 10 company. 11 MR. MCDONALD: Would you read that 12 answer back, please. 13 THE COURT REPORTER: (By reading) 14 "A. No. Because the -- a lot of 15 that falls to the -- the operation 16 on a day-to-day basis. Mr. Kozey 17 sits in our head office. He 18 interprets the regulatory 19 requirements. He ensures that 20 there are -- that those are -- as 21 required. Those are part of the 22 instructions that go into our -- 23 our business. But the compliance 24 to all of that falls to managers, 25 crews, and employees around the	Page 83 1 GLEN DONALD WILSON 2 company." 3 Q. MR. MCDONALD: Was there any other 4 person in the SER during this time period who was 5 tasked with interpreting the relevant hazardous 6 materials regulations besides Mr. Kozey? 7 A. Well, Ms. Nagy would have worked with 8 Mr. Kozey on that. Mr. Kozey had the higher level 9 of responsibility for that. Ms. Nagy would have 10 worked under his direction. 11 I would also say that shown to the 12 right, director regulatory affairs, Lori Kennedy, 13 had some interaction in hazardous materials. She 14 was responsible for security regulation, which 15 quite often related to hazardous materials. So 16 there was -- there was overlap, yeah. 17 Q. Were there any other CP employees who 18 were involved in this aspect of operations? 19 A. If -- if by "aspect of operations" you 20 mean the interpretation of -- of regulatory 21 requirements for hazardous materials? 22 Q. I do. 23 A. Okay. Then -- then no, I would say it 24 really was there. 25 Q. And just so the record is clear, these
Page 84 1 GLEN DONALD WILSON 2 three individuals dealt with compliance issues 3 under both Canadian and US laws and regulations? 4 A. Yes. 5 Q. If we go to the bottom right of the 6 organization chart, Mr. Wilson, I see that we have 7 separate directors of field safety for Canada and 8 the US? 9 A. Correct. 10 Q. The director of field safety Canada was 11 Sergio Sabatini; am I right? 12 A. Correct. 13 Q. And how do you pronounce the last name 14 of the director of field safety for the 15 United States? 16 A. Pielak. 17 Q. Pielak. 18 Were Mr. Pielak and Mr. Sabatini CP 19 employees? 20 A. Yes. Mr. Pielak relocated to the 21 United States for this role. He had been -- 22 shortly prior to the date of this -- this 23 organizational chart, he was part of the head 24 office in Calgary safety function. He relocated to 25 the United States and may have become an -- an	Page 85 1 GLEN DONALD WILSON 2 employee of Soo Line when he took this role as 3 director of field safety US. 4 Q. Would you be able to find out for us 5 whether or not Mr. Pielak became a Soo Line 6 employee when he transferred to the United States? 7 A. I can enquire about that, yes. 8 MR. MCDONALD: I'll ask the court 9 reporter to mark that portion of the transcript. 10 Paul, your rights are reserved but 11 we will make that request. 12 MR. HEMMING: All right. 13 REQUEST NO. 5 - To advise whether 14 or not Mr. Pielak became a Soo Line 15 employee when he transferred to the 16 United States 17 Q. MR. MCDONALD: How did the field 18 safety operations in Canada differ from the field 19 safety operations in the United States at this 20 time? 21 A. You -- you are talking about the boxes 22 specifically under Mr. Sabatini and Mr. Pielak? 23 Q. No, I wasn't actually talking about the 24 boxes, but that's kind of what I'm getting at. 25 Why do you have separate directors

Page 86 1 GLEN DONALD WILSON 2 for field safety for Canada and the United States? 3 A. Because of the -- the various 4 requirements that exist. They are -- they are in 5 most cases different. 6 So if you look at the -- the boxes, 7 the Hazmat field specialists in Canada would be 8 checking for compliance to Canadian standards, 9 generally contained in the general operating 10 instructions. 11 In the United States we have the 12 Hazmat instructions by rail. And the US Hazmat 13 field specialists would be working more to the -- 14 off of those standards. 15 And the same would be true in each 16 of the different boxes that exist. 17 Q. Why did you decide to break them out 18 into US and Canada? 19 A. Because the -- those were the regions. 20 So there -- at this point in time there was a 21 senior vice president for operations US and a 22 senior vice president for operations Canada. And 23 each has distinct operating requirements. 24 So that's -- that's sort of 25 generally why we would have the operating structure	Page 87 1 GLEN DONALD WILSON 2 that we do and why that would be supported by these 3 kinds of organizations. 4 Q. Why didn't you do the same thing with 5 respect to the Hazmat programmes? 6 A. Because the -- there's a necessary level 7 of consistency to operate. And Mr. Kozey's role is 8 to understand both Canada and the US requirements 9 and make sure that we can operate a network 10 consistently. 11 So you have to apply the 12 differences but also be able to operate trains 13 cross-border and understand railcars that will move 14 between Canada and the United States, or vice 15 versa. 16 Q. The Hazmat field specialists for the US 17 are Mr. Bucholtz and Mr. Bell? 18 A. Ball. 19 Q. Ball, I'm sorry. 20 A. That's all right. 21 Q. The print is very small here. You have 22 better eyesight than I do. 23 A. I just remember it. I can't read the 24 print any better than you. 25 Q. Okay. Were they located in the
Page 88 1 GLEN DONALD WILSON 2 United States? 3 A. Yes. 4 Q. Were they employees of CP? 5 A. Mr. Bucholtz was an employee of 6 Soo Line. Mr. Ball was, I believe, an employee of 7 Dakota, Minnesota and Eastern. 8 Q. And you may have told me this earlier, 9 but if you did, I have forgotten it. Who did 10 Mr. Pielak report to at this point in time? 11 A. He reported to the senior vice president 12 of US operations, who at that point in time was 13 Doug McFarlane. 14 M-C capital F. 15 Q. What were the operations standards and 16 rules that Mr. Shearer's group was responsible for? 17 A. So that at this point in time fell to 18 the individual identified there, Stan Bell. When 19 you see directly below him manager rules 20 Scott McDade and Rod McKorkie. Scott McDade was a 21 Canadian employee, who was largely responsible for 22 the Canadian rail operating rules, which were the 23 industry Transport Canada-approved set of rules for 24 operations. 25 Mr. McKorkie was an employee of	Page 89 1 GLEN DONALD WILSON 2 Soo Line and responsible for operating rules for 3 the US operations. 4 Similarly, going down that -- that 5 chain, operating practices, Kim Wachs was 6 responsible for the general operating instructions 7 in Canada, and Kim Johnson was responsible as a 8 Soo Line employee for US operating instructions. 9 Q. So am I understanding this correctly 10 that the rules and regulatory analysis that 11 Mr. Shearer's group was dealing with was generic 12 rail regulations as opposed to Hazmat-specific 13 cargo that Mr. Kozey was dealing with? 14 A. Yes. 15 MR. MCDONALD: I will have the 16 court reporter mark this as Wilson Exhibit 5. 17 EXHIBIT 5 - Organizational chart 18 dated April 26th, 2013 for 19 marketing and sales 20 Q. MR. MCDONALD: You have seen this 21 before, Mr. Wilson? 22 A. Yes, I have. 23 Q. What is it? 24 A. It is an organizational chart dated 25 April 26th, 2013 for M&S, which is marketing and

Page 90 1 GLEN DONALD WILSON 2 sales, energy and merchandise, and it's described 3 as energy, chemicals and plastics. I think the 4 energy and merchandise was sort of the group name. 5 Q. And what was this group's function? 6 A. They were part of the marketing and 7 sales organization generally, which had its -- had 8 an executive vice president that oversaw the entire 9 area. And then there was a vice president that 10 would have been just above this that had a -- a 11 broader grouping. That -- that may have been what 12 energy and merchandise referred to. 13 And then this is the organizational 14 chart from the general manager down that -- would 15 include -- I guess his title was energy, chemicals 16 and plastic. So that's the subgroup. 17 Q. And that's headed by Brent Dornian? 18 A. Correct, yes. 19 Q. What were his duties at this time 20 period? 21 A. This -- Mr. Dornian specifically in this 22 group generally would have interacted a lot with 23 shippers and customers of Canadian Pacific or 24 Soo Line, as the case may be, and dealt with 25 everything from quoting rates, contract terms,	Page 91 1 GLEN DONALD WILSON 2 tariff terms. 3 They would have generally been 4 involved in trying to understand that customer's 5 needs, and helping the organization understand what 6 the customer's expectations were and matching up 7 the rail services to that. 8 Q. I don't believe you gave us a name. Do 9 you recall the name of the vice president that 10 Mr. Dornian reported to? 11 A. At this point in time it would have been 12 Tracy Robinson. 13 Q. Who on -- 14 A. I'm -- 15 Q. I'm sorry? 16 A. Sorry, I was just going to add, she 17 would have in turn reported to the executive 18 vice president, Jane O'Hagan. 19 Q. Thank you. Who on this organization 20 chart on Wilson Exhibit 5 handled crude by rail? 21 A. A number of these people would have been 22 involved in it. Certainly Mr. Dornian, Mr. Hucker 23 -- sorry, Ms. Hucker, Anne Marie Davies was 24 involved in it. I believe Stacy Terlecki, 25 Chantal Renaud.
Page 92 1 GLEN DONALD WILSON 2 And I don't know that I'm getting 3 all of them, but there's certainly an array of 4 people from this that would have been involved with 5 crude oil. 6 Q. But those are the only ones you can 7 identify sitting here today? 8 A. Yes. I -- for instance, there's nine 9 people, I think, named as analyst pricing and sales 10 support. 11 Q. You think all of those -- 12 A. As I said -- and I -- 13 Q. -- dealt with crude by rail? 14 A. Well, I don't know which ones. I don't 15 know how their duties were divided among that group 16 of analysts. Certainly some of them would have 17 dealt with crude by rail. 18 Q. Is it a fair characterization that 19 Mr. Dornian's responsibility was expanding CP's 20 customer base and managing customer satisfaction? 21 A. Yeah. I wouldn't -- I would -- I would 22 add on to that it's also managing the terms and -- 23 of the relationship between a customer and CP. 24 Q. What was Mr. -- excuse me, what was 25 Ms. Hucker's role within this group?	Page 93 1 GLEN DONALD WILSON 2 A. I -- I don't know a lot about her 3 specific responsibilities. It's -- her title is 4 described as director of sales. And I generally am 5 aware that she was interacting with customers in -- 6 in crude by rail. 7 Q. That's the extent of your knowledge? 8 A. Yeah. I -- I don't know a lot about her 9 specific duties. 10 Q. How about Chantal Renaud, what was her 11 roles and responsibilities around this time? 12 A. I'm really kind of limited by the 13 titles, but I -- and it's consistent with my 14 general understanding, that she would have been 15 sort of a support and analysis function on -- it's 16 described as pricing and sales support. 17 And my understanding of that 18 generally is that it would be -- you know, that 19 somebody like Ms. Hucker would be interacting with 20 customers and performing more of this -- what would 21 traditionally be viewed as a sales function. And 22 Ms. Renaud would be in the background doing 23 analysis of, you know, different lengths of haul, 24 different calculations about rates that could be 25 applied.

Page 94 1 GLEN DONALD WILSON 2 Q. Stacy Terlecki's title appears on this 3 chart as director of pricing and sales support ECP? 4 A. Yes. 5 Q. What's ECP? 6 A. I believe it to be energy, chemicals and 7 plastics. 8 Q. Do you know who, if anyone, on this 9 org. chart was responsible for dealing with CP's 10 customers at the New Town transload facility? 11 A. I don't know that I would define it 12 quite that way. The customers may not be located 13 physically at the plant at -- or at the transload 14 facility in New Town. They may be large corporate 15 entities headquartered in places like Calgary or 16 Houston or other energy locations. 17 So the -- oftentimes the team at CP 18 would be dealing with those people as their 19 customers. 20 Q. That's fair, and it's helpful. I guess 21 I can refine the question, then. 22 Do you know who, if anyone, on this 23 org. chart was responsible for dealing with the 24 customers whose cargo was transloaded at the 25 New Town facility?	Page 95 1 GLEN DONALD WILSON 2 A. I don't -- well, I -- so I know 3 World Fuels would be one of those customers. I 4 don't know whose specific -- I believe 5 Elizabeth Hucker had a role in dealing with 6 World Fuels. I don't know who else. There -- 7 Below Elizabeth Hucker are a number 8 of people with the title account manager, and 9 that's -- typically there's an assigned account 10 manager for each significant customer. 11 Q. Right. Well, we do see that 12 Keegan Loxam -- 13 A. Right. 14 Q. -- is the account manager, and it says 15 per -- and crude. Is it your understanding that 16 Mr. Loxam was the member of this group who was 17 responsible for the crude customers -- 18 A. Yeah. 19 Q. -- of CP? 20 A. Yes. 21 Q. And below Mr. Loxam was a gentleman 22 named Jason, and you may have to help me with his 23 last name. 24 A. I'm afraid I don't know that. Or I'd be 25 guessing as much as you would be. But I would go
Page 96 1 GLEN DONALD WILSON 2 with Smiechowski. 3 Q. I'll go with that. 4 It's spelled S-M-I-E-C-H-O-W-S-K-I. 5 Do you know what his role was 6 within this group? 7 A. I don't recall this individual, and I 8 don't know what his -- his duties were. But it 9 appears to be a -- solely reporting to Mr. Loxam, 10 so I would -- I would surmise that it is support 11 for the account manager relating to crude oil. 12 Q. Do you know Mr. Loxam? 13 A. No. I don't recall if I've ever met 14 him. I -- I may have. 15 Q. Never spoken with him on the phone? 16 A. I may have. I -- I -- it would be at 17 this point in time. I know he left our 18 organization many years ago. 19 Q. Are there any individuals at CP beyond 20 the ones we've identified on Wilson Exhibit 4 and 5 21 who had duties that overlapped with or intercept 22 with the people on these lists that dealt with 23 crude by rail? 24 A. Some of your questions related to 25 transload, and I referred earlier to that as a	Page 97 1 GLEN DONALD WILSON 2 separate function from either of the two 3 organizational charts that we've -- we've 4 discussed. 5 Q. Can I stop you right there? 6 A. Sure. 7 Q. I think, if my memory is correct, you 8 said at this point in time, in 2013, there were 9 just two individuals that dealt with transloading? 10 A. Yeah. I said one or two. 11 Q. One or two. Steve -- 12 A. One of whom was Steve -- 13 Q. -- something? 14 A. -- something. 15 Q. And maybe another, okay. 16 A. Yeah. 17 Q. So there's Steve and perhaps one other? 18 A. Yeah. 19 Q. Is there anyone else within the CP 20 organization, besides the ones that we've 21 identified on these two organization charts, that 22 dealt with crude by rail and whose functions 23 intercepted with -- 24 A. It would -- 25 Q. -- the people we've identified on

1 GLEN DONALD WILSON

2 Exhibits 4 and 5?

3 A. Sure. It -- it would be less direct,
4 but there would be -- our customer service group
5 would have dealt with -- which was a separate part
6 of the marketing and sales overall organization.
7 So they deal more transactionally with customers,
8 including crude oil customers.

9 So they receive billing and produce
10 paperwork and deal with phone calls from customers
11 about why a car is where it is or a train or -- so
12 they interact with those kind of customers as well,
13 but less directly.

14 Q. Are there any others?

15 A. Other than just the general principle of
16 operation, sort of executing on principles, you
17 know, train operations. And they would be as such
18 picking up and dropping off crude oil cars. But I
19 can't think of any group that would have a more
20 specific function than that.

21 Q. Okay. If you look at Wilson Exhibit 1,
22 please, and focus your attention on Attachment A,
23 item number 4. You see there's a listing of crew
24 members. Do you see that, Mr. Wilson?

25 A. Yes, I do.

1 GLEN DONALD WILSON

2 Q. Are those all of the members of the crew
3 who were involved in the transportation of the
4 crude oil on the train that ultimately derailed
5 from the CP Soo Line portion of the transport?

6 A. That's my understanding, yes, that they
7 would have been -- they're not all part of one
8 crew. There would have been multiple crews in
9 succession.

10 Q. But that listing of people are all of
11 the CP and Soo Line employees who were part of the
12 train crews related to that train?

13 A. Yes.

14 Q. Let's go through them all. I want you
15 to tell me what their titles and their roles with
16 respect to that train were. So let's start with
17 Thomas Ammon, A-M-M-O-N. What was his title and
18 what was his role?

19 A. I can maybe fend off doing this for each
20 individual because I won't know for any of them.

21 Q. Okay.

22 A. I can tell you that all of them will
23 have had the title of either locomotive engineer or
24 conductor, but I don't know which are which.

25 Q. Okay. And how would you go about

1 GLEN DONALD WILSON

2 finding that out?

3 A. I would have to go back to -- to get --
4 do some enquiry internally and have -- whoever put
5 the list of names together could presumably
6 identify what role each person had.

7 Q. Will do you that for us?

8 MR. HEMMING: And I'll save Glen
9 the task. We either disclosed it; and if we
10 didn't, we would.

11 MR. MCDONALD: Okay.

12 MR. HEMMING: We can pull that
13 information very easily.

14 MR. MCDONALD: Thank you. We don't
15 need to mark that.

16 Q. Are any of those individuals whose names
17 are listed on item number 4 of Attachment A of
18 Wilson Exhibit 1 Soo Line employees?

19 A. Some would be, yes, but I don't know
20 which specific ones.

21 Q. And I suppose if I asked you whether any
22 of them were CP employees, you wouldn't be able to
23 tell me which ones were either?

24 A. No. I can tell you some are, but I
25 don't know which ones.

1 GLEN DONALD WILSON

2 MR. MCDONALD: Paul, have you
3 disclosed that to us already?

4 MR. HEMMING: I can't say if we
5 have or not.

6 MR. MCDONALD: Okay.

7 MR. HEMMING: Whether they were
8 employees of Soo Line or CP, I don't know whether
9 we have that information.

10 MR. MCDONALD: Okay.

11 MR. HEMMING: We will certainly,
12 under reserve of right objection, we'll look into
13 it.

14 MR. MCDONALD: Okay. Will you mark
15 that portion of the transcript, please, Claire.

16 REQUEST NO. 6 - Re the individuals
17 whose names are listed on item
18 number 4 of Attachment A of Wilson
19 Exhibit 1, to advise whether they
20 were employees of Soo Line or CP

21 Q. MR. MCDONALD: At the time of the
22 derailment, were there any CP employees who worked
23 at the New Town transloading facility?

24 A. No, I don't believe so.

25 Q. Do you have doubt?

Page 102 1 GLEN DONALD WILSON 2 A. I'm -- I'm still not, as I said earlier, 3 certain of the -- the operation of the New Town 4 facility I know was run by another party. 5 We have employees who are 6 positioned all around our network to take care of 7 track and infrastructure. I don't know -- the 8 person who had responsibility for our track in that 9 area probably didn't -- wasn't based in New Town, 10 but I don't know that. 11 Q. Other than individuals responsible for 12 track, would CP have any other employees who would 13 work at or around its transloading facilities? 14 A. No. The typical for a third-party-run 15 transload facility CP would serve that as any other 16 customer. 17 So it would be whichever of the two 18 names in item 4 were the train crew that originated 19 at New Town would have been the two employees who 20 would have gone there to receive that traffic. 21 Q. Okay. 22 A. So that would be the typical way of -- 23 that CP would interact with the transload facility. 24 Q. Do you know which of the two individuals 25 listed on item 4 were the two that took the train	Page 103 1 GLEN DONALD WILSON 2 out of New Town? 3 A. That I do not. 4 MR. MCDONALD: And, Paul, would we 5 be able to get that information? 6 MR. HEMMING: Yeah, if we haven't 7 disclosed it. I -- I know who it is. 8 MR. MCDONALD: Okay. 9 MR. HEMMING: But we will address 10 it later. 11 MR. MCDONALD: Okay. Thank you. 12 Would you mark that section of the 13 transcript, please. 14 REQUEST NO. 7 - To advise which of 15 the two individuals listed on item 16 4 of Attachment A of Wilson 17 Exhibit 1 were the two that took 18 the train out of New Town 19 Q. MR. MCDONALD: I just want to clear 20 up some confusion in my mind, Mr. Wilson. 21 In addition to those two people 22 who, in my words, took the train out of New Town, 23 did you say that you might have had a CP employee 24 who worked at or around the New Town facility who 25 was solely responsible for track maintenance in
Page 104 1 GLEN DONALD WILSON 2 that area? 3 A. Every inch of our track has somebody 4 who's responsible for it, so I -- and they tend to 5 own sections of track. 6 Whoever the individual is that 7 would have been responsible for the track on the 8 New Town spur, I believe it was called, or 9 subdivision, I don't know where they were based, so 10 that -- that's the hesitation I have. 11 Q. And would you be able to find out who 12 was the person who was responsible for the track at 13 the New Town spur? 14 A. As of that point in time? 15 Q. Yes. 16 A. Again I can make the enquiry and see if 17 we can determine that. 18 Q. Okay. Thank you. 19 Would you mark that portion of the 20 transcript as well. 21 REQUEST NO. 8 - To advise who was 22 the person who was responsible for 23 the track at the New Town spur 24 Q. MR. MCDONALD: Apart from the 25 individuals who are identified in item 4 of	Page 105 1 GLEN DONALD WILSON 2 Attachment A of Wilson Exhibit 1, were there any 3 other employees of CP or Soo Line who were involved 4 in the transportation of crude from the Bakken 5 region to Lac-Mégantic that we haven't previously 6 mentioned? 7 A. I just need to clarify. Are we talking 8 about the specific train? 9 Q. Yes. 10 A. Okay. There would be other employees 11 involved in a less direct sense. I guess these 12 would be the operating crews who would have in 13 succession spelled each other off as the train 14 moved across CP's network. 15 All of them report to trainmasters, 16 who oversee the operation of trains on their 17 territory, so they would have some level of 18 involvement. 19 That train gets -- would have 20 received mechanical inspections at various points. 21 There would be employees performing those 22 inspections who are not listed here. 23 Q. Any others? 24 A. And dispatchers out of our Minneapolis. 25 And then when it entered Canada or Calgary

Page 106 1 GLEN DONALD WILSON 2 operations centre, they would have been involved 3 directly in communicating with the train crews and 4 dispatch of that train. 5 Q. Any others? 6 A. I suppose some in our customer service 7 centre would have handled some of the documentation 8 related to that train. I can't think of anything 9 beyond that. 10 Q. And beyond what you've told us, would 11 your answer be any different if I asked you 12 specifically about additional Soo Line employees, 13 or were you covering both? 14 A. No, I was -- I was covering both because 15 I was trying to traverse the whole -- both Canada 16 and the US. 17 I suppose you could -- I mean, 18 other employees -- with every train, as a train 19 passes, every operating employee, including even 20 engineering employees, have an obligation to 21 inspect that train as it goes by. So giving even 22 less direct, there would be many such employees 23 putting eyes and doing inspections on that train. 24 Q. If I refer to the train that was 25 involved in the derailment as "Train 282," will you	Page 107 1 GLEN DONALD WILSON 2 understand what I'm talking about? 3 A. Yes. 4 Q. Where did Train 282 come from before it 5 arrived at the New Town terminal? 6 A. I believe Train 282 originated at the 7 New Town terminal so it -- that's its point of 8 origin. 9 The crew would have in all -- I 10 don't know how they got there. They could have -- 11 we call it light engines. They could have moved 12 engines up to the train or they may have arrived in 13 a taxicab to get to the train, but that's -- that's 14 the point at which that train originated on our 15 network. 16 Q. How about the locomotives, where did 17 they come from? 18 A. I -- I don't know if they were added at 19 New Town, were left with the empty cars that -- for 20 the loading process. I'm not sure how it worked. 21 Q. I guess what I'm trying to get at is the 22 -- both the tank cars and the locomotives had to 23 get to New Town to get loaded before they pulled 24 out and -- 25 A. Yes.
Page 108 1 GLEN DONALD WILSON 2 Q. -- ultimately went to Lac-Mégantic. 3 I'm trying to find out if you know 4 where did the tank cars come from before they 5 arrived at New Town to be loaded up? 6 A. I don't know. They -- they empty -- 7 they would have been moving as empties or residue 8 cars presumably, and billing created to have their 9 next load assigned at New Town, North Dakota. 10 Q. Do you know that these tanks cars came 11 from Irving? They had been previously shipped to 12 Irving, the crude was unloaded, and they were 13 shipped back to New Town; is that your 14 understanding of -- 15 A. I -- 16 Q. -- how this worked? 17 A. It is my understanding that the same 18 cars had done that cycle. I -- I don't know that 19 every single car was the same, but generally 20 speaking, yes. 21 Q. Okay. And is it your understanding that 22 when Train 282 arrived back at New Town, the cars 23 that ultimately comprised Train 282 were empty tank 24 cars? 25 A. Generally, yes. The designation of 282	Page 109 1 GLEN DONALD WILSON 2 is perhaps a bit confusing to me because it is -- 3 Q. Okay. 4 A. It would have had a different train 5 designation as a set of residue or empty cars. And 6 then 282 -- the last digit -- when it's an even 7 number tells me it's an eastbound train. So the 8 280 -- the 2 that ends that says that's an 9 eastbound train and it originated at New Town. 10 It would have had a different 11 designation as a set of empties going there. 12 Q. Fair -- fair enough. I'm being 13 imprecise, and I appreciate -- 14 A. No. I'm trying to explain the 15 nuances -- 16 Q. Yeah. No, I -- 17 A. -- of why I'm -- 18 Q. I do appreciate that. 19 What I'm really getting at, not 20 being a railroad person, is the tank cars that 21 ultimately comprised Train 282, it's your 22 understanding that these tank cars were returned 23 from Irving's Saint John facility empty to 24 New Town, and then they were filled with crude oil 25 and then sent back presumably on their way to

Page 110 1 GLEN DONALD WILSON 2 Saint John. Is that -- is that your understanding? 3 A. Generally, yes. I can't say that that 4 was the case for every single tank car, but 5 generally, yes. 6 Q. Okay. Was anything done to prepare the 7 train for loading? The tank cars for loading at 8 New Town by CP? 9 A. No. CP would place empties. So the -- 10 whatever designation the train would have arrived 11 with the empties. Again, I don't know whether 12 locomotives in that case stayed with the cars or 13 were separated from it, but -- and different 14 locomotives placed when it became Train 282. I'm 15 not sure. And it can work either way. 16 But the empty cars would be placed, 17 and then CP would be notified through the billing 18 system that there are loads ready for 19 transportation. 20 Q. So once CP returned the empty tank cars 21 and placed them at New Town, it's -- had no further 22 involvement until it was ready to take the cars 23 forward toward Saint John? 24 A. Yes. 25 Q. So all the loading in the tank cars was	Page 111 1 GLEN DONALD WILSON 2 done by someone other than CP? 3 A. Yes. And then really the -- the 4 movement of empties terminates at New Town. So our 5 involvement with that ends, the cars are placed. 6 And then a new movement is triggered when they're 7 ready to be transported again. 8 Q. So does CP take any steps before it 9 pulls out of New Town to inspect any of the tank 10 cars? 11 A. Yes. The -- the operating crew -- and, 12 again, I don't know which of the two individuals in 13 item 4 it was -- but those two would have had a 14 responsibility to walk -- upon arrival, they would 15 walk the train and inspect the cars. 16 Q. Is there anything else that CP did prior 17 to departing New Town other than the inspection 18 that you just described? 19 A. No. Generally speaking the -- the train 20 crew will just verify that they have -- that the 21 cars are safe for transit. That they have all the 22 matching paperwork. That all of the requirements 23 that they have for -- as -- as -- and that's more 24 specific. 25 Early on we were talking about the
Page 112 1 GLEN DONALD WILSON 2 duties of a conductor. That's really part of the 3 duties of the conductor in particular. 4 And once they're satisfied that the 5 cars are safe for transit, then all the paperwork 6 and placarding and everything matches up, they 7 would then be contacting the dispatcher and saying 8 that they're ready to go, and the dispatcher would 9 tell them whenever they had authorization to 10 proceed. 11 Q. Do the CP personnel interact in any way 12 with the other employees at the New Town facility? 13 A. I wouldn't say CP personnel act with the 14 -- interacted with the employees. They -- the 15 company that operated the New Town facility would 16 have interacted with our transload individual or 17 team. 18 Q. That's what I mean. The people who 19 worked -- who operated the transload facility, 20 would CP's personnel interact with them at 21 New Town? 22 A. They may. Things like -- I don't know 23 if there was a gate, for instance. But in a lot of 24 facilities there can be things like a locked gate, 25 and our operating crew will interact with employees	Page 113 1 GLEN DONALD WILSON 2 of a -- of location where they have to get railcars 3 from to let them know they're coming, and verify 4 that the gate is open, things like that. 5 Q. And these crews that operated in and out 6 of New Town, what was -- was this a regular route 7 that these CP or -- and/or Soo Line employees 8 travelled on? 9 A. Yes. 10 Q. The CP or Soo Line personnel who were 11 responsible for taking the train out of New Town, 12 was -- was that -- was that the only rail operation 13 that these people conducted during this time 14 period? 15 What I'm getting at is once we find 16 out who these two people are, was it their job to 17 take the trains out of New Town and to hand them 18 off to the next team? Was that -- that's -- was 19 that their everyday job on a routine basis, they 20 would take the trains out of New Town to a certain 21 point, then hand them off? 22 A. No, because they would be part of a -- a 23 pool. So I believe in this case based out of 24 Harvey, North Dakota there would be a pool of 25 operating employees, and they can each draw a

Page 114 1 GLEN DONALD WILSON 2 different service on that territory each day. Or 3 each time they go to work. 4 So it's not the assigned job in 5 this case, I believe, to -- to have a specific crew 6 that just goes back and forth doing that. It could 7 be different crews from that pool. 8 Q. Do you know how big the pool is for 9 Harvey, North Dakota at this point in time, 2013? 10 A. I -- I wouldn't know precisely. I would 11 guess -- guess it was about 80. 12 Q. So after the train is loaded and the CP 13 personnel do the inspection, what happens next in 14 terms of moving the train? 15 MR. HEMMING: Paul, just a point 16 of clarification. When you say "the CP personnel," 17 and you are talking about North Dakota, are you -- 18 I'm assuming you are using the broader sense of CP 19 and/or Soo Line personnel? 20 MR. MCDONALD: Soo Line, yes. 21 MR. HEMMING: Okay. 22 MR. MCDONALD: And I appreciate the 23 clarification, Paul. 24 Q. The -- whoever it was that moved 25 Train 282 out of New Town, those were Soo Line	Page 115 1 GLEN DONALD WILSON 2 employees; am I right? 3 A. Yes. 4 Q. Okay. So these employees, after doing 5 the inspection of the tank cars before pulling out 6 of New Town, what else did they do before they got 7 underway? 8 A. They would have done a brake test. They 9 would have done a -- a number of duties related to 10 making sure that the conductor in -- I described 11 him a few minutes ago walking the train. Is 12 looking at wheels, brakes, air hoses, couplers 13 between cars, and verifying that they all look 14 safe, ready. He doesn't identify any issues with 15 them. 16 And then coordinating with the 17 locomotive engineer to perform a brake test to make 18 sure that the brakes -- the pistons extend and 19 retract as -- as the engineer applies the brakes. 20 So all of those tests and 21 inspections are really just part of the -- the 22 general duties of a train crew first receiving 23 cars. And they have a lot of paperwork that they 24 complete to verify that they've done that. 25 And as I said a few minutes ago,
Page 116 1 GLEN DONALD WILSON 2 they then would contact the dispatcher at some 3 point when they believe they're ready to depart. 4 And once they receive instructions, 5 they would then operate the train in accordance 6 with all the operating instructions and rules in 7 place. 8 And until the -- the assigned 9 terminal. So the -- the assignment would take into 10 account the fact that that crew has a significant 11 amount of their time spent at the point of origin 12 to do their duties I described. They would then 13 operate the train to a certain point, and then it 14 would be handed to another crew. And then the -- 15 the processes that apply there are much quicker. 16 Q. Are you familiar with the term "truck 17 tickets"? 18 A. Generally, yes. 19 Q. What do you understand that term to 20 mean? 21 A. It's sort of the -- as I understand it, 22 the trucking industry term for identifying their 23 cargo. 24 Q. And you understand that the crude that 25 came into the New Town facility in the first	Page 117 1 GLEN DONALD WILSON 2 instance was trucked in? 3 A. Yes. You said crude? 4 Q. Crude. 5 A. Sorry, I thought you said crew for a 6 second. 7 Q. No, crude. Yes. 8 You mentioned the Soo Line 9 employees doing paperwork before pulling out of the 10 New Town facility and reviewing paperwork. Do you 11 recall that? 12 A. Yes. 13 Q. Did these employees receive the truck 14 tickets for the cargo? 15 A. No. 16 Q. Was there ever a time that CP's crews 17 would review truck tickets at a transloading 18 facility? 19 A. No. Our train crews receive the 20 documentation I referred to from our -- our network 21 billing centre that would generate train consists 22 and waybills and all the documents associated with 23 the train that they're assigned to operate. 24 Q. Was Train 282 a unit train? 25 A. Yes.

Page 118 1 GLEN DONALD WILSON 2 Q. How do you define "a unit train"? 3 A. The "unit" refers to the fact that it's 4 a single cargo. So a unit train of crude oil means 5 it's -- and I would distinguish that from what we 6 call "a manifest train," which means it's got mixed 7 types of cars and freight on it. 8 Q. Does a unit train have to have a 9 specific number of cars to be called a unit train? 10 A. I don't -- I don't think it's really a 11 regulated term in -- so it -- it would be very 12 inefficient to have it be a very small number of 13 cars. But typically there are 70-plus cars all of 14 the same type and commodity. 15 Q. And how about specific to crude by rail, 16 is a unit train denoted by a certain number of cars 17 all carrying crude oil? 18 A. No, the number of cars can vary. A unit 19 train really means in -- that there would be no 20 commodity other than crude oil. 21 Maybe -- and I should clarify. 22 There's a buffer car. So there's always a car 23 placed between the crude oil and the locomotives. 24 So there might be a load of sand, but because 25 that's a buffer car we wouldn't treat that as	Page 119 1 GLEN DONALD WILSON 2 interfering with the fact that it's viewed as a 3 unit train. 4 The unit train would have, as I 5 said, roughly 70-plus, but it could be -- and some 6 unit trains in other commodities could be 150 cars. 7 I think a lot of crude trains operated around a 8 hundred cars. 9 Q. Who determined the number of cars on 10 trains that were transported from New Town? 11 A. That would be part of the original 12 discussion with the shipper. That the marketing 13 and sales team would be -- it's always a point of 14 discussion how many cars and on what frequency the 15 customer is intending to generate them. 16 And then we would discuss what kind 17 of service we might be able to provide for that. 18 Q. So who makes the decision as to the 19 number of cars on a particular train? 20 A. Well, in -- the originating discussion 21 would really be about are we providing unit train 22 service or are they going to generate what's called 23 a block. So a block of cars might mean they 24 generate 20 cars, and we're going to add that into 25 a manifest train. So that would kind of define the
Page 120 1 GLEN DONALD WILSON 2 type of train service. 3 Once that's defined, if it's unit 4 train service, then there would typically be a 5 range that the customer can provide between X 6 number and Y number. And it's usually not a big 7 range, but it allows for the fact that some cars 8 may not be able to go. They might get less back 9 than they thought they were getting or intended. 10 So there's a bit of a range. But 11 ultimately the customer loads and decides how many 12 are in that particular set on any particular day. 13 And as long as that's within our range, then that's 14 acceptable. 15 Q. Were there any manifest trains ever 16 running out of New Town? 17 A. I believe there were prior to -- I 18 shouldn't say -- the way a manifest train is built 19 is just different. They would switch -- like, 20 bring 20 or 40 cars as -- often a switcher 21 assignment. Pool them at a yard location, and they 22 would be combined with another 50 cars of 23 merchandise or other things. So I believe that has 24 happened with New Town traffic. 25 I don't know that it was happening	Page 121 1 GLEN DONALD WILSON 2 at this point in time, but at other points in time. 3 Q. Okay. Let's just focus on the 2012-2013 4 time period. 5 A. Sure. 6 Q. Did CP haul any cargo other than crude 7 out of New Town? 8 A. Not to my knowledge, no. 9 Q. And so you are dealing with shippers of 10 crude oil during that time frame at New Town? 11 A. Yes. 12 Q. And, again, I just want clarity. You 13 had an overall agreement with these shippers, but 14 on a train-by-train basis the shippers dictated how 15 many cars would comprise each individual train; is 16 that correct? 17 A. Yeah, within a -- within a set range. 18 They -- they couldn't place 200 cars and tell us 19 they want that to be a train of crude oil. 20 Q. Okay. 21 A. They could place 90 or 94 cars, and that 22 would be fine. 23 Q. Okay. While a train was en route from 24 New Town to Saint John -- Irving facility in 25 Saint John, how was the CP crew communicating with

Page 122 1 GLEN DONALD WILSON 2 the company? 3 A. Well, CP's train was only routed from 4 New Town to Montreal. 5 Q. Yeah. 6 A. So during that time, the crews 7 communicate through sometimes personal interaction 8 with the trainmaster role that I described, which 9 is the manager responsible for train operations in 10 -- on that territory. Most of their communication 11 would be through the dispatcher for that territory. 12 Q. Okay. What was the route of travel from 13 New Town to Montreal on Train 282? 14 A. Generally that train moved through major 15 centres like Minneapolis, Saint Paul, Milwaukee, 16 Chicago over the -- if you recall on the map we had 17 a hashed line east of Chicago to the Canadian 18 border. That's Norfolk Southern's track over which 19 we have running rights. So we have operated over 20 that track to the Canadian border, and then over CP 21 track up through Windsor, London, Toronto, and on 22 to Montreal. 23 Q. Did it go from the United States into 24 Canada and stay in Canada for the entire duration? 25 MR. HEMMING: Could you clarify,	Page 123 1 GLEN DONALD WILSON 2 Paul, when you mean by "duration"? You mean the 3 planned duration or the actual duration? 4 Q. MR. MCDONALD: The actual duration? 5 Yes. 6 A. Yes, because it ended in Lac-Mégantic. 7 Q. And explain for us what happens once 8 Train 282 reaches the Canadian border. 9 A. A lot of the customs aspects of that are 10 dealt with in advance, and as -- because it's a 11 daily regular occurrence that traffic moves over 12 the railways, it tends to be fairly efficient at 13 borders. 14 The US-based crew would terminate 15 their movement and place the train wherever it was 16 required to be placed, and then the Canadian crew 17 -- and I should say I don't know in all cases with 18 border crossings. Either the US crew operates 19 slightly into Canada or the Canadian crew operates 20 slightly in the United States. I don't know the 21 case with this specific train. 22 But one of the crews would have 23 crossed the border with the train. The paperwork 24 and the billing and the customs aspects of that are 25 all dealt with separately.
Page 124 1 GLEN DONALD WILSON 2 Q. Can you find out which crew crossed the 3 border to take over -- to take over -- to handle 4 the exchange of operators of this train? 5 A. I can -- I can enquire on that, sure. 6 MR. HEMMING: I can save you the 7 trouble. We disclosed it in an affidavit. 8 MR. MCDONALD: Can you identify the 9 affidavit for me? 10 MR. HEMMING: I can't now but I 11 can -- 12 MR. MCDONALD: Will you do that? 13 MR. HEMMING: I can reproduce it. 14 MR. MCDONALD: Okay, thank you. 15 MR. HEMMING: We've disclosed it 16 in an affidavit. 17 MR. MCDONALD: Okay. Will you mark 18 that section of the transcript, please. 19 REQUEST NO. 9 - To advise which 20 crew crossed the border to handle 21 the exchange of operators of 22 Train 282 23 MR. MCDONALD: Thank you, Paul. 24 Q. How long does the changeover take? 25 A. Generally speaking or specifically at	Page 125 1 GLEN DONALD WILSON 2 the border? 3 Q. At the border. 4 A. At the border. 5 Q. I was staying on -- 6 A. Okay. 7 Q. The exchange -- the transfer of Soo Line 8 operators to CP operators? 9 A. In some cases it can be quite brief. 10 Ten minutes. In other cases there may be -- it 11 would depend on the operation each day. There 12 could be reasons of just congestion or other things 13 that are preventing it from happening quicker than 14 that. 15 But in a -- in a smooth operation 16 where one crew gets off and another crew gets on, 17 it's a matter of minutes really before it's moving 18 again. 19 Q. And CP's transport of Train 282 stopped 20 in Montreal? 21 A. Yes. 22 Q. Explain to us how the hand-off occurs 23 there between CP and MMA's crew? 24 A. That's not really a hand-off. It's -- 25 the train was brought into our Saint-Luc yard. The

Page 126 1 GLEN DONALD WILSON 2 interchange agreement that existed with MMA said 3 that their crews would come over our lines into 4 Saint-Luc yard and then take the train from that 5 location. 6 Q. So CP's crews just bring it to Saint-Luc 7 and leave the cargo there? 8 A. They -- they would cut off their 9 engines, and that really terminates Train 282. The 10 set of cars that remain would be -- the railway 11 term would be "lifted." You know, the -- the MMA 12 crew would come in, attach their locomotives to the 13 cars, and then it becomes Train -- an MMA train 14 designation operating east out of that yard. 15 Q. So there was no interaction between the 16 CP and the MMA crews with respect to this 17 particular train? 18 A. There may have been. There would have 19 been some, because the MMA crew would have had to 20 enter our yard, and they would -- while operating 21 over our tracks and into our yard, they would be in 22 communication with again CP dispatchers, yard 23 personnel about the -- the operation into the yard. 24 MR. MCDONALD: Off the record. 25 (Proceedings adjourned at 12:04 p.m.)	Page 127 1 GLEN DONALD WILSON 2 3 PROCEEDINGS ADJOURNED TO 1:00 P.M. 4 5 (Proceedings recommenced at 1:02 p.m.) 6 GLEN DONALD WILSON, previously sworn, 7 questioned by Mr. McDonald: 8 MR. MCDONALD: I will ask the court 9 reporter to mark Wilson Exhibit 6. And 6A a 10 PowerPoint entitled "Safe Transport of Hydrocarbons 11 Standing Senate Committee on Energy, the 12 Environment, & Natural Resources," dated March 6, 13 2013. 14 6A will be a version with speaking 15 notes and 6B will be the version without them. 16 MR. HEMMING: Is there a 6, 6A, 17 and 6B? 18 MR. MCDONALD: 6A and 6B. 19 MR. HEMMING: 6A and 6B? 20 MR. MCDONALD: Yes. 21 MR. HEMMING: Again, which is 6A? 22 MR. MCDONALD: 6A is the one you 23 have on top there. 24 MR. HEMMING: Okay. 25 EXHIBIT 6A - PowerPoint entitled
Page 128 1 GLEN DONALD WILSON 2 "Safe Transport of Hydrocarbons 3 Standing Senate Committee on 4 Energy, the Environment, & Natural 5 Resources," dated March 6, 2013, 6 with speaking notes 7 EXHIBIT 6B - PowerPoint entitled 8 "Safe Transport of Hydrocarbons 9 Standing Senate Committee on 10 Energy, the Environment, & Natural 11 Resources," dated March 6, 2013, 12 without speaking notes 13 Q. MR. MCDONALD: Could you take a 14 look at those, Mr. Wilson. 15 Am I correct that 6A and 6B are 16 just two different presentations of a PowerPoint 17 that was used in connection with some proceedings 18 before the Standing Senate Committee on energy, the 19 environment, and natural resources? 20 A. Yeah. Without going through a 21 page-by-page compare, they certainly look to be 22 that. And it would be normal that we would produce 23 a version with speaking notes and a version without 24 so... 25 Q. Okay. Have you seen either version of	Page 129 1 GLEN DONALD WILSON 2 this document before today? 3 A. Yes. I was part of the meeting that's 4 referred to on the cover on March 6, 2013. 5 Q. Okay. Who else from CP was present at 6 that meeting? 7 A. It was a combination of the -- some of 8 the safety and environment and regulatory team that 9 we talked about earlier. 10 Certainly I was there. I believe 11 Jim Kozey was there, and Lori Kennedy was there. I 12 don't recall if there was anyone else from that 13 function. And there was also -- I believe 14 Brent Dornian and Elizabeth Hucker from the 15 marketing and sales organization that we have 16 talked about earlier. And, again, there may have 17 been one or two more in the room. I don't recall. 18 Q. Where did this meeting take place? 19 A. It was at a -- what was then called our 20 "RCP," which stands for Royal Canadian Pacific, 21 pavilion. So it was a meeting facility in Calgary 22 just adjacent to our head office at the time. 23 Q. And who besides the CP employees that 24 you named attended the meeting? 25 A. There were a number of the members of

Page 130 1 GLEN DONALD WILSON 2 this Senate Standing Committee that's referred to 3 on the cover, as well as some of their support 4 staff. I don't remember any -- I think there was a 5 government relations person from CP there as well. 6 Q. Okay. Anyone else? 7 A. Those -- those would be the main groups. 8 I -- I don't really recall the specifics of every 9 individual in the room, but that will certainly 10 describe the groups. 11 Q. And why was this meeting convened? 12 A. It was at the request of the 13 Senate Committee. They were, as I recall, trying 14 to learn -- there was quite a bit of attention at 15 the time on comparisons between pipeline and 16 railways and the -- getting crude oil to market 17 challenges that were being faced by the energy 18 industry. And so the Senate had requested it as 19 part of a cross-country tour they did. Meeting 20 with various parties that had stakes in the 21 transportation of crude oil. 22 Q. And it was CP's position that the first 23 and most important benefit of crude by rail was the 24 safety aspect; is that right? 25 A. I'm not sure I understand the question.	Page 131 1 GLEN DONALD WILSON 2 Q. Well, did you present the position to 3 this Senate Committee that the first key benefit to 4 transportation of crude by rail was the safety 5 aspect of it? 6 MR. HEMMING: Can you refer him, 7 if you're referencing a document or where in the 8 document you are talking about? 9 Q. MR. MCDONALD: Well, turn to 10 page 2. 11 A. Okay. 12 Q. You have presented that slide that 13 talked about the key benefits of crude by rail? 14 A. CP presented that. 15 Q. Yes? 16 A. Yes. Yeah. 17 Q. Yeah. Who actually presented the 18 PowerPoint at this meeting? 19 A. I recall it being a sequence. The first 20 -- I would say up -- up to and including Slide 8 21 were the marketing people, either Brent Dornian or 22 Elizabeth Hucker, or both. 23 And then Slide 9, yeah, through to 24 the end, Slide 17, were either exclusively me or me 25 in combination with some of my staff.
Page 132 1 GLEN DONALD WILSON 2 Q. That would have been Mr. Kozey and 3 Ms. Kennedy? 4 A. Yes. I -- I don't recall who spoke to 5 -- to what specifically. 6 Q. Were Mr. Dornian and Ms. Hucker trying 7 to convince the Senate representatives that rail 8 transport of crude oil was safer than pipeline? 9 A. No. They were -- if you look through 10 the slides that I refer to them presenting, they 11 were talking primarily about the supply and demand 12 for crude oil and why oil shippers were interested 13 in railways. 14 I spoke primarily to the safety 15 aspects. And it was -- it was really just about 16 the safety of the railway industry and of CP. 17 Q. Okay. You said you began your portion 18 of the presentation of this deck with Slide 8. Do 19 I recall that correctly? 20 A. Slide 9. 21 Q. Slide 9; I'm sorry. All right. 22 Let's turn to Slide 10. 23 A. Okay. 24 Q. Who prepared this slide? 25 A. I -- I don't remember. There -- there	Page 133 1 GLEN DONALD WILSON 2 were multiple people in my team that had roles in 3 preparing the slides that I used. 4 Q. And were all of the statements on this 5 slide accurate at the time they were presented to 6 the Senate Committee? 7 A. Yeah. I think those are accurate. 8 Q. And did CP do everything that it could 9 do to comply with all of those various regulations 10 that are identified on Slide 10? 11 A. You are asking just generally? 12 Q. Yes. 13 A. In -- yes, I believe we -- we do that as 14 a matter of course on a daily basis. 15 Q. I know you didn't present Slide 8, but 16 would you turn back to it, please. And I'm working 17 with 6A. I direct your attention to Slide 8 and 18 the talking points. 19 A. Okay. 20 Q. The second paragraph below the first 21 bullet point talks about CP has seen significant 22 growth in its crude portfolio in the past three 23 years. 24 Do you see that? 25 A. Yes.

Page 134 1 GLEN DONALD WILSON 2 Q. It talks about the business growing from 3 500 carloads in 2009 to approximately 53,000 in 4 2012 in Canada and the US. 5 Do you see that? 6 A. Yes, I do. 7 Q. Is that an accurate statement? 8 A. I believe it was. 9 Q. Okay. Two paragraphs down from that the 10 talking points mention that you're handling a 11 variety of different crude slates ranging from 12 light to heavy. 13 Was that an accurate statement? 14 A. Yes, I believe it was. 15 Q. What was the reason for distinguishing 16 between handling different types of crude? 17 A. I would surmise the reason in this 18 context was to demonstrate the -- the flexibility 19 that railways -- yeah, if you look at the slide 20 that the speaking notes refer to, there's -- the 21 third bullet says: (as read) 22 Flexible and evolving product 23 model. 24 And that was part of the marketing 25 approach to crude oil, was to educate that railways	Page 135 1 GLEN DONALD WILSON 2 were capable of handling various types of crude 3 oils and products. 4 Q. In fact, if you go up a little further 5 on the slide, there's a statement that you are 6 experienced in handling various grades of crude 7 from a variety of origins; right? 8 A. Yes. 9 Q. Why did -- why did CP's experience in 10 handling various grades of crude matter in terms of 11 safety? 12 A. It wasn't a safety-related statement. 13 This is all in the context of marketing and 14 educating about -- you know, there's -- there's 15 users of crude oil who might want light or heavy or 16 different grades of crude oil, and our marketing 17 team I know we're trying to educate that we were 18 capable of getting crude oil from various regions 19 and on various grades. 20 Q. But you're making a point to this 21 Senate Committee that you have experience with the 22 different types -- the different grades of crude 23 from different regions; yes? 24 A. Yes. 25 Q. What is the difference, in CP's
Page 136 1 GLEN DONALD WILSON 2 experience up to this point, in handling different 3 types of crudes from different regions? 4 A. Well, it -- it would relate to the 5 growth in carloads that you referred to a minute 6 ago. There were 500 in 2009 up to 53,000 in 2012, 7 so I think the statement relates to that. 8 To say that we in the last -- in 9 the previous couple of years, the three-year period 10 that refers to, have seen our market presence grow 11 significantly both in terms of the volumes, the 12 regions that those volumes are originating from, 13 the types of crude oil. So they're being moved. 14 Q. What's -- I guess what I'm trying to get 15 at is what is the significance of handling 16 different types of crude? 17 A. I think, as I said, this -- it's -- it 18 relates to the marketing of -- the approach of our 19 marketing team we're trying to educate that 20 customers can come to them with different types of 21 requests from different regions, different types of 22 crude, and railways are capable of moving those 23 different types of products. 24 Q. Are there different operational concerns 25 that come into play based on the different types of	Page 137 1 GLEN DONALD WILSON 2 crude that are being hauled? 3 A. Not really. 4 Q. Are there any distinctions between the 5 operational procedures in hauling different types 6 of crude? 7 A. Not that I -- there -- there can be 8 distinctions in the -- for instance, some heavy 9 crudes moving heated coil cars that have some 10 unique -- well, it's not even different. They're 11 just -- it's a little bit different type of 12 requirement than I guess other types of crude 13 because they don't have the -- the coil -- the 14 heated coil aspect in the cars. 15 Q. Would you turn to Slide 13 of 16 Exhibit 6A. Did you present that slide to the 17 committee as well? 18 A. Yes, I believe I did. 19 Q. The slide mentions in one of the 20 statements that: (as read) 21 CP's safety management system 22 ensures that we meet or exceed all 23 of the standards prescribed by 24 federal regulations. 25 Did I read that correctly?

Page 138 1 GLEN DONALD WILSON 2 A. Yes, you did. 3 Q. In what way did CP exceed standards 4 prescribed by federal regulations? 5 A. One example of that would be the safety 6 management system regulation has certain required 7 elements. 8 The approach that we adopted 9 included emergency response. The safety management 10 system regulation did not require that you have 11 emergency response protocols as part of the safety 12 management system at the time. So we chose to 13 exceed that regulatory requirement and adopt the 14 principles that -- it's referred to as 15 OSAS 18001 -- OHSAS 18001. That included an 16 emergency response. So that would be an example of 17 exceeding the regulatory requirement. 18 Q. Are there any other regulatory -- 19 regulatory requirements that you can tell us that 20 CP was exceeding at the time of this presentation? 21 A. There -- there would be many that would 22 be too frequent to name in terms of -- like, 23 frequencies of inspection. And I think there are a 24 lot of examples where we would go beyond the 25 requirements of a regulation.	Page 139 1 GLEN DONALD WILSON 2 Q. The talking points of this slide 3 mentioned that -- mention that your safety 4 management system includes internal policies, 5 practices, and procedures. Do you see that? 6 A. Yes. 7 Q. Were you referring to written policies, 8 practices, and procedures? 9 A. In many cases, yes. Not -- maybe not 10 exclusively. 11 Q. In 2012, 2013, with respect to 12 transporting Bakken crude, what would you say was 13 CP's number 1 priority? 14 A. I don't know that I can say there was a 15 number 1 priority. I don't -- I don't generally 16 accept the premise of the question, I guess. It -- 17 Bakken crude -- Bakken is a region, 18 crude is a product. It's one of hundreds and 19 hundreds of dangerous goods that we transported, so 20 it fits within our operation in that way. 21 Q. How about network-wide, what was -- what 22 would you say was CP's number 1 priority in 2013? 23 A. We would frequently say that safety of 24 operations is our top priority. 25 Q. And was that in fact true?
Page 140 1 GLEN DONALD WILSON 2 A. Yes, I believe so. I think it was 3 proven out through the track record that was 4 referred to here with North America's safest 5 railway and train accident rate. Lowest in the 6 industry for what was seven years at the time, now 7 13. 8 MR. MCDONALD: Have the court 9 reporter mark as Wilson Exhibit 7 a document 10 entitled "Crude by Rail Frequently Asked 11 Questions." 12 EXHIBIT 7 - Document entitled 13 "Crude by Rail Frequently Asked 14 Questions" 15 Q. MR. MCDONALD: Have you seen this 16 document before, Mr. Wilson? 17 A. Yes, I have. 18 Q. When did you see this document? 19 A. I don't remember the first time. It was 20 probably in the period of late 2012. And this 21 document was a bit of a living document. It was 22 continually being updated. And I don't remember -- 23 I don't see a date on this one. I don't know when 24 exactly this version of it came from, but it was 25 being continually updated and evolving as our needs	Page 141 1 GLEN DONALD WILSON 2 evolved. 3 Q. And what was the purpose of this 4 document? 5 A. At the time we had a lot of attention on 6 the transportation of crude oil, so this was 7 intended to be a way of consolidating information. 8 And I'm just sort of glancing 9 through some of the questions on the table, the 10 contents at the front. But it's -- it's 11 information about crude oil, it's information about 12 -- well, there's -- I don't know how many 13 questions. 30 or 40 questions probably in total. 14 And it was trying to anticipate the 15 types of questions that our company was generally 16 receiving about crude oil, and consolidating 17 information that was relevant to those anticipated 18 questions. 19 Q. Who were those questions coming from? 20 A. Various sources. They would come in 21 sometimes through our government relations 22 department. This Senate Committee was a good 23 example of that where, you know, a committee of the 24 Senate, Canadian Senate, wanted to understand the 25 movement of crude by rail better. So that was one

Page 142 1 GLEN DONALD WILSON 2 example. 3 Our media relations team. 4 Sometimes through industry associations because 5 they were getting asked a lot of questions about 6 movement of crude by rail. 7 Q. Was this document put together -- 8 together under your direction? 9 A. Partly. It was -- there was input by 10 various groups, the government relations team and 11 media relations team and the marketing and sales 12 team, about the kinds of things they were looking 13 for out of this document. I also inputted into 14 that. I wouldn't say I really directed what it 15 should include. It was -- it was a -- input of a 16 number of people and... 17 Q. Am I correct in understanding that the 18 purpose behind this document was to put together 19 company-approved talking points from which people 20 within the company could respond to enquiries made 21 by persons outside the company? 22 A. I would say that skips a step. 23 Q. Okay. 24 A. It was meant to consolidate information. 25 But if there were going to be company-approved	Page 143 1 GLEN DONALD WILSON 2 talking points, as you put it, in relation to a 3 media request, those would still be vetted on their 4 own. It wasn't automatically acceptable to just 5 draw information from this document and state it in 6 public. It was -- there was still another -- an 7 additional check. 8 Q. But I guess, at least at the time of 9 this iteration of this document, this was what the 10 people within your group understood to be CP's 11 position with respect to the various questions that 12 are itemized in the table of contents? 13 A. I don't know that they -- they 14 understood it to be CP's position. It was meant to 15 inform CP's position. So it was meant to 16 consolidate relevant information. Not necessarily 17 to state it as a position of CP. This was meant to 18 be an internal resource document. But positions, 19 public statements could be drawn from its contents, 20 but it would still be determined as another step. 21 Q. Well, I guess you are testifying here on 22 behalf of CP. So is -- at the time this document 23 was prepared, are the answers to the various 24 questions the answers of CP to those questions? 25 A. It's a -- it's a CP consolidation of
Page 144 1 GLEN DONALD WILSON 2 information. It -- I don't dispute that it's a CP 3 document. But the answers that are in here did not 4 necessarily become CP position. It's -- it's a 5 library of information. You can choose from it 6 what we want. 7 But we would still go through a 8 process of vetting that before determining if we 9 were taking a position on something, what that 10 position would be. 11 Q. Well, again, on behalf of CP, sitting 12 here today are there any answers to any of these 13 questions that you believe are inaccurate? 14 A. I'd have to go through them one by one 15 to say that. But I -- I do suggest to you that 16 that's a possibility because in some cases the 17 answers were pulling information from other 18 sources. So you are relying on that other source 19 to be accurate, and we were -- the people putting 20 this together simply drew that information and 21 placed it into here. That doesn't mean it was 22 accurate from the source it came from. 23 Q. Let's go to page 7 of 19. There's a 24 question there: (as read) 25 What is CP's position on safety?	Page 145 1 GLEN DONALD WILSON 2 A. Hmm-hmm. 3 Q. And then there's a proposed answer. 4 Is the proposed answer accurate 5 from CP's point of view as of the date of this 6 document? 7 MR. HEMMING: Could we clarify? I 8 don't think we've established what the date of this 9 document is. I'd like to be clear on what date you 10 are referencing. 11 MR. MCDONALD: I don't have a date 12 of the document. 13 A. Yeah. I -- I -- the question you are 14 asking about is what is CP's position on safety? 15 Q. Yes. 16 A. And the four bullets below that -- 17 Q. Yes. 18 A. -- I reread that, and they -- I believe 19 those are accurate, yes. 20 MR. MCDONALD: Okay. Off the 21 record. 22 (DISCUSSION OFF THE RECORD). 23 MR. MCDONALD: I'm going to ask the 24 court reporter to mark as Wilson Exhibit 8 a copy 25 of 49 C.F.R. section 171.2.

Page 146 1 GLEN DONALD WILSON 2 EXHIBIT 8 - 49 C.F.R. section 171.2 3 Q. MR. MCDONALD: You are familiar 4 with the United States Code of Federal Regulations? 5 A. Yes. 6 Q. And are you familiar with this section 7 of the code? 8 A. Generally, yes. I -- I would -- I would 9 have read pieces of this at various points in time. 10 I -- I understand the general gist of it. 11 Q. And you understand that this regulation 12 applies to all carriers who transport hazardous 13 material within the United States? 14 MR. HEMMING: Are you quoting from 15 somewhere in the document? 16 MR. MCDONALD: No. I'm just asking 17 if -- CP's understanding. 18 A. Sorry, can you repeat the question? 19 MR. MCDONALD: Sure. Could you 20 read it back, please. 21 THE COURT REPORTER: (By reading) 22 "Q. And you understand that this 23 regulation applies to all carriers 24 who transport hazardous material 25 within the United States?"	Page 147 1 GLEN DONALD WILSON 2 A. It -- it doesn't just apply to carriers, 3 but it certainly does apply to carriers as well as 4 others. 5 Q. MR. MCDONALD: And this was 6 applicable to CP during the years 2012, 2013; 7 right? 8 A. I assume from the dates at the top, 9 January 9, 2006 to March 29, 2017, that that would 10 -- yes. 11 Q. So this is one of the regulations that 12 CP strives to meet or exceed; am I right? 13 A. It certainly looks that way, yes. 14 Q. Okay. And based on your testimony 15 earlier, am I correct that would be Mr. Kozey, 16 Ms. Nagy, and Ms. Kennedy who were the CP employees 17 who were responsible for ensuring that compliance? 18 A. In this case I would limit that to 19 Ms. Kozey and Ms. Nagy. Ms. Kennedy's involvement 20 tended to relate to hazardous materials only 21 inasmuch as they overlapped primarily with security 22 regulations. 23 Q. And so what were Mr. Kozey and 24 Ms. Nagy's responsibilities with respect to 25 ensuring compliance with this regulation?
Page 148 1 GLEN DONALD WILSON 2 A. To understand its requirements as they 3 apply to CP and interpret those requirements into 4 what -- wherever they would be put into practice at 5 CP. That could -- without reading through what all 6 the obligations are in this section precisely, that 7 could be in the form of training materials, it 8 could be in the form of Hazmat instructions for 9 rail. And it could be other things as well. 10 Q. What other things? 11 A. Well, I don't -- I don't -- I haven't 12 gone through and read exactly what obligations this 13 triggers for a railway. But their role would be to 14 make sure that whatever it is that this requires of 15 railways in the transportation of hazardous 16 materials, so there's -- somewhere in our 17 practices, policies, procedures, operating 18 instructions there's a way of implementing that 19 requirement. 20 Q. This regulation applies to the transport 21 of crude oil; correct? 22 A. It -- this section appears to relate to 23 hazardous materials generally, so then yes. 24 Q. What experience, if any, did Mr. Kozey 25 have with respect to the transport of crude oil in	Page 149 1 GLEN DONALD WILSON 2 2012, 2013? 3 MR. HEMMING: Object on 4 foundation. 5 If you know, go ahead, Glen. 6 A. Okay. 7 MR. HEMMING: Give the best answer 8 you can. 9 Q. MR. MCDONALD: Are you speaking for 10 the company? 11 A. Yeah. 12 MR. HEMMING: Sure. But you are 13 asking a question specific to his personal 14 knowledge about Mr. Kozey. I'll make my same 15 objection. 16 Q. MR. MCDONALD: Okay. Let me 17 rephrase the question, then. 18 You are testifying on behalf of CP, 19 and the question is: What experience did Mr. Kozey 20 have with respect to the transport of crude oil in 21 2012 and 2013? 22 MR. HEMMING: And I'll object in 23 the manner in -- if you want to put -- if you want 24 to get really specifically, you got to put it in 25 your topic, Paul. We did our best to prepare our

Page 150 1 GLEN DONALD WILSON 2 witness based on the topics. You didn't designate 3 that as a topic. 4 I will let Glen answer the question 5 as best as he can. But there's a lot of questions 6 you are answering -- or asking that I don't think 7 relate to any of the topics noticed. 8 Go ahead, Glen, if you can answer. 9 A. Mr. Kozey in 2012 and into 2013 would 10 have had very little experience or exposure to the 11 transportation of crude oil. 12 We referred a minute ago to a 13 document that talked about the increase in carloads 14 from 2009 to 2012, so it was really in that period 15 of -- I would say primarily starting in 2012, there 16 was a lot of attention on the growth of crude oil 17 movement by rail. And the document that we were 18 referring to a minute ago was created for that 19 reason because there were a lot of questions, a lot 20 of attention. 21 Mr. Kozey and many of the rest of 22 us were learning about crude oil and its movement, 23 transport by rail, through that period. 24 Q. MR. MCDONALD: Did Soo Line have 25 any prior experience with the transportation of	Page 151 1 GLEN DONALD WILSON 2 crude oil? 3 A. The answer I just gave would be 4 essentially the same for Soo Line or 5 Canadian Pacific Railway. We had crude oil growth 6 in both Canada and the United States, so I think 7 it's effectively the same. 8 Q. It's that same period of time that the 9 growth occurred both in the United States and in 10 Canada? 11 A. Yes. Yes. 12 Q. Would you turn to subsection (f) of the 13 regulation. Take a moment to read it. 14 A. Top of the second page? 15 Q. Yes. 16 A. Okay. 17 Q. Now for purposes of this regulation, you 18 would agree with me that CP is a, quote, "carrier"? 19 A. Yes. 20 Q. All right. As of 2013, did CP have any 21 written policies in place for complying with this 22 subsection 171.2(f)? 23 A. Well, there's -- there's no written 24 policy that says we will comply with this specific 25 subsection.
Page 152 1 GLEN DONALD WILSON 2 There would be, as I explained a 3 few minutes ago, various ways that we would 4 implement obligations such as these. And I think 5 that shows up in our -- in our tariffs and various 6 other places, but it's not -- there's no policy 7 that points specifically to this subsection. 8 Q. As of 2013, were there any written 9 procedures at CP or Soo Line for complying with 10 subsection 171.2(f)? 11 A. There would be -- like, this is a very 12 broad subsection. It talks about transportation in 13 accordance with applicable requirements of the 14 subchapter, and exemptions, special permits, 15 approvals. So all of those things are encompassing 16 many other things. 17 I would say they're -- there would 18 be proceeded -- for example, the special permit 19 provisions, there's -- there's specific permit 20 forms and processes that are used to implement 21 that. 22 Q. Any others? 23 A. There would be many. Like, I -- I don't 24 even know what would be included in applicable 25 requirements of this subchapter, but it would	Page 153 1 GLEN DONALD WILSON 2 presumably be many other things. 3 Q. Okay. Well, let's move on to the second 4 sentence of subsection (f) and focus in on that. 5 Did CP have any written procedures 6 for complying with that second sentence of 7 subsection (f)? 8 A. Well, the section begins by referring to 9 the fact that a carrier may rely on information 10 provided by the offeror of the hazardous material 11 or a prior carrier. 12 Q. Unless? 13 A. Right. 14 Q. Then it goes on? 15 A. Understood. 16 Q. So the question is: Were there any 17 written procedures for how CP would comply with 18 this provision of the regulation; yes or no? 19 MR. HEMMING: And, Glen, don't 20 feel you have to give him a yes or no answer if 21 that's not your answer. You can give him whatever 22 answer you feel is appropriate and truthful. 23 MR. MCDONALD: And responsive. 24 MR. HEMMING: Sure. 25 MR. MCDONALD: You can't just give

Page 154 1 GLEN DONALD WILSON 2 me any answer, Paul. You know that. 3 MR. HEMMING: Sure. 4 A. The answer I was starting to give was 5 that first section talks about may rely on 6 information provided, and there are various ways in 7 which that is implemented. 8 So the offeror of the hazardous 9 material must navigate through various steps to -- 10 to identify, declare what the hazardous material 11 is. So there are various pieces to that. 12 The latter part about knowledge 13 that the information provided is incorrect, I don't 14 think you can write a procedure for that. I think 15 that has to be dealt with if such a situation 16 presents itself. 17 Q. MR. MCDONALD: So the answer is no, 18 there was no written procedure for that? 19 A. I'm not aware of any procedure for that 20 component of it, no. 21 Q. Okay. Let's focus on that portion of 22 the subsection which basically says that if: 23 (as read) 24 The carrier knows or, a reasonable 25 person, acting in the circumstances	Page 155 1 GLEN DONALD WILSON 2 and reasonable -- and exercising 3 reasonable care, would have 4 knowledge that the information 5 provided by the offeror or a prior 6 carrier is incorrect. 7 Were there any written policies at CP 8 for complying with that aspect of the regulation? 9 A. Not -- not to my knowledge. It would be 10 -- as I said a minute ago, it would -- it would be 11 a very unusual circumstance, and it would have to 12 be dealt with in -- in facts in considering those 13 -- the -- whatever was part of that circumstance 14 when it was identified. 15 Q. So you haven't identified a written 16 policy or a written procedure that deals with that 17 circumstance. 18 Did CP provide any training to any 19 of its employees about how to comply with that 20 provision of the regulation? 21 A. No, because the -- I don't think you can 22 train employees for that kind of rare exception. 23 It would be -- it would have to be dealt with 24 depending on what the circumstances of it were. 25 Q. Was there ever any training provided to
Page 156 1 GLEN DONALD WILSON 2 any CP employees who operated trains about how to 3 comply with that particular provision of the 4 regulation? 5 A. No, and I don't see any reason that 6 there would be. Train crews and -- and operating 7 employees generally are trained in -- the tank cars 8 that they see are sealed. They're placarded with a 9 -- with a dangerous goods-required placard that 10 identifies it. They can compare that to the 11 paperwork. Those are the kind of duties that are 12 capable of being performed by those train crews. 13 And the circumstances in which -- 14 they would have neither the training nor the 15 knowledge nor the -- any basis or opportunity to 16 identify the kind of situation that's being talked 17 about in that sentence. 18 Q. Was there any training provided to any 19 of the CP or Soo Line employees who were involved 20 in the preparation of shipping documents about how 21 to comply with this particular aspect of the 22 regulation? 23 A. Well, it -- I don't see a specific -- 24 you are continuing to ask questions about how to 25 comply with this, but there's no prescribed, you	Page 157 1 GLEN DONALD WILSON 2 know -- you know, CP is not required to have a 3 policy, we're not required to have a procedure. 4 Q. I asked about training. 5 A. Understood. We're not required to 6 deliver training. This is -- what we're required 7 to do -- well, it basically just says we can rely 8 on information provided by the offeror unless we 9 know that information is incorrect. I'm shortening 10 that down quite a bit, but that's how I interpret 11 it. 12 Q. Yes. 13 A. So the -- a lot of that is implemented 14 through the controls in our systems. So the -- the 15 shipper -- and it's really the first part. It's 16 the assurance of the shipper, the offeror of the 17 material that says this is what I'm packaging, this 18 -- I'm declaring it to be this product in this 19 class with this shipping paper. 20 And we have training that goes on 21 both for -- in the billing system, in the train 22 crews to be able to match things. But if the 23 placard says UN 1267 and the shipping documents say 24 UN 1267 and the train consist says UN 1267, that's 25 a match.

Page 158 1 GLEN DONALD WILSON 2 Q. So just so the record is clear, CP 3 prepared no policies, prepared no procedures, and 4 provided no training to any of its employees on 5 what to do in a situation that is covered by the 6 second sentence of this subsection of the 7 regulation? 8 MR. HEMMING: I object to the form 9 and mischaracterization of his testimony. 10 Go ahead, Glen. 11 A. I think you are mischaracterizing my 12 testimony. It was very much that we have a lot of 13 controls to ensure the first part of this 14 obligation that the information provided by the 15 offeror is clear that it's checked, it's verified 16 in our billing systems that it's checked again by 17 train crews and others who have access to shipping, 18 to -- the paperwork for a train. Those are the 19 forms of controls. 20 The circumstances in which we could 21 possibly know that to be incorrect are extremely 22 remote and highly variable. I don't know what that 23 circumstance would even include. So it would be 24 nonsensical to me to try and write policies 25 predicting what that would -- might be.	Page 159 1 GLEN DONALD WILSON 2 Q. Well, were the CP and Soo Line 3 operational employees made aware of the 4 requirements of this section of the regulations? 5 A. I don't know what requirement there -- 6 it says we may rely unless it's known to be 7 incorrect. 8 Q. Right. 9 A. So I don't know what requirement that 10 really creates other than responding to a situation 11 where it is identified as incorrect. 12 Q. Were your people ever trained or advised 13 in any way that they could no longer rely on a 14 shipper's classification of goods if a reasonable 15 person exercising reasonable care had reason to 16 believe that the classification was incorrect? 17 Were they ever advised of that? 18 A. Our employees generally would not be 19 advised of that. The systems would protect against 20 that. Mr. Kozey would understand that provision 21 exists. 22 Q. But he's not in operations? 23 A. No. 24 Q. I'm talking about the operations people? 25 A. Yeah. And there would be no need to
Page 160 1 GLEN DONALD WILSON 2 train operations people in that kind of way. 3 Q. And therefore they were not; correct? 4 A. Correct. 5 MR. MCDONALD: I will ask the court 6 reporter to mark as Wilson Exhibit 9 the 7 Consolidated Transportation of Dangerous Goods 8 Regulations including Amendment SOR/2012-245. 9 EXHIBIT 9 - Consolidated 10 Transportation of Dangerous Goods 11 Regulations including Amendment 12 SOR/2012-245 13 Q. MR. MCDONALD: Are you familiar 14 with this document, Mr. Wilson? 15 A. Again in much the same way as I had 16 described with the American C.F.R. reference that 17 we just discussed, I'm generally familiar with 18 this, yes. 19 Q. Okay. I want to talk a little bit about 20 section 2.2, which deals with responsibility for 21 classification. 22 A. Okay. 23 Q. And there's a general statement similar 24 to the US regulation that provides that the 25 consignor is responsible for determining the	Page 161 1 GLEN DONALD WILSON 2 classification of dangerous goods; right? 3 A. Yes. 4 Q. Crude oil qualifies as dangerous goods 5 within the meaning of these regulations; correct? 6 A. Yes. 7 Q. And a consignor is the shipper of the 8 goods? 9 A. Yeah. I would equate that to the 10 offeror or the shipper. Those terms get mixed up 11 sometimes, but they all generally refer to the same 12 kind of party. 13 Q. All right. And section 2.2(6) talks 14 about the requirements of a carrier who notices an 15 error in classification. Do you see that? 16 A. I do. 17 Q. And if a carrier notices an error in 18 classification or has reasonable grounds to expect 19 that an error in classification has been made, what 20 obligation does this regulation impose upon the 21 carrier. 22 A. The carrier must advise the 23 consignor/shipper and must stop transporting the 24 dangerous goods until the consignor verifies or 25 corrects the classification.

Page 162 1 GLEN DONALD WILSON 2 Q. So in 2013, if CP knew there was an 3 error in classification or had reasonable grounds 4 to suspect there was an error, it had an obligation 5 not to transport the goods; am I right? 6 A. It's slightly different. I would say we 7 had an obligation to advise the consignor and stop 8 transporting the goods until the consignor verifies 9 or corrects. This refers to while the dangerous 10 goods are in transport, so that's different than 11 prior to transport. 12 Q. So you are telling me that this does not 13 apply to a situation where CP knew or had 14 reasonable grounds to suspect an error in 15 classification where the train had not yet pulled 16 out of the transloading facility? 17 A. Again, I don't know the circumstances 18 where that might arise, but, yes, I -- this clearly 19 refers to dangerous goods in transport. 20 Q. All right. So I just want to be clear 21 about CP's position on this. 22 MR. HEMMING: Paul, what -- what 23 topic are you on on this particular regulation? 24 MR. MCDONALD: The regulations that 25 cover the trans -- the transportation of goods.	Page 163 1 GLEN DONALD WILSON 2 It's topics number 6, 7, and 8. 3 MR. HEMMING: Can you get specific 4 with regard to this specific regulation, 2.2(6)? 5 That's kind of what I'm looking to be called out. 6 I would say you haven't specified it with 7 reasonable particularity. 8 I'm happy to let you ask Glen the 9 questions you are asking him, but I'm going to note 10 that I don't see this particular regulation you are 11 asking about noticed anywhere in your deposition 12 notice. 13 Q. MR. MCDONALD: You have told us 14 that this regulation applies to CP, and applied in 15 2013; right? 16 A. I haven't checked the dates on the 17 document you've handed me, but I'll accept that, 18 yes. 19 Q. All right. So let's talk about it. 20 A. Okay. 21 Q. Is it CP's position that in 2013, if it 22 had not yet pulled out of a transloading facility 23 but had a train ready to transport, and before it 24 started its trip it noticed an error in 25 classification of the goods or had reasonable
Page 164 1 GLEN DONALD WILSON 2 grounds to suspect there was an error, that it 3 could safely proceed forward and transport that 4 cargo without notifying the consignor that it 5 suspected an error in classification? 6 A. That's not at all what I said. I -- I'm 7 pointing out that this refers to dangerous goods 8 that are in transport. 9 Q. All right. 10 A. So the distinction I'm drawing is trying 11 to define that. I believe CP accepts shipments for 12 transport when our crew inspects that, and accepts 13 it into their train and lifts that, that becomes a 14 CP train; and we have charge, management, and 15 control of that shipment, and it is in transport 16 from that point on. I was not trying to define 17 anything that happens prior to that. 18 Q. All right. So let's give a specific 19 example. A train is ready to begin its trip at the 20 New Town facility and CP has reasonable grounds to 21 suspect that there was an error in classification, 22 would CP have to stop that train and notify the 23 consignor and not continue on with the trip until 24 the discrepancy was resolved? 25 MR. HEMMING: Paul, are you still	Page 165 1 GLEN DONALD WILSON 2 asking about this particular regulation, focusing 3 on 2.2(6)? 4 MR. MCDONALD: Hmm-hmm. 5 MR. HEMMING: A Canadian 6 regulation in North Dakota? 7 MR. MCDONALD: Yes. And, Paul, 8 that is pretty blatant coaching. I -- 9 MR. HEMMING: No, it's not 10 coaching, Paul. 11 MR. MCDONALD: Oh, sure it is. 12 Sure it is. 13 MR. HEMMING: Well, you can think 14 it is whatever you want. 15 MR. MCDONALD: You are not allowed 16 to object to questions, you are not allowed to make 17 speaking objections. But that was a blatant -- 18 blatant example of coaching that's been going on 19 throughout the deposition. 20 MR. HEMMING: It has not, Paul. 21 MR. MCDONALD: I want it to stop. 22 MR. HEMMING: I have barely 23 spoken, Paul, throughout the course of this 24 deposition. I'll object or -- 25 MR. MCDONALD: But every --

Page 166 1 GLEN DONALD WILSON 2 MR. HEMMING: -- will speak when I 3 want to -- 4 MR. MCDONALD: -- time you object, 5 you coach. Every time you object, you coach. 6 MR. HEMMING: I disagree with you. 7 A. Sorry, can we -- 8 MR. MCDONALD: Yes, will you read 9 back the question. 10 THE COURT REPORTER: (By reading) 11 "Q. All right. So let's give a 12 specific example. A train is ready 13 to begin its trip at the New Town 14 facility and CP has reasonable 15 grounds to suspect that there was 16 an error in classification, would 17 CP have to stop that train and 18 notify the consignor and not 19 continue on with the trip until the 20 discrepancy was resolved?" 21 A. It's -- it's a very hypothetical 22 question. I assume you are talking about after the 23 point that I described where CP has accepted the 24 shipment? 25 And I'm talk -- there's a very --	Page 167 1 GLEN DONALD WILSON 2 there's a distinction in my mind from the offeror. 3 Cars are placed, CP is notified that they're 4 offered for transport. The documents our crew 5 receives then allow them to go and they'll perform 6 an inspection. Only when they complete that and 7 decide that those cars are safe and accept them 8 into their train is that -- does that become a CP 9 train and then it's -- it's no longer being 10 offered, it's been accepted into CP. So you're 11 talking about after that point in time? 12 Q. MR. MCDONALD: It really doesn't 13 matter to me. I'm -- I'm -- in very crude terms 14 I'm thinking about the locomotive powering up and 15 pulling out of the transloading facility. That's 16 the point in time I'm talking about. I don't 17 really care about everything that went on before 18 that. 19 If you knew or had reasonable 20 grounds to suspect that the goods were 21 misclassified, could the train move forward out of 22 that transloading facility? 23 A. It would depend who knew that and -- 24 like, the processes that we have in place are, as 25 I've described a number of times, to check and
Page 168 1 GLEN DONALD WILSON 2 verify that there's a match between shipping 3 documents, placards, the various pieces of 4 information that a train crew has at its disposal. 5 Provided all of that matches, they 6 are empowered to accept those cars and power up and 7 begin to move. 8 So the scenario you are describing 9 is one where somehow somebody becomes aware of this 10 hypothetical notion that it's misclassified. So 11 there's no -- there's no way that that is 12 identifiable by the train crew. I don't know who 13 would become aware in that scenario. 14 But we would -- if the train had 15 started to move, if the -- it would all depend what 16 state everything was in. But we would respond to 17 that accordingly. 18 Q. I -- 19 A. And I say that regardless of the 20 jurisdiction and regardless of -- we were caught up 21 earlier in the specifics of the Canadian 22 regulation. 23 Q. Right. 24 A. But it's -- it's -- as a general 25 principle we would not -- we would respond to that	Page 169 1 GLEN DONALD WILSON 2 situation, but it's a very hypothetical situation. 3 Q. And is it CP's position that the 4 Canadian regulations applied to its operations of 5 Train 282 as it left New Town? 6 MR. HEMMING: Objection. That's 7 going to call for a legal question, and he's not a 8 corporate witness to testify on what CP's legal 9 positions are. 10 Q. MR. MCDONALD: You may answer the 11 question. 12 A. I mean as a lawyer I automatically 13 default to saying, no, Canadian regulations don't 14 apply. As a practical matter and as an operations 15 matter, this train was going to originate in 16 New Town and enter into Canada a few days later. 17 So, yeah, we would -- as an -- 18 interpret whatever regulatory standards we need to 19 to make sure that it can operate through both 20 countries. 21 Q. Right. So did this section of 22 Exhibit 9, 2.2(6) apply to Train 282 as it left 23 New Town station? The New Town transloading 24 facility? 25 A. I --

Page 170 1 GLEN DONALD WILSON 2 MR. HEMMING: I'll object again. 3 Calls for a legal question. It's a position for 4 the lawyers, not the witness. 5 You can answer as best you can, 6 Glen. 7 A. As a lawyer and a matter of law, no. 8 Q. MR. MCDONALD: You are speaking for 9 CP, sir. I want CP's position. 10 MR. HEMMING: If you want CP's 11 legal position, Paul, it's coming from me, not the 12 witness. 13 MR. MCDONALD: No, it's coming from 14 the witness today, and you can offer yours later. 15 But he's here to testify as to -- 16 MR. HEMMING: Sure. 17 MR. MCDONALD: -- the regulations 18 that apply to this train, and I want an answer. 19 A. Well, did -- 20 Q. Did it or didn't it apply? 21 A. -- as a regulation applying to this 22 train, no, it did not. 23 Q. Did it apply in any sense to this train? 24 A. Technically as it left New Town, no. As 25 a practical matter, as I explained, any of the	Page 171 1 GLEN DONALD WILSON 2 Canadian regulations that were relevant to the 3 Canadian movement of that train would have been 4 part of the processes that we had in place so that 5 it could move seamlessly and without disruption in 6 either country. 7 Q. Okay. Let's stay with my hypothetical. 8 CP picks up a unit train of crude oil in New Town 9 and either knows or has reasonable grounds to 10 suspect that the cargo has been misclassified. 11 Once that train crosses the border into Canada, is 12 CP obligated to stop the train, notify the 13 consignor, and not move the train forward until the 14 discrepancy in classification is resolved? 15 A. What -- your question was once it's 16 entered Canada? 17 Q. Yes. 18 A. Yes. 19 Q. We went through a whole series of 20 questions earlier with respect to the United States 21 regulation and whether or not CP had any policies 22 or procedures or training. 23 A. Hmm-hmm. 24 Q. Do you recall that -- 25 A. Yes.
Page 172 1 GLEN DONALD WILSON 2 Q. -- line of questioning? 3 I'm just trying to perhaps move 4 this along a little bit more quickly than we did on 5 that last go-around. 6 I want to know the same information 7 basically with respect to this provision of the 8 transportation of dangerous goods regulations. 9 So in -- as of 2013, did CP or 10 Soo Line have any written policies for complying 11 with section 2.2(6) of these regulations? 12 A. No. And, again, I see no reason why any 13 carrier -- and I don't know of any carrier who does 14 have those kind of policies or procedures. 15 Q. Okay. How about -- so they didn't have 16 -- you didn't have policies or procedures in terms 17 of how to comply with this subsection; is that 18 right? 19 A. Well, the -- the scenarios that it 20 describes would be extremely remote, and the facts 21 or circumstances surrounding that kind of scenario 22 are -- would be impossible to predict, so the 23 obligation to respond to it is clearly set out in 24 the regulation. 25 But I don't see how, and I'm not	Page 173 1 GLEN DONALD WILSON 2 aware of any railway who has attempted to write a 3 policy or procedure or anything that would predict 4 what those circumstances would be. 5 Q. And in fact, neither CP nor Soo Line 6 did; right? 7 A. No. 8 Q. Okay. No, they did? 9 A. No, they did not. 10 Q. Or didn't? 11 A. Too many negatives. 12 Q. Yes. And I am assuming -- but I just 13 want to clarify -- that the answer would be the 14 same with respect to training. There was no 15 training provided to any CP or Soo Line employees 16 about the obligations imposed by section 2.2(6); is 17 that right? 18 A. That's right. The training, as I've 19 explained previously, and -- everything relates to 20 the offering for transport of the dangerous goods, 21 the controls that we can reasonably have in place 22 and are required to have. 23 And this section is for an 24 extremely remote, unlikely, difficult to predict 25 kind of exception.

Page 174 1 GLEN DONALD WILSON 2 Q. So, again, just to close the loop, with 3 respect to operations personnel, there was no 4 instruction to those people about the requirements 5 of section 2.2(6) to stop transporting the goods, 6 notify the consignor, and resolve the 7 classification discrepancy in an event where CP or 8 Soo Line knew or reasonably suspected an error in 9 classification? 10 A. No. As -- as I've explained, all those 11 operating employees have many types of controls in 12 place to assure that they've properly accepted and 13 are properly handling those dangerous goods. 14 This kind of rare exception there 15 would be no training or other instruction to them 16 on what to do. 17 Q. World Fuels was one of CP's customers 18 that shipped crude out of New Town; is that right? 19 A. Yes. 20 Q. What, if anything, did CP do to check if 21 World Fuels' classifications of crude oil for 22 shipment under the Packing Group III were correct? 23 A. We -- CP has no expertise nor 24 opportunity to check the classifications of 25 World Fuels.	Page 175 1 GLEN DONALD WILSON 2 Q. So I think it's implicit, but I just 3 want to make sure that it's clear. CP did nothing 4 to check whether or not World Fuels' classification 5 of its crude up through the date of the derailment 6 was in fact correct? 7 A. We -- we rely on the shipper's 8 declaration, World Fuels in this case, as to what 9 is the proper classification. 10 Q. So you did nothing? 11 A. We don't check or validate that. We 12 rely on the -- what the shipper says it is. 13 Q. So you did nothing beyond accepting what 14 the shipper told you; is that right? 15 A. Well, your question kind of implies 16 there's something to be done, but there -- 17 Q. There's no implication. I just want to 18 confirm the fact that you did nothing. Whether you 19 were required to or not? 20 MR. HEMMING: Object to form. He 21 just said what they did. They relied on it. You 22 are putting words in -- 23 A. We did nothing more than relying on the 24 declarations and various ways in which that -- the 25 shipper identifies what it is that they intend to
Page 176 1 GLEN DONALD WILSON 2 ship. 3 Q. MR. MCDONALD: So CP never 4 requested an MSDS from World Fuels prior to the 5 derailment? 6 A. No, we did not. Those are inherently 7 unreliable documents and not designed for 8 transportation. They're not transportation 9 documents. 10 Q. You did request other MSDSs from other 11 producers, though; right? 12 A. In rare, one-off circumstances 13 sometimes, yes. 14 Q. Why? 15 A. Most -- I think I -- any occasion I 16 would be aware of would relate to a release of a 17 product. The MSDS is designed as a product 18 handling. So if there's been a release of that 19 product through an incident, it -- and it's a 20 separate regulatory regime on product 21 identification, things that exist. So it's just 22 sort of an information source that you -- we 23 understand is available if there could be exposure 24 to that product because it's no longer contained 25 within its means of containment.	Page 177 1 GLEN DONALD WILSON 2 MR. MCDONALD: I'm going to have 3 the court reporter mark as Wilson Exhibit 10 an 4 email chain that occurred on January 4, 2013 5 between Keegan Loxam and others. 6 EXHIBIT 10 - Email chain that 7 occurred on January 4, 2013 between 8 Keegan Loxam and others 9 Q. MR. MCDONALD: Have you seen this 10 document before, Mr. Wilson? 11 A. I believe I saw this in preparation for 12 the -- these proceedings. 13 Q. All right. Estevan is a transloading 14 facility that is owned by CP; am I right? 15 A. It's pronounced Estevan. 16 Q. Estevan. 17 A. And as I said earlier about transloading 18 facilities, I'm not sure of the exact ownership of 19 each of them. 20 Q. You don't know that? 21 A. It's on the CP network. 22 Q. Yes. 23 A. I know that. 24 Q. You don't know whether CP has an 25 ownership interest in Estevan?

Page 178 1 GLEN DONALD WILSON 2 A. I do not. 3 Q. So here is an instance where Mr. Loxam 4 is asking for an MSDS of the crude that one of CP's 5 customers is going to be loading at Estevan 6 estimate; correct? 7 A. I don't know the names Nick Reid or 8 Chris Boulanger, but if they're representing a 9 customer, it looks like it's at Shell, so yeah. 10 Q. Okay. 11 A. Yeah. 12 Q. Well, there's an MSDS that's attached, 13 and it's from Shell? 14 A. Yeah. I just noticed the email 15 extension at the top that says boulanger@Shell. 16 Q. Right. 17 A. So... 18 Q. Right. And Shell was a customer of 19 CP's; right? 20 A. Yes. 21 Q. They weren't an operator of Estevan; 22 right? 23 A. No. 24 Q. So here is an instance in which 25 Mr. Loxam is asking for an MSDS, and he's provided	Page 179 1 GLEN DONALD WILSON 2 a copy the very same day he makes the request; 3 correct? 4 A. Yes. 5 Q. Do you know why Mr. Loxam was asking for 6 that MSDS? 7 A. I don't. 8 Q. You mentioned earlier that you thought 9 the only -- you only asked for those when there had 10 been a spill incident I think you said; right? 11 A. Well, I said they -- in -- we would have 12 asked for them in some circumstances. My own 13 experience with that personally is only in 14 releases. There may be some other circumstances, 15 and this -- this is very likely another type of 16 circumstance. 17 Q. Well, it looks like Mr. Loxam is looking 18 for advance notification of the elements of the 19 MSDS because he's referring to "the crude you'll be 20 looking to load at Estevan"; right? 21 A. I can't do more than it's a one-line 22 email. 23 Q. Yeah. 24 A. That asks for a copy, and it does refer 25 to a future tense to your point of looking to load,
Page 180 1 GLEN DONALD WILSON 2 so... That's about as much as I can take from 3 that. 4 Q. And you -- you have no idea why 5 Mr. Loxam was asking for the MSDS? 6 A. No, I don't. Given that he's in a 7 marketing role, I presume it's just to get some 8 understanding of the product that they intend to 9 ship. 10 Q. Do you know whether or not Mr. Loxam did 11 this with respect to World Fuels prior to the 12 derailment? 13 A. I don't believe he did, no, because I do 14 understand that we only came into possession of the 15 MSDS from World Fuels for Train 282 some months 16 later. After the derailment I mean. 17 Q. So it appears from Wilson Exhibit 10 18 that with respect to some of the crude transloading 19 facilities, you were asking for MSDSs but in others 20 you were not? 21 A. I wouldn't know that -- I wouldn't say 22 that that was a general statement. I -- it's clear 23 on January 4th that Mr. Loxam asked Shell to 24 provide an MSDS, and they provided one. 25 Q. Right.	Page 181 1 GLEN DONALD WILSON 2 A. That's about -- and I know there are 3 only very limited circumstances in which we came 4 into possession of any MSDS prior to the 5 derailment. 6 Q. Did CP or Soo Line ever ask World Fuels 7 if it had performed tests for purposes of 8 classification of the oil that it was shipping 9 through the New Town transload facility? 10 A. It -- no. We wouldn't normally ask any 11 shipper that. 12 Q. Did CP, prior to the derailment, ever 13 conduct a review as to how the various shippers of 14 the New Town facility were classifying their 15 shipments? 16 A. Sorry, can I have that read back? 17 MR. MCDONALD: Sure. Anytime you 18 need it read back, you can just ask. 19 THE COURT REPORTER: (By reading) 20 "Q. Did CP, prior to the 21 derailment, ever conduct a review 22 as to how the various shippers of 23 the New Town facility were 24 classifying their shipments?" 25 A. No. We would rely on the shippers to

Page 182 1 GLEN DONALD WILSON 2 fulfil their legal obligation to properly classify, 3 and they would declare that they've done everything 4 they need to do and that it is properly classified 5 to us. 6 Q. MR. MCDONALD: Prior to the 7 derailment, CP knew that World Fuels was 8 classifying its shipments as Packing Group III; 9 isn't that right? 10 A. Yeah. I don't know that it's -- that 11 was exclusively the case, but I know World Fuels 12 was shipping crude oil in Packing Group III prior 13 to the Train 282 shipment. 14 Q. And CP was aware prior to the derailment 15 that no other shipper was classifying its crude as 16 Packing Group III? 17 A. No, that's not true. I would say we 18 were aware of -- 19 Q. I'm speaking out of New Town? 20 A. Out of New Town? 21 MR. HEMMING: What other shippers 22 are you talking about? 23 MR. MCDONALD: All of them. 24 A. I -- I don't -- I recall Bakken 25 shipments generally, and I don't recall	Page 183 1 GLEN DONALD WILSON 2 specifically which ones were from New Town or other 3 locations in the Bakken region. But being in both 4 Packing Group II and Packing Group III. 5 Q. You knew that at the time or this is an 6 understanding you've developed in preparing your 7 testimony? 8 A. The company knew that at the time. My 9 own personal understanding generally was that crude 10 oil is Class III flammable liquid and can be in 11 Packing Group I, II, or III. 12 I don't know prior to the 13 derailment that I had gone looking at the division 14 of what was being shipped in what packing group. 15 Q. Was World Fuels shipping any crude oil 16 -- let me start that one over. I have brain cramp. 17 During the years 2012 and 2013, did 18 World Fuels ship any Bakken fuel out of any 19 transloading facility other than New Town? 20 A. I -- I don't recall. I don't recall the 21 points of origin that World Fuels had. 22 MR. MCDONALD: I will have the 23 court reporter mark as Wilson Exhibit 11 an email 24 chain beginning with an email from Mr. Wilson to 25 Ms. Nagy and Mr. Kozey. Excuse me, I misspoke.
Page 184 1 GLEN DONALD WILSON 2 It's an email from Chris Bunce to 3 Mr. Wilson, cc'ing Ms. Nagy and Mr. Kozey, and it's 4 dated July 19, 2013. And there are emails in 5 addition to that in the chain. 6 EXHIBIT 11 - Email from Chris Bunce 7 to Mr. Wilson, cc'ing Ms. Nagy and 8 Mr. Kozey, dated July 19, 2013, 9 with additional emails 10 Q. MR. MCDONALD: Have you seen this 11 document before, Mr. Wilson? 12 A. Yes. It's addressed to me. 13 Q. Right. And the -- just to orient this 14 in time, this document was sent after the date of 15 the derailment? 16 A. Correct. 17 Q. The day of the derailment was what? 18 A. July 6, 2013. 19 Q. All right. So let's start at the bottom 20 and work up. On the 19th of July in 2013, you are 21 asking Ms. Nagy to: (as read) 22 ...get a pull on what we currently 23 have online from World Fuels and 24 Dakota Plains and how it is billed? 25 Right?	Page 185 1 GLEN DONALD WILSON 2 A. Yes, correct. 3 Q. What do you mean by "what we currently 4 have online"? 5 A. Because the -- the rail -- the railway 6 is a very fluid operation, so "online" means on the 7 CP network, in transport now. So it's a bit of a 8 snapshot. It's the easiest way to get a profile of 9 what's on our network. 10 Q. Okay. So Ms. Nagy responds and sends 11 you the information that appears in her email to 12 you later that day; right? 13 A. Yeah. Looks like roughly five hours 14 later. 15 Q. Okay. And what she found was that 16 between June 30th and July 13th, Western Petroleum 17 billed 518 shipments; right? 18 A. Yes, from Harvey and New Town. 19 Q. And all of those are labelled 20 Packing Group III; right? 21 A. Yes. 22 Q. And then below that she says: (as read) 23 Out of North Dakota 33 percent of 24 the shipments were in Packing Group 25 III and they were all from

Page 186 1 GLEN DONALD WILSON 2 Western Petroleum. 3 Right? 4 A. Yeah. 5 Q. And that Global and Van Hook billed the 6 balance of 67 percent, and they classified their 7 crude as PG II; right? 8 A. Yes, that's what she said. 9 Q. And this information is all through the 10 period June 30th and July 18th or is that from the 11 beginning of time up to July 18th? 12 A. I would interpret all of it to be from 13 that period, but I -- it -- it says that 14 specifically above the Western Petroleum table. 15 Q. Hmm-hmm. 16 A. It doesn't say that about the other. 17 But I believe that's meant to apply to both. 18 Q. So after you made the request, within 19 four hours Ms. Nagy was able to determine that the 20 only shipper classifying its crude as PG III was 21 Western Petroleum; right? 22 A. No. I recall a much longer version of 23 this document that had attachments, tables for 24 crude oil more generally, including other Bakken 25 region locations, and there were a distribution of	Page 187 1 GLEN DONALD WILSON 2 Packing Group II and Packing Group III shipments. 3 Q. So all of that information was available 4 to CP had it chosen to aggregate it to determine 5 which shippers were classifying their crude under 6 which packing group? 7 A. We can do as we did here and take a 8 snapshot of the network and identify which shippers 9 have shipped from which point of origin and in 10 which packing group. 11 Q. Right. You were able to do that just by 12 reviewing information on CP's network; right? 13 A. Yeah. As I -- as I said, what Ms. Nagy 14 would have done here is -- this is a snapshot of 15 the network as of the time that she pulled it. 16 It's a constantly changing thing. But it -- it 17 gave her the point of view as of that point in 18 time. 19 Q. And when was this larger spreadsheet put 20 together? 21 A. It was part of the same exercise. I 22 recall it being a much longer sequence that had 23 various other pages to it. 24 Q. And did CP ever conduct any 25 investigation as to the different packing groups
Page 188 1 GLEN DONALD WILSON 2 that were being assigned to its crude 3 transportation? I have to start that one over 4 again. 5 Prior to the derailment, did CP 6 ever undertake to do what you just mentioned it 7 did, which is to do an investigation as to the 8 different packing groups that its crude shippers 9 were assigning to their cargo? 10 A. I don't believe I said it was -- that 11 this was an investigation. I said this was a 12 snapshot. It started at the -- down at the bottom 13 with the link to the lawsuit adding defendants, 14 which I presume were World Fuels and Dakota Plains 15 at that point in time. But I don't recall the 16 specifics of that news story. 17 So this was a snapshot enquiring 18 into that report. 19 Q. I didn't mean anything pejorative with 20 the term "investigation." 21 A. No, I'm just trying to be precise. 22 Q. Yeah, yeah. 23 So the derailment occurs, and 24 you're gathering information in response to the 25 derailment, and this was part of it; isn't that	Page 189 1 GLEN DONALD WILSON 2 right? 3 A. I wouldn't say this was in direct 4 response to the derailment. It was in response to 5 a report about -- the lawsuit adding defendants 6 looks to be the subject of that news articles. But 7 indirectly that all emanates from the derailment, 8 yes. 9 Q. So you're telling us, then, in addition 10 to the information that appears on Ms. Nagy's email 11 in Exhibit 11, there was a further investigation 12 that was done to identify the various packing group 13 classifications that were assigned by the various 14 shippers out of the New Town facility? 15 A. I don't think it was a further look. I 16 think it was part of the same exercise that she 17 pulled all crude oil and had the -- this type of 18 information on a much larger table that included 19 many more shippers, many more points of origin, and 20 a distribution of packing groups. 21 Q. All right. I will accept your 22 characterization. 23 Had CP ever done that prior to the 24 derailment? 25 A. I don't believe so, no.

Page 190 1 GLEN DONALD WILSON 2 Q. Why did it do it after the derailment? 3 A. As I said, it was in response to a media 4 report which I believe -- without looking at the 5 media report, I can't be sure. But I believe it 6 referred to allegations of misclassification by 7 World Fuels and/or Dakota Plains. 8 Q. Now Mr. Bunce replied to you after 9 Ms. Nagy's email; correct? 10 A. Yeah. I would characterize that as 11 forwarding it to me. 12 Q. Okay. And he mentions in the third 13 paragraph of his email to you that CP could test 14 some of the online WP tank cars; right? 15 A. Yes, he does. 16 Q. So that was something that CP could have 17 done but chose not to; am I right? 18 A. I don't really accept that we could have 19 done that. 20 Q. Okay. He said you could; right? 21 A. He did say that, right. 22 Q. Okay. You don't believe him? 23 A. We didn't act on that. I don't -- I 24 didn't accept at the time that that was a 25 reasonable -- CP's in no position to know how to	Page 191 1 GLEN DONALD WILSON 2 test. Something that's become very apparent to me 3 is that the method to test crude oil for 4 classification is very complicated and very 5 specialized. 6 Q. Come on, you could have hired somebody? 7 A. You know -- 8 Q. Right? 9 A. -- I have seen oil industry experts 10 argue over the proper method, the interpretation of 11 the test, the timing, the variability of when you 12 take the test. It is a very complex exercise. 13 Q. But people do it. There are people out 14 there who do this; right? 15 A. Yes. 16 Q. You could have hired someone to do it 17 but you chose not to; right? 18 A. For -- I mean another key point in this 19 is those tank cars are sealed up, and shippers get 20 very unhappy if you break that seal. We would 21 essentially -- they would view that as us 22 interfering with the integrity of their product. 23 So railways do not, unless there's 24 -- railways just don't go into sealed containers. 25 It's -- it's a basic principle of the global supply
Page 192 1 GLEN DONALD WILSON 2 chain that what is packaged and declared by a 3 shipper to be inside that is passed along that 4 supply chain until it reaches its ultimate 5 destination. 6 Q. We looked at a document earlier, 7 specifically the PowerPoint to the 8 Senate Committee, that talked about the dramatic 9 increase in the volume of crude being transported 10 by CP? 11 A. Yeah. It was a speaking note to the -- 12 Q. Right. 13 A. -- to the PowerPoint. 14 Q. Right. 15 A. That referred to the increase in volumes 16 over three years. 17 Q. And based on that dramatic increase in 18 volumes, did it occur to CP that it should be 19 altering its operation methodologies with respect 20 to hauling crude? 21 A. No. The -- the volume is -- crude oil 22 is one of many hundreds of dangerous goods that CP 23 moves so that the method of operating the railway, 24 the method of handling dangerous goods, all of 25 those things were all in place. The volume was	Page 193 1 GLEN DONALD WILSON 2 secondary. 3 Q. Well, you understand corporate risk; 4 right? 5 A. Yes. 6 Q. Isn't there a greater risk in 7 transporting 53,000 tanker cars of crude oil than 8 transporting 500 cars? 9 A. There's greater risk in moving a 10 locomotive than leaving it parked. The degree is 11 just -- as I said, our railway moves -- it's in 12 excess of 600,000 shipments of dangerous goods 13 annually, so we have to assure safe railway 14 operations overall. 15 But the precise volume of which 16 product and how it is shipped, and that can -- that 17 varies all the time. 18 Q. So you didn't change your procedures as 19 the volume of crude oil transportation spiked? You 20 kept them basically the way they were at the 21 beginning of the endeavour? 22 A. We -- we had very mature, proven, safe 23 operating methods. We were op- -- we were handling 24 Class III flammable liquids already in significant 25 volumes. So crude oil just -- is just another

Page 194 1 GLEN DONALD WILSON 2 product in the Class III flammable liquid group 3 that fits within our handling of dangerous goods 4 overall. 5 Q. Is it CP's position that it has no 6 responsibility to exercise reasonable care to 7 ensure that a shipper's classification is correct? 8 A. I don't -- I don't accept the premise of 9 your question that the -- the principle is 10 analogous to food packaging. And the company that 11 manufactures a food puts the ingredients on the 12 side and seals it up. And the seal is the 13 integrity that says that is what they said it was. 14 And people all around the world rely on that, 15 including those with risk of severe health effects 16 for -- from allergies. They look at those 17 ingredients and they rely on it being what the 18 person who packaged it said it was. It is the same 19 principle here in the global supply chain. 20 Dangerous goods move all around the 21 world all the time. Not just dangerous goods. All 22 freight moves in that way. If you package a 23 thousand TVs in China and seal up that container, 24 that container has a thousand TVs from China. And 25 it stays sealed until it reaches its ultimate	Page 195 1 GLEN DONALD WILSON 2 destination. It might move through multiple 3 transporters. The principle is the same here. 4 MR. MCDONALD: Would you read back 5 my question, please. 6 THE COURT REPORTER: (By reading) 7 "Q. Is it CP's position that it has 8 no responsibility to exercise 9 reasonable care to ensure that a 10 shipper's classification is 11 correct?" 12 Q. MR. MCDONALD: I would like you to 13 answer that question, sir. 14 MR. HEMMING: He just did. 15 MR. MCDONALD: It was not 16 responsive. 17 MR. HEMMING: Well, that's a 18 matter of opinion, Paul. 19 Q. MR. MCDONALD: I'm asking it again. 20 A. Well, I have to ask you to be more -- I 21 don't understand what you mean by -- I gave the 22 best answer I could. 23 Q. It's -- it is a yes or no question. 24 MR. HEMMING: No, it's not, Paul. 25 A. No, it's not.
Page 196 1 GLEN DONALD WILSON 2 Q. MR. MCDONALD: It is. 3 Is it CP's position that it has no 4 responsibility to exercise reasonable care to 5 ensure that a shipper's classification is correct; 6 yes or no? 7 A. CP, in its position as a transporter, is 8 reliant upon the declaration and classification 9 made by the shipper of the goods. That's how I'll 10 answer. 11 Q. So CP doesn't have to exercise any 12 reasonable care to ensure that that classification 13 is correct? 14 A. Well, I think -- 15 Q. Is that your position? 16 A. I think in having processes to assure 17 that the shipper is making a declaration, has 18 verified their classification, I think that is 19 reasonable care exercise. 20 Q. Is that all the reasonable care that CP 21 exercises, obtaining a declaration? 22 A. Verifying. As we've talked about 23 previously, our train crews, our billing people -- 24 there are many checks in our system. There's a lot 25 of reasonable care exercised in our system.	Page 197 1 GLEN DONALD WILSON 2 But if at the end of the day, the 3 shipper puts something different in a sealed 4 container than what they said is in that sealed 5 container, then the railway or any other 6 transporter has no expertise nor opportunity to 7 second-guess what the shipper said it was. 8 Q. And CP, therefore, does nothing to find 9 out whether the classification is incorrect? 10 MR. HEMMING: Objection to form. 11 A. As I said, CP or any other transporter 12 has no ability nor opportunity nor expertise to 13 second-guess what a shipper said is inside that 14 container. 15 Q. MR. MCDONALD: Are you saying they 16 have no obligation either? 17 A. Yeah. The obligation is clearly on the 18 shipper to accurately describe and classify what it 19 is they say -- whatever the product they're 20 shipping, whatever the containment they've put it 21 in, they have to say what they put in there. 22 MR. MCDONALD: Take a five-minute 23 break. 24 MR. HEMMING: Sure. 25 (ADJOURNMENT)

Page 198 1 GLEN DONALD WILSON 2 MR. MCDONALD: Have the court 3 reporter mark as Wilson Exhibit 12 petition for 4 rulemaking. 5 EXHIBIT 12 - Petition for 6 rulemaking 7 Q. MR. MCDONALD: You have seen this 8 document before, Mr. Wilson? 9 A. Yes, I have. 10 Q. You know that it's the Association of 11 American Railroads' petition for rulemaking before 12 the Pipeline and Hazardous Materials Safety 13 Administration? 14 A. Yes, that's correct. 15 Q. Is Mr. Kozey the only one at CP during 16 the time that CP got involved in the transportation 17 of crude and the derailment that participated in 18 the Association of American Railroads Tank Car 19 Committee proceedings? 20 A. I believe he would be the only one 21 who -- who was participating in that Tank Car 22 Committee. 23 Q. If we look at the Attachment A to this 24 document, it identifies Mr. Kozey as one of the 25 Tank Car Committee members; right?	Page 199 1 GLEN DONALD WILSON 2 A. Sorry, that was attachment what? 3 Q. Attachment A. 4 A. A. Yes. 5 Q. Was there anybody else at CP besides 6 Mr. Kozey a member of the Tank Car Committee 7 between the date of this petition for rulemaking, 8 which is March of 2011, and the derailment? 9 A. No. That was consistently Mr. Kozey in 10 that period. 11 Q. Do you know why Mr. Kozey was a member 12 of this Tank Car Committee? 13 A. Every railroad -- every Class I railroad 14 had members on this Tank Car Committee, and it 15 typically fit with the duties of a -- an individual 16 like Mr. Kozey at CP or equivalent positions at 17 other railroads. 18 Q. Did you instruct him to become CP's 19 representative on that committee? 20 A. I was involved, yes, in -- it was simply 21 a matter of succession. When the previous member 22 from CP retired, there was a discussion among 23 various people about who should become the new 24 member for CP, and Mr. Kozey was selected. 25 Q. What does the Tank Car Committee do?
Page 200 1 GLEN DONALD WILSON 2 A. They do a lot of things. They -- and as 3 you can see from the list at Attachment A, they 4 have representation from various shipper 5 organizations, such as -- the Chlorine Institute, 6 the Fertilizer Institute are a couple I see named. 7 As well as tank car manufacturers, such as 8 Union Tank Car; leasing agencies such as 9 American Railcar Leasing; railroads. 10 They collectively discuss issues 11 associated with tank car standards, tank car 12 manufacturing, the -- the facilities that can do 13 either manufacturing work or repair work on tank 14 cars and what standards should exist for those. 15 Q. Did Mr. Kozey report directly back to 16 you with respect to his involvement with the 17 business of the Tank Car Committee? 18 A. Well, as you saw in the organization 19 chart, Mr. Kozey reported to Mr. Bunce, who 20 reported to me. 21 But in terms of the AAR committee 22 structure, the Tank Car Committee reports to the 23 Risk Management Committee. At least it did at this 24 time. And I was the member on that committee from 25 CP. So quite often I would dialogue directly with	Page 201 1 GLEN DONALD WILSON 2 Mr. Kozey because of that organizational structure. 3 Q. So you were familiar with this petition 4 for rulemaking? 5 A. Yes. 6 Q. And I will characterize, but if I 7 mischaracterize, you let me know. Essentially the 8 Tank Car Committee was advocating for increased 9 safety standards on DOT 111 tank cars with respect 10 to hauling PG I and PG II dangerous goods? 11 A. That -- that's effectively the nature of 12 this petition, yes. 13 Q. And CP was in support of that? 14 A. Yes. 15 Q. Why? 16 A. There's quite an involved background 17 prior to the point in -- this point in time of the 18 petition. 19 There had been various incidents 20 involving the transportation of ethanol on some 21 other railroads that led to the perspective that 22 the DOT 111 could be improved upon for the 23 transportation of flammable liquids, and that was 24 part of what was discussed through the Tank Car 25 Committee, and as well in -- in discussions with

Page 202 1 GLEN DONALD WILSON 2 some of the shipper organizations and the AAR, the 3 American Association of Railroads. 4 Q. So at least as of 2011, CP considered 5 the DOT 111s not suitably safe enough to transfer 6 -- to transport Packing Group I and II materials? 7 A. CP was part of the industry discussion 8 of this with other industries, and all -- all the 9 railroads understood and were advocating for 10 improved safety standards for Class III flammable 11 liquids. 12 Q. Including CP? 13 A. Including CP, yes. 14 Q. So was it CP's position at this point in 15 time that it was not safe to transport 16 Packing Group I and II materials in DOT 111s 17 without the improvements that were suggested in 18 this petition for rulemaking? 19 A. I wouldn't say that it was our position 20 that it was not safe. I would say it was our 21 position that it should be safer. 22 Q. And it should be safer why? To prevent 23 environmental contamination and property damage and 24 personal injury? 25 A. Yeah. Any -- I mean, really what the --	Page 203 1 GLEN DONALD WILSON 2 the tank car discussion is about is improving -- 3 the terminology we -- that was -- has frequently 4 been used is "the probability of release." So that 5 means the product -- if the car's involved in an 6 incident, the probability that that car will 7 release its contents is the thing that the railroad 8 industry is focused on trying to improve. 9 The consequences that can flow from 10 that release will include potentially some of the 11 things that you're describing, but the focus is on 12 trying to improve the integrity of the tank car so 13 the release does not occur or is less likely to 14 occur. 15 Q. And one of the reasons you were focusing 16 on Packing Group I and II materials is because 17 they're highly flammable and explosive at low 18 ambient temperatures; correct? 19 A. No. I would say that the focus on 20 Class I and II -- or Packing Group I and II 21 materials emanated from the history of this -- this 22 issue and the fact that the shippers -- the 23 incidents had concerned were ethanol incidents, and 24 that is a Packing Group II product. The shippers 25 were determined to limit the -- the petition to
Page 204 1 GLEN DONALD WILSON 2 Packing Groups I and II. 3 So the railroads would have 4 preferred a petition that included all of Class III 5 flammable liquids, and ultimately that is what the 6 DOT did. But at this point in time, the DOT 7 position was that they wanted a consensus between 8 the shipper groups and the railroad groups, and the 9 only achievable consensus was by limiting it to 10 Packing Groups I and II. 11 Q. All right. And if you turn to page 5 of 12 the petition, and carrying over to 6 and 7, that is 13 a list of the recommended enhancements that the 14 Tank Car Committee was requesting be required of 15 the existing fleet DOT 111s; right? 16 A. It is a list of improvements. It's not 17 necessarily to exist -- the existing fleet. It 18 could -- it's a construction standard. I believe 19 it allowed for modification as well, if I'm not 20 mistaken. So it's -- it's a standard that would be 21 -- no, this is a construction side, I'm sorry. 22 So this is for new build tank cars 23 from that date on. 24 Q. Just new build. 25 Why didn't CP think it was	Page 205 1 GLEN DONALD WILSON 2 important to impose these standards on the existing 3 fleet as opposed to new construction? 4 A. The way that that would normally be 5 accomplished is by requiring phase-out of the 6 existing fleet, and that was certainly what CP 7 would have preferred and what all of the railroads, 8 to my understanding, would have preferred. 9 But again, because of the -- the 10 DOT's insistence that we achieve consensus with the 11 shippers, meaning the railroad industry achieve 12 consensus, the shippers were insistent that it be 13 limited to Packing Group I and II and new 14 construction. 15 Q. Well, there was another option, though, 16 as opposed to just phasing out the existing fleet. 17 Couldn't the existing fleet have been retrofitted? 18 A. Not necessarily all of them. Some of 19 them probably could have been. 20 Q. Right. But if you look at Footnote 7 on 21 page 2, isn't it true that retrofitting the 22 existing fleet was something that was considered, 23 but the Tank Car Committee decided not to do that 24 for cost reasons? 25 A. Well, I -- I don't think it's

Page 206 1 GLEN DONALD WILSON 2 exclusively cost. I think it's feasibility 3 generally, and that's what I was referring to. I 4 think some of the cars -- or some of these changes 5 could have been made. Others like head shields and 6 jackets had a cost of over a billion dollars is 7 what the footnote says. 8 Q. Right. 9 A. So it was presented as there were no 10 feasible options that could be applied to all 11 existing and new cars. So they -- their feeling 12 was that the standards here could not -- could be a 13 new car standard but not feasible as a blanket 14 retrofit standard. 15 Q. And -- but again as -- would you agree 16 with me that the reason the committee decided it 17 was not feasible to retrofit was based on cost? 18 A. No. I would say cost was a 19 consideration. If you read further down, it also 20 says: (as read) 21 Added weight might overload the 22 draft sill of cars. 23 I believe there's various considerations 24 in that. 25 Q. Did any of the cars that derailed at	Page 207 1 GLEN DONALD WILSON 2 Lac-Mégantic have any of the enhancements that were 3 recommended in this petition for rulemaking? 4 A. No. I don't believe any of them did. 5 Q. So based on Mr. Kozey's participation in 6 the Tank Car Committee and CP's own experience, CP 7 knew that the DOT 111 cars had a known risk of 8 spilling their contents upon a derailment; isn't 9 that right? 10 A. Well, it -- every car has that risk. 11 It's a question of degree. And we knew that it was 12 possible to build a car that would reduce that 13 risk. 14 Q. But you knew that in particular the 15 DOT 111 car had a particular risk of rupture or 16 release upon derailment; isn't that right? 17 A. Anytime there's a potential safer car 18 available, then that would always be the railroad 19 industry's preference to get to that safer car. We 20 knew the DOT 111 had a higher risk of release than 21 what the alternative car that was petitioned for 22 here would provide, and that that was a substantial 23 improvement to that risk. 24 Q. So just to close the loop on this 25 petition for rulemaking, I just want to make sure
Page 208 1 GLEN DONALD WILSON 2 my understanding is correct. 3 That CP's position is that the 4 carriers, including CP, wanted a requirement for 5 enhanced construction on the DOT 111s that would 6 pertain to the transport of all Class III flammable 7 liquids, but a compromise was reached with respect 8 to the shippers that the rulemaking would only 9 request that that would be a requirement for 10 Class III flammable liquids that were subclassified 11 as Packing Group I and II? 12 A. Yeah, I think that's a fair summary. 13 Q. And that a further compromise was that 14 these proposed new construction standards would 15 only apply to newly constructed DOT 111 tank cars? 16 A. Yeah. You have to understand that 17 there's a lot of -- that the petition that's here 18 is the outcome of a lot of discussion both within 19 the Tank Car Committee, but more particularly very 20 senior levels among shippers and railroads, and the 21 United States government in this case. 22 And the railroads had tried to 23 influence the government to require new tank car 24 standards for all Class III flammable liquids to 25 require the phase-out of the DOT 111. And their	Page 209 1 GLEN DONALD WILSON 2 position was at the same time the shippers are 3 lobbying the government to not require those 4 things. 5 And the government's answer to all 6 of that was to tell those parties collectively to 7 come to a consensus. 8 And the petition really represented 9 that consensus. It was the outcome of all of those 10 discussions. And the railroads sought what we 11 wanted. The shippers sought what they wanted. But 12 all aside, at the end of the day, we had to come to 13 a consensus, and this was the outcome of that. 14 Q. Prior to the derailment, was there any 15 action taken with regard to the AAR's safety 16 recommendations for DOT 111 tank cars? 17 A. What -- what safety recommendations are 18 you referring to? 19 Q. The -- that we saw in the petition for 20 rulemaking. 21 A. Oh, okay. I wouldn't characterize them 22 as safety recommend -- I mean that's a petition 23 requesting that the government issue a rulemaking 24 adopting certain standards. That's how I would 25 describe it.

Page 210 1 GLEN DONALD WILSON 2 Q. That's more precise. We'll take your 3 characterization. 4 Was any action taken? 5 A. What -- what type of action? To? 6 Q. To require changes to the construction 7 of DOT 111s prior to the derailment. 8 A. There was -- I believe at this -- around 9 the same time there was a -- what's called a 10 "casualty prevention circular" by the AAR, so 11 that's a way of -- and in this case the intent -- 12 by having a consensus, the shippers accepted that 13 the railroad industry through its -- its casualty 14 prevention circular could implement these standards 15 before the government accepted or approved the 16 petition. 17 So it was implemented in that sense 18 prior to any action being taken on the petition. 19 Q. And prior to the derailment? 20 A. Yes. 21 MR. MCDONALD: I will have the 22 court reporter mark as Wilson Exhibit 13 a letter 23 from the National Transportation Safety Board to 24 The Honorable Cynthia L. Quarterman, dated March 2, 25 2012.	Page 211 1 GLEN DONALD WILSON 2 EXHIBIT 13 - Letter from the 3 National Transportation Safety 4 Board to The Honorable Cynthia L. 5 Quarterman, dated March 2, 2012 6 Q. MR. MCDONALD: I will ask if you 7 have seen that document before, Mr. Wilson? 8 A. Yes, I've seen this document. 9 Q. And is it a fair characterization, at 10 least in part, that this safety recommendation is 11 taking issue with the AAR's position at the time 12 that only newly constructed DOT 111s should have 13 these enhanced safety features, and, instead, that 14 those safety features should apply to all cars, 15 both existing and newly manufactured? 16 A. Without rereading the entire document, I 17 do think that's a fair characterization of some of 18 what the NTSB was attempting to say. 19 Q. They wanted all of the existing DOT 111s 20 to be retrofitted with these safety enhancements; 21 right? 22 A. I believe so, yes. 23 Q. Did CP receive a copy of the safety 24 recommendation at or around the time it was issued? 25 A. I -- I wouldn't know the precise timing,
Page 212 1 GLEN DONALD WILSON 2 but this was a document that would have been 3 circulated. It's not addressed to CP, and it was 4 -- I note that it was the CN Cherry Valley 5 incident, so we wouldn't have received it directly 6 from the National Transportation Safety Board, I 7 believe. But it was circulated in ways that we 8 would have received it relatively soon thereafter. 9 Q. So is it fair to say that CP makes some 10 effort to review government safety reports that are 11 relevant to its business operations? 12 A. Yes. 13 Q. This being among them? 14 A. Yes. I'm just -- I'm not sure exactly 15 how this was transmitted to us or when, but it's 16 the kind of document that we would review. 17 Q. If you look at the report on page 2, it 18 makes a number of observations about the 19 inadequacies of the current safety standards for 20 DOT 111s. Do you see that? 21 A. Yeah. It's describing, I believe -- 22 again, without reading every -- everything on here, 23 it looks like it's describing the damages suffered 24 by the cars. I see just briefly 13 cars of the 15 25 involved lost their product from head and shell	Page 213 1 GLEN DONALD WILSON 2 breaches or damaged valves and fittings, so it -- I 3 think I accept your characterization that it's -- 4 it's referring to the inadequacy of the DOT 111 in 5 this case. 6 Q. And do you disagree with the NTSB's 7 position that DOT 111 cars experience more serious 8 damage in accidents than DOT 105s or 112s? 9 A. They're different car types, so I -- I 10 would probably distinguish -- those are pressure 11 cars, which are built stronger because of the fact 12 that their shipments are made under pressure. So 13 it's not an apples-to-apples comparison. 14 But the -- certainly they are -- 15 it's true to say that those cars have thicker 16 shells and heads and -- and respond better to 17 derailment damage as a result. 18 Q. If we go to page 12 of the document, 19 sir, there's a summary there of what the NTSB would 20 like to have the Pipeline and Hazardous Materials 21 Safety Administration implement with respect to the 22 DOT 111 fleet. Do you see that? 23 A. You are referring to the -- did -- 24 they're described as "the following safety 25 recommendations," there's four indented ones?

Page 214 1 GLEN DONALD WILSON 2 Q. Yeah. Yeah. 3 A. Yeah. 4 Q. And the document speaks for itself, but 5 again essentially they want the safety enhancements 6 for existing and newly manufactured DOT 111s; 7 correct? 8 A. Yes. 9 Q. And CP concurred in that position? 10 A. I would say that the -- the series of 11 recommendations here are consistent with what the 12 railroad industry generally wanted in the -- in the 13 period I was describing that led up to the 14 petition. 15 Q. Including CP? 16 A. Yes. I guess I would except the last 17 point. 18 Q. Okay. 19 A. Which I didn't -- I'm just reading the 20 bullets now. Informing pipeline operators I think 21 is a different type of safety recommendation. 22 Q. Okay. So it's only the first three that 23 CP -- 24 A. Those that -- 25 Q. -- can concur with?	Page 215 1 GLEN DONALD WILSON 2 A. -- relate to the tank car standards, 3 yes. 4 MR. MCDONALD: I will have the court 5 reporter mark as Wilson Exhibit 14 a PowerPoint 6 presentation entitled "Design Considerations." 7 EXHIBIT 14 - PowerPoint 8 presentation entitled "Design 9 Considerations" 10 Q. MR. MCDONALD: Do you recognize 11 this document, Mr. Wilson? 12 A. I -- I don't believe I've seen this 13 document before. 14 Q. Do you know who William Schoonover is? 15 A. Yes. 16 Q. How do you know him? 17 A. I met him various times through the role 18 that he had within the Federal Railroad 19 Administration. He has come to various industry 20 meetings. I've also gone many times to Washington, 21 for various regulatory processes and met him 22 various times at those. 23 Q. What's the Railway Supply Institute? 24 A. It's a large organization that includes 25 the main suppliers to the railway industry. So the
Page 216 1 GLEN DONALD WILSON 2 relevant piece here I'm sure is going to be tank 3 car manufacturers, so they would be members of the 4 Railway Supply Institute. I believe rail 5 manufacturers. All the main components of railway 6 supply would -- are typically members of the 7 Railway Supply Institute. 8 Q. Is CP a member? 9 A. I don't believe we're a member. We 10 would sometimes be invited to participate in some 11 of their -- because we're a railway, this is about 12 suppliers to railways. 13 Q. Did anybody from CP attend the meeting 14 of the Railway Supply Institute on May 10, 2011? 15 A. I -- I do not know. I would doubt it. 16 Q. Will you turn to the 13th slide of the 17 PowerPoint deck which is entitled "Accidents." 18 A. Sorry, I don't see page numbers, but 19 have I got the correct one? 20 Q. Yes, that's the right one. The heading 21 on top is "Accidents." 22 A. Yes. 23 Q. And there's a listing of various 24 accidents. 25 Was CP aware of these accidents	Page 217 1 GLEN DONALD WILSON 2 prior to the derailment at Lac-Mégantic? 3 A. I -- I would say generally yes. 4 Probably not the details of them. I'm -- without 5 the context, I -- I'm not sure that these are all 6 ethanol incidents, but I certainly recognize a 7 couple of them as -- as such. 8 Q. What is the proper classification for 9 ethanol? 10 A. It's Class III flammable liquid, 11 Packing Group II. 12 Q. Which was also a proper classification 13 for light sweet crude? 14 A. It -- I mean the shipping name is 15 "petroleum crude oil." It can be in Packing Group 16 II, it can be in Packing Group I or III as well. 17 Q. So I know you've not seen this before, 18 and I know you didn't attend this meeting, but 19 would you turn to the fourth slide in, which is 20 entitled "An Impending Storm." 21 A. Okay. 22 Q. And then it talks about crude oil in the 23 following slide. Do you see that? 24 A. Yes, I do. 25 Q. All right. Independent of this

Page 218 1 GLEN DONALD WILSON 2 PowerPoint, were you aware of an impending storm 3 with respect to crude oil transportation at or 4 around this time, 2011? 5 A. No. I -- I wouldn't have called it 6 that. 7 Q. As you've looked through this document, 8 do you have any idea what Mr. Schoonover is 9 referring to with respect to an impending storm? 10 MR. HEMMING: Object on 11 foundation. 12 Go ahead and answer if you can, 13 Glen. 14 A. I would be guessing. There's no 15 explanation on that particular slide. It looks 16 like kind of a stock image of storm clouds, so 17 it's -- it's very difficult to know what he would 18 have -- 19 Q. MR. MCDONALD: I'm talking about 20 the PowerPoint as a whole. 21 Would you agree with me that the 22 topic of this presentation appears to me -- appears 23 to be that there's an impending storm coming up, 24 and that impending storm is related to derailments, 25 releases, and explosions of flammable liquids being	Page 219 1 GLEN DONALD WILSON 2 transported in DOT 111 tank cars? 3 A. That's a little further than I'm 4 comfortable going. The document is entitled 5 "Design Considerations." The topics for discussion 6 are listed as crude oil tank cars, ethanol tank car 7 enhancements, and coupling speed considerations. 8 The impending storm slide then 9 follows, and I really -- it's difficult to guess at 10 what he might have said to it, but clearly the 11 document includes some discussion of incidents, and 12 I think can imply concern over tank cars standards 13 related to those incidents, as we discussed. 14 Q. Prior to the derailment, did CP have a 15 concern that as the volume of crude oil transport 16 is skyrocketing that it was just a matter of time 17 before there was a derailment which caused a 18 significant amount of damage? 19 A. No, I wouldn't -- I wouldn't say it that 20 way. And the history -- the incidents all 21 described in here are ethanol. 22 Q. Which is the same class as crude oil? 23 A. Well, they're all Class III flammable 24 liquids, yes. 25 Q. Right.
Page 220 1 GLEN DONALD WILSON 2 A. So we understood that there were some 3 very serious incidents involving ethanol, and we, 4 like the rest of the industry, wanted to see 5 improvements to the tank car standards for all 6 Class III flammable liquids. Ultimately, that was 7 limited to Packing Groups I and II in the petition, 8 and then ultimately expanded again to be all 9 Class III flammable liquids. 10 Q. But prior to the derailment, which 11 caused extensive damage -- you would agree with me 12 on that; right? 13 A. With -- with what, sorry? 14 Q. You would agree with me that the 15 Lac-Mégantic derailment caused extensive damage? 16 A. Yes. 17 Q. Was CP concerned prior to that time that 18 it was just a matter of time before there was a 19 derailment which caused significant property 20 damage, personal injury, and/or environmental 21 damage? 22 A. I -- I think the risk at that -- prior 23 to the Lac-Mégantic derailment was understood to 24 relate to the derailments that we had -- awareness 25 had taken place at that time.	Page 221 1 GLEN DONALD WILSON 2 There's a picture of the derailment 3 at Arcadia, Ohio, and I was aware that that was a 4 very serious derailment with very serious -- 5 there's a few pictures of that derailment, 6 actually. And it was known to us, and that was -- 7 that there were -- that that was a risk. And that 8 that's -- that's obviously a very serious accident. 9 Q. And you understood that it was simply a 10 matter of time before something similar to that 11 occurred on a crude train; correct? 12 A. No, I don't think that's -- that's fair. 13 Q. Why not? 14 A. I -- the history of incidents that took 15 place at this point in time were all ethanol. 16 Q. Well, to be fair, there had been 17 derailments of trains carrying crude that had 18 resulted in significant damage; isn't that right? 19 A. I don't believe there had been any that 20 had the scale of damage as the incidents described 21 in here. 22 Q. Okay. 23 A. These -- these are incidents in this 24 presentation, like the Arcadia incident that 25 involves --

Page 222 1 GLEN DONALD WILSON 2 Q. Yeah. 3 A. -- large fireballs and significant 4 damage and fire and -- that's the scale of incident 5 I'm talking about. 6 Q. Right. 7 A. So... 8 Q. Did -- you knew, though, prior to the 9 Lac-Mégantic derailment that if there was a 10 derailment similar to what had happened in Ohio, 11 that a large fireball could result? 12 A. Yes. 13 Q. I'm talking about a derailment of crude 14 oil? 15 A. Yes. Generally, yes. But I don't think 16 it was well understood within our industry what the 17 various crude products were and what the -- the 18 flammability prospects were until we -- we saw some 19 incidents involving crude oil that demonstrated 20 that kind of risk and potential. 21 MR. MCDONALD: Could you read back 22 that answer. 23 THE COURT REPORTER: (By reading) 24 "A. Yes. Generally, yes. But I 25 don't think it was well understood	Page 223 1 GLEN DONALD WILSON 2 within our industry what the 3 various crude products were and 4 what the -- the flammability 5 prospects were until we -- we saw 6 some incidents involving crude oil 7 that demonstrated that kind of risk 8 and potential." 9 Q. MR. MCDONALD: Well, CP knew the 10 flammability of crude oil prior to the derailment? 11 You -- 12 MR. HEMMING: Objection form. 13 Go ahead. 14 Q. MR. MCDONALD: Isn't that right? 15 A. We -- we knew the classification of 16 crude oil. My point is that the incidents 17 involving crude oil -- for instance, we had one in 18 a location called Parkers Prairie that was a very 19 thick, heavy crude oil, and it -- the flammability 20 risk associated with that derailment I would say 21 was much different. 22 Q. Right. But the -- let's talk about 23 Bakken crude. You knew what the characteristics of 24 Bakken crude oil were; right? 25 A. Not the characteristics. We knew what
Page 224 1 GLEN DONALD WILSON 2 the classification of Bakken crude oil was. 3 Q. But in order to know the classification, 4 you need to know what the characteristics are with 5 respect to flammability and all of that stuff; 6 right? 7 A. Sure. That's what defines -- 8 Q. Right. 9 A. -- the classification. 10 Q. Right. So you knew -- you were well 11 aware prior to the derailment that if there were a 12 derailment and a breach, there could be a 13 significant fireball as a result of the derailment? 14 Didn't you know that? 15 A. Yeah, we -- we knew any Class III 16 flammable liquid that has those -- and I forget the 17 numbers, but the -- the packing groups are defined 18 by boiling point and flashpoint, and products that 19 are Class III flammable liquids that fit those 20 ranges are in those ranges because they have like 21 characteristics. 22 So we knew any product that is in 23 the same range would have similar risks. I 24 wouldn't say that we necessarily understood exactly 25 how that product would react or -- or the unique	Page 225 1 GLEN DONALD WILSON 2 characteristics of that product. 3 Q. CP understood that the crude oil that 4 was being extracted from the Bakken region had 5 different characteristics than oil being extracted 6 in other parts of North America; isn't that right? 7 A. No, I wouldn't -- I wouldn't put it that 8 way. I mean the -- the thing we learned very early 9 on about crude is that it is crude, meaning it's 10 not a refined product, meaning it is highly 11 variable. So would other regions produce products 12 that are similar? Even within my -- my 13 understanding within the same region the product 14 can vary from one wellhead to another one day to 15 another. 16 Q. But isn't it true that the oil extracted 17 from the Bakken region was light sweet crude? 18 A. I've heard it generally described that 19 way. Yes, I've heard that. That's sort of a 20 generic term that I've heard describe other oil as 21 well. 22 Q. So the answer is yes? 23 A. That we -- you are -- 24 Q. CP understood that the oil extracted 25 from the Bakken region was light sweet crude; yes

Page 226 1 GLEN DONALD WILSON 2 or no? 3 MR. HEMMING: And give whatever 4 answer you want, Glen. 5 A. Yeah, as a general matter, yes. I would 6 say we did understand that it was -- I'm not sure I 7 could even define "light sweet crude" for you, but 8 I can say that I heard that term used in reference 9 to Bakken crude. 10 Q. MR. MCDONALD: Well, CP understood 11 that light sweet crude has a lower flashpoint than 12 heavy crude; right? 13 A. Again as a general principle, but not 14 necessarily in all cases. 15 Q. What do you mean by that? 16 A. I mean crude can be described as heavy 17 but have very flammable diluents in it to have it 18 flow easier, and that can cause its classification 19 to be moved up. Similarly, light crude may not 20 have the constituents to make it as flammable as 21 other light crude. 22 MR. MCDONALD: Off the record. 23 (DISCUSSION OFF THE RECORD) 24 MR. MCDONALD: I will have the 25 court reporter mark as Wilson Exhibit 15 --	Page 227 1 GLEN DONALD WILSON 2 MR. HEMMING: Are we on? 3 MR. MCDONALD: Yes. 4 MR. HEMMING: Okay. You said off. 5 Sorry. 6 MR. MCDONALD: Yeah, I'm -- 7 MR. HEMMING: I got confused. 8 MR. MCDONALD: We're back on, yes. 9 An email from Keegan Loxam -- 10 excuse me, from Mike Bleackley to Keegan -- 11 Well, let's go off the record 12 again. 13 (DISCUSSION OFF THE RECORD) 14 MR. MCDONALD: Let's try that 15 again. We will mark as Wilson Exhibit 15 an 16 October 28, 2011 email from Mike Bleackley to 17 Keegan Loxam and others. 18 EXHIBIT 15 - October 28, 2011 email 19 from Mike Bleackley to Keegan Loxam 20 and others 21 Q. MR. MCDONALD: Have you seen this 22 document before, Mr. Wilson? 23 A. I believe I have in preparation for this 24 proceeding. 25 Q. That's the first time you saw it?
Page 228 1 GLEN DONALD WILSON 2 A. Yes. 3 Q. So we already have talked about who 4 Mr. Loxam is. Who is Alain Dupere? 5 A. I -- I don't know. 6 Q. And we know who Ms. Hucker is? 7 A. Yes. 8 Q. Would you be able to find out who 9 Alain Dupere is for us? 10 A. I can enquire into that. I don't 11 recognize the name at all, but I can ask. 12 MR. MCDONALD: Would you mark that 13 part of the transcript, please. 14 REQUEST NO. 10 - To advise who 15 Alain Dupere is 16 Q. MR. MCDONALD: And do you know who 17 Mike Bleackley is? 18 A. No, I do not. 19 Q. From looking at this document, do you 20 understand that he works for Cenovus? 21 A. I would surmise that because he's copied 22 a number of people from Cenovus, but I don't know 23 any of those names, and I -- and his doesn't say 24 the email extension. 25 Q. Was Cenovus a producer of crude oil from	Page 229 1 GLEN DONALD WILSON 2 the Bakken region? 3 A. Yes, I believe that's right. 4 Q. A customer of CP's? 5 A. Yes. 6 Q. Why is an MSDS being sent from Cenovus 7 to CP at this point in time? 8 A. I -- I don't know. 9 Q. Was there any relationship between 10 Cenovus and CP other than shipper and carrier? 11 A. I don't believe so. I think that would 12 be the extent of the description. 13 Q. What was done internally at CP with this 14 information? 15 A. I -- I don't know. 16 Q. Did Cenovus ship its crude out of the 17 New Town facility? 18 A. I don't believe so. I believe they 19 shipped out the Bakken region, but I -- I don't 20 believe they shipped out of New Town. 21 Q. And if you take a look at this MSDS, can 22 you tell me what the classification of the material 23 which is designated "crude oil sweet" is? 24 A. Not easily. I -- material safety data 25 sheets are not easy to read. This one says it is

Page 230 1 GLEN DONALD WILSON 2 Class III, it then lists Packing Groups I and II 3 and the ranges. But then I look down below and I 4 see a very wide range of flashpoint, from minus 40 5 to 60 degrees Centigrade, I believe. 6 Q. Right. But the classification, 7 according to Cenovus Energy, is Packing Group I and 8 II; correct? 9 A. They've stated that under "Material 10 Identification and Use," but if -- I believe that 11 the flashpoint down below is inconsistent with 12 that. Or broader than that. 13 Q. So are you saying they're wrong in the 14 classification they give to this product? 15 A. I -- I don't know if it's wrong, but 16 it's in -- there's an inherent inconsistency in 17 here to me. 18 Q. Okay. So we've seen that Mr. Loxam has 19 asked for an MSDS from Shell. We saw that 20 previously in Exhibit 10. Do you recall that? 21 A. I do. 22 Q. And he's asking one now -- for one now 23 from Cenovus; right? 24 MR. HEMMING: I'll object to the 25 characterization.	Page 231 1 GLEN DONALD WILSON 2 Go ahead and answer. 3 A. Yeah. I don't see a request. I see 4 simply a message from Mike Bleackley. I don't know 5 for certain that he is with Cenovus, but if he is 6 it's simply -- as it says: (as read) 7 Here is the MSDS for the Bakken 8 crude. 9 He doesn't reference a request. 10 Q. MR. MCDONALD: Well, if it hadn't 11 been requested, why would he be sending an MSDS to 12 Mr. Loxam and others? 13 A. I -- I don't know. 14 Q. Do you think it makes any sense that he 15 would do that without having been requested? 16 A. I think it's plausible. I don't -- I 17 don't know what the history of why this was 18 provided October 28th, 2011 would be. 19 Q. So you just described this MSDS as being 20 unclear to you in the sense that you are saying 21 that the packing group designation is not 22 consistent with the physical data for the material 23 that appears below? 24 A. The packing group includes right in the 25 -- the -- I believe that's the same as the
Page 232 1 GLEN DONALD WILSON 2 classification standard, a flashpoint of less than 3 23 degrees Celsius. Down below in section 4 the 4 flashpoint is described as having a range below 5 minus 40 to 60. So that -- that range is in excess 6 of a hundred degrees Celsius. 7 Q. I'm sorry; where are you pointing to? 8 A. Under the heading "Section 4 - Fire and 9 Explosion." 10 Q. Yes? 11 A. Approximately in the middle -- 12 Q. Yes. 13 A. -- there's a flashpoint degrees Celsius 14 and method, and it refers to minus 40 to 60. 15 Q. So looking at this, there's a question 16 in your mind as to whether or not they've 17 identified the correct packing group? 18 A. Well, they haven't specified any one 19 packing group. They've -- they've specified two 20 packing groups, including their -- their 21 definition, I guess. And then they've got a 22 flashpoint method that's -- or flashpoint range 23 that exceeds all of that. 24 Q. Well, I'm just trying to understand your 25 testimony. When I asked you what the packing group	Page 233 1 GLEN DONALD WILSON 2 was earlier, you said it wasn't clear based when -- 3 when you compared the packing group designations to 4 the information under section 4. 5 Is it clear to you what the packing 6 group is for this product and whether or not it's 7 properly classified? 8 A. This isn't a classification document, 9 this is a material safety data sheet. 10 Q. Right. I'm just talking about on this 11 document? 12 A. Yeah. On this document I see 13 inconsistency. 14 Q. Would you agree with me that a producer 15 has a much better idea of its product and its 16 properties than CP does? 17 A. Yes. 18 MR. MCDONALD: Would the court 19 reporter mark as Wilson Exhibit 16 an email chain 20 between several representatives of CP, beginning 21 with an email from Bill Hay to Jim Kozey on 22 December 13, 2011. 23 EXHIBIT 16 - Email chain between 24 several representatives of CP, 25 beginning with an email from

Page 234 1 GLEN DONALD WILSON 2 Bill Hay to Jim Kozey on 3 December 13, 2011 4 Q. MR. MCDONALD: Have you seen this 5 document before? 6 A. Yes, in preparation for -- for this 7 proceeding. 8 Q. Who's Global? 9 A. I don't -- I don't see the reference, 10 but I -- Global is another shipper of crude oil. 11 Q. From the Bakken region? 12 A. Yes. And I believe other regions as 13 well. 14 Q. The reason I mention Global is when you 15 look at the first email starting from the bottom up 16 from -- 17 A. Oh, yeah, I see it, from Global. 18 Q. -- Mr. Feygelson to Mr. Kozey, it says: 19 (as read) 20 From Global. 21 And what is from Global do you 22 understand to be the MSDS that's attached to the 23 email? 24 A. I -- I would presume, yes. 25 Q. All right. Now Mr. Feygelson is	Page 235 1 GLEN DONALD WILSON 2 identified as a Canadian Pacific account manager. 3 Do you see that? 4 A. I do. 5 Q. Do you know Mr. Feygelson? 6 A. No, I do not. 7 Q. It identifies an address here in 8 Dunmore, Pennsylvania. Do you see that? 9 A. Yes. 10 Q. Is he a US-based Canadian Pacific 11 employee? 12 A. I -- I would assume yes, but I don't -- 13 that's an unusual address to me. We didn't have 14 operations in Pennsylvania, but we sometimes have 15 marketing representatives in different locations 16 so... 17 Q. Do you understand him to be working for 18 Canadian Pacific out of Pennsylvania at this point 19 in time? 20 A. That's how I would interpret this, yes. 21 MR. HEMMING: Well, just so we're 22 clear, by "Canadian Pacific," which -- which 23 Canadian Pacific are you referring to? It says in 24 -- I realize this problem has happened a lot but 25 just says "Canadian Pacific." I'm not sure if you
Page 236 1 GLEN DONALD WILSON 2 are trying to pin him down which corporate entity 3 he's employed by. 4 MR. MCDONALD: My counsel has 5 advised me not to speculate, Paul. I'm only 6 reading from the document. 7 Q. Do you know which Canadian Pacific we're 8 talking about here, Mr. Wilson? 9 A. When he's got it in his signature line 10 like that, I would assume he means the trade name 11 under which the railway sort of generally operates. 12 Whether he -- again, I -- I remember the name, I 13 don't remember where he was situated. The location 14 is unusual. He -- I don't know if he was 15 definitely an employee of Soo Line, but that would 16 be my guess. 17 Q. Okay. Could you find that out for us? 18 A. I could look for that, yes. 19 MR. MCDONALD: Okay. Would you 20 please mark that portion of the transcript, Claire. 21 REQUEST NO. 11 - To advise if 22 Mr. Feygelson was an employee of 23 Soo Line 24 Q. MR. MCDONALD: Who's 25 Michael Wilken?	Page 237 1 GLEN DONALD WILSON 2 A. Michael Wilken was a hazardous materials 3 officer that worked in -- I believe in Eastern 4 Canada. He retired probably not long after this. 5 Q. Do you know why Mr. Feygelson was 6 sending this MSDS to Mr. Kozey? 7 A. I do not, no. 8 Q. Mr. Wilken then forwards it to several 9 other people within CP; am I right? 10 A. Yes. Looks like five. 11 Q. All of those gentlemen work under you? 12 A. At one point or another they probably 13 did. Not necessarily at this point in time but... 14 Q. Do you know why Mr. Wilken was 15 forwarding that MSDS for crude coming out of the 16 Midwest to these people? 17 A. No, I do not. 18 Q. And who is Bill Hay? 19 A. Bill Hay also left CP probably not long 20 after this in -- I would guess in 2012, but he at 21 the time was a manager with emergency response 22 responsibilities. 23 Q. He is saying: (as read) 24 This stuff is going to be a 25 problem.

Page 238 1 GLEN DONALD WILSON 2 Do you see that? 3 A. I do see that. 4 Q. And "the stuff" he's referring to would 5 you agree with me is crude coming out of the 6 Midwest? 7 A. Yes, I think that's a reasonable 8 conclusion as to what he was referring to. 9 Q. Did CP consider that stuff to be a 10 problem or going to be a problem? 11 A. I don't know why Mr. Hay said that. As 12 I described a few minutes ago reading a material 13 safety data sheet is difficult documents to apply 14 to crude oil. They don't fit very well. He may 15 have been referring to that being a problem. 16 Again, this one has a very wide 17 range of flashpoints. And part of what we were 18 starting to understand at this point in time was 19 crude is very variable and difficult to -- unlike 20 other dangerous goods that are refined, they have 21 more precise characteristics, and crude was very 22 variable. 23 Q. In terms of which packing group it 24 should fall under? 25 A. But -- well, both -- packing group. It	Page 239 1 GLEN DONALD WILSON 2 can be I, II, III, or it can be a non-regulated 3 product. So, yeah, that -- that kind of 4 variability is -- and -- and his point may have 5 been that this MSDS doesn't help with any of that. 6 Q. Well, you are just speculating, though; 7 right? 8 A. Well, that's what you're asking me to 9 do. 10 Q. No, no, I didn't ask you to speculate. 11 I asked you whether -- 12 MR. HEMMING: He can interpret 13 however he wants, Paul. 14 A. My basic answer is I don't know why 15 Mr. Hay said this stuff is going to be a problem. 16 Q. MR. MCDONALD: Now this MSDS 17 identifies the material as crude oil sweet; right? 18 A. Yes, it does. 19 Q. And does the MSDS contain transportation 20 information with respect to classification? 21 A. Yes, section 14 on page 14 is entitled 22 "Transportation Information." 23 Q. So this MSDS for Bakken crude identifies 24 the classification as hazard Class III, 25 Packing Group I or II; right?
Page 240 1 GLEN DONALD WILSON 2 MR. HEMMING: We'll object to the 3 characterization that this is Bakken crude, but go 4 ahead. 5 Q. MR. MCDONALD: Okay. Well, I 6 thought we could maybe do it the easy way. 7 Was there any crude oil coming out 8 of the Midwest of the United States other than from 9 the Bakken region? 10 A. Not on CP's network, I don't believe. 11 Q. All right. So we're talking about 12 Bakken crude here; right? 13 A. I -- yeah, I think we are. It doesn't 14 say that anywhere. It says crude oil sweet, and 15 then the -- Mr. Wilken is the one who said it's 16 coming out of the Midwest. 17 Q. Right. 18 A. So if that's all correct, then it's 19 presumably Bakken crude. 20 Q. Do you have any reason to doubt it? 21 A. No, I don't. 22 Q. Okay. So this is Bakken crude 23 identified as Packing Group I or II; correct? 24 A. Yes, that's -- again, that's the 25 transportation information. I would point out	Page 241 1 GLEN DONALD WILSON 2 earlier it had a broad flashpoint range that went 3 beyond Packing Groups I and II. 4 Q. So you have some question about whether 5 this classification is accurate? 6 A. Well, again, I don't necessarily accept 7 that this is a classification. This is a material 8 safety data sheet. It's not a transportation 9 document. 10 Q. Right. But they're identifying it as 11 hazard Class III, Packing Group I and II. Are you 12 telling us that you have some question about 13 whether that's accurate? 14 A. Yes, because the -- the flashpoint range 15 earlier in the document is much bigger than 16 Packing Groups I and II. 17 MR. MCDONALD: Off the record. 18 (DISCUSSION OFF THE RECORD) 19 (ADJOURNMENT) 20 Q. MR. MCDONALD: Prior to the 21 derailment, did CP have any communications with any 22 shipper about the inability to change the packing 23 group field on CP's online application for 24 shipment? 25 A. I don't accept the premise of the

Page 242 1 GLEN DONALD WILSON 2 question that there was such an inability. I'm 3 aware from the preparation for this that Mr. Jasso 4 gave evidence that he encountered a difficulty. I 5 believe that was his own issue, and that that 6 became a -- identified to CP after the derailment 7 and then was resolved. 8 Q. So Mr. Jasso from what company? 9 A. I don't remember the name. It was a -- 10 started with an S. It was a company based in the 11 area around New Town, or at least the -- did some 12 of the billing services. 13 Q. And he contacted CP advising them that 14 he was trying to change the packing group 15 designation for crude oil on CP's online system and 16 was unable to do that? 17 A. The record that we have of him 18 contacting CP occurred in August of 2013, after the 19 derailment. I know he testified that he placed a 20 phone call -- or stated that he placed a phone call 21 prior to the date of the derailment, but CP has no 22 record of that. 23 Q. So you -- you searched for a record of 24 that phone call? 25 A. Yes.	Page 243 1 GLEN DONALD WILSON 2 Q. Couldn't find any? 3 A. No. 4 Q. And you said you don't accept the 5 premise that he was unable to change the packing 6 group. Did I hear you correctly? 7 A. Well, I -- no, the premise of the 8 question, which was more about -- suggested to me 9 that the problem was a broader one that CP would 10 have been in touch with customers about. And we're 11 not aware of anyone else having this problem. 12 Mr. Jasso clearly identified that he did. He 13 received some instruction, and that appeared to 14 remedy the issue. 15 So I believe it was Mr. Jasso's 16 understanding on a problem with CP's system. 17 Q. Why do you say that? 18 A. Because the explanation -- he received 19 an explanation from our technical support, and that 20 was the last we heard of the issue. He seemed to 21 accept the explanation that he received to resolve 22 his trouble changing packing groups. 23 Q. Do you understand that Mr. Jasso was 24 told that the packing group field could not be 25 manipulated by him and that it had to be fixed
Page 244 1 GLEN DONALD WILSON 2 internally at CP? 3 A. No, that's not what I understand. 4 Q. So Mr. Jasso is the only person that CP 5 is aware of who made a complaint of this sort? 6 A. Yes. I wouldn't say it was a complaint. 7 He enquired for support, and support was given, and 8 that appeared to resolve his -- his question. 9 Q. Did CP report Mr. Jasso's enquiry to any 10 US or Canadian regulators? 11 A. No. 12 Q. Who at CP was involved in this series of 13 communications with Mr. Jasso? 14 A. Dave Moisey was the individual who 15 communicated with Mr. Jasso. He was -- I believe 16 Mr. Jasso enquired through a help or support link 17 on our Customer Station website. 18 Q. But you don't know who that person was 19 that he communicated with in the first instance? 20 A. I -- I know he says he phoned CP. We 21 have no record of that phone call, so I -- I don't 22 know anything more about it than that. 23 Q. So as far -- just to close the loop, as 24 far as CP knows, the only person that interacted 25 with Mr. Jasso on this issue was Mr. Moisey?	Page 245 1 GLEN DONALD WILSON 2 A. Yes. In August period after the 3 derailment when -- and in that case there was a 4 written enquiry and a written email response with 5 images attached saying this is how we changed the 6 packing group and demonstrating how to use the 7 site. 8 Q. Were there any internal changes made to 9 the system at CP as a result of Mr. Jasso's 10 enquiry? 11 A. No. It appeared to be a user problem, 12 not a system problem. 13 Q. What was the user problem? 14 A. I don't know the exact nature of it, but 15 Mr. Jasso did not seem to understand how to change 16 the packing group. That was the nature of his 17 enquiry, and it was explained to him how to do it. 18 And through the messages that I referred to. 19 MR. MCDONALD: Have the reporter 20 mark as Wilson Exhibit 17 an email chain involving 21 Dave Moisey, Eli Jasso, and others, starting -- or 22 ending with an email dated August 2, 2013. 23 EXHIBIT 17 - Email chain involving 24 Dave Moisey, Eli Jasso, and others, 25 ending with an email dated

Page 246 1 GLEN DONALD WILSON 2 August 2, 2013 3 Q. MR. MCDONALD: Is this the series 4 of communications between Mr. Jasso and Mr. Moisey 5 that you are referring to? 6 MR. HEMMING: Just to be clear, it 7 looks like we have two emails. Do you have the 8 same thing? I've got what I think are two 9 different emails. 10 MR. MCDONALD: Well, there's -- 11 MR. HEMMING: Maybe -- 12 MR. MCDONALD: Yes. Two -- it's a 13 compendium of emails. 14 MR. HEMMING: Yeah. 15 MR. MCDONALD: Is that fair, Paul? 16 MR. HEMMING: Yeah, fair. I 17 wanted to make sure I was -- 18 MR. MCDONALD: Yes. 19 MR. HEMMING: -- seeing the same 20 thing you were. 21 MR. MCDONALD: Yes. 22 A. Yes. This is what I was referring to. 23 Q. Okay. So let's start from the bottom 24 and work up. Mr. Jasso's first sentence in email 25 at 7:38 on August 2nd tells you about having	Page 247 1 GLEN DONALD WILSON 2 problems with the website, and when they bill a 3 train out it defaults to the commodity 4 Packing Group III when it should be II; right? 5 A. Yes. That's what he says. 6 Q. Okay. And he said he's tried to change 7 it himself by following the CP support but it does 8 not change, and he's asking for a way to have it 9 default to Packing Group II; right? 10 A. Yes. 11 Q. All right. So Kay Jared responds to 12 Mr. Jasso's email -- excuse me, Kristy Jared? 13 A. She -- I wouldn't say she responds. 14 She's forwarding it to eB support, which I believe 15 is eBusiness support. 16 Q. Right. 17 A. And then she's copying Mr. Jasso to show 18 him where this has been -- 19 Q. Yeah. 20 A. -- moved along to. 21 Q. And is Kristy Jared a CP employee? 22 A. I believe she would be a Soo Line 23 employee. 24 Q. Can you find that out for us? 25 A. Yes.
Page 248 1 GLEN DONALD WILSON 2 MR. MCDONALD: Would you please 3 mark the transcript. 4 A. I will enquire. 5 REQUEST NO. 12 - To confirm if 6 Kristy Jared is a Soo Line employee 7 Q. MR. MCDONALD: And at that point, 8 Mr. Moisey responds directly to Mr. Jasso later in 9 the day on August 2nd; correct? 10 A. Yes. 11 Q. All right. Now he says in his email to 12 Mr. Jasso, among other things: (as read) 13 There are some compatibility issues 14 with updating commodity information 15 with IE 10. 16 Do you see that? 17 A. Yes. 18 Q. And he recommends that IE 8 be used on 19 Customer Station. Do you see that? 20 A. Yes. 21 Q. Do you know what he's talking about? 22 A. Generally, yes. IE 10 and IE 8 refers 23 to Internet Explorer versions. There was an issue 24 with pop-up screens not a -- not functioning 25 properly in the newer version, the IE 10 version,	Page 249 1 GLEN DONALD WILSON 2 of Internet Explorer. So he was explaining that 3 sometimes that can be a compatibility issue, and 4 IE 8, however, had been tested with our 5 Customer Station function and worked properly. 6 As it turned out, that was not 7 Mr. Jasso's issue, but it was something that our IT 8 group was -- was communicating to remedy potential 9 issues. 10 Q. Okay. So what was the issue? 11 A. He appeared to just not know how to 12 select packing groups within the application. So 13 the screens that follow, the red arrows ratify 14 Mr. Moisey showing Mr. Jasso the steps to follow. 15 Q. So CP's position is it was user error? 16 A. Yes. The system worked as intended. 17 Mr. Jasso appeared to not be familiar with how to 18 use the system properly. 19 Q. Did CP conduct any investigation as to 20 whether or not any of the shipments that were 21 billed through Mr. Jasso or others were 22 misclassified as a result of this misunderstanding? 23 A. To be clear, the misunderstanding I'm 24 talking about is Mr. Jasso's misunderstanding of 25 how to use the application.

Page 250 1 GLEN DONALD WILSON 2 Q. Right. But it's clear that he was 3 trying to get cargo classified as Packing Group II 4 and he kept getting it default to Packing Group 5 III; right? That's what started the enquiry? 6 A. Yes. 7 Q. So did that cause CP to look into 8 whether or not that problem had caused a 9 misclassification of any shipments prior to 10 Mr. Jasso's enquiry? 11 A. No. I think it's evident that 12 Mr. Jasso's asking for support so he can properly 13 classify the shipment. 14 Q. So you didn't conduct any investigation 15 as to whether there was any misclassification of 16 any crude oil as a result of this issue that was 17 brought to CP's attention by Mr. Jasso? 18 A. Of Mr. Jasso's issues brought to CP's 19 attention by Mr. Jasso. 20 Q. We'll take your characterization. Did 21 you conduct an investigation as to whether there 22 was -- 23 A. No. 24 Q. -- any misclassified oil as a result of 25 this?	Page 251 1 GLEN DONALD WILSON 2 A. No. We assisted Mr. Jasso to remedy his 3 issue understanding our system. 4 Q. Did CP send any information out to any 5 of its other customers regarding the explanation 6 that it had given to Mr. Jasso in terms of how to 7 properly select the packing group? 8 A. No. And there were no other reports of 9 any other customers having that difficulty. 10 Q. Does CP have any procedures or protocols 11 for recording or otherwise logging phone calls from 12 customers? 13 A. There are logs of calls made or received 14 but not recordings of the phone calls. 15 Q. So if Mr. Jasso did in fact make a call 16 to CP prior to the derailment regarding this issue 17 of packing group designation, why is there no 18 record of that? 19 A. We could find no record of that call 20 being made. 21 Q. Did CP make any enquiry as to whether or 22 not any other shipper was having problems with its 23 website related to using Internet Explorer 24 Version 10? 25 A. The issue with Internet Explorer
Page 252 1 GLEN DONALD WILSON 2 Version 10 was identified by CP on its own. As I 3 think many organizations do with their software 4 applications, when new versions of programmes like 5 Internet Explorer or -- the same would be true 6 today with your Apple iPhone, if they introduce a 7 new IOS operating system, our IT department would 8 test how our systems work with that new operating 9 system. 10 And the version of 11 Internet Explorer 10 here was tested with our 12 applications at CP by our own IT department and 13 determined to cause some issues. 14 Q. Right. And that's what Mr. Moisey says 15 in his email of August 2nd? 16 A. Yes. 17 Q. Right. So my question is: Did CP alert 18 any other customers of -- that there were some 19 compatibility issues in using Internet Explorer 20 Version 10? 21 A. I believe we did, just as Mr. Moisey did 22 in this case. If customers were experiencing any 23 difficulties that caused them to request or receive 24 our eBusiness support, I believe it was sort of a 25 standard thing that was mentioned to customers in	Page 253 1 GLEN DONALD WILSON 2 that period of time, that if they were using 3 Internet Explorer 10 that might be one of the 4 issues that they would encounter. 5 Q. So CB -- CP was not proactive in this 6 regard in sending out an alert to its customers 7 that they should be using a more current version of 8 Explorer? 9 A. No. We were using it as a -- as a form 10 of support for customers that might have 11 difficulty. 12 Q. How long was the Internet Explorer 10 13 issue a problem? 14 A. I -- I don't know the answer to that. I 15 know it was a problem when they did the initial 16 testing, and I don't know when that was resolved. 17 Q. When was Internet Explorer 10 18 introduced? Do you know? 19 A. I don't know. 20 Q. Do you know when the first -- the next 21 upgrade to the system was after that? 22 A. The next upgrade to what system? 23 Q. Internet Explorer. 24 A. No, I don't. 25 Q. Shift gears. Did CP and World Fuels

Page 254 1 GLEN DONALD WILSON 2 have a contractual agreement governing the shipping 3 of crude from New Town? 4 A. We did for a period of time. That 5 agreement was expired at the time of the -- the 6 shipment that was later part of the derailment. 7 Q. So there was no agreement in place 8 between the two companies with respect to 9 Train 282? 10 A. That's right. The terms of the tariff 11 would have applied at that point. 12 Q. How long had that prior agreement been 13 in place? 14 A. I don't recall specifically. I believe 15 it was a year or two. It had expired I believe in 16 2012, and they were negotiating new terms when -- 17 at the time of the derailment, but they were not in 18 place yet. 19 Q. At the time of the derailment, were 20 there certain issues that the parties were unable 21 to reach agreement on in terms of an overall 22 agreement? 23 A. They were still negotiating and had not 24 signed an agreement, so I -- I don't know the 25 precise dynamic of why exactly that was. But I	Page 255 1 GLEN DONALD WILSON 2 know it was still being discussed. 3 Q. You don't know what issues were still 4 outstanding? 5 A. No, I don't. 6 Q. At the time of the derailment? 7 A. No. 8 Q. Who would at CP? 9 A. The people who had direct responsibility 10 for that negotiation, that would be the marketing 11 and sales group that -- and I don't know which 12 individual, but Brent Dornian or someone from that 13 team. Keegan Loxam would be somebody who might 14 have. 15 Q. Are there any other CP employees besides 16 Mr. Dornian and Mr. Loxam who you would identify as 17 having knowledge of the outstanding issues between 18 World Fuels and CP with respect to this agreement 19 at the time of -- 20 A. Probably -- 21 Q. -- derailment? 22 A. Probably add Ms. Hucker to that. And 23 Tracy Robinson, who was the vice president that I 24 talked about earlier, may have. I don't know 25 exactly who was involved in those discussions, but
Page 256 1 GLEN DONALD WILSON 2 it would have been people from within that team. 3 Q. And did the prior contract between CP 4 and World Fuels just expire by its terms? 5 A. Yes. 6 MR. MCDONALD: I will have the 7 court reporter mark as Wilson Exhibit 18 a shipping 8 document that I will ask Mr. Wilson to identify. 9 EXHIBIT 18 - Bill of lading for 10 Train 282 11 Q. MR. MCDONALD: Have you seen this 12 before, Mr. Wilson? 13 MR. HEMMING: Put your glasses on. 14 A. Yes. It's fuzzy so... Yes, it's fuzzy, 15 but it looks like the shipping instructions for 16 Train -- I can't quite read the number. But I 17 believe that's Train 282, and I have seen it 18 before. 19 Q. MR. MCDONALD: This is the bill of 20 lading for Train 282? 21 A. No, I wouldn't characterize it that way. 22 Q. What would you call it? 23 A. This is -- this looks like a printout of 24 the shipping information that's entered. The bill 25 of lading would be generated as a result of this.	Page 257 1 GLEN DONALD WILSON 2 Q. So does this document have a name? 3 A. I -- I wouldn't -- I don't see a name 4 given to it. It is -- on the top it's described as 5 "My Shipping Instructions - Display Document." It 6 looks like a printout. 7 MR. HEMMING: Can we go off the 8 record for a second? 9 MR. MCDONALD: Yes. 10 (DISCUSSION OFF THE RECORD) 11 Q. MR. MCDONALD: After an 12 off-the-record conference, Mr. Wilson, would you 13 agree with me that this is in fact the bill of 14 lading for Train 282? 15 A. Yes. 16 Q. All right. This is a contractual 17 arrangement between World Fuels and CP? 18 A. Well, as I said, the contract expired, 19 but by submitting a bill of lading to CP, the terms 20 of the tariff would then provide the terms of 21 carriage and form the contract. 22 Q. All right. Would you go to the last 23 page of the document? 24 A. Okay. 25 Q. All right. It says there -- there's a

Page 258 1 GLEN DONALD WILSON 2 signature line. But on top of it, it says: 3 (as read) 4 I, Eli Jasso, acting for 5 Western Petroleum Co., agree to the 6 Canadian Pacific Railway terms and 7 conditions for shipment of freight 8 and any supplemental charges. 9 Do you see that? 10 A. I do. 11 Q. Did I read that correctly? 12 A. I believe so, yes. 13 Q. Okay. What are these terms and 14 conditions? 15 A. That would be the standard terms of our 16 tariffs. 17 Q. And where are those located? 18 A. In various places. They're available 19 through the website that this information was 20 entered into. They're available through our 21 marketing and sales department. They're printed in 22 hard copies and -- and they're easily attainable I 23 would say. 24 Q. Is there a CP document entitled: Terms 25 and Condition -- Conditions for Shipment of	Page 259 1 GLEN DONALD WILSON 2 Freight? 3 A. I am not sure if there is such a 4 document or not. 5 Q. Tell me today, sitting here, what 6 comprised these terms and conditions? 7 A. To the best of my knowledge, it would be 8 the various tariffs that would apply. 9 Q. What tariffs? 10 A. I -- without having them in front of me, 11 it's -- I remember there are various tariffs that 12 contain various terms that would add up to forming 13 the terms and conditions of movement. 14 Q. But nowhere on this bill of lading are 15 those tariffs enumerated, are they? 16 A. No. 17 Q. And how would Mr. Jasso know which 18 tariffs you are referring to? 19 A. He would presumably have been able to 20 pull those off of the website had he wanted to 21 check what they were, or enquire of CP as to which 22 terms and conditions or tariffs were -- were being 23 referred to here. 24 Q. Is there a document that identifies the 25 tariffs that apply to this bill of lading?
Page 260 1 GLEN DONALD WILSON 2 A. I don't believe so. I think it's -- the 3 tariffs apply as applicable. 4 Q. Who determines that? 5 A. Well, that would be a matter of 6 application of the tariffs. It would be -- each 7 tariff would state what its terms are, what they 8 apply to. This being a shipment of hazardous 9 materials. Any provisions that relate to shipments 10 of hazardous materials would apply. In a shipment 11 of non-hazardous materials, those provisions would 12 not apply. 13 Q. Who decides that? 14 A. It's a -- it's a matter of reading and 15 interpreting and understanding the provisions that 16 would apply. 17 Q. But how was -- how was Mr. Jasso to know 18 what these terms and conditions are? 19 A. Well, Mr. Jasso was designated by 20 Western Petroleum. Western Petroleum would have 21 had a dialogue with CP about those. 22 Q. On this particular bill of lading? 23 A. Not on a train-specific bill of lading. 24 But in their contract lapsing, they would have 25 understood that the terms and tariffs apply.	Page 261 1 GLEN DONALD WILSON 2 Q. How do you know that? 3 A. Because it's one or the other. Shippers 4 understand that terms apply to shipments. If it's 5 not -- if those terms are not contained in a 6 contract bilateral between the shipper and the 7 railway, then they're in the general application 8 tariffs. 9 Q. And where does one learn that from? 10 A. From the discussion that would take 11 place with our marketing and sales team about terms 12 of movement. 13 Q. Does CP have any document or any email 14 communication that identifies to Western Petroleum 15 which tariffs apply to this train? 16 A. I -- I don't know, but I -- I doubt it. 17 The movement of a specific train would not 18 typically be something that would be discussed that 19 way. The movement of the shipper's freight 20 generally would -- that would be more the nature of 21 the discussion. 22 Q. I'm -- I'm looking at this period of 23 time where you had an existing agreement with 24 Western Petroleum/World Fuels. Are we on the same 25 page there?

1 GLEN DONALD WILSON

2 A. Yes.

3 Q. Okay. Then the agreement lapses and
4 there's an interim period where there's no
5 agreement between the parties?

6 A. Yes.

7 Q. And I want to know how it -- how one
8 determines which tariffs apply to the trains during
9 that interim period.

10 A. Okay. As I've said, in -- the way that
11 shippers -- I have no knowledge of the specific
12 discussions between CP and Western Petroleum or
13 World Fuels.

14 But as a matter of general course,
15 you don't get to ship by rail without understanding
16 that one or the other applies. You either have a
17 contract or you move your goods subject to the
18 terms of the tariffs.

19 If there's any question of what
20 terms apply, that's a discussion point between our
21 marketing and sales team and the shippers.

22 Q. And, again, I just -- I want to
23 understand. Are there any documents that you are
24 aware of that clarify between World Fuels and
25 Western Petroleum on the one hand and CP on the

1 GLEN DONALD WILSON

2 other which tariffs applied to the trains that were
3 transporting during this interim period when there
4 was no overarching agreement?

5 A. I don't know if there were such
6 documents or not.

7 Q. You're not aware of any sitting here
8 today?

9 A. No.

10 Q. Are all of these tariffs that you're
11 referring to -- were all of these tariffs available
12 on the CP website at the time that this bill of
13 lading was issued?

14 A. I believe so, yes.

15 Q. Are you sure of that?

16 A. I'm not a hundred percent sure, but I --
17 I generally know that all of our tariffs are
18 accessible. I believe they're all posted to the
19 website.

20 Q. Do any of these tariffs deal with the
21 question of the level of liability that CP was
22 willing to incur for the transport?

23 A. There are some liability provisions in
24 one of the tariffs in particular. I don't recall
25 what they say.

1 GLEN DONALD WILSON

2 Q. And do the parties get to decide which
3 level of liability is going to apply?

4 A. Which parties?

5 Q. The part -- well, in this instance
6 World Fuels and CP.

7 A. It -- they can discuss that, but the
8 provisions of the tariff would cover the -- would
9 provide those terms.

10 Q. So the -- there's a tariff that
11 determines the level of liability that CP is
12 willing to --

13 A. It contains provisions on liability. I
14 don't -- I don't recall what they say.

15 Q. You don't know what they say?

16 A. I don't recall.

17 Q. Would Mr. Loxam and Mr. Bunce know?

18 A. Not Mr. Bunce. Mr. Dornian I believe
19 would probably --

20 Q. Mr. Dornian, sorry?

21 A. Yeah. Mr. Loxam and Mr. Dornian would
22 be very -- far more familiar with that.

23 MR. MCDONALD: I will ask the court
24 reporter to mark as Wilson Exhibit 19 what appears
25 to be a tariff.

1 GLEN DONALD WILSON

2 EXHIBIT 19 - Tariff

3 Q. MR. MCDONALD: Have you seen this
4 before?

5 A. I believe I saw this in preparation for
6 these proceedings.

7 Q. What is it?

8 A. It's described as a tariff that -- looks
9 like it sets rates primarily for different
10 routings, so -- the name is specifically
11 World Fuel.

12 Q. And what is the purpose of this
13 document?

14 A. I believe it's to clarify the rates that
15 will apply to different routings.

16 Q. And did this tariff govern Train 282?

17 A. I believe I see a reference to origin
18 from New Town, destination Saint John, and
19 Route CPRS-MMA. So that, I believe, would include
20 Train 282.

21 Q. So the answer is yes, this tariff did
22 govern Train 282?

23 A. Yes.

24 Q. And does this constitute an interim
25 tariff?

Page 266 1 GLEN DONALD WILSON 2 A. That's not a term I'm afraid I'm 3 familiar with. 4 Q. What is CP's position as to what effect 5 this tariff has on Train 282? 6 A. I believe this would establish the 7 rates, being -- looks like \$5,435, if I'm not 8 mistaken; then down below the division, which would 9 be \$3,500 per railcar to CP and \$1,935 to MMA. 10 Q. Is that it? 11 A. No. I think the -- I mean there's more 12 in here that looks like it would apply. I'd have 13 to read through it very closely to say exactly 14 what. There's fuel price provisions. 15 Q. So does this constitute a contract 16 between Western Petroleum/World Fuels and CP? 17 A. I'm not sure if this document 18 constitutes a contract. It represents terms of 19 contract at the very least. 20 Q. Is there another written contract that 21 you're aware of between CP and 22 Western Petroleum/World Fuels relating to Train 282 23 beyond the bill of lading that we've marked as 24 Exhibit 18? 25 A. Well, I didn't describe the bill of	Page 267 1 GLEN DONALD WILSON 2 lading that way. I described the bill of lading 3 with -- in conjunction with the tariffs and other 4 -- other terms comprising the contract essentially 5 for the movement. 6 Q. All right. Well, let's back up, then. 7 Is the bill of lading a contractual document 8 between CP and Western Petroleum? 9 A. Yeah, I would call it part of the 10 contract. 11 Q. Are you aware of any other document 12 besides the bill of lading that evidences the 13 contract between CP and Western Petroleum that 14 relates to Train 282? 15 A. That relates specific -- the tariffs of 16 general application would all apply. I'm not aware 17 of a specific one for Train 282. 18 Q. Beyond the bill of lading? 19 A. Beyond the bill of lading. 20 MR. MCDONALD: Off the record. 21 (DISCUSSION OFF THE RECORD) 22 (ADJOURNMENT) 23 MR. MCDONALD: I'll have the court 24 reporter mark as Wilson Exhibit 20 an email from 25 Jim Kozey to a number of recipients, dated
Page 268 1 GLEN DONALD WILSON 2 December 23rd, 2013, with an attachment. 3 EXHIBIT 20 - Email from Jim Kozey 4 to a number of recipients, dated 5 December 23rd, 2013, with an 6 attachment 7 Q. MR. MCDONALD: Have you seen this 8 document before, Mr. Wilson? 9 A. I'm copied on the -- the message from 10 Ed Greenberg below that. I don't recall seeing 11 Mr. Kozey's message forwarding that on before. 12 Q. Okay. The document that's attached to 13 these emails has been referred to by a number of 14 people as the, quote, "Irving PowerPoint." Are 15 familiar with that term? 16 A. I've heard it, yes. 17 Q. Okay. I just want to know was anybody 18 at CP aware of the Irving PowerPoint prior to the 19 derailment? 20 A. No, I don't believe so. 21 Q. Did CP itself have any agreements with 22 any of its shippers relating to the transport of 23 crude oil from its source to the New Town 24 transloading facility? 25 A. When you say -- so you mean from	Page 269 1 GLEN DONALD WILSON 2 wellheads and the like? 3 Q. Yes. 4 A. No. 5 Q. So is my understanding correct that the 6 shippers had different arrangements to transport 7 their crude by truck to the New Town transload 8 facility and then the exchange will be made to 9 transport by rail? 10 A. Yes. CP's interest would have been in 11 the rail facility and not how the crude oil got to 12 the rail facility. 13 Q. Did CP have any information about any 14 agreements between the shippers and any third 15 parties with respect to the transport of their 16 crude oil to the New Town transloading facility? 17 A. Sorry, did we have any which? 18 MR. MCDONALD: Read back the 19 question, please. 20 THE COURT REPORTER: (By reading) 21 "Q. Did CP have any information 22 about any agreements between the 23 shippers and any third parties with 24 respect to the transport of their 25 crude oil to the New Town

Page 270 1 GLEN DONALD WILSON 2 transloading facility?" 3 A. No. 4 Q. MR. MCDONALD: Shifting gears 5 again. We're going to be jumping around here. 6 A. Sure. 7 Q. Trying to close this out. 8 I want to talk about separation, if 9 any, between Soo Line documents and CP documents 10 was one of the topics that was on the deposition 11 notice. 12 A. Okay. 13 Q. Okay. Does Soo Line create its own 14 electronic documents separate from the CP network? 15 A. I'm not sure about the term "electronic 16 documents." I guess I'm hesitating because of it. 17 Soo Line sometimes has separate documents. 18 We talked earlier about the 19 hazardous material, instructions for rail versus 20 the CPRC general operating instructions. So those 21 are separate documents that are each their version 22 of trying to do the same thing; determining 23 operating practices for the railway. 24 I'm not sure about electronic 25 format.	Page 271 1 GLEN DONALD WILSON 2 Q. Yeah, I'm just -- I'm distinguishing 3 paper copies in a file that somebody could walk 4 into a Soo Line office and cull through and decide 5 which ones they wanted to produce in response to a 6 discovery request as opposed to those that one 7 would have to go to a computer or some other 8 peripheral and/or a network to retrieve. 9 So that what I'm trying to get at 10 is does Soo Line store any electronic documents, 11 those that would have to be retrieved from the 12 computer, on a network separate from CP's? 13 A. No. The network itself and the systems 14 would all be the same. Some of the documents may 15 be limited in their application but they would all 16 be part of the same network. 17 Q. Does Soo Line have its own IT staff 18 separate from CP? 19 A. It -- it does have some IT staff. They 20 would be reporting into the -- the CP IT group and 21 working on the same systems. 22 Q. Do Soo Line employees create their own 23 emails -- email addresses separate from those on 24 the CP system or are they all integrated? 25 A. They're all integrated into CPR emails.
Page 272 1 GLEN DONALD WILSON 2 Q. They have the same CP domain? 3 A. Yes. 4 MR. MCDONALD: Have the court 5 reporter mark as Exhibit 21 a document from the 6 Region 8 hazardous materials team inspection for 7 the Bakken Formation in North Dakota. 8 EXHIBIT 21 - Document from the 9 Region 8 hazardous materials team 10 inspection for the Bakken Formation 11 in North Dakota 12 Q. MR. MCDONALD: Have you seen that 13 document before, Mr. Wilson? 14 A. Yes. I believe I was shown this 15 document in preparation for these proceedings. 16 Q. Was CP aware of this document prior to 17 Mr. Kozey's deposition? 18 A. No. 19 Q. That was the first time anyone at CP had 20 ever seen it? 21 A. I believe that's correct, yes. 22 Q. Would you turn to page 9 of the 23 document. There's an item number 6 there that 24 talks about a new issue about several new companies 25 shipping crude oil as petroleum crude oil, 3,	Page 273 1 GLEN DONALD WILSON 2 Packing Group III. Do you see that? 3 A. I do. 4 Q. And those were designations that 5 differed from the site MDSs -- MSDSs which 6 classified the material as PG I or PG II. Do you 7 see that? 8 A. Yes. It -- it's poorly written but -- 9 Q. Yes. 10 A. -- I take it that's what it means -- 11 Q. Yes. 12 A. -- to say. 13 Q. So even though CP hadn't seen this 14 document before, in or around 2012, was CP aware of 15 this issue that the Region 8 hazardous materials 16 team inspection had identified? 17 A. No. 18 Q. CP had no knowledge of this? 19 A. No. I guess I should say yes to that. 20 CP had no knowledge is -- 21 Q. You're right. Thank you for clarifying 22 the record. 23 You're familiar with the derailment 24 that has been referred to as "the White River 25 derailment"?

1 GLEN DONALD WILSON

2 A. Yes.

3 Q. How fast was that train going when it
4 derailed?

5 A. I don't recall the exact speed. I
6 believe it was in the area of 40 miles an hour.

7 Q. And crude oil spilled in that
8 derailment?

9 A. Yes.

10 Q. Where did the railcars end up upon the
11 derailment?

12 A. You're talking specifically the crude
13 oil cars?

14 Q. Yes.

15 A. Because there were various commodities
16 in the derailment.

17 I believe the crude oil cars went
18 down an embankment.

19 Q. And do you know how much crude oil was
20 released in that accident?

21 A. I recall that two cars leaked crude oil.
22 I don't recall the specific quantity that was lost.
23 One of them I believe lost all or virtually all of
24 its contents. The other one lost some.

25 MR. MCDONALD: Have the court

1 GLEN DONALD WILSON

2 reporter mark as Wilson Exhibit 22 an email chain
3 that ends and begins on April 3rd, 2013.

4 EXHIBIT 22 - Email chain that ends
5 and begins on April 3rd, 2013

6 Q. MR. MCDONALD: You have seen this
7 email before, sir?

8 A. Yes. It's a series of emails, but
9 I've -- I've seen each of them.

10 Q. You wrote the top email?

11 A. Yes, I did.

12 Q. And this is a series of communications
13 shortly after learning of the White River
14 derailment; is that right?

15 A. Yes. It's -- it's the same day as the
16 derailment occurred.

17 Q. Right. So in your email you relay that
18 you're tied up in managing the response?

19 A. Yes.

20 Q. Was that your responsibility, to manage
21 that response?

22 A. I may have stated that a bit loosely in
23 a time crunch. I think I was trying to get a -- I
24 was involved in the response. I wasn't -- I didn't
25 go to the site, so I don't want to be misunderstood

1 GLEN DONALD WILSON

2 that I was managing it on site in this case.

3 Q. You had overall responsibility for it?

4 A. I was part of the team that was
5 responsible for the response, but I wouldn't say I
6 had overall responsibility.

7 Q. All right. In your email you mention
8 the origin is Canmar. Is that the shipper?

9 A. I believe Vermilion Resources is the
10 shipper and Canmar is the location.

11 Q. Where is Canmar?

12 A. It's in Central Alberta, I believe.

13 Q. And you mentioned that is light sweet
14 crude?

15 A. Yes.

16 Q. Why was the origin of the oil important
17 to put into this email?

18 A. Ms. Robinson asked me for it. So her
19 question was can I pull a billing in the origin.

20 Q. Okay.

21 A. So that was responsive to that
22 question --

23 Q. Okay.

24 A. -- that she had asked.

25 Q. And why did you mention that it was

1 GLEN DONALD WILSON

2 light sweet crude?

3 A. I don't recall.

4 Q. Does that have any significance in terms
5 of the response?

6 A. Not -- not really. It's -- it's a --
7 sweet light crude is more of a trade name. It's
8 not a classification. Not even a trade name, it's
9 a generic descriptor that's often used for crude.

10 I -- I probably had -- someone
11 probably used that term to me and I repeated it in
12 this message.

13 Q. Is it fair to say that "light sweet
14 crude" is a generic descriptive for the more
15 flammable form of crude oil?

16 A. Generally, yes. It's -- it's -- lighter
17 crude generally equates to more flammable. Not
18 always the case, but as I -- as we talked about
19 earlier.

20 Q. What was the classification of this oil
21 that spilled in the White River derailment?

22 A. I -- I don't recall. I know it was --
23 it was a dangerous good-regulated Class III
24 flammable liquid. I -- I don't recall the packing
25 group.

Page 278 1 GLEN DONALD WILSON 2 Q. You don't recall the packing group? 3 A. Yeah. 4 Q. And did this crude that spilled from 5 these railcars catch fire? 6 A. No, they did not. 7 Q. Was there a fire at the derailment site 8 at White River? 9 A. There -- there was some time later, 10 during the recovery operations. I believe it was 11 started by the bucket of an excavator working on 12 the site. 13 Q. What caught fire? 14 A. Some of the oil that they were -- I 15 believe the excavator was attempting to create a 16 berm to contain the oil and dragged its bucket 17 across a rock, creating a spark, and there was a 18 small fire that was quickly extinguished. 19 Q. Does CP know that for a fact or is that 20 an assumption or an opinion that it was an 21 excavator bucket that sparked the fire? 22 A. That was a fact-based report that I 23 received, and I -- I know others in CP received. I 24 believe that originated from the operator of the 25 equipment, so it -- it was the -- that's the only	Page 279 1 GLEN DONALD WILSON 2 description I've ever known for it. 3 Q. Was this fire reported to any 4 authorities? 5 A. I believe it was reported or called into 6 the local fire department. 7 Q. Didn't cause any damage? 8 A. No. 9 Q. Did CP institute any safety precautions 10 for the transport of crude oil as a result of the 11 White River derailment? 12 A. I don't believe there were any changes 13 specific to crude oil that -- that we made directly 14 as a result. That derailment was part of the basis 15 for some of the changes that we were seeking in 16 tank car standards more generally, but that's not a 17 CP practice that would have changed. 18 MR. MCDONALD: Off the record. 19 (DISCUSSION OFF THE RECORD) 20 (ADJOURNMENT) 21 Q. MR. MCDONALD: All right. Who was 22 responsible for choosing the route for Train 282? 23 A. The shipper, World Fuels. 24 Q. Did CP have any involvement in that 25 decision?
Page 280 1 GLEN DONALD WILSON 2 A. CP executes that decision by following 3 the instructions. 4 Q. What about with respect to the 5 interchange? What interchanges -- how was that 6 decided? 7 A. The -- the shipper by selecting which 8 route it wants is -- is in effect selecting as well 9 the carrier that the traffic would be interchanged 10 to. So in this case we would then apply the terms 11 of agreement for interchange with MMA. 12 MR. MCDONALD: Okay. I have 13 nothing further at this time, Mr. Wilson. Thank 14 you for your testimony. 15 MR. HEMMING: I have no questions 16 for you, Mr. Wilson. 17 And we'll put on the record the 18 parties have agreed to review the transcript for 19 Mr. Wilson as designee of Canadian Pacific Railway 20 Company, to review it within the time permitted by 21 the federal rules. 22 If we note a difference in 23 corporate position between Canadian Pacific Railway 24 Company and Soo Line Railroad Company, we will note 25 that in our response to the transcript, and at	Page 281 1 GLEN DONALD WILSON 2 which time if there is such a difference, we'll 3 provide -- make available a corporate 4 representative for Soo Line Railroad Company to sit 5 and appear for a 30(b)(6) deposition in order to 6 explain the difference in corporate position, if 7 any. 8 MR. MCDONALD: Off the record. 9 (DISCUSSION OFF THE RECORD) 10 MR. HEMMING: And, further, if we 11 find that there is no difference in corporate 12 position on the topics covered by the examination 13 that were conducted here today, we will agree that 14 such testimony is the same as if used for Soo Line 15 Railroad Company. 16 MR. MCDONALD: The same as if given 17 by Soo Line Railroad Company? 18 MR. HEMMING: Correct. 19 MR. MCDONALD: Thank you. 20 21 (Proceedings ended at 5:58 p.m.) 22 23 24 25

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 1 to 281 are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary,
Province of Alberta, this 17th day of
December, 2019.

"C.M. Forster", CSR(A)
Official Court Reporter

ERRATA SHEET

Case Name:

Deposition Date:

Deponent:

Pg. No. Now Reads Should Read Reason

6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

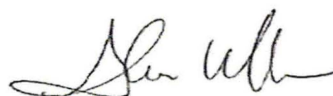
THIS ____ DAY OF _____, 2019.

(Notary Public) MY COMMISSION EXPIRES: _____

ERRATA SHEET

Page	Line	Change	Reason for Change
53	9-11	Strike "Probably from this map New Town, and Estevan, Scotford. Certainly those three."	Ownership of transload facilities was not among the noticed topics. Upon investigation, CP had no ownership interest in the New Town facility, which was privately owned.
54	2-3	Change "I believe CP owned the facility and contracted for its operation with a third party." To: "CP had no ownership of the New Town facility."	Ownership of the New Town facility was not among the noticed topics. Upon investigation, CP had no ownership interest in the facility, which was privately owned.

By the above corrections, if any, I hereby sign my deposition



Glen Donald Wilson

Dated this 16th day of January, 2020

EXHIBIT D

1
2 UNITED STATES BANKRUPTCY COURT
3 FOR THE DISTRICT OF MAINE

4 In re:)
5)
6 Montreal, Maine & Atlantic) Bk. No. 13-10670
7 Railway, Ltd.,) Chapter 11
8)
9 Debtor.)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 ROBERT J. KEACH, solely in) Adv. Proc. No.
2 his capacity as the estate) 14-1001
3 representative of the)
4 post-effective date estate of)
5 MONTREAL, MAINE & ATLANTIC)
6 RAILWAY, LTD.,)
7)
8 Plaintiff,)
9)
10 v.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

CANADIAN PACIFIC RAILWAY
COMPANY and SOO LINE RAILROAD
COMPANY,
Defendants.

CONFIDENTIAL DEPOSITION OF DARLENE CORA NAGY, taken
by the Plaintiff, commencing at the hour of 8:54
a.m. on Thursday, February 14, 2019, at Blake,
Cassels & Graydon LLP, before Deanna M. DiPaolo,
CSR(A), Certified Shorthand Reporter.

3

1 **A. No.**
2 Q. I'd like to lay out just a few grounds
3 rules. The first thing is that a court reporter's
4 transcribing verbatim whatever's said today, so
5 it's important that you answer questions verbally,
6 not with a nod of the head or a shrug or a shake of
7 the head. Do you understand that?
8 **A. Yes, I do.**
9 Q. The transcription also means that you
10 and I have to not speak on top of one another.
11 That's easier said than done. I'll try to let you
12 finish your answer, and I'd ask that you let me
13 finish my question so that the transcript is clear;
14 is that right?
15 **A. Yes.**
16 Q. If you need to have a question repeated
17 or rephrased, just let me know, I'll try to
18 rephrase it. Otherwise, it'll -- I'll assume that
19 you understood the question; is that fair?
20 **A. That's fair.**
21 Q. If you need a break at any time, just
22 let me know, we can take it. The only caveat to
23 that is if there's a question pending, I'd ask that
24 you answer the question before we take a break.
25 Your attorney may object from time

2

1 ATTORNEY FOR THE PLAINTIFF:
2 Bernstein, Shur, Sawyer & Nelson, P.A.
3 BY: JACK WOODCOCK
4 100 Middle Street, PO Box 9729
5 Portland, ME 04104-5029
6 (207) 228-7115
7 jwoodcock@bssn.com

8 ATTORNEYS FOR FOR THE DEFENDANTS:
9 Briggs and Morgan
10 BY: PAUL J. HEMMING
11 80 South Eighth Street,
12 Minneapolis, MN 55402
13 (612)977-8719
14 phemming@briggs.com

15 Canadian Pacific Railway
16 BY: CHRISTINE PLANTE
17 7550 Ogden Dale Rd SE
18 Calgary, AB T2C 4X9
19 (403) 319-6173
20 christine_plante@cpr.ca

21 -----
22 DARLENE CORA NAGY, sworn, examined by
23 Mr. Woodcock:
24 Q. Good morning, Ms. Nagy, we just met, my
25 name's Jack Woodcock.

1 **A. Morning.**
2 Q. I represent the estate representative
3 Montreal, Maine & Atlantic Railway in this action.
4 Do you understand this action stems
5 from the derailment in Lac-Mégantic, Quebec?
6 **A. Yes, I do.**
7 Q. Have you ever had your deposition taken
8 before?

4

1 to time. Subject to his instruction that you not
2 answer the question, you should answer the
3 question, subject to the objection, okay?
4 **A. Understood.**
5 Q. Is there any reason you cannot answer
6 the questions I pose to you truthfully and honestly
7 today?
8 **A. No.**
9 Q. You're not under the influence of any
10 drugs or alcohol?
11 **A. No.**
12 Q. And you understand that even though
13 we're in this informal setting here today, your
14 testimony has the same weight as it does in court?
15 **A. Yes, I do.**
16 Q. Just for a few background terms, I'll
17 refer to "CP," you understand that to be Canadian
18 Pacific and the other defendants in this case, Soo
19 Line Railway, for instance?
20 **A. Okay.**
21 Q. "MMA," Montreal, Maine & Atlantic
22 Railway?
23 **A. Yes.**
24 Q. Good. And Train 282 will be the train
25 originated in New Town destined for Saint John

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

5

1 which derailed in Lac-Mégantic on July 6, 2013?

2 **A. Okay.**

3 Q. Can you please state your full name for
4 the record?

5 **A. Darlene Cora Nagy.**

6 Q. And your address, please?

7 **A. 131 Scenic Park Crescent NW, Calgary,**
8 **Alberta.**

9 Q. Your date of birth?

10 **A. September 23rd, 1963.**

11 Q. Have you been convicted of any crimes?

12 **A. No.**

13 Q. Where did you grow up?

14 **A. I was born in Broadview, Saskatchewan,**
15 **spent some time in Bredenburg, Saskatchewan, but**
16 **mostly grew up in Saskatoon, Saskatchewan.**

17 Q. Did you go to high school there?

18 **A. Yes, I did.**

19 Q. What did your parents do for work?

20 **A. My father worked for CP Rail, my mother**
21 **was a housewife.**

22 Q. How long did your dad work for CP?

23 **A. From the time he was 14 until he passed**
24 **away when he was 51.**

25 Q. Do you have any other family members who

6

1 work for CP?

2 **A. I do, I have a brother.**

3 Q. And what is his -- is he currently a CP
4 employee?

5 **A. Yes, he is.**

6 Q. What is his position?

7 **A. He's a transportation representative in**
8 **the Winnipeg network service centre in Winnipeg.**

9 Q. So he lives in Winnipeg?

10 **A. Yes.**

11 Q. Any other family members who are
12 employed or have been employed by CP?

13 **A. My ex-husband.**

14 Q. And what's his name?

15 **A. Sheldon Nagy.**

16 Q. And what -- is he still employed with
17 CP?

18 **A. He's retired.**

19 Q. What was his position?

20 **A. He was an interline clerk.**

21 Q. What does that mean?

22 **A. He was responsible for the invoices**
23 **between the short-line railroads and CP Rail.**

24 Q. Short line being like Soo Line?

25 **A. Short line being smaller, like a...**

7

1 Q. MMA?

2 **A. Not a federal-governed railway.**

3 Q. Did you and your ex-husband meet at CP?

4 **A. Yes, we did.**

5 Q. Can you briefly describe your education
6 after high school?

7 **A. I took a two-year diploma course for**
8 **early childhood education at Kelsey Institute in**
9 **Saskatoon, as well as I have a certificate in**
10 **management and administration from the University**
11 **of Winnipeg.**

12 Q. Is the two-year diploma you got in
13 Saskatoon, is that a -- how would you describe
14 that?

15 **A. It's for working with children in a --**
16 **in a daycare setting, special needs children.**

17 Q. We have, in the United States, we have a
18 designation, it's an associate's degree, instead of
19 a bachelor's degree. Does that ring anything to
20 you, no?

21 **A. It does not.**

22 Q. And then the certificate, how long were
23 you in school for your certificate of management
24 and administration?

25 **A. I took that as an evening course in the**

8

1 **'90s.**

2 Q. And that is just a certificate?

3 **A. Correct.**

4 Q. Following your diploma in early
5 education, did you work in that field?

6 **A. I did.**

7 Q. For how long?

8 **A. Approximately three and a half years.**

9 Q. And what made you leave?

10 **A. I was working at a crisis nursery**
11 **centre, the first one that was established in**
12 **Canada, where children were brought to us from the**
13 **police in a -- that had been in domestic**
14 **altercations, parents have been sent to jail or**
15 **beat up. It was a stressful situation.**

16 **CP Rail called me and asked me if I**
17 **would come back to work, so I tried to do both**
18 **positions for awhile. CP Rail paid three times as**
19 **much as crisis nursery did, so I chose to then go**
20 **full-time with CP Rail.**

21 Q. You mentioned going back to work for CP
22 Rail.

23 **A. Correct.**

24 Q. What was your first --

25 **A. I started in June of 1981 as a telephone**

9

1 **answering clerk.**

2 Q. Was this before you received your
3 diploma in Saskatoon?

4 **A. This was before, that's correct.**

5 Q. So what year did you graduate high
6 school?

7 **A. 1981.**

8 Q. And so your first job was CP Rail?

9 **A. Correct.**

10 Q. Did you work in your -- the same office
11 that your father did?

12 **A. Yes, I did, for one year.**

13 Q. And then what was your next position?

14 **A. I went to school, took the course, went
15 back to work at CP Rail over the summer to earn
16 some money, went back to school and then went to
17 work at crisis nursery.**

18 Q. When you worked there at CP during the
19 summers, would you also be employed as a clerk?

20 **A. I was employed as a -- I worked several
21 positions. So I was the telephone operating clerk,
22 I was a train machine clerk, a car control clerk,
23 car checker, so I'd work out in the yard watching
24 switch trains, a waybilling clerk. I called crews.
25 I was assistant chief clerk. I worked every**

10

1 **position there was in the office. It was a
2 unionized position at that time.**

3 Q. And this is in Saskatoon?

4 **A. That's correct.**

5 Q. And then after your stint at the crisis
6 nursery centre, what was your position with CP
7 again?

8 **A. I -- all those varied positions, I went
9 back and was vacation relief for those positions.**

10 Q. So that would have been on or about
11 1984/85?

12 **A. 1986.**

13 Q. 1986, and have you been continually
14 employed by CP since 1986?

15 **A. I have.**

16 Q. After your role starting in 1986 as sort
17 of a utility person, what was your next official
18 position?

19 **A. I was transferred to the Winnipeg
20 customer service centre. All the customer service
21 centres across Canada were being transferred into
22 Winnipeg. I moved there in October of 1994 and
23 went through a nine-week course in training on how
24 to do all those positions.**

25 **After the training, they asked me**

11

1 **to be a trainer, so I was a trainer for about a
2 year and a half. And then I was promoted to a
3 night supervisor/manager on the floor.**

4 Q. How long were you a night supervisor?

5 **A. Until 1997 when I went off on mat leave.**

6 Q. And after you -- how long were you on
7 maternity leave?

8 **A. For about six months.**

9 Q. What was your position after that?

10 **A. Was promoted to waybilling manager in
11 the Winnipeg office.**

12 Q. And what did you do in your position as
13 waybilling manager?

14 **A. I was in charge of all the waybills that
15 were created for both carload and intermodal in
16 both Canada and the US, as well as preparing custom
17 documents from the waybills.**

18 Q. Did all of CP's waybills go through the
19 Winnipeg office?

20 **A. No.**

21 Q. Through your office?

22 **A. There was some in the Minneapolis
23 office, as well.**

24 Q. What determined which went to
25 Minneapolis and which went to Winnipeg?

12

1 **A. Where the car was being billed from. US
2 cars were billed in the US, Canadian cars were
3 billed in Canada.**

4 Q. So your office handled waybilling for
5 all Canadian-originated cars?

6 **A. Correct.**

7 Q. And how long were you waybilling
8 manager?

9 **A. Until 2005 when I was transferred to
10 Calgary.**

11 Q. Was that a promotion?

12 **A. It was a lateral move.**

13 Q. Why did you move?

14 **A. There was more opportunity in the
15 Calgary office.**

16 Q. CP's headquartered in Calgary?

17 **A. Correct.**

18 Q. What was your position when you first
19 moved to Calgary in '05?

20 **A. I was the manager of the mines, metals,
21 and aggregates customer service team.**

22 Q. What did you do in that role?

23 **A. I managed a group of customer service
24 reps who spoke to customers if they had problems
25 with their cars moving or if they were delayed or**

13

1 **any issues that might be happening with their**
2 **railcars.**

3 Q. You mentioned mines, metals, and
4 aggregates. Mines, does that refer to cargo that
5 would have originated from a mine?

6 **A. Like -- yes, like nickel or that type of**
7 **thing.**

8 Q. Coal?

9 **A. We did not do coal.**

10 Q. And then metals, self-explanatory?

11 **A. Correct.**

12 Q. And what does "aggregates" mean?

13 **A. Everything else that nobody else wanted**
14 **pretty much.**

15 Q. Can you give an example of an aggregate?

16 **A. A carload of scrap that wasn't going to**
17 **a typical destination that we would always send it**
18 **to like EVRAZ.**

19 Q. Is it correct to describe aggregates as
20 just miscellanea?

21 **A. Correct.**

22 Q. And how long were you manager in the
23 mines, metals, and aggregates division, there's a
24 division; is that right?

25 **A. Group.**

14

1 Q. Group?

2 **A. For one year.**

3 Q. What was your next position?

4 **A. I was the manager of domestic**
5 **intermodal.**

6 Q. Intermodal, what does that mean?

7 **A. The containers that you see on the**
8 **railcars that go by that sometimes say Canadian**
9 **Tire, that type of thing. So it's a container**
10 **instead of a -- that's loaded onto a flat car,**
11 **versus a railcar that already has wheels on it.**

12 Q. So the container can be then trucked or
13 shipped?

14 **A. Correct.**

15 Q. So you began that position in 2006;
16 right?

17 **A. Approximately, yes.**

18 Q. And how long were you in that position?

19 **A. For approximately a year, maybe 15**
20 **months.**

21 Q. What was your next position?

22 **A. I was the manager of boxcars and**
23 **flatcars in the asset management team.**

24 Q. What did your -- what were your duties
25 as manager of boxcars and flatcars?

15

1 **A. I had asset distributors who reported to**
2 **me who were responsible for distributing empty**
3 **boxcars and flatcars to our customers across our**
4 **network.**

5 Q. And how long were you in that position?

6 **A. I was in that position for**
7 **approximately -- approximately about nine months**
8 **when I was then also given other fleet types and**
9 **then promoted to director of asset management.**

10 Q. Are the boxcars and flatcars you
11 mentioned, are they owned by CP?

12 **A. Some of them were, some of them were**
13 **leased cars.**

14 Q. Is that why the term, it's asset
15 management?

16 **A. Correct.**

17 Q. Other than boxcars and flatcars, what
18 other assets were you managing?

19 **A. Gondolas, hoppers and --**

20 Q. When I think of a gondola, I think of
21 Venice or a ski mountain.

22 **A. When I think --**

23 Q. That doesn't compute.

24 **A. No, when I think of gondola, think of**
25 **what a coal is loaded into, so you have an open**

16

1 **top. Whereas a hopper has -- is same type of car,**
2 **but it's closed on the top.**

3 **I was also in charge of bi-levels**
4 **and tri-levels for automotive, the automotive**
5 **industry.**

6 Q. And again, these are CP assets that
7 you're managing?

8 **A. Those are leased assets that come on to**
9 **our rail lines that we need to direct to customers**
10 **for placement.**

11 Q. Leased by CP or leased by the customers?

12 **A. Leased -- there's different types.**
13 **There's -- some are leased by CP, very few, most**
14 **are -- they're leased by customers or in a pool.**
15 **TTX has a large pool that CP is a part of.**

16 **And so dependent on how many assets**
17 **we ask for, so if we know our customers require**
18 **approximately 200 railcars, we would ask to have**
19 **200 cars out of that pool. And then we would be**
20 **able to direct them where they need to go.**

21 Q. And how long were you director of asset
22 management?

23 **A. Until December 31st of 2012.**

24 Q. What was your next position?

25 **A. On January 1st of 2013, I became the**

17

1 **hazmat program manager.**

2 Q. Is that your current title?

3 **A. Correct.**

4 Q. I haven't been counting here, but is it
5 safe to say you've been in like a dozen positions
6 at CP?

7 **A. That would be safe to say.**

8 Q. Is there -- is it safe to say that also
9 you have a pretty wide understanding of CP's
10 business from your positions within it?

11 **A. I have a fairly solid understanding of**
12 **the -- the business on the rail side, like**
13 **delivering railcars.**

14 Q. Is it typical for employees of CP to
15 have as many positions as you do or are you unique
16 in that respect?

17 **A. Employees that started in the same time**
18 **frame as I did would have had varied background as**
19 **I do. It's not typical now for people to move to**
20 **that many different positions.**

21 Q. Were your positions union positions
22 or --

23 **A. Up until I became a trainer in Winnipeg**
24 **in 1994, they were all unionized before that.**

25 Q. Is CP still unionized?

18

1 **A. They still have unionized positions.**

2 Q. Hand you what we'll mark as Nagy Exhibit
3 1.

4 **EXHIBIT 1 - Notice of deposition of**
5 **Darlene Nagy re Bk. No. 13-10670**
6 **Chapter 11**

7 Q. MR. WOODCOCK: Take some time to
8 review it, and I ask, have you seen this document
9 before?

10 **A. No.**

11 Q. At any rate, you are here to give your
12 deposition in this case; is that right?

13 **A. Correct.**

14 Q. Yeah, what did you do to prepare for
15 your deposition?

16 **A. I reviewed emails and spoke to my**
17 **lawyers in -- about how depositions work and what**
18 **to --**

19 MR. HEMMING: I'll just caution
20 you not to talk about the substance of our
21 conversations, but it's okay to tell who you spoke
22 with.

23 Q. MR. WOODCOCK: Did you select the
24 emails that you reviewed?

25 **A. No.**

19

1 Q. Who did, and you're pointing to --

2 **A. I'm not exactly sure who did.**

3 Q. Someone from CP's legal team?

4 **A. Correct.**

5 Q. Did any of those emails refresh your
6 recollection?

7 **A. Some of them did, yes.**

8 Q. Is there anyone in particular?

9 **A. The one where I -- that I created about**
10 **crude oil, that one was the most that I could**
11 **recall.**

12 Q. Other than the emails, did you review
13 any type of document, any other documents?

14 **A. No.**

15 Q. Other than counsel, did you speak to
16 anyone else about the substance of your deposition?

17 **A. No.**

18 Q. Did you talk with Bill Kozey?

19 MR. HEMMING: I think you mean
20 Jim.

21 Q. MR. WOODCOCK: Jim Kozey, sorry.

22 **A. No, I didn't speak to him about...**

23 Q. Is there anything else you can think of
24 that you did to prepare for your deposition, other
25 than your meeting with counsel, the review of

20

1 emails?

2 **A. I reviewed a deposition that was done by**
3 **James Clements in order to understand what a**
4 **deposition was.**

5 MR. HEMMING: So she's seen you
6 before, Jack.

7 Q. MR. WOODCOCK: Did you watch the
8 video?

9 **A. Watched the video, but he wasn't on it.**

10 Q. You heard my voice?

11 **A. I did.**

12 Q. Outside -- have you talked, spoken with
13 anybody outside of CP with the substance of your
14 deposition?

15 **A. No, I have not.**

16 Q. Hand you what we'll mark as Nagy Exhibit
17 2.

18 **EXHIBIT 2 - Organizational chart**
19 **for CP Safety, Environment &**
20 **Regulatory, dated January 25, 2013**

21 Q. MR. WOODCOCK: Have you seen this
22 document before?

23 **A. I've seen our org charts before; I don't**
24 **know if I've seen this particular org chart.**

25 Q. If we could turn to you on the org

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

21

1 chart, manager hazmat, that is your current
2 position, as well?

3 **A. Correct.**

4 Q. Right? Do you still work under Jim
5 Kozey?

6 **A. Yes, I do.**

7 Q. And did you directly report to him at
8 the time that this org chart was made in
9 January 25, 2013?

10 **A. Yes, I did.**

11 Q. If I could direct your attention to the
12 top of the chart, look at Mr. Glen Wilson, what was
13 his role at the time this org chart was made?

14 **A. He was the VP safety and environment and
15 regulatory.**

16 Q. And what did he do in that position?

17 MR. HEMMING: Object to
18 foundation. If you known, Darlene.

19 **A. I honestly don't know.**

20 Q. MR. WOODCOCK: Did you have any
21 interactions with Mr. Wilson?

22 **A. I would have attended some meetings that
23 he would have been in.**

24 Q. Do you know how many VPs Canadian
25 Pacific has?

22

1 **A. No, I do not.**

2 Q. Can you describe your role as manager of
3 hazmat in 2013?

4 **A. It was a new position, and I was hired
5 to ensure any updates that were done to the
6 Transportation of Dangerous Goods Regulations, as
7 well as the US 49 CFR Tariff 6000 regulations were
8 updated in our internal documents, as well as our
9 internal training programs.**

10 **I also was responsible for any
11 reports or reporting that was required out of those
12 regulations. I was also responsible for obtaining
13 train documents or compressed waybills for our
14 dangerous goods officers who were responding to any
15 incidents that were happening on CP Rail, as well
16 as assist them in contacting the shipper for any
17 technical advice they may want on the incident that
18 they were attending to, as well as requesting SDS
19 sheets for them, for that incident if they
20 requested them.**

21 Q. What was the division, if any, between
22 you and Mr. Kozey, in terms of duties?

23 **A. I was responsible more for the
24 regulation side of things. He attended more on the
25 tank car, that type of -- side of things and**

23

1 **attended most of the meetings that were held
2 outside of CP.**

3 Q. Can you expand on your role as the
4 regulation side of things?

5 **A. So I would read the proposed notice of
6 regulations or Gazette 1 type of information,
7 determine if there was going to be any changes to
8 any of our internal documents or training and would
9 prepare to get those updates done internally.**

10 Q. In terms of your role in reviewing new
11 regulations, did you have also a role in reviewing
12 compliance with existing regulations?

13 **A. No.**

14 Q. Who at CP would have had that
15 responsibility?

16 **A. I'm not sure.**

17 Q. In any event, it was not your role to --
18 or duty to ensure compliance with -- like the
19 existing *Transportation of Dangerous Goods Act*?

20 **A. It was my role to understand the
21 regulations and ensure that our internal documents
22 reflected those regulations.**

23 Q. So taking the *Transportation of
24 Dangerous Goods Act*, for example, it was your role
25 to ensure that CP complied with that act?

24

1 **A. In most aspects, yes.**

2 Q. And same thing for 49 CFR regs in the
3 United States?

4 **A. In most aspects, yes.**

5 Q. You qualified that by "most," what do
6 you mean by that?

7 **A. I -- because I wouldn't have a full
8 understanding of everything that would have been in
9 the regulations.**

10 Q. Who at CP would have had, if anybody, an
11 understanding of the full regulations?

12 **A. I don't believe we have an expert at CP
13 that has an understanding of the full regulations.**

14 Q. Is there anyone else at CP during the
15 2013 time frame who would have had a better
16 understanding of the *Transportation of Dangerous
17 Goods* and 49 CFR than you?

18 **A. Jim Kozey.**

19 Q. Anybody else?

20 **A. Paul Weiss would have had a better
21 understanding of them than me at that time.**

22 Q. And what was Paul's position?

23 **A. He's not on this org chart.**

24 MR. HEMMING: If you know from
25 your personal knowledge, you can answer.

25

1 **A. He's the transportation of dangerous**
2 **goods documentation manager; I'm not sure if he's a**
3 **manager or supervisor. And he works out of**
4 **Winnipeg.**

5 Q. Hand you what we'll mark as Exhibit 3 to
6 your deposition.

7 **EXHIBIT 3 - Organizational chart**
8 **for M&S Energy & Merchandise:**
9 **Energy, Chemicals & Plastics, dated**
10 **April 26, 2013**

11 Q. MR. WOODCOCK: Have you seen this
12 document before?

13 **A. No.**

14 Q. Is -- would Mr. Weiss be on Exhibit 3,
15 this org chart?

16 **A. No.**

17 Q. Do you know, comparing Exhibit 2 to
18 Exhibit 3, Exhibit 2 is Safety, Environmental, &
19 Regulatory, and Exhibit 3 is M&S Energy &
20 Merchandise. Would you know which group or
21 division Mr. Weiss would be under?

22 **A. Neither.**

23 Q. Neither of these, but do you know which
24 one he would be under?

25 **A. The -- it would be under Pam Arpin, I'm**

26

1 **not sure what her group is called.**

2 Q. Could you repeat that name, please?

3 **A. Pam Arpin, A-R-P-I-N.**

4 Q. And what -- do you know what Pam's
5 position is?

6 **A. She's in charge of the NSC in Winnipeg.**

7 Q. N --

8 **A. Network service centre.**

9 Q. Did you, when you worked in Winnipeg,
10 did you work with Ms. Arpin or Mr. Weiss?

11 **A. Ms. Arpin was not there when I worked in**
12 **Winnipeg; she worked in Calgary. We -- when I**
13 **moved to Calgary, she moved to Winnipeg.**

14 Q. So you never overlapped?

15 **A. I think we may have for a few months in**
16 **Calgary. Paul Weiss, I would have been in the same**
17 **office as him, but I wouldn't have worked directly**
18 **with him at that time.**

19 Q. In your role as hazmat manager in and
20 around 2013, did you interact with Mr. Weiss?

21 **A. Yes.**

22 Q. In what capacity?

23 **A. I would phone him for advice in**
24 **interpreting some of the regulations, as well as**
25 **for train documents, if I was having trouble**

27

1 **obtaining them, as well as for verifying different**
2 **documents that I was creating to ensure that I was**
3 **on the right track.**

4 Q. I think you previously testified that
5 you started your position as hazmat manager January
6 1, 2013; is that right?

7 **A. Correct.**

8 Q. Have you had any experience in dangerous
9 goods before that time?

10 **A. Other than in the waybilling team when I**
11 **was in charge of dangerous goods billing, none**
12 **other than that.**

13 Q. And what was your understanding or what
14 interaction had you had with dangerous goods in
15 your position as a waybilling team?

16 **A. To ensure that all of the correct data**
17 **was being sent in either on a paper bill of lading**
18 **through EDI into our centre so that a full waybill**
19 **could be created.**

20 Q. Is it correct for me to describe your
21 role with dangerous goods and the waybilling
22 section as sort of a clerical role where you're
23 ensuring they meet the requirements of the waybill?

24 **A. That's correct.**

25 Q. It didn't require substantive knowledge

28

1 of the underlying regulations?

2 **A. It did not.**

3 Q. If I can have you turn back to Nagy
4 Exhibit 2, in your role as hazmat manager in 2013,
5 who on this chart did you have the most
6 interactions with?

7 **A. Jim Kozey, as well as Lori Kennedy.**

8 Q. And other than those two principals, who
9 else did you interact with?

10 **A. Chris Bunce, and I would have been**
11 **involved with emails with Glen Wilson, as well as**
12 **Keith Shearer.**

13 Q. Anybody else?

14 **A. Not in regard to the position, no.**

15 Q. Can you describe --

16 **A. Oh, I'm sorry.**

17 Q. Sure.

18 **A. Actually would have had -- I didn't --**
19 **tiny -- Mike Pielak and Sergio Sabatini.**

20 Q. I'm having a hard time finding those
21 folks.

22 **A. Bottom.**

23 MR. HEMMING: Darlene, why don't
24 you point him on the -- there you go.

25 Q. MR. WOODCOCK: Okay?

29

1 **A. And then some of the people that would**
2 **have reported up to them, like Scott Croome.**

3 Q. Can you point to me where he is too?

4 **A. Here.**

5 Q. Okay.

6 **A. As well as Mike Ball, Dale Buckholtz, I**
7 **think he's on here.**

8 Q. I think he's just above Mike Ball.

9 **A. Right.**

10 Q. It's not the clearest. Since we're
11 there at the bottom right-hand corner of the org
12 chart, can you describe your -- what your role as
13 your interactions with the field safety team?

14 **A. So under the field safety team, you had**
15 **the hazmat field specialists, which would have been**
16 **Dale Buckholtz, Mike Ball, Scott Croome. And I**
17 **would have obtained MSDS sheets, train documents,**
18 **as well as compressed waybills for any incidents**
19 **that they were responding to.**

20 Q. Would they, being the field safety team,
21 make the first request for the MSDS or the waybill?

22 **A. Once an incident was occurring, it was**
23 **common knowledge that they would require those**
24 **documents before they arrived at the scene, so that**
25 **was something that was automatically done. They**

30

1 **typically would request that the MSDS be asked for.**
2 **Sometimes these incidents occur in**
3 **areas where the phone isn't necessarily available,**
4 **and so these were some of the things that we would**
5 **do for them.**

6 Q. What is your understanding of why the
7 field safety team would request an MSDS?

8 **A. To get a further breakdown of what was**
9 **in the shipment. They would also request support**
10 **from a technical advisor from the shipper, as well,**
11 **in some instances.**

12 Q. What's the reason they would want the
13 specific breakdown?

14 MR. HEMMING: Objection,
15 foundation, if you know, Darlene.

16 **A. I don't know myself.**

17 Q. MR. WOODCOCK: You just know that
18 they request the MSDS?

19 **A. They request the MSDS, I would get them**
20 **the MSDS.**

21 Q. You also mentioned that you interacted
22 with Ms. Kennedy in her role as director of
23 regulatory affairs; is that right?

24 **A. That's correct.**

25 Q. What's your understanding of

31

1 Ms. Kennedy's role at this time?

2 **A. I don't -- I don't know what her role**
3 **was at that time.**

4 Q. What -- why did you interact with her?

5 **A. She was transferring some of the duties**
6 **that were in her role to me, so then I could do**
7 **those duties for her.**

8 Q. Your position, was that spun off from
9 some of Ms. Kennedy's duties?

10 **A. I believe there was a small portion,**
11 **yes.**

12 Q. Where did the other portion come from,
13 if you know?

14 **A. It was created new for me.**

15 Q. Do you have any understanding of why
16 your position was created?

17 **A. I believe that the hazmat programs area**
18 **had a lot of work, and so it was deemed that**
19 **Mr. Kozey required some assistance.**

20 Q. Do you know the reason for this excess
21 amount of work?

22 **A. There was an increase in hazmat**
23 **shipments.**

24 Q. How would you characterize those hazmat
25 shipments?

32

1 **A. I don't understand the question.**

2 Q. It was an increase in what type of
3 hazmat material?

4 **A. I believe there was an increase overall,**
5 **but there was an increase in crude oil shipments.**

6 Q. Was it your understanding that your
7 position was created in a response to an increase
8 in business for crude by rail?

9 **A. I'm not exactly sure why they created**
10 **the position.**

11 Q. How much of your position dealt with
12 crude by rail?

13 **A. When I first began, none.**

14 Q. And then over -- what about six months
15 after?

16 **A. Within the first six months, I created**
17 **some documentation about crude so that we could**
18 **have an understanding of where it was growing, why**
19 **it was growing, the difference between pipeline and**
20 **rail.**

21 Q. Just take a point in time, spring of
22 2013, how much of your duties concerned crude?

23 **A. There was a document that I created at**
24 **that time; it was not full-time position for me to**
25 **look at crude.**

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

33

1 Q. What did you spend your other time
2 doing?
3 **A. Learning the regulations as this was a**
4 **brand new position to me, understanding the**
5 **processes.**

6 Q. So this was a brand new field for you at
7 this time?

8 **A. That's correct.**

9 Q. And it was taking some time for you to
10 get up to speed?

11 **A. Absolutely.**

12 Q. When do you -- would you say you finally
13 get up to speed on the -- on what your -- the
14 duties of your position entailed?

15 **A. I would say it was at least 14 months.**

16 Q. As you started to get up to speed, if
17 you had any questions, who would you ask?

18 **A. Jim Kozey or Paul Weiss.**

19 Q. Anybody else? That's a no, sorry?

20 **A. No, sorry.**

21 Q. Directly above Mr. Kozey on Exhibit 2 is
22 a man by the name of Chris Bunce. Did you have
23 interactions with him around -- in the 2013 time
24 frame?

25 **A. I did.**

34

1 Q. And what were those?

2 **A. They were mostly of an administration**
3 **type. He would ask me to print things or format**
4 **documents.**

5 Q. What's your understanding of Mr. Bunce's
6 role at this time?

7 **A. He was the chief environmental officer**
8 **in charge of the group. Honestly, I did not**
9 **understand his role.**

10 Q. Do you now have an understanding of what
11 his role was?

12 **A. Somewhat.**

13 Q. What is that?

14 **A. It was to oversee and manage the group.**

15 Q. Does Mr. Bunce currently work for CP?

16 **A. He does not.**

17 Q. When did he leave?

18 **A. I'm not sure the exact date.**

19 Q. Can you give a rough estimate?

20 **A. Somewhere in 2014/2015.**

21 Q. Do you know where he works now?

22 **A. I do not.**

23 Q. Do you know why he left?

24 **A. He was let go.**

25 Q. Do you know why he was let go?

35

1 **A. I do not.**

2 Q. Do you know who would?

3 **A. Pardon me?**

4 Q. Do you know who would know that
5 information?

6 **A. He had moved back into the environmental**
7 **engineering areas, so somebody within the**
8 **engineering area.**

9 Q. Anybody on this org chart?

10 **A. Mr. Wilson or Mr. Shearer may know.**

11 Q. Turning to Exhibit 3, the M&S org chart,
12 first of all, do you know what "M&S" stands for?

13 **A. I believe it's marketing and sales.**

14 Q. In your role in 2013 as manager of
15 hazmat, did you have any interactions with
16 individuals included in the M&S org chart?

17 **A. I would have had some with Elizabeth**
18 **Hucker.**

19 Q. Anybody else?

20 **A. Possibly Kevin Budd, underneath**
21 **Elizabeth Hucker.**

22 Q. Anybody else that you can think of?

23 **A. Anne Marie Davies.**

24 Q. Is that all?

25 **A. I'm trying to read the names.**

36

1 Q. Take your time.

2 **A. Possibly Stacy Terlecki, Chantal Renaud,**
3 **Luke Meredith, I believe that's all.**

4 Q. Taking Ms. Hucker first, can you
5 describe your interactions with her, what they
6 concerned?

7 **A. It would have been when there was**
8 **incidents, she would have been asking who the**
9 **shippers were that were involved and possibly**
10 **requesting information on any of the damage if we**
11 **knew anything.**

12 Q. So did she -- is it correct to describe
13 your interactions with her as being responding to
14 requests for information?

15 **A. Correct.**

16 Q. After an incident or accident?

17 **A. Yes.**

18 Q. Does CP distinguish between "incident"
19 or "accident"?

20 **A. We call them "incidents."**

21 Q. 'Cause it sounds better?

22 **A. That may be why.**

23 Q. If I say "accident," you'll understand
24 that it's either incident or accident?

25 **A. I'll understand.**

37

1 Q. Next to Ms. Hucker is Ms. Davies, can
2 you describe the interactions you had with her?

3 **A. It would have been the same.**

4 Q. And what about Mr. Budd underneath
5 both --

6 **A. It would...**

7 Q. -- Ms. Hucker and Ms. Davies?

8 **A. It would have been the same.**

9 Q. Moving to the left side of the org
10 chart, Ms. Terlecki, what interactions did you have
11 with her in your role in 2013?

12 **A. It would have been the same, as well as**
13 **I believe that I worked with Ms. Terlecki on**
14 **gathering data for the safe shipper awards.**

15 Q. What's the safe shipper awards?

16 **A. They're awards given to shippers who**
17 **ship over X amount of loads on rail and did not**
18 **have any non-accidental releases.**

19 Q. Is this an award that CP gives
20 essentially its customers?

21 **A. It's an award that's given by all Class**
22 **1s through the AAR.**

23 Q. Is it an AAR award or a CP award?

24 **A. It's an AAR award.**

25 Q. And does CP make recommendations?

38

1 **A. We advise whom on our rail had shipped**
2 **the appropriate amount of shipments, as well as if**
3 **they'd had any non-accidental releases, they**
4 **wouldn't qualify for the award.**

5 Q. So you have to have a clean slate in
6 that year to be eligible for the award?

7 **A. That's correct.**

8 Q. Do you know if any shippers of crude
9 ever received the award?

10 **A. I can't recall.**

11 Q. Do you have a list of award recipients?

12 **A. Marketing and sales would have the list.**

13 Q. Moving to Chantal Renaud, what
14 interactions did you have with -- excuse me, I
15 don't know if that's a man or a woman.

16 **A. It's a lady.**

17 Q. With Ms. Renaud?

18 **A. It would have been similar conversations**
19 **with the others.**

20 Q. And that's, generally speaking,
21 providing information?

22 **A. Providing information.**

23 Q. And to narrow that down further, I think
24 you mentioned this, but what information are you
25 exactly providing?

39

1 **A. Yeah, typically responses to their**
2 **requests on information with incidents. There's**
3 **also, because of my varied background, information**
4 **going back and forth about previous positions that**
5 **I had held that did not relate to the hazmat**
6 **position.**

7 Q. What about Mr. Meredith?

8 **A. I worked a lot with Luke Meredith on**
9 **customer bulletins.**

10 Q. What is a customer bulletin?

11 **A. Information that is sent to our**
12 **customers regarding any type of information we**
13 **think that they need to know about the rail, things**
14 **that we may ask them to do, things that -- changes**
15 **that may be coming up.**

16 Q. Do you recall any specific customer
17 bulletins relating to crude around the 2013 time
18 period?

19 **A. I believe there was one regarding**
20 **Protective Direction 31 and us wanting to have**
21 **customers add additional information on the**
22 **waybills.**

23 Q. What additional information?

24 **A. Indicating that they had tested the**
25 **crude since July 7th of 2013 as per the protective**

40

1 **direction.**

2 Q. So this is post Lac-Mégantic?

3 **A. Correct.**

4 Q. Anything pre Lac-Mégantic?

5 **A. There possibly was, I don't...**

6 Q. Nothing you can remember right now?

7 **A. Nothing that I can recall at this**
8 **moment.**

9 Q. Does CP issue a customer bulletins only
10 in response to regulatory changes?

11 **A. No.**

12 Q. What other instances would it issue a
13 customer bulletin?

14 **A. Line outages, delays in shipments.**

15 Q. Anything else?

16 **A. I'm sure there are, but nothing I can**
17 **recall right now. Cleaning switches at their**
18 **industry sidings so that it's safe for our**
19 **conductors to go in and switch.**

20 Q. If CP wishes its customers to change
21 their practices, does it affect that change in any
22 other way, other than a customer bulletin?

23 **A. I believe that the account managers**
24 **would speak to the shippers that were involved.**

25 Q. In other words, they would follow up?

41

1 **A. Correct.**

2 Q. And would -- in this case, would it be
3 Mr. Meredith who would follow up with the shippers?

4 MR. HEMMING: Objection,
5 foundation. If you know.

6 **A. If -- if that was a line of business**
7 **that he was working in, it would have been. I'm**
8 **sure there were others.**

9 Q. Hand you what we'll mark as Exhibit 3 to
10 your deposition?

11 MR. HEMMING: Four.

12 MR. WOODCOCK: Number 4.

13 **EXHIBIT 4 - Email from Darlene Nagy**
14 **to Jim Kozey, dated March 28, 2013**

15 Q. MR. WOODCOCK: Take some time to
16 review this, but just my question at this point
17 will only refer to the text in the email, not
18 what -- the table below it.

19 **A. All right.**

20 Q. Ready? Have you seen this document
21 before?

22 **A. Yes, I have.**

23 Q. And what is it?

24 **A. It's a kind of a larger document that I**
25 **created. In the larger document, it only indicated**

42

1 **risks and issue, and I believe some of it asked me**
2 **to move the mitigation of what CP Rail would do**
3 **into the table.**

4 Q. I'd like to direct your attention to the
5 just the first line of the document, and you
6 mentioned that you will be moving the document over
7 to Lori's crude-by-rail file; is that right?

8 **A. That's correct.**

9 Q. What is your understanding of the
10 reference to Lori's crude-by-rail file?

11 **A. It was a file that was on our share**
12 **drive where we were filing different information**
13 **about crude by rail, many of the articles that were**
14 **in the newspaper and other information that we were**
15 **gathering by crude by rail versus pipeline.**

16 Q. Did you have access to the file?

17 **A. I did.**

18 Q. How often did you consult the file?

19 **A. Weekly.**

20 Q. And you mentioned Lori's crude-by-rail
21 file, was she the, for lack of a better word,
22 keeper of the file?

23 **A. That's correct.**

24 Q. Did you contribute information that went
25 to the crude-by-rail file?

43

1 **A. I created a document that was filed in**
2 **this crude-by-rail file.**

3 Q. Other than the document referenced in
4 Exhibit 4, can you think of anything else you
5 contributed to the crude-by-rail file?

6 **A. There's a larger document that this is**
7 **an excerpt out of.**

8 Q. What's your understanding of the purpose
9 of the file?

10 **A. It was to understand the growth in crude**
11 **by rail. There was a lot of negative press about**
12 **oil, and it was to understand what that negative**
13 **press was about.**

14 **It was also to understand the**
15 **difference between pipeline and rail so that we**
16 **could understand the differences, the incidents**
17 **that happened in pipeline, the incidents that**
18 **happened on rail, how pipe -- how crude moves in**
19 **pipelines versus rail. We didn't have a good**
20 **understanding of the differences.**

21 **And so that was what I was -- the**
22 **information I was gathering so that we could be**
23 **more knowledgeable about that type of information.**

24 Q. Do you know when the file was created?

25 **A. In 2013.**

44

1 Q. Was it created after you started your
2 position as hazmat manager?

3 **A. I believe it was.**

4 Q. Do you know who had access to the file?

5 **A. I believe Lori Kennedy, myself, Jim**
6 **Kozey, Chris Bunce, Glen Wilson, and Keith Shearer.**
7 **I don't know who outside of that would have.**

8 Q. How did you use the file?

9 **A. If I saw a press release about crude by**
10 **oil, I would enter or file it into this file, as**
11 **well as the document that I created was placed into**
12 **this file.**

13 Q. Did you consult the file to educate
14 yourself about issues relating to crude by rail?

15 **A. I believe I would have, yes.**

16 Q. Was this an electronic file?

17 **A. I don't understand the question.**

18 Q. It's not a file cabinet?

19 **A. Correct, it's not a file cabinet; it's**
20 **an electronic file.**

21 Q. If you had an issue, a question about
22 crude by rail at this time in spring of 2013, other
23 than the crude-by-rail file, is there any other
24 source that you would go to?

25 **A. I would have gone on the Internet,**

45

1 **looked at different websites, gathered information**
2 **from websites such as API, American Petroleum**
3 **Institute, CAPP, websites, etcetera.**

4 Q. Anything else, other than Internet
5 searching and the crude-by-rail file if you had a
6 crude-related question in spring of 2013?

7 **A. I would have also been looking at the**
8 **TDG regulations, as well as the 49 CFR, Tariff**
9 **6000.**

10 Q. Anything else?

11 **A. I imagine there were, but I can't recall**
12 **them at this point.**

13 Q. If you found something that you found
14 particularly useful on -- in your Internet
15 searching, would you then include it on the -- in
16 the crude-by-rail file?

17 **A. Dependent on what it was and the source.**

18 Q. Were there times where you found a
19 source that you deemed important enough to include
20 on the -- in the crude-by-rail file?

21 **A. I don't recall.**

22 Q. How would you remember?

23 **A. How would I remember?**

24 Q. Is there any way that you would be able
25 to remember if you --

46

1 **A. If I looked at the crude-by-rail file.**

2 Q. Did you consult any individuals outside
3 of CP in -- for a crude-related question?

4 **A. I did not.**

5 Q. Hand you what we'll mark as Exhibit 5 to
6 your deposition.

7 **EXHIBIT 5 - PowerPoint presentation**
8 **entitled "CP - Hydrocarbons by**
9 **Rail," dated May 2012**

10 Q. MR. WOODCOCK: Do you recognize
11 this document?

12 **A. I don't recognize it.**

13 Q. Had you ever seen any of the slides
14 included in that document?

15 **A. I don't recall seeing any of the slides.**

16 Q. If I could refer you to -- it's page 3
17 of the document, and it's Slide 2, have you ever
18 seen this slide before?

19 **A. I have not seen this slide; I have seen**
20 **similar slides.**

21 Q. Are you familiar with CP's transload
22 facilities on or around 2013?

23 **A. I was aware that there was transload**
24 **facilities.**

25 Q. Were you aware that CP owned some

47

1 transload facilities in and around the Bakken
2 Formation?

3 MR. HEMMING: Objection,
4 characterization. If you know.

5 **A. I was aware that we owned some transload**
6 **facilities; I would not have been aware that we**
7 **owned them in that area.**

8 Q. MR. WOODCOCK: Who at CP would have
9 knowledge about CP's practices at the transload
10 facilities?

11 **A. I don't know.**

12 Q. Who would you ask that question, if you
13 had a question about a specific transload facility
14 in the mid -- in North Dakota, who would you ask
15 about to get that question answered?

16 **A. Today?**

17 Q. Let's start with today and then back in
18 2013?

19 **A. Today I would ask the transload facility**
20 **group.**

21 Q. Did that group exist in 2013?

22 **A. I believe it did.**

23 Q. Did you have any interactions with that
24 group in your role as hazmat programs, as hazmat
25 director?

48

1 **A. I did, but I don't recall when it was.**

2 Q. Is the transload group here in Calgary?

3 **A. Yes, they are.**

4 Q. Generally speaking, can you describe
5 what that group does?

6 MR. HEMMING: Objection,
7 foundation. If you know, go ahead.

8 **A. I don't know the responsibilities.**

9 Q. MR. WOODCOCK: Going back to 2013,
10 at that time, what was the state of your knowledge
11 about CP, about operations at transloading
12 facilities, crude transloading facilities?

13 **A. I knew that we had a closed-loop system**
14 **at our transloads because I'd heard someone say**
15 **that, and...**

16 Q. What does that mean?

17 **A. And that was --**

18 Q. Excuse me for interrupting.

19 **A. That was my question was, "What does**
20 **that mean?" And so it means none of the vapours,**
21 **when you're transloading the crude, escape into the**
22 **air.**

23 Q. Did you gain an understanding of why
24 this closed-loop system was done?

25 **A. Environmentally friendly.**

49

1 Q. Was this discreet subject of the
2 closed-loop system, does that cover your full
3 knowledge of CP's activities at transloading
4 station, crude transloading stations --
5 **A. At that --**
6 Q. -- in 2013?
7 **A. At that time, yes.**
8 Q. What about now?
9 **A. I don't know much more.**
10 Q. Referring back to the same page on
11 Exhibit 5, page 2 of the slide deck that we just
12 examined denotes that oil from the Bakken region is
13 light oil; is that right?
14 **A. That's what it denotes.**
15 Q. Did you have that understanding in 2013?
16 **A. I wasn't particularly knowledgeable**
17 **about crude in 2013.**
18 Q. In 2013, can you describe the state of
19 your knowledge about crude oil?
20 **A. I understood that crude oil's a Class 3**
21 **flammable liquid and that it is shipped as Packing**
22 **Group I, II, and III, and that we had various**
23 **origins and destinations on our network that the**
24 **oil was shipped to and from.**
25 Q. In 2013, did you understand how crude

50

1 would be designated as either Packing Group I,
2 Packing Group II, or Packing Group III?
3 **A. I did not.**
4 Q. Do you understand now?
5 **A. Yes, I do.**
6 Q. And what is your understanding now?
7 **A. It's based on a flashpoint and a boiling**
8 **point.**
9 Q. In 2013, what did you understand the
10 packing group designations to denote?
11 **A. They denoted Packing Group I was great**
12 **danger, II was medium danger, and III would have**
13 **been minor.**
14 Q. So you understood generally that they --
15 that Packing Group I was more dangerous than II,
16 and Packing Group II was more dangerous than
17 Packing Group III; is that right?
18 **A. That's what I understood.**
19 Q. But you didn't understand what the
20 physical properties of the oil were that would make
21 it I or II or III?
22 **A. I did not.**
23 Q. In 2013, did you understand crude oil to
24 be a non-homogenous dangerous good?
25 **A. You'll need to explain that question to**

51

1 **me.**
2 Q. I'm using the term that I learned
3 yesterday from Mr. Kozey. "Homogenous" in my
4 understanding is that it's one thing, like
5 chlorine. Chlorine is chlorine; right?
6 **A. Correct.**
7 Q. And it's a dangerous good?
8 **A. Correct.**
9 Q. There's no distinctions among chlorine;
10 is that right?
11 **A. That's my understanding. So you're**
12 **asking me if it's comingled shipping?**
13 Q. Yeah, my -- my question is did you
14 understand that crude oil had different -- was
15 non-homogenous; in other words, it had different
16 properties?
17 **A. I learned that in 2013.**
18 Q. On or about what time do you think you
19 learned that?
20 **A. After Lac-Mégantic.**
21 Q. So it wasn't until after Lac-Mégantic
22 that you understood that crude oil had different
23 properties and should be treated differently?
24 **A. I think that's when my -- my knowledge**
25 **of it, I understood it fully. I believe prior to**

52

1 **that, I had an understanding that there were**
2 **different products in it, but it didn't make sense**
3 **to me at that point. I thought of crude oil as a**
4 **product.**
5 Q. And in 2013, you were -- you were the
6 manager of hazmat; right?
7 **A. Hazmat programs.**
8 Q. Hazmat programs, and did you have
9 anybody underneath you?
10 **A. No, not at that time.**
11 Q. And do you have any idea of how many
12 shipments of crude oil CP was doing at that time,
13 in terms of cars or barrels?
14 **A. At which time?**
15 Q. In 2013?
16 **A. I believe it was around 80 to 90,000 was**
17 **what I had come up with, in 2012; in mid-2013, I**
18 **wouldn't have known how many we were going to do**
19 **that year.**
20 Q. So in 2012, there were 80 to 90,000 cars
21 or barrels, I'm sorry?
22 **A. Cars.**
23 Q. Cars, okay, and then did CP project an
24 increase in that in 2013?
25 **A. Yes, they did.**

53

1 Q. And do you recall what that increase,
2 what percentage increase that was?
3 **A. I don't recall what it was. I know that**
4 **there was a projection of an increase.**

5 Q. Did you have any concerns in your role
6 that you didn't fully understand of substance that
7 was being shipped throughout North America?

8 **A. That wasn't part of my role, to**
9 **understand what the substance was.**

10 Q. But it was your job to understand the
11 regulations; right?

12 **A. It was my job to understand the**
13 **regulations.**

14 Q. And the regulations have different --
15 there are different consequences for different
16 packing groups; right?

17 MR. HEMMING: Objection,
18 characterization, but go ahead, if you know.

19 **A. My understanding of crude oil at that**
20 **time were that I was a great danger, II was medium,**
21 **and III was a minor danger.**

22 Q. MR. WOODCOCK: Other than yourself
23 and Mr. Kozey, was there anyone at CP who was
24 handling crude-by-rail hazmat in 2013?

25 **A. Can you describe what "handling" would**

54

1 **mean?**

2 Q. Other than you and Mr. Kozey, was there
3 anybody else who had chief responsibility for
4 hazmat for crude by rail at CP?

5 **A. Everybody had a different role. I mean**
6 **the conductors would be moving the railcars and**
7 **ensuring that the compressed waybills and the**
8 **placards on the car would match. The waybilling**
9 **clerks in Winnipeg would be ensuring that when the**
10 **waybills came in, the information didn't reject,**
11 **that everything was proper on the waybills.**

12 **So everybody had a different type**
13 **of role maybe in handling hazmat.**

14 Q. Yeah, that's -- that was probably an
15 overly broad question. Other than you and
16 Mr. Kozey, was there anybody else at CP handling
17 compliance with the dangerous goods regulations
18 for --

19 **A. Paul Weiss --**

20 Q. Paul Weiss?

21 **A. -- would be for documentation.**

22 Q. And what was the delineation, if any,
23 between what you and Mr. Weiss were doing?

24 **A. Mr. Weiss was in charge of**
25 **documentation, ensuring that train documents and**

55

1 **compressed waybills were created for hazardous**
2 **materials across our network. My -- my position**
3 **was ensuring that internal documents for -- such as**
4 **our emergency response documents, our training**
5 **documents for mechanical, engineering, train crews,**
6 **was up to date with the latest train regulations in**
7 **both Canada and the US.**

8 Q. Was Mr. Weiss's role limited to ensuring
9 that the documentation itself was complete?

10 **A. His role was to ensure that if there**
11 **were changes in regulation that required more**
12 **information on the documentation, that changes in**
13 **IT were completed in order for those -- that**
14 **information to appear on the train consist or**
15 **compressed waybills.**

16 Q. Is it correct to describe Mr. Weiss's
17 role is ensuring that the electronic waybilling
18 system or bill of lading system contains the
19 correct -- the required information?

20 **A. That would have been one of his**
21 **responsibilities.**

22 Q. What are the others?

23 **A. To ensure that train documents had the**
24 **correct information, marshaling regulations,**
25 **etcetera.**

56

1 Q. What's the difference between waybill
2 and the train documents, if any?

3 **A. A train document lists the railcars in**
4 **order from the engine to the tail end. Compressed**
5 **waybill is information about hazardous materials or**
6 **dangerous goods shipments on that train and has to**
7 **have specific information as required from the**
8 **regulations in a particular order.**

9 MR. HEMMING: Jack, whenever it's
10 a good time, whenever you're done with this line.

11 MR. WOODCOCK: Sure. Why don't we
12 continue a little bit, and then I'll just wrap up.

13 **A. Sure.**

14 Q. MR. WOODCOCK: Do the train
15 documents contain hazardous materials information
16 or is that only on the waybill?

17 **A. The train documents would list if the**
18 **car was containing a hazardous material.**

19 Q. And take, for instance, a train carrying
20 crude?

21 **A. Yes.**

22 Q. Does the -- do the train documents
23 contain information about UN number and packing
24 group number?

25 **A. It would not contain packing group**

57

1 **number; that would be on the compressed waybills.**
2 **It -- I need to look at an outbound train report**
3 **right now in order to tell you the rest.**

4 Q. Just so I understand what Mr. Weiss is
5 doing fully, so he was in charge of both the
6 waybill information and the train documentation
7 information?

8 **A. He's in charge of ensuring that the**
9 **systems that create the waybills are up to date**
10 **with the regulations.**

11 **So I'll give you an example, with**
12 **the compressed waybills, in the Transportation of**
13 **Dangerous Goods Regulations, they changed the order**
14 **that the information needed to appear on a**
15 **compressed waybill, so he had to ensure that when**
16 **those documents were created, they were in the**
17 **order that were required for transportation of**
18 **dangerous goods.**

19 Q. And then does he go to IT and say, "You
20 have to make this change to implement in the
21 waybill system"?

22 **A. He works with IT, yes.**

23 MR. WOODCOCK: All right. I think
24 that's a good time for a break.

25 (BRIEF ADJOURNMENT)

58

1 Q. MR. WOODCOCK: We're back on the
2 record after a brief break.

3 If I could refer you back to
4 Exhibit 5 and the third page of the slide deck and
5 direct your attention to the subline that says (as
6 read):

7 "CP is playing an important role in
8 North America's crude market."

9 Did you have that understanding in 2013?

10 **A. Generally yes, I would have.**

11 Q. And what would you describe as CP's
12 important role in North America's crude market?

13 **A. Moving the crude oil trains to market**
14 **and that the crude oil was increasing in volume and**
15 **that we were part of that -- that story.**

16 Q. Direct your attention to the second
17 bullet that says (as read):

18 "CP played an integral role in
19 establishing crude-by-rail supply
20 chain in the North America market."

21 Did you have that understanding of CP
22 played an integral role in the rail supply chain?

23 MR. HEMMING: Could you mention
24 what time frame, Jack?

25 MR. WOODCOCK: 2013.

59

1 Q. MR. WOODCOCK: Looking at page 3 of
2 Exhibit 5, all my questions would be related to
3 the --

4 **A. 2013.**

5 Q. -- 2013 time frame.

6 **A. I don't believe that I would have had a**
7 **very good understanding that we -- the integral**
8 **role that we played at that point.**

9 Q. What was your understanding of the
10 supply chain in 2013, the crude-by-rail supply
11 chain?

12 **A. That there were origins where we would**
13 **load the crude, and then we would either typically**
14 **take to a destination or would interchange it to**
15 **another railroad.**

16 Q. Did you have any interactions with the
17 other players in the supply chain, shippers,
18 producers?

19 **A. No, I did not.**

20 Q. Moving to the second full bullet point,
21 (as read):

22 "Handling various grades of light
23 and heavy crude" -- then -- "X
24 variety of origins in North
25 America."

60

1 In 2013, did you have any understanding
2 of the difference between light and heavy crude?

3 **A. In the document that I had created for**
4 **the crude by rail for Lori's share file, I learned**
5 **that there is a difference between light and heavy**
6 **and that light crude oil would float in water and**
7 **that heavy crude oil would sink and that there was**
8 **varying degrees of how one would need to clean it**
9 **up if it was to be involved in an incident.**

10 Q. Did you have any other understanding
11 about the differences between light and heavy crude
12 oil at 2013?

13 **A. At 2013, I did not.**

14 Q. Did you have any understanding of the
15 origin of Bakken-based crude oil, the properties of
16 Bakken-based crude oil?

17 **A. I would not have understood the**
18 **properties.**

19 Q. Do you now have an understanding of the
20 properties of Bakken crude oil?

21 **A. I have a better understanding, but I'm**
22 **still far from being a chemist or an expert in any**
23 **of that type of --**

24 Q. Did --

25 **A. -- information.**

61

1 Q. Sorry to interrupt. Generally speaking,
2 would you classify Bakken crude oil as light crude
3 oil?

4 **A. I wouldn't classify Bakken crude. It's**
5 **the shipper's responsibility to classify dangerous**
6 **goods.**

7 Q. How would you -- would you describe it
8 generally as light oil?

9 **A. I would not classify crude oil. I would**
10 **describe crude oil from what I've read to be light**
11 **crude oil, since 2013.**

12 Q. In 2013, did you have any understanding
13 about some advantages or disadvantages from an
14 industry perspective of light crude versus heavy
15 crude?

16 **A. The only understanding I had at that**
17 **point in time was that crude oil in pipelines**
18 **required some dilbit or something to be added to it**
19 **in order to move it. And I found it fascinating**
20 **that it took 15 to 22 days to go from Houston to**
21 **New York City.**

22 **And so I thought that at that point**
23 **in time, railcars were -- would be a significant**
24 **advantage if people are trying to move their crude**
25 **to a facility because of a spec by.**

62

1 Q. But I take it in 2013, you didn't have
2 any understanding of the advantages or
3 disadvantages from a refiner's perspective of light
4 versus heavy crude.

5 **A. I think in the document that I created,**
6 **I understood that there were different things that**
7 **were created from crude, such as jet fuel and**
8 **diesel and gasoline, but that was from a slide that**
9 **I had seen on the Internet.**

10 Q. What about in terms of flashpoint in
11 2013, did you have any understanding of the
12 differences in flashpoint between light and heavy
13 crude?

14 **A. I did not.**

15 Q. Boiling point?

16 **A. Did not.**

17 Q. Packing group?

18 **A. Understood differences in Packing Group**
19 **I to be high, II to be medium, and III to be minor.**

20 Q. Did you have any understanding of the
21 relationship between light and heavy in packing
22 group classification?

23 **A. I don't -- I did not at that point in**
24 **time, no.**

25 Q. Do you now?

63

1 **A. I do understand that.**

2 Q. And what is that understanding now?

3 **A. That Packing Group I has the -- the**
4 **packing groups are dependent on flash groups and**
5 **boiling points.**

6 Q. If I could turn you to the final bullet
7 point on that, it says (as read):

8 "Optionality and evolution in
9 establishing supply chain solutions
10 to meet varying industry needs."

11 Do you have any understanding of what
12 that means?

13 **A. I don't understand what they meant by**
14 **that. If I was to look at the sub-bullets where it**
15 **says (as read):**

16 "Manifest, Unifest, and unit train
17 design,"

18 that would indicate to me that we would
19 be able to either put in any unit train or single
20 carload or -- in, you know, varying amounts on a
21 train and that they spelled the word "transload"
22 incorrectly.

23 Q. What was your understanding of CP's
24 relationship with crude shippers in 2013?

25 **A. Our relationship in what perspective?**

64

1 Q. With crude shippers generally speaking,
2 did you have any understanding of the relationship?

3 **A. Our account managers would have that**
4 **relationship with the shippers.**

5 Q. What about you personally, did you have
6 any contact with shipper, crude shippers?

7 **A. I don't recall ever speaking to a crude**
8 **oil shipper at this point.**

9 Q. At what point did you -- did there come
10 to be a point in time in which you did reach out to
11 crude shippers directly?

12 **A. I would have only reached out if I was**
13 **requesting an MSDS sheet or a technical advisor to**
14 **speak to one of our hazmat officers.**

15 Q. Did you make those requests only after
16 an accident?

17 **A. That's correct.**

18 Q. And did you always receive the MSDS when
19 you requested it?

20 **A. From what I recall, I believe so.**

21 Q. Did you personally review the MSDSes
22 that you obtained or just ferried them on?

23 **A. I ferried them on.**

24 Q. You didn't even look at them?

25 **A. I would have looked at them for interest**

65

1 **sake, but I necessarily did not understand what**
2 **they contained.**

3 Q. Do you do -- do you make the same
4 requests now?

5 **A. I still do. I also have two other**
6 **people who now help me.**

7 Q. Now do you review the MSDSes?

8 **A. I have a better look at them, yes.**

9 Q. And what do you mean by "better"?

10 **A. I look at the different sections to see**
11 **if they're completed.**

12 Q. In the 2013 time frame, how many MSDSes
13 do you think you -- for crude do you think you saw?

14 **A. I can think of three incidents for sure**
15 **that I would have seen MSDSes on.**

16 Q. And what were those?

17 **A. There was the Parkers Prairie incident**
18 **in Minnesota. There was the White River incident**
19 **in Ontario, and there was a Jansen, Saskatchewan,**
20 **incident. And then I believe I saw the MSDSes for**
21 **Lac-Mégantic but later on in the year.**

22 Q. Do you recall at about what time the
23 Parkers Prairie incident occurred?

24 **A. I believe it was in March.**

25 Q. Do you know who the shipper was?

66

1 **A. I don't recall.**

2 Q. And the product was crude?

3 **A. Correct.**

4 Q. Can you just generally describe what
5 happened in the Parkers Prairie accident?

6 **A. I believe it was a crude oil car that**
7 **was leaking.**

8 Q. And was your only role in the Parkers
9 Prairie incident to -- or accident to obtain the
10 MSDS and give it to the field specialist?

11 **A. That's correct.**

12 Q. Do you have any other knowledge about
13 the Parkers Prairie incident, accident?

14 **A. I don't recall any other specifics of**
15 **that incident.**

16 Q. Moving on to White River, did you
17 perform that same role of obtaining the MSDS?

18 **A. Yes, I did.**

19 Q. And what's your recollection about White
20 River accident?

21 **A. I remember passing the MSDS, the train**
22 **documents, etcetera, onto the field specialist, and**
23 **that one of the -- there's two cars leaking, one**
24 **was upside down in a -- in a snowbank.**

25 Q. Do you recall about what time period the

67

1 White River derailment occurred?

2 **A. It was in April of 2013.**

3 Q. So about a month after Parkers Prairie.

4 Moving to Jansen, Saskatchewan,

5 first of all, when did that accident occur?

6 **A. That was in May of 2013.**

7 Q. And can you generally describe that
8 accident?

9 **A. There was also a crude oil car that had**
10 **leaked, so I also got the MSDS for the dangerous**
11 **goods officer.**

12 Q. Do you know what caused the leak?

13 **A. The derailment.**

14 Q. That's my question is whether there was

15 a --

16 **A. I'm not sure what caused the derailment.**

17 Q. Okay, but there was a derailment?

18 **A. Correct.**

19 Q. The train went off the track, and crude
20 oil at DOT-111 car leaked oil?

21 **A. I can't recall if it was DOT-111. I'm**
22 **sure it probably was; however, yes, it did leak.**

23 Q. Do you recall the extent, how much oil
24 was involved?

25 **A. I can't recall.**

68

1 Q. So in the spring of 2013, being March,
2 April, and May, CP experienced three different
3 derailments with crude cars; is that right?

4 **A. That's correct.**

5 Q. And the White River derailment,
6 subsequently there was a fire; right?

7 **A. I believe so, yes.**

8 Q. Was there fire in any of the other
9 derailments?

10 **A. No, there was not, but the fire was not**
11 **account of the derailment; it was during cleanup.**

12 Q. Nonetheless, the oil spilled; right?

13 **A. The oil did spill.**

14 Q. And it alit?

15 **A. Something alit, I'm a...**

16 Q. Can you think of anything else, other
17 than oil, that would have caused a fire?

18 **A. I -- I was not there, so I'm not aware.**

19 Q. To your knowledge, other than were there
20 any other derailments that CP experienced in
21 crude-by-rail cars between March and July 2013?

22 **A. Those are the three that I recall.**

23 Q. Hand you what we'll mark as Exhibit 6 to
24 your deposition.

25

69

1 **EXHIBIT 6 - ISI shipping**
2 **instructions from CP Rail intranet**
3 **shipping instructions**
4 Q. MR. WOODCOCK: Take some time to
5 review it. Do you recognize this document?
6 **A. I have not seen this document before,**
7 **but I know what it is.**
8 Q. And what is it?
9 **A. It's an ISI shipping instructions from**
10 **our CP Rail intranet shipping instructions.**
11 Q. Is this a CP-created document?
12 **A. This is created from shippers inputting**
13 **data into our system, which then generates this**
14 **document.**
15 Q. Refer your attention to the last page of
16 the document, page 7?
17 **A. Yes.**
18 Q. And on page 7, there's a packing group
19 number; is that right?
20 **A. That's correct.**
21 Q. And it's Packing Group III?
22 **A. That's what they input, yes.**
23 Q. How does Canadian Pacific receive the
24 information regarding the packing group
25 information?

70

1 **A. The customer enters it into the ISI**
2 **shipping instructions. When they've completed all**
3 **the information as required for a hazardous**
4 **materials shipment, they then indicate that they**
5 **have entered everything correctly. They need to**
6 **then push send, and we receive the information.**
7 Q. What does -- if anything, does CP do
8 with that packing group information?
9 **A. All of the information that's on this**
10 **ISI shipping instruction document is received into**
11 **CP Rail's internal systems. In this case, it would**
12 **come through a -- into order entry, order entry**
13 **then ensures that all the --**
14 Q. Excuse me, can I just stop you there?
15 What's "order entry"?
16 **A. Order entry is CP Rail's internal**
17 **waybilling system.**
18 Q. And describe what that order entry
19 system does?
20 **A. You -- it receives information such as**
21 **this ISI document or 404 documents which are sent**
22 **from other customers to us in a -- in a different**
23 **manner than ISI, as well as 417 waybill information**
24 **from other railroads.**
25 **So if another railroad is**

71

1 **interchanging railcars to us, it would send the**
2 **information in. Order entry captures the waybill**
3 **information, ensures that all the information is --**
4 **that is required for that type of a shipment is**
5 **entered.**
6 **If there's any information missing,**
7 **it rejects the waybill. If it's all there, the**
8 **waybill is produced, which then enters into our**
9 **TYES system.**
10 Q. What's the -- can you --
11 **A. T-Y-E-S.**
12 Q. T-Y-E-S, what does that stand for?
13 **A. Train yards, I can't remember what the E**
14 **is, I believe it's execution system. I'm not**
15 **positive on the E, enterprise system.**
16 Q. And what is that system?
17 **A. It's an inventory system of all our**
18 **railcars on our network.**
19 Q. So does that give you a sort of snapshot
20 of all the cars and goods on CP's entire network at
21 any time?
22 **A. It gives us a snapshot of all the**
23 **railcars on CP's network. In order to know what's**
24 **in them, you would look at the waybill information**
25 **within each car.**

72

1 Q. An individual at CP looking at the TYES
2 system, would they be able to determine that the
3 train on Exhibit 6, which is going from New Town to
4 Saint John, is a crude by -- is carrying crude?
5 **A. They would generate documents out of**
6 **TYES that would indicate to them that it's carrying**
7 **crude.**
8 Q. And what -- what are those documents?
9 **A. Outbound train documents, compressed**
10 **waybills, tonnage profiles, hazardous goods**
11 **documentation.**
12 Q. And what is done with those documents?
13 **A. That is what the train crew carries with**
14 **them.**
15 Q. Anything else that's done with those
16 documents?
17 **A. Well, no, that's what the purpose is**
18 **for.**
19 Q. If, in 2013, if an individual at CP
20 wanted to know what dangerous goods were currently
21 on CP's network, how would you go about determining
22 that?
23 **A. There's different reports that are**
24 **available through TYES that you could request**
25 **specific information regarding, if you're looking**

73

1 for all boxcars, all hoppers, all tank cars. And
 2 it would pull back the list for you, and it would
 3 indicate a UN number on that list, from what I
 4 recall.
 5 Q. Okay, can you make a query, for example,
 6 for the UN number for crude and it'll give you all
 7 the cars carrying crude?
 8 **A. I believe so.**
 9 Q. Did you ever do that?
 10 **A. No.**
 11 Q. What reports, if any, did you run on the
 12 TYES system in your role as hazmat manager in 2013?
 13 **A. So when there was an incident and a --**
 14 **they were looking for a car that needed to have a**
 15 **transload, so they wanted to take the material out**
 16 **of one car into another, I would look for a**
 17 **transload candidate out of the TYES system so I**
 18 **could query where the empty tank cars were with**
 19 **that type of last contained product in them.**
 20 Q. Anything else, any other queries that
 21 you're running on the TYES system?
 22 **A. There wouldn't have been at that time,**
 23 **no.**
 24 Q. What about now?
 25 **A. No.**

74

1 Q. What, if any, analysis did you conduct
 2 in 2013 of packing group information for crude
 3 shipments?
 4 **A. None.**
 5 Q. Do you know if any analysis was
 6 completed at CP in 2013?
 7 **A. I do not know.**
 8 Q. Did you expect that that analysis would
 9 be done?
 10 **A. I wouldn't have had any reason to think**
 11 **that that analysis would have been done.**
 12 Q. What about any suspicion that it would
 13 not have been done?
 14 **A. Neither.**
 15 Q. You just didn't -- didn't have a
 16 position at that time?
 17 **A. Correct.**
 18 Q. What about now?
 19 **A. I wouldn't expect that it's been done**
 20 **now.**
 21 Q. Other than your request of an MSDS
 22 following a train accident, are you aware of any
 23 other requests conducted by CP for MSDSes of crude
 24 oil in 2013?
 25 **A. I have seen documents when I was**

75

1 reviewing my -- my emails of other MSDSes that were
 2 sent to us.
 3 Q. Did you have personal knowledge of those
 4 MSDSes at the time in 2013?
 5 **A. No.**
 6 Q. Do you know who did?
 7 **A. I don't know.**
 8 Q. Are you aware of any instance of CP
 9 requesting an MSDS and not receiving one?
 10 **A. I'm not aware of any.**
 11 Q. Taking, for example, a train in 2013
 12 outbound from New Town destined for Saint John, in
 13 2013, did you have any understanding of how many
 14 MSDSes, separate MSDSes would be implicated in that
 15 train?
 16 **A. No.**
 17 Q. Did you have any understanding of where
 18 the oil came from outbound from New Town in 2013?
 19 **A. I understood that it came from**
 20 **wellheads.**
 21 Q. And how did it get from the wellhead to
 22 where CP picked it up?
 23 **A. In trucks.**
 24 Q. Can you generally describe what your
 25 understanding was of the -- that process from the

76

1 wellhead to the DOT-111?
 2 **A. I had none.**
 3 Q. Have you ever visited a transloading
 4 facility?
 5 **A. No, I have not.**
 6 Q. If a spill were to happen at a
 7 transloading facility in 2013, would that have come
 8 under your purview as hazmat director?
 9 **A. I was a hazmat program manager.**
 10 Q. Okay.
 11 **A. It would have been dependent on who**
 12 **owned the transload, I believe. If it was not our**
 13 **transload, if we didn't own it, it would fall under**
 14 **the transload facility.**
 15 Q. So if at a CP-owned transload, that
 16 would have come to you?
 17 **A. It would have come to the -- Sergio**
 18 **Sabatini and the Mike Pielak group, who then, if**
 19 **they required an MSDS, would have contacted me.**
 20 Q. Are you aware of any instances where CP
 21 personnel requested information from you as a
 22 result of a spill at a transloading facility?
 23 **A. There was one spill, but I can't recall**
 24 **when it was. I believe it was in 2014.**
 25 Q. Do you recall what facility?

77

1 **A. It was somewhere in -- I believe it was**
2 **somewhere in Alberta, but I'm not -- I'm -- can't**
3 **recall the exact location.**

4 Q. In 2013, what specific steps did you
5 take when you were requested to provide an MSDS to
6 CP personnel?

7 **A. So on the compressed waybill, there's an**
8 **emergency response phone number.**

9 Q. If I could just stop you there, is that
10 number included on Exhibit -- we've lost it -- 6?

11 MR. HEMMING: I'll save some time,
12 why don't you both look at the last page.

13 **A. Thank you, yes, yes, it is.**

14 Q. MR. WOODCOCK: And there's a --
15 next to the 20 -- it's the emergency 24-hour
16 denotation, it says CHEMTREC, do you have any
17 understanding what CHEMTREC is?

18 **A. It's a facility in the United States**
19 **that if the shipper so decides to sign up with**
20 **them, they can -- they'll house their MSDSes for**
21 **them and respond because the 24-hour E number must**
22 **be answered immediately, they'll answer the phone**
23 **and -- and get the MSDSes.**

24 Q. Okay, so you call CHEMTREC, and they
25 have access or possession of the MSDSes?

78

1 **A. In this case, it would be CHEMTREC, yes.**

2 Q. Is CHEMTREC a common sort of contact
3 number that you would use?

4 **A. There are various customers that use**
5 **CHEMTREC as their emergency response number.**

6 Q. When you call this number at CHEMTREC,
7 what happens next?

8 **A. I identify myself, who I am, and what**
9 **I'm looking for. They request all the information**
10 **that's on this waybill.**

11 Q. Who's "they," you?

12 **A. CHEMTREC.**

13 Q. Okay, CHEMTREC?

14 **A. They request all the information, so the**
15 **shipper, the consignee where the incident took**
16 **place. Then what they do is with all of the**
17 **information that they get from person that's**
18 **calling, in this instance, me, they will then**
19 **request an MSDS from the customer if they don't**
20 **have one on file, which they should, or -- and they**
21 **also send out a follow-up email to everybody that's**
22 **on the email chain for Canadian Pacific Railway, as**
23 **well as for the shipper, all of their email**
24 **addresses so that they're all aware that an**
25 **incident has occurred.**

79

1 Q. And then you get a -- typically how long
2 is the response from CHEMTREC?

3 **A. To get the MSDS?**

4 Q. Yeah.

5 **A. Typically it's within the hour.**

6 Q. So it's pretty quick?

7 **A. It is very quick.**

8 Q. And then once you get that MSDS from
9 CHEMTREC, what's the next step that you take?

10 **A. I would forward it to the dangerous**
11 **goods officer that's responding, as well as print**
12 **out a copy so that we have a copy at headquarters**
13 **and then also file it in our incident file.**

14 Q. So you take the MSDS, and you -- that
15 you put into at least two files?

16 **A. One file, and then I would forward it to**
17 **the dangerous good officer that's responding, as**
18 **well as have a printed copy.**

19 Q. Hand you what we'll mark as Exhibit 7 to
20 your deposition.

21 **EXHIBIT 7 - Document entitled**

22 **"Customer Notice - Petroleum Crude**
23 **Oil"**

24 Q. MR. WOODCOCK: Have you seen this
25 document before?

80

1 **A. I have seen it in reviewing my emails.**

2 Q. What is this document?

3 **A. This document I believe was created**
4 **before I joined the team.**

5 Q. So you don't have any personal knowledge
6 of this document?

7 **A. I had no personal help in creating it or**
8 **hadn't seen it until I reviewed the emails.**

9 Q. You previously referred to what I
10 believe is a customer bulletin. Is this an
11 example, Exhibit 7, is this an example of a
12 customer bulletin?

13 **A. This would have been an example, I**
14 **believe.**

15 Q. If I can direct your attention to the
16 first sentence of the second paragraph, which
17 states (as read):

18 "Please confirm with the material
19 safety data sheet for your product
20 and determine appropriate
21 classification based on flashpoint
22 and select the appropriate tank car
23 specification."

24 Did I read that correctly?

25 **A. You read that correctly.**

81

1 Q. Are you aware of any other instance in
2 which CP asked its customers to examine the MSDSes
3 for their product?

4 **A. I'm not aware of any other.**

5 Q. There's a reference here to special
6 provision CGSB. Do you know what that is?

7 MR. HEMMING: Jack, where are you
8 at?

9 MR. WOODCOCK: It's the heading of
10 the table in the middle.

11 **A. I don't know what that would have been.**

12 Q. MR. WOODCOCK: I think you've
13 answered this, but I'm going to ask it again 'cause
14 I've forgotten the answer.

15 MR. HEMMING: I'll remind you.

16 Q. MR. WOODCOCK: What period of time
17 did you learn the -- what properties determined,
18 properties of crude oil determined packing group?

19 **A. I would say that I honestly understood
20 it within the last three months.**

21 Q. When did you first start to gain an
22 understanding of what delineated packing group
23 designation for crude oil?

24 **A. I understood that there was a flashpoint
25 and a boiling point, but I didn't understand where**

82

1 **to look and how to get that information.**

2 Q. Are you just -- is your last answer
3 described as to your knowledge in 2013?

4 **A. I wouldn't have known where to look and
5 how to delineate that information.**

6 Q. Did you, in 2013, did you even know
7 about the difference in packing group designations?

8 **A. I knew that I was high, I was medium,
9 and I was minor.**

10 Q. In 2013, did you -- strike that.

11 MR. HEMMING: I'll object if you
12 ask that question that prompts that answer again.

13 Q. MR. WOODCOCK: I'll show you what
14 we'll mark as Exhibit 8 to your deposition.

15 **EXHIBIT 8 - Part 2 of the TDGR
16 regulations**

17 Q. MR. WOODCOCK: Do you recognize
18 this document, Exhibit 8?

19 **A. Yes.**

20 Q. What is it?

21 **A. It's an excerpt out of the TDGR
22 regulations, appears to be Part 2.**

23 Q. And in 2013, is this part of the
24 regulations that you were trying to come up to
25 speed on?

83

1 **A. I was trying to gain a knowledge of
2 these, yes.**

3 Q. If I could direct your attention to
4 page 2-5, are you there?

5 **A. Yes.**

6 Q. And specifically Number 6 under 2.2, can
7 you read that provision to yourself and let me know
8 when you've read it?

9 **A. Yes, I've read it.**

10 Q. In 2013, were you familiar with 2.2
11 Subsection (6)?

12 **A. I wouldn't have been familiar with that
13 subsection, no.**

14 Q. Who would have been, if you know?

15 **A. Jim Kozey would have been.**

16 Q. Anybody else?

17 **A. Not -- I can't suggest who else may have
18 known.**

19 Q. In 2013 in your role as manager of
20 hazmat, you had the role of ensuring that CP
21 complied with the *Transportation of Dangerous Goods*
22 *Act*; right?

23 **A. I had the responsibility to ensure that
24 our internal documents were updated with dangerous
25 goods regulations and that our training documents**

84

1 **were updated with dangerous goods regulations in
2 both Canada and the US.**

3 Q. Did you, in 2013, did CP have any
4 internal documents relating to compliance with
5 2.2(6)?

6 **A. Not that I'm aware of.**

7 Q. How about now?

8 **A. Not that I'm aware of.**

9 Q. What is your current understanding of a
10 carrier's duty under 2.2(6)?

11 **A. If --**

12 MR. HEMMING: I'll object to the
13 extent it calls for a legal conclusion, but you can
14 answer as best you can.

15 **A. If there's -- if you suspect that
16 there's an error in classification, that you would
17 need to stop that car in transport.**

18 Q. MR. WOODCOCK: In 2013, did CP have
19 any policies in place to ensure compliance with
20 2.2(6)?

21 **A. I am not aware.**

22 Q. Is there -- how would you find that out?

23 **A. I'm not sure. I know that in 2012 they
24 stopped some cars that were in transport, so I'm
25 presuming that there was some type of a process in**

85

1 place.

2 Q. As far as you know in 2013, though,
3 there was no policy in place to ensure compliance
4 with 2.2(6)?

5 A. I don't know if there was a written
6 policy in place.

7 Q. What about a verbal policy, were you
8 instructed of a verbal -- were you handed any
9 policies to comply with 2.2(6)?

10 A. I was not.

11 Q. And did you even know 2.2(6) existed in
12 2013?

13 A. I did not.

14 Q. Currently, does CP have any policies and
15 procedures in place to ensure compliance with
16 2.2(6)?

17 A. Not written in policy, no.

18 Q. What about verbally?

19 A. Verbally I would -- it would be expected
20 that if you -- if you thought that there was an
21 error, that you would stop that car.

22 Q. How was this verbal policy transmitted
23 to CP employees?

24 A. It wouldn't be transmitted to the
25 employees; it would be whomever discovered that

86

1 error would then start the -- the chain.

2 Q. And describe that chain?

3 A. The waybills or the railcars would need
4 to be found where they are, and they would need to
5 be stopped. And that would be done through the
6 transportation operation side of the house.

7 Q. And then what happens?

8 A. The cars would be set off until the
9 shipper could update or correct the waybill if
10 required.

11 Q. And so you asked the shipper, someone
12 says at CP, "I suspect an error in classification,"
13 train is stopped. And then it's up to the shipper
14 to investigate; is that right?

15 A. It's the shipper's responsibility to
16 classify the goods before offering them in
17 transportation.

18 Q. And at the point where the shipper says,
19 "No, that classification is correct," what happens
20 next?

21 MR. HEMMING: Objection, calls for
22 speculation. If you know.

23 A. I don't know.

24 Q. MR. WOODCOCK: Have you had any
25 instances where you yourself have denoted an error

87

1 in classification that you've sent through the
2 chain that you just described?

3 A. I have not denoted an error in
4 classification as I would not even know how to do
5 that.

6 Q. Do you have any occasions, do you know
7 of any occasions on which CP has done so?

8 A. Has done?

9 Q. Noted an error in classification and
10 stopped the train?

11 A. Not an error in classification, no.

12 Q. But what's the -- what's the reason for
13 your qualification, error in classification?

14 A. I believe that there is an error in the
15 type of means of containment and that they stopped
16 those railcars.

17 Q. In other words, the container was the
18 wrong type for the good?

19 A. Correct.

20 Q. You stated previously, I believe, that
21 you also tried to gain a familiarity with 49 CFR
22 under the US Hazardous Materials Regulations;
23 right?

24 A. Yes.

25 Q. Do you have any understanding of any

88

1 differences between 2.2(6) and the American
2 standard?

3 MR. HEMMING: Objection,
4 foundation. If you know, go ahead.

5 A. I don't know.

6 Q. MR. WOODCOCK: Hand you what we'll
7 mark as Exhibit 8 to your deposition, oh, 9.

8 EXHIBIT 9 - Excerpt out of 49 CFR

9 Q. MR. WOODCOCK: Do you recognize
10 this exhibit, Exhibit 9?

11 A. It appears to be an excerpt out of 49
12 CFR.

13 Q. And would you have reviewed 49 CFR as
14 you're coming up to speed with the hazardous
15 materials regulations in 2013?

16 A. Not the entire book, no.

17 Q. Do you recall, let me direct your
18 attention to 49 CFR 171.2(f) and the last sentence
19 of (f). It's on the first page, the first
20 paragraph of page 2?

21 A. Okay.

22 Q. Did you have an understanding in 2013 of
23 a carrier's duty under 171.2(f), if it suspected or
24 a reasonable person would have suspected an error
25 in classification?

89

1 **A. I would not have known about this**
 2 **specific.**
 3 Q. When, if at all, did you become aware of
 4 a carrier's duty under 171.2(f)?
 5 **A. I don't know exactly when, but probably**
 6 **within the last couple of years.**
 7 Q. Who at -- I take it that CP in 2013 did
 8 not have any policies to comply with 171.2(f), if
 9 it did not have any policies to comply with the
 10 *Transportation of Dangerous Goods Act*. Is that
 11 right?
 12 **A. I don't know, I...**
 13 Q. At least you have no knowledge of any
 14 policies or procedures in place to comply with
 15 171.2(f)?
 16 **A. That's correct.**
 17 Q. What about now, are there any policies
 18 or procedures in place to ensure compliance with
 19 171.2(f)?
 20 **A. Not that I'm aware of.**
 21 Q. What is your understanding of a
 22 carrier's obligations under 171.2(f) as of today?
 23 **A. As it states, (as read):**
 24 "Each carrier who transports a
 25 hazardous material in commerce may

90

1 rely on the information provided by
 2 the offerer of the hazardous
 3 material or prior carrier unless
 4 the carrier knows or a reasonable
 5 person acting in the circumstances
 6 and exercising reasonable care
 7 would have knowledge that the
 8 information provided by the offerer
 9 or prior carrier is incorrect."
 10 Q. Do you have any understanding of any
 11 differences, if at all, between 171.2(f) and
 12 *Transportation of Dangerous Goods 2.2(6)*?
 13 MR. HEMMING: Object on
 14 foundation. Go ahead if you know.
 15 **A. I don't know.**
 16 Q. MR. WOODCOCK: Would Mr. Kozey have
 17 the most information, most knowledge of 49 CFR at
 18 CP?
 19 MR. HEMMING: Same objection. Go
 20 ahead if you know.
 21 **A. I'm not sure if he would have the most**
 22 **knowledge. He has more knowledge than I do.**
 23 Q. MR. WOODCOCK: If you had a
 24 question in 2013 about as you're coming up to speed
 25 on 49 CFR, who would you ask that question to?

91

1 **A. I would ask Jim Kozey.**
 2 Q. Anybody else?
 3 **A. No. Sorry, possibly Paul Weiss.**
 4 Q. Is there anybody else today that you
 5 would go to if you had questions about 49 CFR
 6 171.2?
 7 **A. I may reach out to other carriers.**
 8 Q. Did you do that in 2013?
 9 **A. I didn't, no. I did not have the other**
 10 **carrier contacts at that point.**
 11 Q. Mr. Kozey would have?
 12 **A. I believe he may have.**
 13 Q. Hand you what we'll mark as Exhibit 10.
 14 **EXHIBIT 10 - Email from Lori**
 15 **Kennedy to Tracy Robinson and**
 16 **others with attached PowerPoint**
 17 **presentation**
 18 Q. MR. WOODCOCK: Exhibit 10 consists
 19 of an email and then a PowerPoint presentation. Do
 20 you have both of those?
 21 **A. I do.**
 22 Q. And I don't believe you were included on
 23 this email, but it's included just for context.
 24 Have you ever seen, reviewing both the email and
 25 then the slide deck, have you ever seen this slide

92

1 deck before?
 2 **A. I don't recall any of it.**
 3 Q. Do you recall anything about a meeting
 4 that CP had with the Standing Senate Committee on
 5 Energy, the Environment and Natural Resources on or
 6 about March 6th of 2013?
 7 **A. I believe that's the one that Glen**
 8 **Wilson had attended.**
 9 Q. Did you provide any information to
 10 prepare for that meeting, to your knowledge?
 11 **A. Not that I recall.**
 12 Q. If I could direct you down to it's the
 13 bottom of the first email under "SER restricted
 14 links," can you describe what those are, if you
 15 know?
 16 **A. They're links on our shared drive.**
 17 Q. Would these be links to the
 18 crude-by-rail file?
 19 **A. It looks -- it appears that restricted**
 20 **by rail is in that link, so I believe so.**
 21 Q. Okay, so in other words, do I have it
 22 right that the restricted crude by rail is the
 23 crude-by-rail folder?
 24 **A. It's Lori's folder, so I'm not exactly**
 25 **sure how that -- what files she has on there.**

93

1 Q. And you do not, though you consulted the
2 crude-by-rail file, you have no recollection of
3 reviewing --

4 **A. These...**

5 Q. -- the slide deck; is that right?

6 **A. That's correct.**

7 Q. Do you have any understanding of what
8 the Standing Senate Committee on Energy, the
9 Environment and Natural Resources is?

10 **A. I do not.**

11 Q. And do I have your testimony right that
12 you think that it was Glen Wilson who made the
13 presentation on behalf of CP?

14 **A. I believe Glen Wilson attended a senate
15 committee meeting, and I'm not sure if it's this
16 one or not.**

17 Q. Looking at each page of the slide deck,
18 is there any particular slide that you would have
19 provided information for?

20 MR. HEMMING: Object, foundation,
21 but go ahead and go through the slides.

22 **A. The only one that I possibly would have
23 provided any information on that I -- that I don't
24 recall is the information at the very last page
25 indicating how many, in 2011, CP hazmat field**

94

1 **personnel visited that many response teams,
2 etcetera, if that would be the only thing that I
3 would possibly have provided.**

4 Q. MR. WOODCOCK: And I understand
5 that you don't specifically recall providing that
6 information, but if it were you, how would you have
7 obtained that information?

8 **A. We have a spreadsheet that we keep of
9 all the TRANSCAER activities and training
10 activities that our DGOs and hazardous materials
11 officers put on for fire fighters and first
12 responders across our network.**

13 Q. You mentioned an acronym TGOs?

14 **A. DGO.**

15 Q. DGOs, what is that?

16 **A. Dangerous goods officer. In Canada, we
17 refer to them as dangerous goods officers, and in
18 the United States, it's hazmat officers.**

19 Q. So this document states (as read):

20 "In 2013, CP hazmat personnel
21 visited 47 municipalities across
22 our network."

23 Is that to -- well, why did they visit
24 these municipalities, if you know?

25 **A. It states in 2011.**

95

1 Q. Or 2011, sorry.

2 **A. And is part of TRANSCAER, which is
3 Community Awareness and Emergency Response. We
4 participate in exercises across the network in
5 working with first responders to learn about the
6 hazmat materials that are in the trains and how to
7 respond if there's a possible incident.**

8 Q. In 2013, did you have any understanding
9 of how the packing, different packing group
10 designations for crude would have affected
11 emergency response?

12 **A. No, I understood that there was
13 different environmental cleanup; didn't occur to me
14 that there was different --**

15 Q. Do you have that understanding now?

16 **A. I do.**

17 Q. And so at least from a hazmat personnel
18 standpoint, a DGO or hazmat, it makes a difference
19 of the packing group designation; right?

20 **A. It does to an emergency responder is my
21 understanding.**

22 Q. Hand you what we'll mark as Exhibit 12
23 to your deposition, 11.

24 **EXHIBIT 11 - Document entitled
25 "Crude by Rail Frequently Asked**

96

1 **Questions," dated March 17, 2013**

2 Q. MR. WOODCOCK: Have you seen this
3 document before?

4 **A. I don't recall the document; no, I have
5 not.**

6 Q. You've never seen this before?

7 **A. I do not recall this document.**

8 Q. Have you ever seen similar documents
9 prepared by CP, frequently-asked-questions
10 documents?

11 **A. I prepared one when I was on the asset
12 management team.**

13 Q. What was that document, generally
14 speaking?

15 **A. It was in regards to different types of
16 railcars when they're CP owned, when they're CP
17 leased, when they're foreign railway owned and how
18 they -- which cars cost more to have online,
19 etcetera.**

20 Q. And what was the purpose of the document
21 you just described, the FAQ asset management
22 document?

23 **A. It was to give some knowledge to our
24 field operations about the railcars that they were
25 moving, and so they understood demurrage and**

97

1 **storage and per diem on railcars on the railroad.**

2 Q. Is it safe to say it was a document to
3 educate folks in CP about an area that they might
4 not have had --

5 **A. Correct.**

6 Q. -- the industry knowledge that you had?

7 **A. That's correct.**

8 Q. If I can direct your attention to page
9 13 of the document, and the question is (as read):
10 "What does CP do to prevent
11 incidents?"

12 And the response is in part, (as read):
13 "We meet or exceed regulation
14 standards and safety environmental
15 practices."

16 Is that right?

17 **A. That's what it says, yes.**

18 Q. In 2013, did you believe that statement
19 to be true?

20 **A. In 2013, I believe that statement would
21 have been true.**

22 Q. In 2013, although you believe that
23 statement to be true, you yourself did not have any
24 awareness of transportation of dangerous goods
25 2.2(6); that's right?

98

1 **A. I did not have any understanding of
2 that.**

3 Q. And CP had no policies in place to
4 comply with 2.2(6)?

5 **A. None that I'm aware of.**

6 Q. And you did not have any knowledge of 49
7 CFR 171.2(f); is that right?

8 **A. That's correct.**

9 Q. And CP had no policies and procedures to
10 comply with 171.2(f); is that right?

11 MR. HEMMING: Object on
12 foundation. You can answer if you know.

13 **A. Not that I'm aware of.**

14 Q. MR. WOODCOCK: What in your view
15 was done by CP to exceed regulation standards?

16 MR. HEMMING: Objection, form,
17 calls for opinion. Go ahead and answer as best you
18 can.

19 **A. I believe that there were a number of
20 inspections done to tracks, the track geometry,
21 that type of thing. I sat close to where the
22 engineering folks sat and heard them indicate that
23 they exceeded the standards, and that's why I
24 formed that opinion.**

25 Q. MR. WOODCOCK: And even though CP

99

1 exceeded the safety and environmental standards in
2 2013, in your view, it still had three derailments
3 in a span of three months; is that right?

4 **A. Yes, they did have three derailments.**

5 Q. And then Lac-Mégantic happened in July
6 after the --

7 MR. HEMMING: Let's be clear,
8 that's not a CP derailment.

9 MR. WOODCOCK: Yeah.

10 **A. That was my response, it was not a CP
11 derailment.**

12 Q. MR. WOODCOCK: If I could direct
13 your attention to page 16, I'm going to direct your
14 attention to the first two questions. (as read):

15 "Are all crude oil products
16 regulated the same,"

17 And (as read):

18 "What is crude oil sweet."

19 Do I have your testimony right that you
20 yourself did not know the answers to those
21 questions in 2013?

22 **A. To which questions?**

23 Q. That are all crude oil products
24 regulated the same and what is crude oil sweet, you
25 would not have known the answers to those questions

100

1 in 2013?

2 **A. I see where...**

3 Q. It's hard, it's below but it -- do you
4 see which questions to which I'm referring?

5 **A. I do now; I didn't before.**

6 Q. Okay. Why don't we take the -- take
7 them in turn.

8 Would you have been able to provide
9 an answer to the question "are all crude products
10 regulated the same in 2013"?

11 **A. I would have known that all crude oil
12 products were a Class 3 flammable liquid.**

13 Q. Would you have known that in general,
14 light crude oils have a lower flashpoint and
15 heavier crude oils have a higher flashpoint?

16 **A. I would not.**

17 Q. In 2013, had someone asked you the
18 question, "What is crude oil sweet," would you have
19 been able to provide an answer to that question?

20 **A. I would not have been able to provide an
21 answer to them. I did do some online Internet to
22 try to figure that type of information out for that
23 crude oil document.**

24 Q. Sitting here today, do you have any
25 reason to dispute the answer to the question, "What

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

101

1 is crude oil sweet"?

2 MR. HEMMING: As depicted on the
3 document?

4 MR. WOODCOCK: Yes.

5 **A. So on this document, it's only**
6 **indicating Group I or II; it should indicate Group**
7 **III, as well.**

8 Q. MR. WOODCOCK: And what is the
9 basis for that statement?

10 **A. Because petroleum crude oil is -- can be**
11 **a Packing Group I, II, or III.**

12 Q. What about crude oil sweet?

13 **A. I'm -- I do not know.**

14 Q. So you don't know the answer to the
15 question?

16 **A. No, I don't.**

17 Q. Turning to the second bullet under that
18 crude oil sweet answer, it says (as read):

19 "ID Number UN1267 - some states may
20 require UN1203 gasoline."

21 Do you have any understanding of that
22 bullet point?

23 **A. I do not.**

24 Q. Do you know what states, if any, would
25 have required the UN designation of UN1203?

102

1 **A. I would not.**

2 Q. Who would at CP?

3 MR. HEMMING: Object, foundation.
4 If you know, go ahead.

5 **A. I don't know. Jim Kozey may know, but I**
6 **can't say that he would specifically know that**
7 **answer.**

8 Q. MR. WOODCOCK: If this question
9 were presented to you in 2013, to whom would you
10 have gone to get an answer at CP?

11 **A. I would have asked Jim Kozey.**

12 Q. Anybody else?

13 **A. Possibly Paul Weiss if Jim was not**
14 **around.**

15 Q. So Jim would have been your Number 1,
16 and then Paul would have been your Number 2?

17 **A. Jim Kozey was my direct supervisor, yes.**
18 **I wouldn't mind a break.**

19 MR. WOODCOCK: Now is a good time.
20 It's a little early.

21 (DISCUSSION OFF THE RECORD)
22 (BRIEF ADJOURNMENT)

23 Q. MR. WOODCOCK: Hand you what we'll
24 mark as Exhibit 12 to your deposition.

25 **EXHIBIT 12 - Email from**

103

1 **Lori Kennedy to Glen Wilson, dated**
2 **March 12, 2013**

3 Q. MR. WOODCOCK: Do you recognize
4 this document, Exhibit 12?

5 **A. I recognize this email, yes.**

6 Q. And what is this email?

7 **A. I believe it was an email that -- we had**
8 **a meeting with Glen Wilson who there was a bunch of**
9 **brainstorming done about different things that we**
10 **should figure out about crude oil moving on rail.**

11 Q. Did you attend at the brainstorming
12 session as referenced here on March 7th?

13 **A. I believe I was in the room, yes.**

14 Q. Do you have any independent recollection
15 of it sitting here now?

16 **A. I remember sitting in the room.**

17 Q. That's it?

18 **A. And the whiteboard on the side.**

19 Q. Do you remember what was discussed?

20 **A. Not exactly, no.**

21 Q. Generally speaking?

22 **A. Generally speaking, it was different,**
23 **things that perhaps we should research about, crude**
24 **oil moving on rail versus moving in a pipe.**

25 Q. Do you know what precipitated the

104

1 meeting, why it was called for?

2 **A. We were having a lot of negative press**
3 **about crude by rail, and there was a lot of press**
4 **about, you know, pipelines being safer. And so in**
5 **order to understand and educate ourselves on where**
6 **the press was coming from and what type of**
7 **information we should have in order to respond to**
8 **some of those press releases, we were looking for**
9 **details on pipe versus rail.**

10 Q. Did you yourself have any belief of
11 whether that negative press about crude by rail was
12 founded or unfounded?

13 **A. I saw the articles that were indicating**
14 **that pipelines were safer than rail.**

15 Q. Did you have any opinion about that?

16 **A. I did not believe that they were that**
17 **much safer than rail.**

18 Q. But you had just joined the hazardous
19 materials group a couple months before.

20 **A. Correct.**

21 Q. So you didn't have much of a basis to
22 make that --

23 **A. I didn't understand pipeline that well,**
24 **and so in order to get to know it and understand**
25 **it, why this was being said, this was one of the**

105

1 **things that I worked on.**

2 Q. The addressees of this email are
3 Glen Wilson, Keith Shearer, Jim Kozey, and you
4 Darlene --

5 **A. That's correct.**

6 Q. -- Nagy?

7 **A. Correct.**

8 Q. Do you recall if all those individuals
9 attended the brainstorming session?

10 **A. I know myself and Lori were there; I**
11 **don't recall if specifically Jim and Keith were**
12 **there.**

13 Q. You recall that Mr. Wilson was there?

14 **A. It was in his office, yes.**

15 Q. At this point in your work at the -- in
16 SER, had you had many meetings at Mr. Wilson's
17 office?

18 **A. Maybe a couple.**

19 Q. Do you recall any other -- well, was
20 Lori Kennedy there at the --

21 **A. At this meeting?**

22 Q. -- brainstorming session?

23 **A. Yes.**

24 Q. Do you recall if anybody else was there?

25 **A. I recall that Glen Wilson was there; I**

106

1 **don't recall if Keith and Jim were there.**

2 Q. And you don't have any recollection of
3 other individuals not included on this email who
4 would have attended?

5 **A. I don't recall. I just remember Lori**
6 **because she was writing on the whiteboard.**

7 Q. Hand you what we'll mark as Exhibit 13
8 to your deposition.

9 **EXHIBIT 13 - Document with the file**
10 **name "Research Analysis**
11 **Brainstorming Draft 2013/03/07"**

12 Q. MR. WOODCOCK: Ask that you review
13 this document and tell me if you've seen it before?

14 **A. It looks familiar.**

15 Q. I'll represent to you that the file name
16 on this document is "Research Analysis
17 Brainstorming Draft 2013/03/07"?

18 **A. Okay.**

19 Q. Okay. Based on that information and
20 your review of it, is this a sort of notes of the
21 brainstorming session, do you --

22 **A. I believe that's what this is.**

23 Q. And did you receive these notes of the
24 brainstorming session?

25 **A. I would have either received them or I**

107

1 **would have had -- seen them on the file, been**
2 **directed to see them on the file.**

3 Q. Do you know who took these notes?

4 **A. Lori.**

5 Q. Reviewing Exhibit 13, does that refresh
6 your recollection as to the topics discussed at the
7 brainstorming meeting?

8 **A. It -- it appears to be what we would**
9 **have discussed.**

10 Q. Do you have any recollection that does
11 not comport with the topics and discussion points
12 as shown on Exhibit 13?

13 **A. I don't understand what the word**
14 **"comport" means.**

15 Q. Do you have any reason to think that the
16 topics on 13, on Exhibit 13, were not discussed at
17 the brainstorming session?

18 **A. I have no reason to believe they**
19 **weren't.**

20 Q. If I could direct your attention to
21 below the three bullet points, and it says (as
22 read):

23 "Need to have a common definition
24 of DG and crude" -- and then in
25 parenthesis -- ("SER and M&S),"

108

1 end parenthesis. Do you have any
2 understanding of what that means?

3 **A. No.**

4 Q. Do you recall attempting to craft a
5 definition of crude oil for analysis purposes?

6 **A. Not for analysis purposes.**

7 Q. For any other purpose?

8 **A. I believe there was a document**
9 **describing what petroleum crude oil was.**

10 Q. The next bullet point, it said (as
11 read):

12 "Need an equivalency table for..."

13 And then there are a number of items.

14 Do you have any understanding of what that notes?

15 **A. Yes, in -- on the railroad, we describe**
16 **tank cars as typically having litres or pounds or**
17 **kilograms, and so we wanted to understand how many**
18 **pounds or litres, versus barrels, would be in a**
19 **tank car so that we could understand when we're**
20 **looking at pipeline versus rail, they talk about**
21 **number of barrels or number of gallons, what that**
22 **would mean in a -- how many tank cars that would**
23 **be.**

24 Q. If I could return back to the crude
25 definition, do you know why a definition of crude

109

1 was discussed?

2 **A. I don't recall.**

3 **Q.** Do you recall what the definition
4 ultimately became?

5 **A. It -- this -- this sentence confuses me**
6 **because it says "definition of DG," which to me**
7 **would mean dangerous goods and crude, and so I'm**
8 **not sure why those would be in the same sentence.**

9 **Q.** Could it be that the crafted definition
10 for dangerous goods and a separate definition for
11 crude?

12 **A. I think -- I would think that it's**
13 **perhaps because in Canada, we refer to dangerous**
14 **goods, and in the United States, we refer to it as**
15 **hazardous materials.**

16 **So it's more an education to**
17 **marketing and sales that the two different entities**
18 **talk about it in two different manners. That's how**
19 **I would think of that.**

20 **Q.** Do you recall any discussion about the
21 difference between heavy crude and light crude?

22 **A. It's on here, so there must have been**
23 **discussion on it, but I don't recall the**
24 **discussion.**

25 **Q.** Moving down, there's a sentence that

110

1 says or partial sentence that says (as read):

2 "Define and have common
3 understanding of" -- and then --
4 "incident/accident/NAR."

5 Do you recall what any discussions were
6 about that -- delineations, if any, between
7 incident, accident, and NAR?

8 **A. Well, NAR is a non-accidental release.**
9 **Incident would be what we refer to as an accident,**
10 **and I believe that we're looking at perhaps**
11 **accidents for pipeline, as well.**

12 **So incident/accident would be**
13 **referred to as the same when I read this.**

14 **Q.** Why were you attempting to get an
15 understanding of what an accident is?

16 **A. I'm not sure we were having -- looking**
17 **for a common understanding. That was the -- what**
18 **we're looking for or if we're looking for the**
19 **actual incidents and releases on rail versus**
20 **pipeline.**

21 **Q.** Turning to the bottom third of the page,
22 there's an underline that says "risk differences."
23 Do you see that?

24 **A. Mm-hmm.**

25 **Q.** What, if any, risk differences did you

111

1 identify in the brainstorming session?

2 **A. I don't know. I don't recall anything**
3 **being identified in the brainstorming session.**

4 **Q.** Is it your understanding that it was a
5 project to identify?

6 **A. Correct.**

7 **Q.** So you were identifying risks in the
8 transportation of crude by rail; right?

9 **A. Yes, as well as pipe.**

10 **Q.** And then pipeline risks?

11 **A. Correct.**

12 **Q.** And doing a comparison?

13 **A. That's correct.**

14 **Q.** Did you yourself undertake any of this
15 risk analysis?

16 **A. I did do some -- I looked on the**
17 **Internet to look at -- for some of these -- some of**
18 **the information for some of these things listed on**
19 **this document.**

20 **Q.** Did you do anything else to identify
21 risks with the transportation of crude oil, other
22 than search on the Internet, crude oil by rail?

23 **A. I looked at NTSB reports, TSB reports,**
24 **but that was all on the Internet, as well.**

25 **Q.** Were you specifically tasked with risk

112

1 identification?

2 **A. I was tasked with some of these items on**
3 **here and was -- and I specifically looked at**
4 **pipeline risks versus rail risks.**

5 **Q.** In part of your risk assessment, did you
6 examine the different risks associated with
7 different packing groups?

8 **A. No, I did not.**

9 **Q.** Why not?

10 **A. There -- because it was petroleum crude**
11 **oil in a railcar in a means of containment versus**
12 **pipeline.**

13 **Q.** You yourself have said that Packing
14 Group III is low risk; right? Whereas Packing
15 Group I is high risk; right?

16 **A. Correct.**

17 **Q.** You didn't specifically examine the
18 delineations of risk between the packing groups and
19 your assessment of crude by rail?

20 **A. I did not.**

21 **Q.** What risks did you specifically examine?

22 **A. I looked at when an incident happens,**
23 **what is available.**

24 **For example, in rail, it's**
25 **immediately known by the RTC that an incident has**

113

1 **happened, and ER resources are sent out, emergency**
2 **response resources. Versus in a pipeline, a leak**
3 **is often -- can go for a day, two days, weeks,**
4 **before anybody realizes that there's an incident.**

5 **And so the environmental impacts**
6 **for that sort of thing versus what rail does.**

7 Q. You would agree with me that in order to
8 get the complete picture of risks of crude by rail
9 and crude by pipe, that you would need to examine
10 all the risks with crude-by-rail transportation; is
11 that right?

12 **A. I examined all the risks that I was**
13 **aware of.**

14 Q. But you were not aware of packing -- any
15 increased risks with packing group information?

16 **A. Would not have occurred to me to look at**
17 **the different risks for packing groups in rail**
18 **versus pipeline.**

19 Q. And you were not told to do so; is that
20 right?

21 **A. I was not told to do so.**

22 Q. You would have done so, had you been
23 told, I assume?

24 **A. Yes.**

25 Q. So in a way, your risk assessment for

114

1 crude by rail was incomplete?

2 MR. HEMMING: I'll object to the
3 characterization.

4 **A. The -- the reason that I did the risk**
5 **analysis was for the negative press that was coming**
6 **out on rail versus pipe, and so we were looking at**
7 **the different ways that we mitigated those risks on**
8 **rail versus pipe.**

9 Q. MR. WOODCOCK: But you didn't
10 examine packing -- any differences in packing
11 group?

12 **A. That's correct.**

13 Q. Did you assess, as part of your risk
14 assessment, any existing controls that CP had to
15 address safety risks?

16 **A. Controls as far as the RTC was**
17 **immediately advised that there may have been an**
18 **incident versus in pipeline, they have controls in**
19 **their network that they call them pigs, I'm not**
20 **sure why, that run up and down the -- the pipeline**
21 **to look for cracks and different things that could**
22 **be happening in the pipeline. Whereas we have**
23 **geometry cars that run up and down our tracks that**
24 **look for similar things.**

25 Q. Other than this distinction, it's sort

115

1 of like a physical inspection?

2 **A. That's correct.**

3 Q. Did I have that right, physical
4 inspection of the -- of the pipeline versus a
5 physical inspection of the tracks?

6 **A. Correct.**

7 Q. Did you examine any other controls that
8 CP had in place to minimize risks for
9 transportation of crude by rail?

10 **A. Not that I recall.**

11 Q. Same question for pipeline, did you look
12 into any controls the pipeline industry had to
13 minimize risks in the piping of crude?

14 **A. Not that I recall.**

15 Q. Hand you what we'll mark as Exhibit 14
16 to your deposition.

17 **EXHIBIT 14 - Document entitled "SER**
18 **Crude Oil Research & Assessment**
19 **Requirements"**

20 Q. MR. WOODCOCK: Do you recognize
21 this document, Exhibit 14?

22 **A. Yes, I do.**

23 Q. What is this?

24 **A. This is a document that I believe Lori**
25 **put together, a more complete document from the**

116

1 **brainstorming of things that needed to be done in**
2 **order to complete the report.**

3 Q. So this document, Exhibit 14, arose
4 subsequent to the brainstorming session; is that
5 right?

6 **A. Yeah, I think it would be flushed out**
7 **from this document.**

8 Q. What's your understanding of the
9 objective which was to support CP's position that
10 the transportation of crude oil by rail was a
11 viable and safe means to transport crude oil?

12 **A. The objective would have been to develop**
13 **the position.**

14 Q. And that position --

15 **A. Was that it was --**

16 Q. -- was that it's going to be -- that
17 crude by rail done by CP was safe; is that right?

18 **A. It was viable and safe, correct.**

19 Q. And you were going to support that
20 position with both qualitative and quantitative
21 data; is that right?

22 **A. That's correct.**

23 Q. There's a second bullet point of safety,
24 both general and HazCom. Can you describe, if any,
25 the difference between general safety and HazCom

117

1 safety?

2 **A. I cannot.**

3 Q. What about the difference between
4 environmental safety and general and HazCom safety,
5 is that a difference with distinction to you?

6 **A. Not to me, no.**

7 Q. Under the heading "Assessment Steps"
8 states that (as read):

9 "This should include an assessment
10 of safety (general and HazCom)
11 environment and security handling
12 risks associated with crude oil
13 between the rail origin and
14 destination, including transload
15 between rail and truck (only)."

16 Did I read that correctly?

17 **A. You read that correctly.**

18 Q. What, if anything, did you do to assess
19 safety between the rail origin and its destination?

20 **A. I don't believe I did anything in that
21 space.**

22 Q. Do you know if anybody else at CP was
23 tasked with that?

24 **A. I don't recall.**

25 Q. At any rate, it's Number 1 in the

118

1 assessment steps; is that right?

2 **A. That's correct.**

3 Q. If not you, who?

4 **A. I'm not sure.**

5 Q. Who would be the potential individuals
6 who had the information basis to conduct the
7 assessment Step Number 1 at CP?

8 MR. HEMMING: Objection,
9 foundation. Go ahead and answer if you can.

10 **A. This -- this was a -- research that was
11 being done by several of us. I looked specifically
12 at rail transportation incidents; I did not look at
13 between rail and the destination as you asked in
14 your first question.**

15 Q. MR. WOODCOCK: Do you understand
16 assessment risk Step Number 1 to include the full
17 spectrum of risks for the transportation of crude
18 by rail?

19 **A. Can you repeat that question?**

20 Q. Sure.

21 MR. WOODCOCK: Could you read back
22 the question, please?

23 (COURT REPORTER READ BACK)

24 **A. So when I -- what I was assigned to do
25 was identify potential incidents that had occurred**

119

1 **on rail versus pipeline. That was my -- my part in
2 doing that one.**

3 Q. MR. WOODCOCK: Did you have any
4 understanding that your -- the risk assessment
5 conducted by CP should be limited in any way?

6 MR. HEMMING: Objection,
7 foundation. Go ahead and answer if you know.

8 **A. I have no idea. But when I read this,
9 it also indicates security risks, and I was not
10 part of security risks.**

11 Q. MR. WOODCOCK: My question is did
12 you have any -- do you have any memory of risks
13 that were identified by CP individuals that, but
14 for one reason or another, were not examined?

15 **A. Not that I can recall.**

16 Q. Do you recall the results, if any, of
17 the assessment done in Step Number 1 of identifying
18 crude oil risks?

19 **A. I created a document indicating the
20 differences between rail transportation and
21 pipeline transportation. That was my part of that.**

22 Q. What about work done by others as part
23 of this brainstorming group?

24 **A. I don't recall seeing any, anything from
25 anyone else.**

120

1 Q. If I could have you look at -- we've
2 focused so far on Step Number 1, but if I could
3 have you look at both the following Steps 2, 3, and
4 4 under the assessment steps?

5 **A. So I did some -- I did pull some
6 information for Number 3, (as read):**

7 "Assessing existing controls that
8 are in place to address safety,
9 environmental and security risks."

10 Q. If I could just stop you there, do you
11 remember what those existing controls you
12 identified and assessed were?

13 **A. They were the network service, the --
14 excuse me, the RTC centre, the dispatchers who
15 would immediately know when the incident had
16 occurred and the geometry cars that run up and down
17 the tracks to identify tracks that are needing
18 repair or replacement, as well as our WILD
19 detectors which indicate when cars have hot wheels
20 or things of that nature, versus the pigs in the
21 pipeline and the slow response to some of their
22 spills.**

23 Q. Did you assess any existing controls
24 that CP had to comply with the *Transportation of
25 Dangerous Goods Act*?

121

1 **A. No, I did not.**

2 Q. Are you -- in 2013, can you identify any
3 existing controls that CP had to comply with the
4 *Transportation of Dangerous Goods Act*?

5 **A. In 2013, I would not have been able to.**

6 Q. Let's turn to the bottom topic on page
7 1, which is under "research areas." The beginning
8 part says (as read):

9 "To develop a complete picture for
10 safety, environment and security,
11 research should include..."
12 and then three bullets. Did you do
13 anything personally to address the three bullet
14 points below?

15 **A. I looked at information on rail,
16 pipeline, and truck, and that's about it.**

17 Q. Did you --

18 **A. There's -- sorry, there's some bullets
19 on the next page.**

20 Q. Let's just stay on page 1 --

21 **A. Okay.**

22 Q. -- for now because that's what my
23 question asked about. Did you identify any risk
24 factors relevant to safety and safety - HazCom?

25 **A. Not that I recall.**

122

1 Q. Do you recall anybody in CP's
2 brainstorming session or anybody else at CP --

3 **A. I can't.**

4 Q. -- who identified risk factors?

5 **A. I can't remember.**

6 Q. Moving on to the top of page 2, it's a
7 continuation of the bullet points under "risk
8 factors." Did you do anything to identify risk
9 factors for the bullet points starting "environment
10 and security" on the top of page 2?

11 **A. For environment, I did do some -- some
12 research on that.**

13 Q. And what was that?

14 **A. If I recall, some of it was on proximity
15 to sensitive areas where if pipeline, if it's not
16 built, can have some issues, whereas rail's already
17 built, water, where we run by water. And there was
18 some information about emissions where pipeline had
19 less emissions versus rail in the transportation of
20 the crude.**

21 Q. Do you recall assessing the risk factors
22 with specific gravity when you assessed
23 environmental damage for crude releases near water?

24 **A. There was some information about
25 specific gravity and that heavier oil would sink**

123

1 **and lighter oil would float. And so the mitigation
2 efforts for cleanup would be different.**

3 Q. From an environmental cleanup
4 perspective, based on your research, was there any
5 tangible difference between the risk of crude oil
6 with a lighter specific gravity than with a lower
7 specific gravity?

8 **A. From the research I did, it was all
9 regarding the cleanup and that the crude oil would
10 float, and so you'd have to boom, versus the
11 heavier oil would sink. And so cleanup would be
12 more difficult.**

13 Q. As part of that analysis, did you
14 examine what percentage of CP's haulage of crude
15 was light versus heavy?

16 **A. I can't recall.**

17 Q. Is that something you would have looked
18 at?

19 **A. I don't remember.**

20 Q. If I could turn your attention to the
21 bottom table in page 2, am I correct in
22 understanding that these, what's in the table, are
23 definitions for terms that were identified in the
24 brainstorming session?

25 **A. The terms were what we were looking for,**

124

1 **accidents, crude oil, when they were involved,
2 hazardous commodities and what the incident was,
3 whether it was an incident or an NAR.**

4 **In the definition of crude oil, it
5 only indicates Packing Group I or II, but that
6 would not have been possible to delineate between
7 any of the accidents because it would not have been
8 part of the information that I would have been
9 looking at.**

10 Q. If I could refer you back to page -- to
11 Exhibit 13?

12 **A. Yes.**

13 Q. If you recall, we spoke about the
14 brainstorming session coming -- needing to have a
15 definition for DG and crude; right?

16 **A. Correct.**

17 Q. And then having a common definition of
18 incident, accident, and AR; is that right?

19 **A. That's what it says, yes.**

20 Q. And you've testified that Exhibit 14 was
21 a result of the brainstorming session, happened
22 after; right?

23 **A. It appears that that's what it was a
24 result of.**

25 Q. And the definitions on page 2 of Exhibit

125

1 14 are the definitions of the terms identified on
2 Exhibit 13; is that right?

3 **A. It appears that some of them are.**

4 Q. Well, for instance, crude oil is; right?

5 **A. Crude oil is.**

6 Q. An incident; right?

7 **A. Is an accident or an NAR as I indicated,**
8 **yeah.**

9 Q. And an accident?

10 **A. Correct.**

11 Q. And an NAR?

12 **A. Under "definition," yes.**

13 Q. And the definition of crude oil on page
14 2 of Exhibit 14 excludes Packing Group III; isn't
15 that right?

16 **A. It does exclude Packing Group III on**
17 **this document; however, in doing the research, it**
18 **would have included Packing Group III. It would**
19 **not have excluded -- it would not have excluded any**
20 **packing groups because I only looked at crude oil,**
21 **I didn't do a subset.**

22 Q. Okay, so in performing the analysis, you
23 did not use the definition of crude oil on page 2;
24 is that right?

25 **A. That's correct.**

126

1 Q. Do you have a -- do you recall that
2 being an issue?

3 **A. No.**

4 Q. Did you tell that to other folks at CP?

5 **A. No, I did not.**

6 Q. You just made that decision on your own?

7 **A. There's no way to get to that level when**
8 **you're looking for 1267 in the information that**
9 **you're looking for on the Internet or within our**
10 **systems.**

11 Q. Do you know why Packing Group III is
12 excluded from the definition of crude oil?

13 **A. I do not.**

14 Q. But in performing your analysis, you
15 examined UN1267; is that right?

16 **A. That's correct.**

17 Q. And you didn't dive down into packing
18 group information?

19 **A. I did not.**

20 Q. And did you tell that to your superiors
21 and that part of your analysis, you only looked
22 at -- you looked at UN1267?

23 **A. I don't think I specifically said I left**
24 **out Packing Group I, II, or III; I just said I**
25 **looked at UN1267.**

127

1 Q. Did you look at UN1203?

2 **A. I did not.**

3 Q. Why not?

4 **A. We -- I didn't think to look for it.**

5 Q. The definition of crude oil on page 2 of
6 Exhibit 14, in some states, it's UN1203; right?

7 **A. That's correct, that's what it states.**

8 Q. In performing your research looking at
9 the definition of crude oil on page 2 of Exhibit
10 14, how far back did you go in CP's history, if you
11 recall?

12 **A. I don't recall exactly, but I know I did**
13 **not go back any further than the year 2000.**

14 Q. At what point did CP's crude-by-rail
15 transport really take off, do you have a date in
16 mind?

17 MR. HEMMING: Object, foundation.
18 Go ahead and answer to the best of your ability.

19 **A. I believe it was in 2012 and then 2013.**

20 Q. MR. WOODCOCK: Do you have any --
21 based on your analysis, do you have any picture
22 about the amount of crude by rail that CP was
23 transporting before the time frame you just
24 indicated, 2012?

25 **A. I know that it was a lot less, but I**

128

1 **don't know the specific amount.**

2 Q. Were you aware of any changes in CP's
3 policies as a result of the increase in
4 transportation of crude oil?

5 **A. I was not aware of any.**

6 Q. Sitting here today, do you have any
7 knowledge that CP's policies and procedures changed
8 in response to the increased shipment of crude by
9 rail?

10 **A. Not at that time, no, I don't believe**
11 **there was.**

12 Q. You mentioned the increase in
13 crude-by-rail transport by CP in the 2012 time
14 frame. Can you just generally describe in the
15 subsequent years, like in the next three years, how
16 the evolution of CP's crude-by-rail transport went
17 on a volume basis?

18 **A. I don't recall exact numbers, but I know**
19 **that volumes in 2013 were higher, and then I can't**
20 **recall 2014.**

21 Q. What about today?

22 **A. Today?**

23 Q. Compared with, for instance, 2012?

24 **A. I think today we're probably the same as**
25 **2012, but again, I haven't done the numbers. I**

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

129

1 know we did have a period where it dropped off
2 quite a bit.

3 Q. And do you know what period that was?

4 A. Last year.

5 MR. WOODCOCK: We can go off the
6 record.

7 (Proceedings ended at 12:41 p.m.)

8 -----
9 (Proceedings to recommence at 1:30 p.m.)
10 -----

131

1 Q. Can you look through it, do you have any
2 reason to dispute that?

3 A. I have no reason to dispute that.

4 Q. Have you seen this document before?

5 A. Yes, I have.

6 Q. Can you generally describe what this
7 Excel file's purpose is?

8 A. It's to lay out the action items, who's
9 responsible for them and when they hopefully will
10 be completed.

11 Q. So if you go through the -- taking Item
12 Number 3, for example, I'll refer to the items as
13 on the left-hand side?

14 A. Okay.

15 Q. So the action item is described under
16 Column A; right?

17 A. Correct.

18 Q. And then you have a responsible
19 individual or individuals; is that right?

20 A. That's correct.

21 Q. And is the duration, is that in days?

22 A. I'm not sure.

23 Q. And you have a start date, well, at any
24 rate, you have a start date, for instance, on the
25 Item Number 3, it's a March 7th of 2013; right?

130

1 (Proceedings recommenced at 1:32 p.m.)

2 DARLENE CORA NAGY, previously sworn,
3 questioned by Mr. Woodcock:

4 Q. Back on the record after a lunch break.

5 Ms. Nagy, could I refer you back to
6 Exhibit 12 of your deposition?

7 A. Yes.

8 Q. And Exhibit 12 there are two attachments
9 to Exhibit 12. There's the SER crude research
10 analysis that we've gone through; right?

11 And there's a CP activity list action item

12 tracking; is that right?

13 A. Correct.

14 Q. And the activity list is an Excel
15 spreadsheet; is that right?

16 A. It looks like it, yes, it is.

17 Q. Hand you what we'll mark as Exhibit 15
18 to your deposition.

19 EXHIBIT 15 - Excel spreadsheet, CP
20 Activity List Action Item Tracking

21 Q. MR. WOODCOCK: And ask you to
22 confirm, is this the spreadsheet that is attached
23 to Lori's email of 3/12/13, Exhibit 12?

24 A. I believe it is, but I can't confirm
25 that.

132

1 A. Correct.

2 Q. And you have an end date of March 11th,
3 I mean March --

4 A. 18th.

5 Q. 18th; right?

6 A. Correct, which would result in your 11
7 days.

8 Q. Eleven days, okay, and then there's a
9 next checkpoint, what's your understanding of what
10 that is?

11 A. I believe that it possibly could be a
12 next meeting to discuss what has been or has not
13 been done.

14 Q. In your experience, is this type of
15 action item chart used frequently in Canadian
16 Pacific?

17 A. No, it's not.

18 Q. Have you seen charts similar to one and
19 followed them?

20 A. I have seen charts similar to this one,
21 yes.

22 Q. Turning to Item Number 3, you have --
23 there's an under the responsible, it's both you and
24 Jim Kozey; is that right?

25 A. That's correct.

133

1 Q. Do you recall any delineation between
2 you and he on these items?

3 **A. No.**

4 Q. No, do you have an understanding of who
5 had primary responsibility, you or he, for, for
6 instance, an Item Number 3?

7 **A. Action Item Number 3, I believe I was
8 the primary.**

9 Q. And then did Mr. Kozey review --

10 **A. Yes.**

11 Q. -- Number 3?

12 **A. That's correct.**

13 Q. For any action item for which you were
14 the primary, did Mr. Kozey review your work?

15 **A. He did.**

16 Q. So it's sort of is it you guys were
17 working as a team?

18 **A. I reported to Mr. Kozey, so as much as a
19 team is working with your boss --**

20 Q. Two, team of two?

21 **A. -- is.**

22 Q. Further on down on that responsible,
23 there's the letters turn to red and bold. Do you
24 see that?

25 **A. I do.**

134

1 Q. Does that mean anything to you, that
2 distinction?

3 **A. Does not.**

4 Q. Do you have any idea why some are red
5 and some of them are not red?

6 **A. I do not.**

7 Q. You've mentioned that for Action Item
8 Number 3, that you were the primary; is that right?

9 **A. I recall doing the -- gathering the
10 information for most of that action item.**

11 Q. And did you complete that action item
12 within the 11-day duration?

13 **A. I don't recall.**

14 Q. I'd like for you to compare Action Items
15 Number 4 with Number 9, do you have any
16 understanding of the difference between safety
17 general, which was assigned to Ms. Kennedy, and
18 safety HazCom, which was assigned to you and
19 Mr. Kozey?

20 **A. I would not have known.**

21 Q. You did not know?

22 **A. I would not have understood the
23 difference between the two.**

24 Q. Did you have any understanding of what
25 Ms. Kennedy was going to be assessing, in terms of

135

1 safety general?

2 **A. I don't recall, no.**

3 Q. And how -- do you have any understanding
4 of how her analysis would differ from the analysis
5 that you and Mr. Kozey would be undertaking?

6 **A. I don't recall.**

7 Q. Turning to Action Item Number 10, who
8 had primary responsibility for Action Item Number
9 10, you or Mr. Kozey?

10 **A. I believe I was looking for the
11 information from the media and looking for
12 information from the public concerning crude oil
13 and rail.**

14 Q. Did you identify all risks and concerns
15 associated with the transportation of crude oil?

16 **A. I identified the risks that were in the
17 media at that time.**

18 Q. So in order to identify the potential
19 risk and concerns, you went -- well, tell me what
20 you did to identify the risks and concerns?

21 **A. I looked at media releases, I looked at
22 TSB reports and NTSB reports, and anything that I
23 read that may be a potential risk I would have
24 input into the document.**

25 Q. What were the results of your risk

136

1 identification assessment, if any?

2 **A. I don't recall what they were
3 specifically. I was two months into the job at
4 this time, so I was -- everything was new, and I
5 was learning a lot at this point.**

6 Q. And you were given 11 days to complete
7 this project, is that right, under -- according to
8 Exhibit 15?

9 **A. According to Lori's timeline, yes.**

10 Q. Do you recall, and it being a longer --
11 there being an extension of that time frame?

12 **A. I don't recall, no.**

13 Q. Do you recall if Mr. Kozey made any --
14 did any independent research?

15 **A. I don't know.**

16 Q. And did you report your -- the results
17 of your identification of potential risks and
18 concerns to Mr. Kozey?

19 **A. I created a Word document that had all
20 the information I had found on the Internet.**

21 Q. Turning to Action Item Number 11, (as
22 read):

23 "Assess current risk status of
24 identified risk, including data
25 analysis where available."

137

1 Was there any distinction in your mind
2 between Action Item Number 10 and Number Item
3 Number 11?

4 **A. Not in my mind.**

5 Q. You completed them simultaneously?

6 **A. Correct.**

7 Q. And you were the primary for Action Item
8 Number 11, as well?

9 **A. I don't know if I was the primary. I**
10 **identified what I could find on the Internet and**
11 **put it into a Word document that Mr. Kozey would**
12 **have read.**

13 Q. What data analysis, if any, did you
14 undertake?

15 **A. I did no data analysis.**

16 Q. Why not?

17 **A. I don't know how to do data analysis.**

18 Q. Did you voice that to Mr. Kozey?

19 **A. I don't recall specifically saying that**
20 **to him.**

21 Q. Do you have any recollection of
22 Mr. Kozey performing independent data analysis?

23 **A. I can't recall if he did or not.**

24 Q. Turning the next page to Action Item
25 Number 12, did you undertake Action Item Number 12,

138

1 it's a build incident summary to capture incidents
2 involving crude trains?

3 **A. Yes, I did.**

4 Q. And what did you do to complete that
5 task?

6 **A. I looked through our incident summary**
7 **spreadsheets that they had kept previously to me**
8 **getting there, identified when crude had been**
9 **involved in an incident, and captured that and**
10 **inputted it into a table.**

11 Q. When you completed Action Item Number
12 12, had the Parkers Prairie accident occurred yet?

13 **A. I don't believe it had.**

14 Q. If it had, would you have included it in
15 your --

16 **A. I would have, yes.**

17 Q. Did you update the document that
18 captured accidents involving crude trains that you
19 created in the beginning of March to include the
20 three CP derailments that happened in the spring of
21 2013?

22 **A. I don't believe I did.**

23 Q. Why not?

24 **A. There was no request to update the**
25 **document after I had given it to Jim.**

139

1 Q. Turning to Action Item Number 13, (as
2 read):

3 "Assess existing controls that are
4 in place to address identified
5 risks."

6 Do you recall who had primary
7 responsibility for performing that action item?

8 **A. I don't recall who had primary.**

9 Q. Do you recall performing any tasks to
10 complete Action Item 13?

11 **A. I can't recall.**

12 Q. Do you recall any results from Action
13 Item 13 assessing the existing controls to
14 identifying --

15 **A. I believe we had a paragraph about risks**
16 **in the document, but I can't recall what they were.**

17 Q. Turning to Action Item 14, which is (as
18 read):

19 "Summarize data information and
20 draft messaging that addresses the
21 potential risks and concerns and
22 supports CP's position that rail is
23 safe."

24 Did you undertake that action item?

25 **A. I don't believe that was part of my...**

140

1 Q. Do you think Mr. Kozey would have -- if
2 not you, it would have been Mr. Kozey?

3 **A. I believe Mr. Kozey summarized the data**
4 **that I had captured in the -- in the summary page**
5 **that was on the report.**

6 Q. What, if anything, was done with the
7 data that did not support CP's position that rail
8 is safe for crude oil?

9 **A. That all the information that was in the**
10 **report stayed in the report.**

11 Q. Was information that was learned that
12 undercuts CP's position that rail was safe for
13 transportation of crude oil, did that make it into
14 the report?

15 **A. I don't recall any type of information.**

16 MR. HEMMING: I was going to
17 object that the question assumes that exists.

18 Q. MR. WOODCOCK: Do you recall
19 uncovering any information that indicated or
20 undercut CP's position that rail is safe for
21 transportation of crude oil?

22 **A. I don't recall any of that type of**
23 **information.**

24 Q. None?

25 **A. I don't recall.**

141

1 Q. You just don't have a memory one way or
2 the other?

3 **A. I don't have memory, I...**

4 Q. Action Item 15 just says
5 "environmental." Is that a new category, I mean
6 just describe what your view is on what Action Item
7 15 is?

8 **A. I would -- I would think that**
9 **environmental is the light crude oil floats, the**
10 **heavy crude oil sinks, and therefore, cleanup in**
11 **the environment is different, depending on the type**
12 **of crude oil.**

13 Q. Just to make sure I've got your
14 testimony correct on that, there are different
15 risks environmentally speaking with light crude oil
16 versus heavy oil; is that right?

17 **A. I -- I recall some media that I found on**
18 **the Internet where the public was concerned about**
19 **the cleanup of the heavy sludgy crude and the**
20 **impact to the environment.**

21 Q. Anything else that you uncovered?

22 **A. There are different public concerns**
23 **about cleaning up and what it was doing to the --**
24 **the impact to the environment.**

25 Q. If I could have you turn to the next

142

1 page, page 3, and specifically Action Item 26 which
2 is (as read):

3 "Assess overall research and
4 determine what will be done
5 in-house and what requires
6 additional support."

7 And you, Mr. Kozey or Keith Shearer; is
8 that right?

9 **A. That's correct.**

10 Q. And Glen Wilson are all tasked who's
11 responsible for that; is that right?

12 **A. That's correct.**

13 Q. Do you recall having a meeting to
14 discuss overall research and determine what needed
15 to be done in-house or what required additional
16 support?

17 **A. After this was created, I don't recall a**
18 **meeting.**

19 Q. Do you recall outsourcing, whether CP
20 outsourced any of the action items listed on -- in
21 this document?

22 **A. I don't know if there was any.**

23 Q. With regard to data analysis, you said
24 you couldn't perform data analysis, did you
25 specifically request additional support to perform

143

1 that analysis?

2 **A. No, I did not.**

3 Q. Why not?

4 **A. I did the action items that were**
5 **assigned to me to the best of my ability, and the**
6 **ones that I couldn't do were not done.**

7 Q. So there was no additional support
8 requested from your memory?

9 **A. Not from me, no.**

10 Q. How about anybody else?

11 **A. I don't know.**

12 Q. On the right-hand side under notes for
13 Item Number 26, it says "initial assessment"?

14 **A. Sorry, which action item?**

15 Q. Twenty-six, the same item we've been
16 speaking about. Do you have any knowledge of what
17 the "initial assessment" means?

18 **A. I do not.**

19 Q. I'd like for you to turn to pages 4
20 through 8 of Exhibit 15 and just generally look
21 them over?

22 **A. To page 8?**

23 Q. Yes.

24 **A. Okay.**

25 Q. I'll represent to you that in the native

144

1 Excel document, pages 4 through 8 are a separate
2 tab in the Excel document. Do you know what I mean
3 by that?

4 **A. I understand.**

5 Q. Does that make sense to you, that pages
6 4 through 8 would be a separate tab?

7 **A. I'm not sure why they were, but I can**
8 **understand it.**

9 Q. Do you -- what's your understanding of
10 the purpose of pages 4 through 8 of Exhibit 15?

11 **A. It appears that they were looking at the**
12 **meetings that different people were attending for**
13 **crude oil across the network in the US.**

14 Q. What do you mean by "across the
15 network"?

16 **A. Well, I mean across Canada, so in**
17 **Vancouver, in Calgary, Tilley, Alberta, Ottawa,**
18 **Houston, Texas, which would be down in the States,**
19 **Calgary, Saskatoon. So when I say "across the**
20 **network," I mean across Canada, across...**

21 Q. Does that mean across CP's network?

22 **A. When I said that, that would mean across**
23 **our network that some of these places are not on**
24 **our network.**

25 Q. Houston's not part of your network?

145

1 **A. Nope.**

2 Q. I don't believe that you are the listed
3 CP participant on any of these activities; is that
4 right?

5 **A. That's correct.**

6 Q. Did you support, do you have any
7 recollection of you supporting the named CP
8 participant in any of these events or activities?

9 **A. No.**

10 Q. I'd like for you now to turn to pages 9
11 through 15 at the end of the document, and I'll
12 represent to you that these two are a separate tab
13 in the native Excel.

14 **A. All right, okay.**

15 Q. Do you have an understanding of what
16 pages 9 through 15 represent in Exhibit 15?

17 **A. They appear to be documents in some
18 cases that were created or housed and stored.**

19 Q. Do you have any idea of where these
20 documents would be housed or stored on CP's
21 internal network?

22 **A. When I look at the file name, I don't
23 see the -- the R drive share where it would be
24 stored, so I'm not sure.**

25 Q. Do you recall reviewing this tab, pages

146

1 9 through 15 of Exhibit 15, in performing your
2 research activities for the action items listed in
3 Exhibit 15?

4 **A. I did not.**

5 Q. Did you consult the documents listed
6 in -- on pages 9 through 15 in performing your
7 research?

8 **A. I may have had some of them, the
9 documents already, but I wouldn't have gone to this
10 document to find them.**

11 Q. Do you recall reviewing specifically in
12 any of the documents listed in pages 9 through 15
13 for your research for the action items in Exhibit
14 15?

15 **A. I believe I would have looked at the one
16 on the bottom of page 9, "CP Dangerous Goods
17 Incidents Graphs," and perhaps I may have even
18 created that one for Mr. Kozey. I believe that I
19 reviewed the AAR view of railroad versus pipeline
20 safety and environmental impact on page 11 because
21 I recognize the name Peter French. And I don't
22 recognize any of the others.**

23 Q. Is there a reason why you, in performing
24 your research, you determined to look at the
25 Internet versus first taking a look at what CP had

147

1 in-house?

2 **A. I have no reason why I would have done
3 one or the other.**

4 Q. Other than the documents that you just
5 noted on -- listed in Exhibit 15, do you recall
6 consulting any specific other CP documents to
7 perform your research items?

8 **A. I don't recall.**

9 Q. I think we'll mark as Exhibit 15, 16 to
10 your deposition.

11 **EXHIBIT 16 - PowerPoint
12 presentation entitled "Crude By
13 Rail Presentation for Transport
14 Canada", dated March 14, 2013**

15 Q. MR. WOODCOCK: Have you ever seen
16 this document before?

17 **A. No, I don't recall this document.**

18 Q. Do you recall any CP individual making a
19 presentation to Transport Canada on or about March
20 14th, 2013?

21 **A. I believe in here, it indicates somebody
22 had possibly done that, but I don't recall.**

23 Q. If you want to go back to Exhibit 15,
24 I'm at page 6?

25 **A. So Robert Taylor, I'm not sure if that's**

148

1 **who, though --**

2 Q. Who made the presentation?

3 **A. -- made the presentation or not.**

4 Q. Who is Robert Taylor?

5 **A. He's in our government affairs
6 department.**

7 Q. What does he do?

8 **A. I'm not sure.**

9 Q. And are you familiar with Brent Dornian?

10 **A. I believe he was in marketing and sales
11 at that time.**

12 Q. And Keith Shearer?

13 **A. He's on the org chart.**

14 Q. And Michael Murphy?

15 **A. I'm not sure who he was.**

16 Q. The topic listed is "Bakken/Oil By
17 Rail"; is that right?

18 **A. In Document 15, yes, that's what it's
19 indicating. I'm not sure if these two are the same
20 document; one is March 15th, one is March 14th.**

21 Q. And that the background is the basis for
22 presentation/BNSF presentation; is that right?

23 **A. That's what it says.**

24 Q. Do you have any recollection of a BNSF
25 presentation?

149

1 **A. I do not.**

2 Q. To your knowledge, were you involved in
3 background information for a presentation before
4 Transportation Canada?

5 **A. I was not.**

6 Q. Based on the line on page 6 of Exhibit
7 15 and Exhibit 16 itself, who at CP would be the
8 person or persons to ask about the crude-by-rail
9 presentation for Transport Canada?

10 **A. One of the ones listed there.**

11 Q. Do you recall having a conversation with
12 any of the individuals listed on the "meeting with
13 TC" line on page 6 of Exhibit 15 about the content
14 of the presentation?

15 **A. I don't, no.**

16 Q. Hand you what we'll mark as Exhibit 17
17 to your deposition.

18 **EXHIBIT 17 - Email from**
19 **Darlene Nagy to Glen Wilson and**
20 **others, dated March 25, 2013**

21 Q. MR. WOODCOCK: Do you recognize
22 Exhibit 17?

23 **A. Yes, I do.**

24 Q. What is it?

25 **A. It's a summary or key points on the**

151

1 Q. MR. WOODCOCK: Did you yourself
2 draft the summary of key points?

3 **A. No, I didn't.**

4 Q. Do you know who did?

5 **A. Jim Kozey.**

6 Q. Jim, did you provide him the information
7 from which he drafted the key points?

8 **A. Some of the information that he used in**
9 **the summary is from the report.**

10 Q. And turning to the report itself, did
11 you draft the report or was that Mr. Kozey again?

12 **A. I drafted the report; Mr. Kozey reviewed**
13 **the report.**

14 Q. And then he looked at the report and
15 created the key points?

16 **A. Yes.**

17 Q. Is that right?

18 **A. That's correct.**

19 Q. And these key points were emailed to the
20 individuals who were part of the initial
21 brainstorming session; right?

22 **A. Yes.**

23 Q. And Mr. Bunce, as well?

24 **A. Who was Jim Kozey's supervisor / manager**
25 **at that time.**

150

1 **crude transportation document that I was part of**
2 **creating.**

3 Q. The crude transportation document which
4 is attached to the email, Exhibit 17, you mentioned
5 before that you created a document?

6 MR. HEMMING: I hate to interrupt,
7 Jack, I don't think we have the exhibit that's
8 attached to the --

9 MR. WOODCOCK: Yeah, it's not
10 physically -- I mean it's listed as an attachment.

11 MR. HEMMING: I understand.

12 MR. WOODCOCK: Listed as an
13 attachment; it's not physically attached to Exhibit
14 17.

15 **A. Okay.**

16 Q. MR. WOODCOCK: Was that the
17 document that you created having performed the
18 action items in Exhibit 15?

19 **A. That's correct.**

20 Q. And is the summary of key points
21 included in the email itself, is that taken from
22 the document itself?

23 **A. The summary of key points is the summary**
24 **of the key points from the document.**

25 (DISCUSSION OFF THE RECORD)

152

1 Q. I'd like you to turn to page 2 of
2 Exhibit 17, Number 1 is "odour," and it relates to
3 a concern at transloading facilities; is that
4 right?

5 **A. That's correct.**

6 Q. And it mentions an open system versus a
7 closed system; is that right?

8 **A. That's what it indicates.**

9 Q. And you previously testified that you
10 understood that CP used a closed system at
11 transloading and that was sort of the extent of
12 your knowledge about CP's transloading; is that
13 right?

14 **A. Correct.**

15 Q. And that knowledge, was that gleaned
16 from this odour risk point?

17 **A. I had heard Mr. Kozey indicate that CP's**
18 **transload facilities all used closed-loop systems**
19 **when he was on a conference call.**

20 Q. And this risk point confirms that; is
21 that right?

22 **A. Correct.**

23 Q. I'd like -- under the "sour crude oil,"
24 there's a separate line, it says "fire explosion."
25 Do you see that?

153

1 **A. I do.**

2 Q. It says (as read):

3 "The physical characteristics and
4 high degree of variability in crude
5 oil have been identified as a
6 concern associated with emergency
7 response to crude incidents."

8 Is that right?

9 **A. That's what it says.**

10 Q. (as read):

11 "And MSDSes for crude tend to be
12 very generic, and as a result, have
13 large ranges in the information
14 presented."

15 Is that right?

16 **A. That's what it says.**

17 Q. Did you identify that as a risk?

18 **A. I believe Mr. Kozey would have
19 identified that as a risk.**

20 Q. Did you discuss that with Mr. Kozey?

21 **A. Only to the extent that it was in the
22 report.**

23 Q. What, if anything, did CP do to mitigate
24 that risk?

25 **A. Nothing that I'm aware of.**

154

1 Q. So CP identified a risk, is that right,
2 with crude transportation?

3 **A. I believe CP identified that MSDSes are
4 generic.**

5 Q. And it's under the category of "risks";
6 right?

7 **A. Yes, it is.**

8 Q. And they have large ranges in the
9 information presented, MSDSes; is that right?

10 **A. They typically do, yes.**

11 Q. And to your emergency, CP did not do
12 anything to mitigate that risk?

13 **A. It's the shipper's responsibility to
14 identify the product that they're offering and put
15 it in the correct means of containment.**

16 Q. My question's about CP, did CP do
17 anything to mitigate the risks identified on page 2
18 of Exhibit 17?

19 **A. They did not, as far as I know.**

20 Q. Do you recall discussing the summary of
21 key points with any of the individuals included on
22 this -- on the email, Exhibit 17?

23 **A. Not these specific points that are
24 listed here, other than perhaps the rail incidents.**

25 Q. What do you recall about the -- any

155

1 topics about the rail incidents?

2 **A. Just indicating which ones they were and
3 where they were from.**

4 Q. This email was sent March 25th, 2013, a
5 little bit later in March than Document 15. Do you
6 know if the Parker Prairie incident had occurred at
7 that point?

8 **A. I believe Parker Prairie was March 27th.**

9 Q. So two days after?

10 **A. Correct.**

11 Q. Were the key points updated to include
12 the Parker Prairie incident?

13 **A. They were not.**

14 Q. Turn back to page 2 of Exhibit 17, and
15 looking at the rail accidents, was the -- do the
16 rail accidents, does that refer to just CP or does
17 that refer to all rail accidents for the Category 1
18 carriers?

19 **A. That's all rail incidents for all -- not
20 just CP Rail.**

21 Q. And the latest date on this table was
22 2/6/11; is that right?

23 **A. That's correct.**

24 Q. Is that the latest date a crude oil
25 spill happened on -- on rail by a carrier, by a

156

1 Class 1 carrier?

2 **A. That I had found in my research.**

3 Q. And what did you do to -- what was your
4 research?

5 **A. I looked online for rail incidents, and
6 I spoke to -- and this is why I spoke about these
7 rail accidents -- to people who had been in the
8 department longer than I had to find out where
9 incidents may have happened so that I could try to
10 find them. I looked at TSB reports, and I looked
11 at NTSB reports.**

12 Q. Did you do anything else to identify
13 rail accidents involving crude oil?

14 **A. Not that I recall.**

15 Q. So you spoke to individuals within CP
16 who had sort of a longer history than you; right?

17 **A. Correct.**

18 Q. And then you did some Internet
19 searching?

20 **A. I did.**

21 Q. And did you call the carriers involved
22 in these accidents?

23 **A. I did not. I looked at NTSB reports and
24 TSB reports, which would have had lots of
25 information regarding the number of cars derailed**

157

1 **and the number of cars released.**

2 Q. Did you identify first an accident and
3 then go to the TSB report?

4 **A. One way or the other.**

5 Q. Then what's the equivalent of the TSB
6 report in the United States?

7 **A. NTSB.**

8 Q. Oh, National Transportation Safety
9 Board?

10 **A. Correct.**

11 Q. Looking at page 2 again of Exhibit 17,
12 under the "tank car accident performance," now,
13 what was your understanding in 2013, if any, of
14 DOT-111 tank car performance?

15 **A. I had no understanding of DOT-111 tank
16 car.**

17 Q. That was Mr. Kozey's bailiwick?

18 **A. Absolutely.**

19 Q. You mentioned that one of the three
20 derailments that happened in the spring of 2013 was
21 the White River derailment; is that right?

22 **A. That's correct.**

23 Q. And what was your involvement, if any,
24 in the White River derailment?

25 **A. From what I recall, I got the MSDS**

158

1 **sheets for the dangerous goods officer that was
2 responding, as well as I retrieved the outbound
3 rail report, as well as the compressed waybills.**

4 Q. Did you do anything, other than convey
5 this information to individual -- the MSDS and the
6 waybill and the outbound rail report to folks at
7 CP, did you do anything else related to White
8 River?

9 **A. I -- I made sure that they got those
10 documents, as well as our emergency response
11 trailer, we had one in Minneapolis, so I was
12 creating customs document in order for us to cross
13 that trailer into Canada to have it be available at
14 the incident.**

15 Q. Can you generally describe what your
16 understanding of what happened in White River?

17 **A. I believe that it was a broken wheel,
18 the train derailed, and I do not recall how many
19 cars derailed in that incident. However, two of
20 them were crude oil, and those two cars were
21 leaking.**

22 Q. Hand you what we'll mark as Exhibit 18
23 to your deposition.

24 **EXHIBIT 18 - Email from Paul Weiss
25 to Jim Kozey, dated April 3, 2013**

159

1 Q. MR. WOODCOCK: Can you look at
2 Exhibit 18 and tell me what it is?

3 **A. It's an email from Paul Weiss to Jim
4 Kozey, and it appears that Paul received MSDS for
5 the Irving Oil cars from Liquid Transloading.**

6 Q. So in this case, was it Mr. Weiss who
7 obtained the MSDS?

8 **A. In this case, yes.**

9 Q. And he forwarded to both you and Jim?

10 **A. Oh, yes, I'm on here, yes.**

11 Q. And then what, if anything, well, first
12 of all, did you review the MSDS?

13 **A. I -- I would not have at that time.**

14 Q. Looking at first page of the MSDS, which
15 is Bates stamped CP03209, you see the product name
16 is crude oil sweet; right?

17 **A. I see that.**

18 Q. And it's highlighted; is that right?

19 **A. It appears to be.**

20 Q. Do you know why it's highlighted?

21 **A. I have no idea.**

22 Q. Do you recall, do you independently
23 recall, without consulting the MSDS, what packing
24 group the Irving Oil cars were designated?

25 **A. Without looking at the MSDS, I wouldn't**

160

1 **know.**

2 Q. I want you to look at the MSDS and see
3 if you can --

4 **A. It's indicating that they are a II.
5 It's also indicating that the boiling point is
6 between 20 and 650 degrees Celsius, and the
7 flashpoint is between minus 20 degrees Celsius to
8 93 degrees Celsius. And it's a comingled stream of
9 crude oils from various producers.**

10 Q. If I could have you refer back to
11 Exhibit 11, page 16?

12 **A. Yes.**

13 Q. Page 16, please?

14 **A. Oh.**

15 Q. And specifically the question about
16 "what is crude oil sweet," and the answer, one of
17 the answer bullets is Packing Group I or II; right?

18 **A. I see that.**

19 Q. So the packing group designation for the
20 White River derailment is Packing Group II for
21 crude oil sweet comports with CP's information
22 about what crude oil sweet is; is that right?

23 **A. These two cars did not derail in the
24 White River derailment.**

25 Q. That's not my question.

161

1 **A. Okay.**

2 Q. My question is you obtained an MSDS
3 from -- regarding the Irving Oil in the White
4 River; true?

5 **A. That's true.**

6 Q. And it's labelled "crude oil sweet";
7 right?

8 **A. It's -- yes, it is.**

9 Q. And it's designated as Packing Group II?

10 **A. It is.**

11 Q. Is that right? And my question is
12 simply that Packing Group II designation for crude
13 oil sweet comports with CP's definition of crude
14 oil sweet, which is Packing Group I or II?

15 **A. It come -- I'm not sure what that word
16 is, computes?**

17 Q. Comports.

18 **A. Comports.**

19 Q. It matches?

20 **A. It matches what's in this document of
21 what crude oil sweet is.**

22 Q. And this document you're referring to
23 the frequently-asked-questions document, Exhibit
24 11?

25 **A. That's correct.**

162

1 Q. CP's own document?

2 **A. I'm not sure who created the document,
3 but yes, it appears to be a CP document.**

4 Q. Do you have any reason to doubt that
5 it's a CP document?

6 **A. I have none.**

7 Q. You mentioned that the Irving Oil cars
8 were not the cars that spilled in the White River
9 derailment; is that right?

10 **A. That's correct.**

11 Q. Do you know who the shipper was?

12 **A. In the cars that spilled?**

13 Q. Yes, sorry.

14 **A. I don't recall, I would need to look.**

15 Q. Do you know why an MSDS would be
16 requested for the -- for some of the cars that did
17 not spill?

18 **A. These two cars were CP-marked railcars,
19 and so the interest was -- was what was loaded in
20 those cars.**

21 Q. What do you mean by that, "CP marked"?

22 **A. They were CP415786 and C415715.**

23 Q. Okay, what does that mean?

24 **A. It's the initial number marked on the
25 side of the car.**

163

1 Q. It was -- it was the whole train,
2 though, was a CP -- was under a CP -- CP was the
3 carrier of the train that derailed at White River;
4 right?

5 **A. CP was in care and control of all the
6 railcars on the train that derailed; however,
7 railcars, as we discussed earlier, some are owned
8 by CP, some are leased by CP, and some are owned by
9 other railroads. These two cars are owned by CP.**

10 Q. How many DOT-111 cars in 2013 did CP
11 own?

12 **A. I don't recall, but I believe most of
13 them were in our OCS fleet.**

14 Q. What does that mean, "OCS fleet"?

15 **A. On-company service for our own purpose
16 of moving diesel fuel.**

17 Q. Why was this Irving Oil, then, on the CP
18 cars, do you have any --

19 **A. I believe we had excess OCS railcars,
20 and so they were being leased.**

21 Q. So Irving was the lessor of --

22 **A. I'm not sure who the lessor was.**

23 Q. At any rate, CP owned some DOT-111 cars
24 in 2013 that were not being used, and so it leased
25 those cars to companies that wanted to use them?

164

1 **A. Correct.**

2 Q. Would those cars have come under your
3 jurisdiction as the asset manager?

4 **A. I did not have tank cars in our -- in my
5 fleet; I was only non-regulated goods.**

6 Q. Who, if you know, has -- whose
7 responsibility was it to manage the DOT-111s within
8 CP's possession?

9 **A. The person responsible for the
10 on-company service railcars would have been the OCS
11 department at that time.**

12 Q. What does "OCS" stand for?

13 **A. On-company service.**

14 Q. Do you have any idea who would have led
15 that group in CP at that time?

16 **A. I do not.**

17 Q. Is there any way you can estimate how
18 many CP-owned DOT-111s there were in 2013?

19 **A. I -- I believe it is around 200.**

20 Q. And do you know how many were leased at
21 that time?

22 **A. I believe it was under 30, maybe 25.**

23 Q. Did CP always lease excess capacity
24 DOT-111s?

25 **A. I'm not aware.**

165

1 Q. Have you ever seen a lease agreement for
2 a CP-owned DOT-111?

3 **A. No, I have not.**

4 Q. Hand you what we'll mark as Exhibit 19.

5 **EXHIBIT 19 - Two emails, one**

6 **entitled "FW: White River**

7 **Derailment," one entitled**

8 **"WDDERAIL2," both dated April 3,**

9 **2013, and document entitled**

10 **"Dangerous Commodities."**

11 Q. MR. WOODCOCK: We'll make sure
12 we've got this exhibit correct. The first page for
13 Exhibit 19 should be an email 4/3/13, entitled "FW:
14 White River Derailment"; is that right?

15 **A. That's correct.**

16 Q. And then the second one is an email
17 410 -- 4/3/13, subject "WDDERAIL2"; is that right?

18 **A. That's correct.**

19 Q. And then the third one is a document
20 entitled "Dangerous Commodities" with a Bates
21 number of CP08848; is that right? Bates number's
22 in the bottom right.

23 **A. Oh, yes.**

24 Q. Sorry.

25 **A. Okay, thank you. Correct.**

167

1 Q. Because that may not have been available
2 on the MSDS; is that right?

3 MR. HEMMING: Objection,
4 foundation. Go ahead if you know.

5 **A. I'm not sure why he has that.**

6 Q. MR. WOODCOCK: And then turning to
7 the next email, which -- the WDRAIL2 email, what is
8 this document?

9 **A. This is a document that she -- it looks**
10 **like Angela Moisey generated or pulled off of the**
11 **document database, which has seven cars listed on**
12 **it.**

13 Q. Is there a name for this document?

14 **A. This is a work list document, so if a**
15 **crew is going out and going to lift or set off cars**
16 **over the road, they would get a work list document.**

17 Q. Do you know why this document would be
18 requested after the derailment?

19 **A. Possibly because the railcars wouldn't**
20 **have been listed on the outbound train document,**
21 **and they didn't have the work list document on**
22 **site. That's the only possible reason I can think**
23 **of.**

24 **However, when I look at the email,**
25 **it says fun -- (as read):**

166

1 Q. Can you describe what these documents
2 are?

3 **A. All three?**

4 Q. Yeah, why don't you start with the
5 first -- first one to read the email?

6 **A. So the first one is a request from Mike**
7 **Pielak asking to get MSDS sheets and contacting the**
8 **shipper to find out what the properties of the**
9 **products are.**

10 Q. And do you believe it was you who
11 contacted the shipper?

12 **A. I don't recall.**

13 Q. But would it have been either you or Jim
14 Kozey?

15 **A. Or Paul Weiss --**

16 Q. Or Paul Weiss?

17 **A. -- may have been asked to do it.**

18 Q. Okay, one of the risks that was
19 identified was that the MSDS sheets were generic
20 and didn't have exact properties; is that right?

21 **A. That's correct.**

22 Q. And this email, 4/3/13, demonstrates
23 that; is that right?

24 **A. That they're asking for the shipper to**
25 **identify the properties of the product.**

168

1 "Attached the waybills for
2 CHPX208967 up to and including
3 214077,"

4 which were supplied; however, those
5 railcar numbers don't match the work list document.

6 Q. Did you just notice that now for the
7 first time?

8 **A. I did, yeah.**

9 Q. Yeah?

10 **A. The first car number is the same, second**
11 **one is the same, third one's the same, and 981203**
12 **is the same, 86 is listed, 415715 is listed, but he**
13 **asked for up to and including 214077.**

14 Q. Okay, and then turning to what's Bates
15 stamped at the lower right-hand number is CP08848,
16 do these consist of the compressed waybills for the
17 train that derailed in White River?

18 **A. I'm not -- I don't know if these are all**
19 **the compressed waybills, but these are compressed**
20 **waybills.**

21 Q. Are these the compressed -- do all these
22 compressed waybills indicate a tank car filled with
23 crude oil?

24 **A. Yes, they do.**

25 Q. Reviewing these compressed waybills, do

169

1 you have now any recollection of which shipper
2 or -- it was that the oil -- whose oil spilled in
3 the derailment?
4 **A. These compressed waybills are all**
5 **indicating that the shipment origin is from Calmar,**
6 **Alberta, the shipper was Irving Oil; however, I**
7 **don't know -- oh, and then that's the last two,**
8 **those are the CP ones, and then the first four are**
9 **from Liquids Transloading, was it 4123 --**
10 **correction, the other five are from Liquids**
11 **Transloading out of Calmar.**

12 **And I believe it was one -- two of**
13 **those railcars that derailed, but I don't recall**
14 **the exact railcar numbers.**

15 Q. How were you able to determine which of
16 these waybills dealt with the CP-owned cars?

17 **A. The last two waybills on this package**
18 **indicate that the railcar numbers are CP415786 and**
19 **415715.**

20 Q. And both of those originate in Calmar
21 and were destined to Irving Oil in Saint John,
22 New Brunswick?

23 **A. Yes, they are.**

24 Q. And they're both designated Packing
25 Group II; is that right?

170

1 **A. That's what the compressed waybills**
2 **indicate, yes.**

3 Q. And all the compressed waybills indicate
4 a packing group of II; is that right?

5 **A. In this instance, yes.**

6 Q. I'll hand you what we'll mark as
7 Exhibit 20.

8 **EXHIBIT 20 - Email from**
9 **Darlene Nagy to Lori Kennedy, dated**
10 **April 9, 2013**

11 Q. MR. WOODCOCK: Do you recognize
12 this document, Exhibit 20?

13 **A. My name is on it; I don't recall it**
14 **offhand.**

15 Q. Would, at the time of the White River
16 derailment, would you have reviewed press about the
17 derailment?

18 **A. Yes, we would have.**

19 Q. And you personally?

20 **A. I typically if I knew that there was a**
21 **press release, I would read it.**

22 Q. I'd like you to refer to the second page
23 of the document.

24 **A. Yes.**

25 Q. And it's the bottom article, the second

171

1 sentence reads (as read):

2 "The train derailment took place
3 Wednesday morning about 15
4 kilometres west of White River
5 spilling an estimated 400 barrels
6 of light sweet crude."

7 Is that right?

8 **A. That's what the article indicates.**

9 Q. Did you have any other understanding of
10 the content of the spill, that it was anything
11 other than light sweet crude?

12 **A. It wouldn't have occurred to me to think**
13 **of it as anything but crude.**

14 Q. At this point, you're not making those
15 distinctions between --

16 **A. I am not.**

17 Q. -- light crude and -- did the
18 Transportation Safety Board investigate the White
19 River derailment?

20 **A. I believe they did.**

21 Q. Did you have any role in that
22 investigation?

23 **A. I may have supplied train documents to**
24 **the regulatory team.**

25 Q. Did you have any other role?

172

1 **A. No.**

2 Q. Since then, have you had any role in a
3 TSB investigation?

4 **A. No, other than supplying documents of --**
5 **train documents and compressed waybills and**
6 **possibly photos if our dangerous goods officers**
7 **took photos.**

8 Q. Do you know who would have participated
9 for CP in the TSB investigation on White River
10 accident?

11 **A. I'm not a hundred percent sure, but**
12 **possibly Keith Shearer.**

13 Q. Did you have any role in the TSB, in
14 CP's work on the TSB report for Lac-Mégantic?

15 **A. I'm not -- no, I have -- no, I did no**
16 **work on anything.**

17 MR. WOODCOCK: Want to take a
18 break?

19 MR. HEMMING: Sure.
20 (BRIEF ADJOURNMENT)

21 Q. MR. WOODCOCK: I'll show you what
22 we'll mark as Exhibit 21 to your deposition.

23 **EXHIBIT 21 - Two-page email, dated**
24 **April 22, 2013, with attached**
25 **PowerPoint presentation entitled**

173

1 **"RAC Dangerous Goods Committee**
2 **Report to RAC SOMC"**

3 Q. MR. WOODCOCK: Exhibit 21 consists
4 of an email, a two-page email, and then an
5 attachment to that email, a PowerPoint
6 presentation; is that right?

7 **A. That's correct.**

8 Q. I'd like for you to start at the bottom
9 of the string of this email?

10 **A. Yes.**

11 Q. And I ask you, there's an email to Jim
12 Kozey, it says (as read):

13 "The SMOC [sic] meeting will be
14 held on Monday, May 13th."

15 Do you have any idea of what "SOMC" is?

16 **A. Safety and operations management**
17 **committee.**

18 Q. Was Mr. Kozey a member of that
19 committee?

20 **A. No, he was not that I -- that I'm aware**
21 **of.**

22 Q. Down below the sentence that refers to
23 the SMOC is the dangerous goods committee. You see
24 that?

25 **A. Correct, yes.**

174

1 Q. Is SMOC a part of the dangerous goods
2 committee?

3 **A. I believe that the dangerous goods**
4 **committee reports up to the SOMC is my**
5 **understanding.**

6 Q. And there's a -- this is an
7 acronym-heavy email, it refers to the RAC, that's
8 the Railway Association of Canada; is that right?

9 **A. That's correct.**

10 Q. And the -- just generally describe what
11 the Railway Association of Canada is?

12 **A. It's the -- they represent both Class**
13 **1s, I guess all Class 1s that are in Canada, as**
14 **well as the short-line railways. And it's similar**
15 **to the -- I guess the AAR committee in the US is my**
16 **understanding, except for it's Canadian.**

17 Q. Did you have an understanding that
18 Mr. Kozey was going to present to the RAC dangerous
19 goods committee on or about the middle of May 2013?

20 **A. I believe that Mr. Kozey was going to**
21 **present the RAC -- RAC dangerous goods committee**
22 **report to SOMC on May 13th.**

23 Q. Okay, so turning to CP04048, I see the
24 RAC dangerous goods committee --

25 **A. Report.**

175

1 Q. -- report to the RAC SOMC?

2 **A. Correct.**

3 Q. So he's reporting from the RAC dangerous
4 goods committee to a different committee within
5 the --

6 **A. Up to...**

7 Q. Up to -- reporting to a higher level
8 committee?

9 **A. Correct.**

10 Q. Do you know who comprises the dangerous
11 goods committee?

12 **A. I know that Canadian Pacific Railway is**
13 **on that committee. It's CN Rail is on that**
14 **committee. I'm not sure which short lines may be**
15 **represented on the committee, as well as some of**
16 **the dangerous goods officers from the RAC are on**
17 **that committee.**

18 Q. Refer you to the bottom of the CP04047
19 in Exhibit 21, the sentence reads (as read):

20 "Mr. Kozey reports the activities
21 of the RAC TDG specialist team and
22 topics of interest relative to the
23 transportation of petroleum crude
24 oil."

25 Is that right?

176

1 **A. That's what it says.**

2 Q. And is that what you understood
3 Mr. Kozey's presentation to be about?

4 **A. I -- that's what the presentation**
5 **appears to be.**

6 Q. Turning to the presentation itself,
7 unfortunately these are not paginated, but it is
8 third page from the end.

9 **A. Where it indicates "petroleum crude oil**
10 **transportation"?**

11 Q. That's right, you're there. Am I right
12 in assessing that the risks and issue listed below
13 are the same risks and issues that were identified
14 on Exhibit 17, page 2?

15 **A. Yes, those are listed there.**

16 Q. So the -- for instance, the fire
17 explosion risk is identified in the summary of key
18 points on Exhibit 17, and then it's reported to the
19 SMOC?

20 **A. I'm not sure if it was reported or not.**
21 **This is a -- my understanding this is a draft.**

22 Q. How do you know this is a draft?

23 **A. On the email, it indicates (as read):**
24 "Upcoming SOMC meeting, RAC TDG
25 committee - draft,"

177

1 Jean attaches as initial draft, and when
2 I look at the second page, it indicates (as read):
3 "Jean, I need your help with this
4 one."

5 Q. Do you recall any changes being made to
6 this draft?

7 **A. I do not recall.**

8 Q. Were you present at this presentation?

9 **A. No, I was not.**

10 Q. Did Mr. Kozey report back anything about
11 this presentation to you?

12 **A. No, he did not.**

13 Q. Do you know who created the slide deck
14 starting Bates Stamp Number CP04048?

15 **A. I believe the slide deck is a**
16 **continuously updated slide deck, so I'm not sure**
17 **who would have created the first one.**

18 Q. What's the basis for your statement that
19 it's a continually updated slide deck?

20 **A. Because in later years, I updated this**
21 **same type of slide deck and updated the information**
22 **that was on the slides.**

23 Q. Okay, so in other words for the -- take
24 the next meeting, whenever that was, it would be
25 this slide deck, plus or minus some information?

178

1 **A. Correct.**

2 Q. And you yourself did that sometimes,
3 updating slide deck?

4 **A. I began to do that, yes.**

5 Q. Do you know when you started doing that?

6 **A. I don't recall exactly.**

7 Q. Hand you what we'll mark as Exhibit 22
8 to your deposition.

9 **EXHIBIT 22 - Email from**
10 **Keith Shearer to Breanne Feigel and**
11 **others, dated June 5, 2013**

12 Q. MR. WOODCOCK: Do you recognize
13 Exhibit 22?

14 **A. I do.**

15 Q. And Exhibit 22 references -- well, first
16 of all, you're included as a recipient on the
17 emails in Exhibit 22; is that right?

18 **A. That's correct.**

19 Q. And Exhibit 22 refers to at the bottom
20 email of a crude-by-rail weekly safety meeting; is
21 that right?

22 **A. That's correct.**

23 Q. Do you recall meeting weekly to discuss
24 rail safety?

25 **A. I recall there were some meetings on a**

179

1 **weekly basis, I didn't attend all of them,**
2 **discussing crude by rail and -- but I don't recall**
3 **exactly what was held in those meetings.**

4 Q. Do you have any idea of when those
5 meetings would have started?

6 **A. I believe around the same time that we**
7 **were creating some of the other documents, but I'm**
8 **not a hundred percent sure.**

9 Q. Do you recall where you met?

10 **A. They were conference calls.**

11 Q. The individuals who are included on the
12 email, dated June 5, 2013, are those the
13 individuals who would have participated in the
14 crude-by-rail safety weekly meeting?

15 **A. Are you talking about this line?**

16 Q. Yes.

17 **A. I believe that those are the people that**
18 **would have been invited to attend the meetings.**

19 Q. And they may or may not have attended?

20 **A. Correct.**

21 Q. And just so the record's clear, you
22 indicated it was the email 2:27 p.m.; right?

23 **A. Yes.**

24 Q. I'd like for you to turn to the second
25 page of the document, and specifically under the

180

1 heading "Safety Regulator and Enviro," the second
2 bullet point; okay?

3 **A. Yes.**

4 Q. The second bullet begins (as read):
5 "Brent raised a Q around trying to
6 educate stakeholders on categories
7 of DGS."

8 Is that right?

9 **A. That's what it says.**

10 Q. And do you have any understanding of who
11 the stakeholders are?

12 **A. Around who he raised the question to?**

13 Q. No, I assume that he's raising the
14 question to the group. Is that a fair assumption?

15 **A. That's correct.**

16 Q. And then it's trying to educate
17 stakeholders, I'm getting -- I'm just trying to get
18 your understanding of who -- what that refers to,
19 "stakeholders"?

20 **A. Okay, understood.**

21 MR. HEMMING: Objection,
22 foundation. Go ahead if you know.

23 **A. I'm not entirely sure. It may have been**
24 **internal, it could have been external, I don't**
25 **know.**

181

1 Q. MR. WOODCOCK: And then you have
2 (as read):

3 "On categories of DGS..."

4 That's short for "dangerous goods"; is
5 that right?

6 **A. I believe so.**

7 Q. And then you have (as read):

8 "...bitumen versus heavy crude

9 versus sweet crude volatility

10 factors, cleanup factors,

11 etcetera."

12 Is that right?

13 **A. That's correct.**

14 Q. "Brent" is Brent Dornian; is that right?

15 **A. That would be correct.**

16 Q. Do you recall him raising this question?

17 **A. I don't specifically recall him raising
18 the question.**

19 Q. Do you have any memory surrounding this
20 bullet point that we're discussing now?

21 **A. Now that I read it?**

22 Q. Yes.

23 **A. Yes.**

24 Q. And what is that?

25 **A. Only that they had raised the question**

182

1 **on what types of railcars that crude oil could go
2 into, that's what I recall.**

3 Q. This question raises -- relates to
4 different categories of dangerous goods; right?
5 Heavy versus sweet crude; right?

6 **A. Correct.**

7 Q. And volatility factors and cleanup
8 factors; right?

9 **A. Correct.**

10 Q. And it says that a cheat sheet would be
11 helpful; is that right?

12 **A. That's what it says.**

13 Q. And it says you and Jim (as read):

14 "...had started a document on

15 densities and flashpoints that can

16 be shared with the group."

17 Is that right?

18 **A. That's what it indicates.**

19 Q. Do you recall creating a document on
20 densities and flashpoints that was going to be
21 shared with the crude-by-rail safety weekly meeting
22 group?

23 **A. I believe that Jim and I had worked on a
24 document, and I was more involved in the formatting
25 of the document than creating the document.**

183

1 Q. Is it safe to say that Jim, sorry,
2 created the content of the document, and then you
3 reformatted it?

4 **A. That would be safe to say.**

5 Q. You don't have any independent
6 recollection of you adding to the document --

7 **A. I wouldn't have --**

8 Q. -- substantively?

9 **A. I wouldn't have had enough information
10 to understand to add to that.**

11 Q. Your role was limited to your knowledge,
12 which was formatting in this case?

13 **A. In this case.**

14 Q. Hand you what we'll mark as Exhibit 23
15 to your deposition.

16 **EXHIBIT 23 - Email from
17 Darlene Nagy to Jim Kozey, dated
18 June 11, 2013, with attached
19 document re crude oil**

20 Q. MR. WOODCOCK: Do you recognize
21 Exhibit 23?

22 **A. Yes, I do.**

23 Q. What is it?

24 **A. It's a document regarding crude oil.**

25 Q. And referring to the email, which is

184

1 CP06558, do you see that?

2 **A. Correct.**

3 Q. That you write to Jim, you say (as
4 read):

5 "Looks much better, thanks for the
6 adds. I prettied up the
7 formatting."

8 **A. Correct.**

9 Q. Is that right? So that indicates what
10 you just previously testified, that you reformatted
11 the document and sent it back to Jim; is that
12 right?

13 **A. I -- I may have gotten some of this
14 information off of the Internet. Jim would have
15 gone in, looked at some of the information, made
16 some adds. I would go back in and format it so
17 that it looked pretty.**

18 Q. Do you have any -- I think your previous
19 testimony was, now you've got this document in
20 front of you, that you didn't really contribute
21 substantively to this document; is that right?

22 **A. This would have been off the Internet or
23 Jim would have indicated --**

24 Q. In any rate, Jim would have had the
25 final review of this document?

185

1 **A. Correct.**

2 Q. Is that right? Do you know what was
3 done, if anything, with this document?

4 **A. It may have been used in some emails for
5 different purposes, but I do not know.**

6 Q. Do you have any idea why, referring back
7 to Exhibit 22, before Brent's question, it seemed
8 like you and Jim had already started a document
9 about -- is that your recollection?

10 **A. That's -- that would be my recollection,
11 yes.**

12 Q. Do you know why this document was
13 created?

14 **A. I think it was a part of the
15 continuation of some of the other stuff we had been
16 working on from Lori's --**

17 Q. Lori's task list?

18 **A. Yes.**

19 Q. And then did you continue it, well,
20 let's say first of all, do you remember continuing
21 this document in any way?

22 **A. This document?**

23 Q. Yes, the --

24 **A. 6559?**

25 Q. 6559?

187

1 there have been three crude oil
2 incidents on mainlines in Canada."
3 Is that right?

4 **A. That's what it says.**

5 Q. And you have the White River on April 4;
6 right?

7 **A. Correct.**

8 Q. Or it's hard to tell whether it's four
9 barrels or four -- April 4?

10 **A. Yeah, I'm not sure.**

11 Q. And that was a CP train; right?

12 **A. That's correct.**

13 Q. And then Jansen, Saskatchewan; is that
14 right?

15 **A. Correct.**

16 Q. And that was a CP train?

17 **A. Correct.**

18 Q. Is that right? And then (as read):

19 "Calgary at June, no release."

20 Do you have any information on that
21 Calgary train?

22 **A. I don't recall it.**

23 Q. And added to that would be the Parker
24 Prairie incident; right?

25 **A. Which is in the United States.**

186

1 **A. No.**

2 Q. And you don't as -- have any
3 recollection of what, if anything, was done with
4 this document?

5 **A. It would have been a reference document
6 for someone, but I don't know.**

7 Q. Would this have been included in the
8 crude-by-rail file for general access?

9 **A. I'm not sure.**

10 Q. Hand you, we're on 24, mark as
11 Exhibit 24.

12 **EXHIBIT 24 - Document entitled
13 "Lac-Mégantic Derailment -
14 Questions and Answers," dated
15 July 9, 2013**

16 Q. MR. WOODCOCK: Have you seen
17 Exhibit 24 before?

18 **A. I don't recall this document.**

19 Q. My question on Exhibit 24 is pretty
20 specific. So if you go to the fifth page bottom
21 note, do you see Footnote 4?

22 **A. Yes, I do.**

23 Q. Footnote 4 follows the sentence (as
24 read):

25 "Over the course of this year,

188

1 Q. Which is in the United States, not in
2 Canada?

3 **A. Correct.**

4 Q. You don't have any independent
5 recollection of this Calgary accident?

6 **A. I do not.**

7 Q. If you were to find out who the carrier
8 was for that Calgary accident, how would you go
9 about doing that?

10 **A. I'd first look internally to see if it
11 was us, and if it wasn't us, there's only one other
12 railroad that it could be in Calgary.**

13 Q. Who's that?

14 **A. The CN.**

15 Q. The CN, so it's either CP or CN?

16 **A. Correct.**

17 Q. And we'll mark as Exhibit 25 to your
18 deposition.

19 **EXHIBIT 25 - Document entitled
20 "Canadian Pacific Crude by Rail
21 Board of Directors' Briefing"**

22 Q. MR. WOODCOCK: Have you ever seen
23 Exhibit 25, a board of directors' briefing?

24 **A. I have not.**

25 Q. Would you have provided information on

189

1 crude by rail for a briefing of a board of
2 directors?

3 **A. If I had provided information, I**
4 **wouldn't know that it had been provided in this,**
5 **and I would think it would be under the number of**
6 **carloads volume on page 3 if -- if anything.**

7 Q. You guessed where I was going, so that
8 carload of information, it may or may not have come
9 from you?

10 **A. It may or may not have, yes.**

11 Q. You would have had access to that
12 information, though; right?

13 **A. Yes.**

14 Q. Does the statement that volumes have
15 grown from 500 carloads in 2010 to 53,500 in 2012,
16 does that mesh with your understanding of the
17 growth of crude by rail in Canadian Pacific?

18 **A. I thought it was more in 2012, but this**
19 **makes sense, yes.**

20 Q. And then the next statement says (as
21 read):

22 "In January, volumes reached an
23 annualized rate of 70,000
24 carloads."

25 Is that right?

190

1 **A. That's what it says.**

2 Q. Does that statement appear to be
3 correct, based on your understanding of the growth
4 in 2013?

5 **A. That would have come from marketing and**
6 **sales; I would not have been able to produce**
7 **something, a number like that.**

8 Q. In other words, you would have been able
9 to provide historic volumes but not projections?

10 **A. That's correct.**

11 Q. And projections would have come from
12 marketing?

13 **A. Yes.**

14 Q. Do you have any reason to dispute the
15 growth from 53,500 to 70,000?

16 **A. I would have no reason to dispute it.**

17 Q. And during this period of growth from
18 2011, 2012, and 2013, as far as -- and in 2013, the
19 individuals in charge of compliance with hazardous
20 materials regulations would have been you and Jim
21 Kozey; is that right?

22 MR. HEMMING: Objection, she went
23 over this before. You can answer as best you can
24 again, Darlene.

25 **A. As far as transportation of goods on the**

191

1 **railroad, yes, that would have been us.**

2 Q. MR. WOODCOCK: And Mr. Weiss was
3 also involved from a clerical perspective; that's
4 right?

5 **A. For documentation, correct.**

6 Q. Is it safe to say that these carloads
7 are travelling through major North American cities?

8 MR. HEMMING: Objection,
9 foundation. Go ahead and answer if you can.

10 **A. Our network does travel through cities**
11 **such as Calgary and Vancouver and Winnipeg.**

12 Q. MR. WOODCOCK: Toronto?

13 **A. Winnipeg, Toronto.**

14 Q. Montreal?

15 **A. Montreal.**

16 Q. Chicago?

17 **A. We interchange in Chicago and travel**
18 **through Chicago.**

19 MR. WOODCOCK: Want to go off the
20 record?

21 (DISCUSSION OFF THE RECORD)

22 (BRIEF ADJOURNMENT)

23 **EXHIBIT 26 - Email from**

24 **Darlene Nagy to Chris Bunce, dated**

25 **July 19, 2013**

192

1 Q. MR. WOODCOCK: We're back on after
2 a break, and before you is Exhibit 26 to your
3 deposition, take some time to review it.

4 **A. Okay.**

5 Q. Do you recognize this document, Exhibit
6 26?

7 **A. Yes, I do.**

8 Q. And what is it?

9 **A. It was -- there was a request from**
10 **Mr. Wilson to find out how many crude oil cars we**
11 **had online from World Fuel in Dakota Plains on**
12 **July 19th of 2013.**

13 Q. And you respond to that request; is that
14 right?

15 **A. That's correct.**

16 Q. With some tables; is that right?

17 **A. That's correct.**

18 Q. And you make the statement that (as
19 read):

20 "Out of North Dakota, 33 percent of
21 the shipments were Packing Group
22 III, all from Western Petroleum."

23 Is that right?

24 **A. Yes, I do.**

25 Q. And (as read):

193

1 "Global and Van Hook billed a
2 balance of 67 percent of the
3 shipments, but as Packing Group
4 II."

5 Is that right?

6 **A. That's correct.**

7 Q. What was the source of this information,
8 the packing group information?

9 **A. Waybills.**

10 Q. Waybills, and how did you access that?

11 **A. Through our -- trying to think what it
12 was called, a system called CORE.**

13 Q. C-O-R-E?

14 **A. Correct.**

15 Q. And specifically when -- when Mr. Wilson
16 asked you to pull on what we currently have online
17 from World Fuels in Dakota Plains, how did you do
18 that?

19 **A. The current online would have been
20 through a system that we have set up internally, so
21 we can see all hazmat loads that are online, and
22 then I could filter down to crude oil.**

23 Q. All right, so is there a name for the
24 system where you can see all hazmat loads online?

25 **A. It's called the "Dangerous Commodities**

194

1 **Locations Report," DCLR.**

2 Q. And how is that report generated?

3 **A. It's automatically generated daily.**

4 Q. And who reviews that report?

5 **A. It's generated daily so that if we
6 require the report, we can have a look at it. It
7 does not indicate packing group on that report.**

8 Q. So what does the Dangerous Commodities
9 Location Report indicate?

10 **A. It would indicate UN number, product
11 description, last location of the railcar, origin,
12 destination.**

13 Q. And then how did you get the packing
14 group information?

15 **A. So that would have been -- that
16 information would have been how I would have gotten
17 how many cars were on -- online at that time. So
18 that would have been current loads.**

19 Q. So can I interrupt you there?

20 **A. Yes.**

21 Q. So is that the column total or subtotal?

22 **A. Those were the number of shipments that
23 were billed between June 30th and July 18th.**

24 Q. And that would have come from the hazmat
25 loads online?

195

1 **A. That would have come from historical
2 data that would have had to have been pulled by
3 somebody in the same office as Paul Weiss.**

4 Q. Okay, I'm catching up here. Western
5 Petroleum, the -- your email ends (as read):

6 "Western Petroleum currently has
7 online today, July 18th, 157
8 loads."

9 **A. Correct.**

10 Q. And that came from the CORE system?

11 **A. From the DCLR.**

12 Q. Dangerous Commodities Locations Report?

13 **A. Right, and I would have looked up the
14 packing groups for those.**

15 Q. And then how did you do that?

16 **A. I would have looked up either in our
17 /FOR waybill system, which is individually cars, or
18 we have an order entry system that can pull back
19 some information, as well.**

20 Q. Do you recall specifically how you
21 access that information?

22 **A. I can't recall which system I used at
23 this time.**

24 Q. Okay, so that referred to the -- what --
25 what Western Petroleum had online on CP's

196

1 network --

2 **A. On July.**

3 Q. On July 18th?

4 **A. Correct.**

5 Q. 2013?

6 **A. Correct.**

7 Q. And then how did you get the historical
8 information going back to the end of June?

9 **A. That was pulled by someone in Winnipeg's
10 office.**

11 Q. And do you know how that information was
12 pulled?

13 **A. That was pulled out of the -- I believe
14 the system that's called CORE.**

15 Q. And do you have familiarity with that
16 system?

17 **A. I do not.**

18 Q. Who does?

19 **A. David Braun; he's retired. Paul Weiss
20 may have some idea of how to pull it, but I -- I
21 don't believe he would because he's -- he always
22 asked Dave Braun to do it.**

23 Q. Did you ask Mr. Braun for the
24 information, the historic information, going back
25 from the 18th to the -- of July through the 30th of

197

1 June?

2 **A. I would have worked with Paul Weiss to**
3 **request these, this information.**

4 Q. And how long did it take you to get that
5 information?

6 **A. I don't recall.**

7 Q. Do you have any idea?

8 **A. It appears within the day.**

9 Q. If I could direct you to the top of
10 Exhibit 26, it says (as read):

11 "World Fuel is the parent company
12 of Western Petroleum, and the
13 shipper on the waybills appears as
14 Western Petroleum."

15 Where did you get that information?

16 **A. From Luke Meredith.**

17 Q. Luke Meredith, and how did you -- did
18 you ask Luke directly?

19 **A. It was from previous correspondence that**
20 **we'd had.**

21 Q. What were those correspondence about?

22 **A. About the shipper, Western Petroleum,**
23 **and whether -- whether they were the actual shipper**
24 **or if they had -- if -- because sometimes there's**
25 **an ultimate shipper and then the shipper that shows**

198

1 **on the waybill.**

2 Q. This next part, you say (as read):

3 "Dakota Plains is the wellhead and
4 also does not appear as the
5 shipper."

6 Is that right?

7 **A. That's correct.**

8 Q. What was the basis for that information?

9 **A. That was information I'd also received**
10 **from Meredith, Luke Meredith.**

11 Q. Did Mr. Meredith have a particular
12 relationship with World Fuels or Western Petroleum?

13 **A. He worked in the marketing and sales**
14 **department.**

15 Q. Before you ran this report on -- these
16 reports on July 19th, did you have any
17 understanding of how Western was classifying its
18 oil for shipment?

19 **A. I did not.**

20 Q. Did you have any understanding at all of
21 how shippers out of the Bakken were classifying
22 their shipments of crude oil?

23 **A. I did not.**

24 Q. Did you have any conversations with
25 Mr. Bunce about the results of your -- the reports

199

1 you ran?

2 **A. I would have -- this is the email that I**
3 **sent him as a result of the request that came from**
4 **Glen. I'm not recalling any particular**
5 **conversations we had after this, but we may have.**

6 Q. You don't recall any specific ones?

7 **A. I don't recall.**

8 Q. Do you recall any conversations with
9 anybody at CP about the results that you obtained
10 from the reports you ran on July 18th, 2013?

11 **A. I don't recall any conversations.**

12 Q. Do you recall anything else about
13 Exhibit 26?

14 **A. No, I don't recall anything else.**

15 Q. Did you perform these similar reports
16 with other shippers?

17 **A. I think after this report was generated,**
18 **we requested that Mr. Braun put in a weekly crude**
19 **oil report that would pull back packing groups for**
20 **us.**

21 Q. And was that done?

22 **A. I believe it was.**

23 Q. And that weekly crude report would have
24 eliminated the step of having to look at the
25 waybills; is that right?

200

1 **A. Each individual waybill, yes.**

2 Q. And which system are the waybills -- the
3 CORE system; is that right?

4 **A. I believe that's what the system is**
5 **called.**

6 Q. Had you had any familiarity with these
7 systems before you joined as hazmat management
8 director in 20 -- the beginning of 2013?

9 **A. I knew that CORE existed; I did not have**
10 **the security to run any reports out of it. I knew**
11 **that it was there, but I didn't necessarily know**
12 **all information that it could pull back.**

13 Q. Do you know who has -- who at that time
14 had access to CORE?

15 **A. I know David Braun did.**

16 Q. What about Mr. Kozey?

17 **A. No, he would not have.**

18 Q. Why did you have access and not
19 Mr. Kozey?

20 **A. I did not have access to CORE.**

21 Q. Mr. Braun did?

22 **A. Mr. Braun did.**

23 Q. Is there any other repository of
24 waybills at Canadian Pacific for goods shipping
25 online?

201

1 **A. I'm not sure. I -- I believe there are,**
 2 **there's different systems, but I'm not sure what**
 3 **they're called or what they would be.**
 4 Q. Does CP still generate the weekly report
 5 that you referred to?
 6 **A. Yes, they do.**
 7 Q. Do you examine it weekly?
 8 **A. I do not.**
 9 Q. Who does?
 10 **A. I'm not sure if anyone does, but I know**
 11 **that Paul Weiss received it, and we also get it**
 12 **into a general hazmat inbox.**
 13 Q. What's that mean, "general hazmat
 14 inbox"?
 15 **A. That myself among the two people that**
 16 **report to me, we can all get into the same inbox,**
 17 **Outlook inbox.**
 18 Q. So am I describing it correctly, it's
 19 sort of a joint email account?
 20 **A. That would be correct.**
 21 Q. Is there anybody else, other than you
 22 and the two individuals who work under you, that
 23 have access to that email account?
 24 **A. Mr. Kozey.**
 25 MR. WOODCOCK: Thank you, Ms. Nagy,

202

1 I have no further questions at this time.
 2 **A. Thank you.**
 3 MR. HEMMING: I'll be brief, just
 4 a couple.
 5 QUESTIONS BY MR. HEMMING:
 6 Q. Can you turn back, Ms. Nagy, to Exhibit
 7 Number 18, Mr. Woodcock asked you some questions
 8 about an MSDS that was associated with a couple of
 9 tank cars that I believe you said that didn't leak
 10 in the White River derailment.
 11 And I wanted to ask you a question
 12 about the -- I think you mentioned the MSDS
 13 indicated that a Packing Group II in response to a
 14 question from Mr. Woodcock, and you added in your
 15 answer (as read):
 16 "A range of boiling points and
 17 flashpoints from the Bates number
 18 page CP03209, boiling point of 20
 19 to 650 Celsius and a flashpoint of
 20 minus 20 C to 93.3 C."
 21 Why did you reference those ranges in
 22 response to Mr. Woodcock's question?
 23 **A. Because I know now that those --**
 24 **indicating that type of boiling point and**
 25 **flashpoint does not necessarily mean that that is a**

203

1 **Packing Group II, and so therefore, you should be**
 2 **aware that it is a comingled stream of crude and**
 3 **that you should be prepared for -- as emergency**
 4 **responders, they should be prepared to treat it as**
 5 **a Packing Group I.**
 6 Q. Do you know, based on your knowledge
 7 today, I won't ask you about 2013, but do you know,
 8 based on your knowledge today, what packing groups
 9 those range of boiling points and flashpoint can
 10 cover?
 11 **A. I believe they're I, II, and III.**
 12 MR. HEMMING: Okay, that's all I
 13 had, thank you.
 14 MR. WOODCOCK: No follow-up from
 15 me.
 16 MR. HEMMING: We'll designate this
 17 transcript today, the exhibits, as confidential
 18 under our protective order. I'd like to have the
 19 same -- the same designation to Mr. Kozey's
 20 deposition from yesterday.
 21 I'm permitted to do it in writing
 22 two weeks after. I'm trying to do it on the
 23 record, which the protective order I'll represent
 24 allows to save myself having to write a letter
 25 designating as such. That's all.

204

1 MR. WOODCOCK: We'll reserve all
 2 our rights under the protective order and treat it,
 3 this confidential designation, under the terms and
 4 conditions of the protective order entered in this
 5 case.
 6 _____
 7 (Proceedings ended at 4:02 p.m.)
 8 _____
 9
 10 Certificate of Transcript
 11 I, the undersigned, hereby certify that the
 12 foregoing pages 1 to 204 are a complete and
 13 accurate transcript of the proceedings taken down
 14 by me in shorthand and transcribed from my
 15 shorthand notes to the best of my skill and
 16 ability.
 17
 18 Dated at the City of Calgary,
 19 Province of Alberta, this 19th day of February,
 20 A.D. 2019.
 21
 22
 23 _____
 24 Deanna M. DiPaolo, CSR(A)
 25 Official Court Reporter

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

205

ERRATA SHEET

Page	Line	Change	Reason for Change
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21		By the above corrections, if any, I hereby sign my	
22		deposition.	
23		_____	
24		DARLENE CORA NAGY	
25		Dated this __ day of ____, 2019.	

207

1	EXHIBIT 5 - PowerPoint presentation entitled "CP -	46
2	Hydrocarbons by Rail," dated May 2012	
3		
4	EXHIBIT 6 - ISI shipping instructions from CP Rail	69
5	intranet shipping instructions	
6		
7	EXHIBIT 7 - Document entitled "Customer Notice -	79
8	Petroleum Crude Oil"	
9		
10	EXHIBIT 8 - Part 2 of the TDGR regulations	82
11		
12	EXHIBIT 9 - Excerpt out of 49 CFR	88
13		
14	EXHIBIT 10 - Email from Lori Kennedy to Tracy	91
15	Robinson and others with attached PowerPoint	
16	presentation	
17		
18	EXHIBIT 11 - Document entitled "Crude by Rail	95
19	Frequently Asked Questions," dated March 17, 2013	
20		
21	EXHIBIT 12 - Email from Lori Kennedy to Glen	102
22		
22	Wilson, dated March 12, 2013	
23		
23		
24		
25		

206

- I N D E X -

DARLENE CORA NAGY

February 14, 2019

1	The following is a listing of exhibits, undertakings and		
2	objections as interpreted by the Court Reporter.		
3	The transcript is the official record, and the index is		
4	provided as a courtesy only. It is recommended that the		
5	reader refer to the appropriate transcript pages to ensure		
6	completeness and accuracy.		
7	***EXHIBITS***		
8	EXHIBIT 1 - Notice of deposition of Darlene Nagy	18	
9	re Bk. No. 13-10670 Chapter 11		
10			
11	EXHIBIT 2 - Organizational chart for CP Safety,	20	
12	Environment & Regulatory, dated January 25, 2013		
13			
14	EXHIBIT 3 - Organizational chart for M&S Energy &	25	
15	Merchandise: Energy, Chemicals & Plastics, dated		
16	April 26, 2013		
17			
18	EXHIBIT 4 - Email from Darlene Nagy to Jim Kozey,	41	
19			
20			
21			
22			
22	dated March 28, 2013		
23			
23			
24			
25			

208

1	EXHIBIT 13 - Document with the file name "Research	106
2	Analysis Brainstorming Draft 2013/03/07"	
3		
4	EXHIBIT 14 - Document entitled "SER Crude Oil	115
5	Research & Assessment Requirements"	
6		
7	EXHIBIT 15 - Excel spreadsheet, CP Activity List	130
8	Action Item Tracking	
9		
10	EXHIBIT 16 - PowerPoint presentation entitled	147
11	"Crude By Rail Presentation for Transport Canada",	
12	dated March 14, 2013	
13		
14	EXHIBIT 17 - Email from Darlene Nagy to Glen	149
15	Wilson and others, dated March 25, 2013	
16		
17	EXHIBIT 18 - Email from Paul Weiss to Jim Kozey,	158
18	dated April 3, 2013	
19		
20	EXHIBIT 19 - Two emails, one entitled "FW: White	165
21		
21	River Derailment," one entitled "WDDERAIL2," both	
22		
22	dated April 3, 2013, and document entitled	
23		
23	"Dangerous Commodities."	
24		
24		
25		

DARLENE CORA NAGY - February 14, 2019 - CONFIDENTIAL

209

1 EXHIBIT 20 - Email from Darlene Nagy to Lori 170
2 Kennedy, dated April 9, 2013
3
4 EXHIBIT 21 - Two-page email, dated April 22, 2013, 172
5 with attached PowerPoint presentation entitled
6 "RAC Dangerous Goods Committee Report to RAC SOMC"
7
8 EXHIBIT 22 - Email from Keith Shearer to Breanne 178
9 Feigel and others, dated June 5, 2013
10
11 EXHIBIT 23 - Email from Darlene Nagy to Jim Kozey, 183
12 dated June 11, 2013, with attached document re
13 crude oil
14
15 EXHIBIT 24 - Document entitled "Lac-Mégantic 186
16 Derailment - Questions and Answers," dated July 9,
17 2013
18
19 EXHIBIT 25 - Document entitled "Canadian Pacific 188
20 Crude by Rail Board of Directors' Briefing"
21
22 EXHIBIT 26 - Email from Darlene Nagy to Chris 191
23 Bunce, dated July 19, 2013
24
25

210

1 ***UNDERTAKINGS REQUESTED***
2 None noted
3
4 ***OBJECTIONS***
5 None noted
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT E

1
2 UNITED STATES BANKRUPTCY COURT
3 FOR THE DISTRICT OF MAINE

4 In re:)
5)
6 Montreal, Maine & Atlantic) Bk. No. 13-10670
7 Railway, Ltd.,) Chapter 11
8)
9 Debtor.)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 ROBERT J. KEACH, solely in) Adv. Proc. No.
2 his capacity as the estate) 14-1001
3 representative of the)
4 post-effective date estate of)
5 MONTREAL, MAINE & ATLANTIC)
6 RAILWAY, LTD.,)
7)
8 Plaintiff,)
9)
10 v.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 CANADIAN PACIFIC RAILWAY)
2 COMPANY and SOO LINE RAILROAD)
3 COMPANY,)
4)
5 Defendants.)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

1 CONFIDENTIAL DEPOSITION OF JAMES MICHAEL KOZEY,
2 taken by the Plaintiff, commencing at the hour of
3 8:59 a.m. on Wednesday, February 13, 2019, at
4 Blake, Cassels & Graydon LLP, before Deanna M.
5 DiPaolo, CSR(A), Certified Shorthand Reporter.

3

1 before in a proceeding pending in the federal
2 courts of the United States?
3 **A. No.**
4 Q. I want to take a minute, then, and
5 discuss with you some of the ground rules under
6 which we'll operate today. Does that make sense to
7 you?
8 **A. Sure.**
9 Q. As you can see, the court reporter is
10 taking down in transcription form everything that
11 is said here, so it's very important that we don't
12 speak at the same time. Do you understand that?
13 **A. Yes.**
14 Q. What I'm going to be doing today is
15 asking you a series of questions, and I would like
16 you to give me your honest, most complete answer to
17 all of those questions, okay?
18 **A. Yes.**
19 Q. You have testified in other proceedings
20 before?
21 **A. Yes.**
22 Q. Under oath?
23 **A. Yes.**
24 Q. You understand, then, that this mode of
25 conversation is not, for some of us, typical in our

2

1 ATTORNEYS FOR THE PLAINTIFF:
2 Bernstein, Shur, Sawyer & Nelson, P.A.
3 BY: PAUL McDONALD and JACK WOODCOCK
4 100 Middle Street, PO Box 9729
5 Portland, ME 04104-5029
6 (207) 228-7260
7 pmcdonald@bernsteinshur.com

8 ATTORNEYS FOR FOR THE DEFENDANTS:
9 Briggs and Morgan
10 BY: PAUL J. HEMMING
11 80 South Eighth Street,
12 Minneapolis, MN 55402
13 (612)977-8719
14 phemming@briggs.com

15 Canadian Pacific Railway
16 BY: CHRISTINE PLANTE
17 7550 Ogden Dale Rd SE
18 Calgary, AB T2C 4X9
19 (403) 319-6173
20 christine_plante@cpr.ca

21)
22)
23)
24)
25)

1 JAMES MICHAEL KOZEY, sworn, examined by
2 Mr. McDonald:
3 Q. Please state your name.
4 **A. My name is James Michael Kozey.**
5 Q. Where do you live?
6 **A. Calgary, Alberta.**
7 Q. What's your address?
8 **A. 2240 Longridge Drive SW.**
9 Q. Mr. Kozey, my name is Paul McDonald. We
10 met for the first time this morning; is that right?
11 **A. That's correct.**
12 Q. Have you ever given deposition testimony

4

1 outside world.
2 **A. Correct.**
3 Q. So it's really important that you wait
4 until I have finished my question, even though you
5 can anticipate how I'm going to conclude the
6 questions so that we have a clean record. Do you
7 understand that?
8 **A. Understood.**
9 Q. And I'm going to do my best to not
10 interrupt you when you give your responses, okay?
11 **A. Okay.**
12 Q. Now, if you don't understand a question,
13 and there are likely to be instances today where my
14 phrasing is not particularly clear to you, I'm
15 going to ask you to ask me to rephrase the
16 question, okay?
17 **A. Okay.**
18 Q. If you don't ask me to rephrase, I'm
19 going to assume that you've understood the question
20 and that you're able to and that you will give me
21 your most honest and complete answer. Is that
22 fair?
23 **A. Yes.**
24 Q. Also it's important for the court
25 reporter, in order to get an accurate transcript,

5

1 to make sure that all of your responses are oral.
 2 **A. Okay.**
 3 Q. You just nodded your head --
 4 **A. Sorry.**
 5 Q. -- in response, and that's the kind of
 6 an example that I'm talking about. I will try to
 7 remind you if I see that you haven't given an oral
 8 answer, I'll understand that you've either assented
 9 or said no with the wave of the head, but that's
 10 not going to show up on the transcript.
 11 **A. Okay.**
 12 Q. All right? There may and likely will be
 13 times throughout this proceeding when your counsel
 14 interposes an objection to one of my questions. Do
 15 you understand that that's likely to happen?
 16 **A. Yes.**
 17 Q. Do you also understand that if an
 18 objection is made, you are still under an
 19 obligation to answer the question that I've posed
 20 to you?
 21 **A. Yes.**
 22 MR. HEMMING: Except, Jim, if I
 23 assert something's covered by the attorney-client
 24 privilege.
 25 **A. Okay.**

6

1 MR. HEMMING: There will be
 2 instances where I instruct you not to answer.
 3 **A. Okay.**
 4 Q. MR. McDONALD: If at any point in
 5 the proceedings today, Mr. Kozey, you feel like you
 6 need a break, just let me know, and we'll try to
 7 accommodate you. All right?
 8 **A. All right.**
 9 Q. Did you do anything to prepare for your
 10 deposition today?
 11 **A. I met with internal and external**
 12 **counsel.**
 13 Q. When did you do that?
 14 **A. I guess multiple times since the case**
 15 **was initiated.**
 16 Q. Who's the internal counsel that you met
 17 with?
 18 **A. Cassandra Quach and Christine Plante.**
 19 MR. HEMMING: You can name
 20 identities, Jim, but beyond that, if I need to
 21 interpose an objection of privilege, I will.
 22 Q. MR. McDONALD: The question right
 23 now is just who did you meet with?
 24 **A. That's internal counsel are those two.**
 25 Q. And outside counsel, who did you meet

7

1 with?
 2 **A. Mr. Hemming, there's been some**
 3 **transition in multiple legal teams throughout the**
 4 **course of this, so I can't remember the firms'**
 5 **names. But there were -- sorry, I guess I need**
 6 **clarification on the question, for the US**
 7 **proceeding?**
 8 Q. Yes, for this proceeding.
 9 **A. So -- and -- and I'll have to retract**
 10 **what I just said. So for this proceeding, it would**
 11 **be Mr. Hemming and Mr. Thornton.**
 12 Q. You've not met with your in-house
 13 counsel for purposes of preparing for your
 14 deposition testimony today; is that right?
 15 **A. No, that's -- internal counsel and**
 16 **Mr. Hemming and Mr. Thornton.**
 17 Q. And who are the internal counsel that
 18 you met with in order to prepare for today's
 19 deposition?
 20 **A. Cassandra Quach and Christine Plante.**
 21 Q. What did you do to prepare for this
 22 deposition?
 23 **A. I've reviewed a number of documents that**
 24 **were part of your I guess information requests.**
 25 **I've reviewed the -- I'll get the wrong legal term,**

8

1 **but your -- the document you prepared as part of**
 2 **establishing a class action suit, I don't know...**
 3 Q. The claim?
 4 **A. The claim.**
 5 Q. The complaint?
 6 **A. Yes.**
 7 Q. Did you do anything else, besides meet
 8 with your counsel and review those documents?
 9 **A. Review those documents, not that I can**
 10 **think of.**
 11 Q. And when you met with your counsel, was
 12 it just you and the counsel present or were other
 13 people present, as well?
 14 **A. In certain circumstances, it was direct**
 15 **with counsel, and in other circumstances, it was**
 16 **with more representatives from CP and counsel.**
 17 Q. Okay. Let's see if we can break this
 18 down a little bit, Mr. Kozey, can you tell me how
 19 many times you met --
 20 MR. HEMMING: I'm going to --
 21 Q. MR. McDONALD: -- with legal
 22 counsel?
 23 MR. HEMMING: Apologies for
 24 interjecting, I'm going to object on the grounds of
 25 privilege. How much or how little he met with his

9

1 legal counsel is going to be covered by privilege.

2 MR. McDONALD: I'm not sure about
3 that, Paul.

4 MR. HEMMING: Well, I'm asserting
5 the privilege anyway.

6 MR. McDONALD: You're instructing
7 him not to answer?

8 MR. HEMMING: I am.

9 **OBJECTION TAKEN to answering the**
10 **question: Let's see if we can break this down a**
11 **little bit, Mr. Kozey, can you tell me how many**
12 **times you met with legal counsel?**

13 Q. MR. McDONALD: Who were the people
14 that attended these meetings, besides yourself?

15 **A. So Elizabeth Hucker, Darlene Nagy, Lori**
16 **Kennedy.**

17 Q. Is that it?

18 **A. That's all I can remember, yeah.**

19 Q. And were they present at all of your
20 meetings with counsel?

21 **A. No.**

22 Q. Who's Elizabeth Hucker?

23 **A. She works for Canadian Pacific Railway**
24 **in the marketing and sales department.**

25 Q. Darlene Nagy?

10

1 **A. Darlene Nagy reports to me.**

2 Q. What's her title?

3 **A. Manager of hazardous materials programs.**

4 Q. Lori Kennedy, what's her title?

5 **A. She's the director regulatory affairs.**

6 Q. Were these meetings with your counsel
7 joint preparation sessions for the three -- for the
8 four of you?

9 **A. I guess I'm not sure what you mean by**
10 **"joint preparation."**

11 Q. Was it your understanding that these
12 women were meeting with counsel in order to prepare
13 for their own depositions?

14 **A. My understanding was we were -- we met**
15 **with -- cooperatively as a group like that to be**
16 **provided with kind of an overview of this entire**
17 **process as to what we could expect generally, but**
18 **nothing kind of individually specific to each of**
19 **our I guess documents or information that we**
20 **provided as part of the discovery process.**

21 Q. Right, apart from these meetings with
22 counsel and your review of certain documents, did
23 you do anything else to prepare for your deposition
24 testimony today?

25 **A. I -- I've asked colleagues from other**

11

1 **Class 1 railroads how they handle certain topics**
2 **that we may discuss here today.**

3 Q. Who were those people that you spoke
4 with?

5 **A. In general, it would be the individuals,**
6 **Class 1 railroad representatives, my equivalents**
7 **from the different Class 1 railroads from CSX,**
8 **BNSF, UP, KCS, CN, the names -- I couldn't remember**
9 **if I made -- named all seven Class 1 railways.**

10 Q. You spoke to a representative from each
11 of those seven Class 1 railways?

12 **A. I've spoken -- I speak with them a lot**
13 **on all sorts of different matters, but I ask them**
14 **how they handled certain things.**

15 Q. What are the names of the people that
16 you spoke with?

17 **A. So it would be Steve McNealy from KCS.**
18 **CN would be Anthony Ippolitto. BNSF would be**
19 **Patrick Brady. UP, it's an individual there,**
20 **Tim -- sorry, I can't remember Tim's last name.**
21 **He's relatively new addition to UP. CSX is Chris**
22 **Machenberg.**

23 Q. That's five.

24 **A. I'm just going to list out the names of**
25 **the roads to see if I can remember --**

12

1 Q. Sure.

2 **A. -- who's who.**

3 Q. Take your time. As we said in the
4 beginning, it's not a test, but I do want to know
5 who you spoke to if you can remember?

6 **A. So there's CN, we've got CN on the list.**

7 Q. We do, and CN, just for the record,
8 that's --

9 **A. Canadian National, CN, CSX, UP.**

10 Q. And again, just for the record, UP is?

11 **A. Union Pacific.**

12 Q. We've got KCS, as well?

13 **A. KCS.**

14 Q. Mentioned Steve Machenberg from KCS.
15 And what does that stand for?

16 **A. Kansas City Southern, oh, Norfolk**
17 **Southern.**

18 Q. Who did you speak to at Norfolk
19 Southern?

20 **A. Dave Schorendorfer.**

21 Q. That's six.

22 **A. And then CP would be the seven.**

23 Q. You have the seventh?

24 **A. Yeah.**

25 Q. Were the conversations with all of these

13

1 gentlemen along the same topics?

2 **A. I asked one very specific question.**

3 **Q.** And that question was what?

4 **A. "Has any of your railways ever done any**
5 **testing for the purpose of classification?"**

6 **Q.** And when you say "for the purpose of
7 classification," is that for the classification of
8 goods shipped on their railways?

9 **A. Correct.**

10 **Q.** Was the question specific to crude oil?

11 **A. It was a generic question.**

12 **Q.** Okay.

13 **A. The answer was no.**

14 **Q.** So all six of these individuals said
15 that they had never done testing of any goods that
16 were shipped on their railway?

17 **A. For the purpose of classification,**
18 **correct.**

19 **Q.** Had they done testing for any other
20 purposes?

21 **A. Well, we have done testing for disposal,**
22 **waste disposal.**

23 **Q.** All right, had they done testing for any
24 other purposes?

25 **A. I have never asked that question.**

14

1 **Q.** For what other purposes has Canadian
2 Pacific done testing of goods cargo, other than
3 disposal?

4 **A. None.**

5 **Q.** Why did you ask them that question?

6 **A. I thought -- well, in general, I was**
7 **curious to make sure that we were doing everything**
8 **the same. Like in general we work together as part**
9 **of the hazardous AAR, Association of American**
10 **Railways hazardous materials committee. We work**
11 **together to, you know, ensure the safe**
12 **transportation of hazardous materials.**

13 **We share a lot of best practices.**
14 **We share a lot of information on different things**
15 **we've -- or different issues that inspectors may**
16 **have brought forward. We share a lot of**
17 **information on proposed rules, up and coming rules.**
18 **And we do that because, you know, the North**
19 **American rail transportation system is kind of a**
20 **singular entity, and we need to ensure that we do**
21 **things very consistently so that when we**
22 **interchange products or cars, it goes through**
23 **seamlessly.**

24 **Q.** Were these gentlemen aware at the time
25 of this conversation that Canadian Pacific was

15

1 facing the potential of liability in connection

2 with the Lac-Mégantic derailment?

3 **MR. HEMMING:** Objection, form and
4 foundation. You can answer if you know.

5 **A. Could you state the question again,**
6 **please?**

7 **Q.** **MR. McDONALD:** Sure. Could you
8 read it back, please?

9 **(COURT REPORTER READ BACK)**

10 **A. I guess in general, the rail industry**
11 **knows that CP was one of the entities that did not**
12 **settle in this case.**

13 **Q.** **MR. McDONALD:** So the answer to the
14 question is yes, as far as you know?

15 **A. As far as I know.**

16 **Q.** Have you or anyone at Canadian Pacific
17 ever considered testing cargo?

18 **A. No, we -- we don't consider testing**
19 **cargo. I guess you have to recognize that when we**
20 **look at the 172.101 table in the United States,**
21 **which is the list of hazardous materials, or if you**
22 **look at Schedule 1 in the Transportation of**
23 **Dangerous Goods Regulations, there's approximately**
24 **2,300 different UN numbers, United Nations numbers,**
25 **for all sorts of different products.**

16

1 **And so the ability to be an expert,**
2 **in terms of what's the right sampling method,**
3 **what's the right protocol, what's the right test,**
4 **it's just something that the rail carrier's not**
5 **equipped, nor responsible for, in transportation.**

6 **Q.** Well, doesn't CP own some transloading
7 facilities, as well?

8 **A. We own some transloading facilities.**

9 **Q.** And in connection with that operation,
10 has CP ever considered whether it should be
11 testing --

12 **A. What we --**

13 **Q.** -- the crude oil?

14 **A. -- own transload facilities, but we are**
15 **not the operator or shipper at those facilities.**

16 **Q.** Understood, but will you answer my
17 question now?

18 **A. Yes.**

19 **Q.** You have considered?

20 **A. No, so can you state the question again,**
21 **please?**

22 **Q.** Yes, sure. I'll just ask Deanna to read
23 it back, please.

24 **Let me save some time, and I'll**
25 **just ask it again.**

17

1 In connection with CP's ownership
2 of transloading facilities, has it ever considered
3 whether it should be testing, for purposes of
4 classification, the crude oil that flows into and
5 out of that transloading --

6 **A. No.**

7 **Q.** -- facility? No, you're not aware of it
8 or no, CP, you're speaking for all of CP, do you
9 know the answer?

10 **A. No, I'm not aware of it.**

11 **Q.** You're not aware of it. What else do
12 you recall of any of these conversations with these
13 gentlemen about the question that you posed to
14 them?

15 **A. The -- I can't think of anything, any
16 other specific question I had specifically asked
17 that group.**

18 **Q.** Is there anything else you remember
19 about any of these conversations beyond what you've
20 told us this morning?

21 **A. No.**

22 **Q.** All right. You've told us that you met
23 with both inside and outside counsel. You've told
24 us that you reviewed documents. You've told us
25 that you've spoken to these colleagues at seven

18

1 other Class A railroads. What, if anything, did
2 you in addition to that for purposes of preparing
3 for today's deposition?

4 **A. Again, I guess I reviewed your complaint
5 and thought of the topic areas that you might be
6 interested in. I've looked at different parts in
7 the regulations that I thought might be relevant.
8 You know, as part of the
9 information that was provided in the information
10 requests, there are a number of different
11 documents, TSB reports, different things like that
12 that I reviewed.**

13 **Q.** Were the documents that you reviewed
14 selected by your counsel?

15 **A. No.**

16 **Q.** How did you decide which documents to
17 review?

18 **A. Well, I -- I guess I reviewed every
19 document that was provided as part of the discovery
20 process, so...**

21 **Q.** How do you know that?

22 **A. I guess my understanding was we were
23 working together with counsel to look at certain
24 relevance. My understanding is once we had gone
25 through all those documents, that full sweep was**

19

1 **provided to you.**

2 **Q.** Were you one of the people in charge of
3 coordinating that full sweep as you phrased it?

4 **A. No, I would not be in charge.**

5 **Q.** But as far as you know, you reviewed
6 every document that CP has produced to us in this
7 matter?

8 **A. Relevant to my area of expertise.**

9 **Q.** Are those documents that you reviewed
10 segregated from the document production that was
11 made in this case?

12 **A. I don't know.**

13 **Q.** Did you mark up any of those documents?

14 **A. No, I did not? I made -- I guess under
15 the direction of counsel, prepared for --**

16 **MR. HEMMING:** Let's stop you right
17 there. I don't want you testifying that anything
18 that was done under the direction of counsel.

19 **A. Okay.**

20 **Q.** **MR. McDONALD:** Nor do I. So let's
21 get back to my question, did you highlight any of
22 the documents you reviewed?

23 **A. Not me individually.**

24 **Q.** Did other people highlight them?

25 **A. I don't know.**

20

1 **Q.** Were any of the documents that you
2 reviewed highlighted?

3 **A. Yes.**

4 **Q.** Were there -- do you know the term
5 "marginalia"?

6 **A. No.**

7 **Q.** It's a term lawyers use, it's a silly
8 word, but what for us, it denotes writings in the
9 margin, notes that one puts on a document?

10 **A. Okay.**

11 **Q.** Were any of -- did any of the documents
12 that you reviewed contain any of this marginalia,
13 handwritten notes of you or someone else?

14 **A. No, not that I can recall.**

15 **Q.** And are the documents that you reviewed
16 for purposes of preparing to testify today, are
17 they physically segregated, were they hard copy
18 pages that are typically segregated from the entire
19 CP production?

20 **A. The documents that I reviewed?**

21 **Q.** Yes, let me try to start that over.

22 You've told us that you've reviewed documents that
23 you thought were relevant?

24 **A. Correct.**

25 **Q.** You've told us that some of them were

21

1 highlighted, and what I want to know is these
2 documents that you reviewed, were they hard copy
3 document or did you --

4 **A. Electronic.**

5 Q. -- review them on a computer screen?

6 **A. Electronic.**

7 Q. And are the ones that you decided to
8 review segregated in some sort of an electronic
9 file from the document production that was made to
10 us in this case?

11 MR. HEMMING: Objection,
12 foundation. If you know, Jim.

13 **A. Yeah, I guess, you know, as part of the**
14 **review, the lawyers segregated documents for us to**
15 **discuss, but I don't recall any marginalities, is**
16 **that what you called it?**

17 Q. MR. McDONALD: Marginalia, yeah.

18 **A. Marginalia.**

19 Q. Yeah, this is what I'm getting at,
20 Mr. Kozey. As I understand your testimony, you've
21 told us that there was a fairly substantial
22 document production that was made to us in this
23 case.

24 **A. Correct.**

25 Q. You're aware of that. And I thought

22

1 I've heard you testify that you reviewed a subset
2 of that production?

3 **A. There were documents that I thought**
4 **would be more relevant or discussion that I thought**
5 **would be important.**

6 Q. And what I'd like to know is what those
7 documents are, so I'm asking are they in any way
8 segregated from the entire CP production so that
9 you could point me to them and I could look at
10 them?

11 **A. I guess the own -- so the -- as part of**
12 **prepping, we did mock a deposition --**

13 MR. HEMMING: I'm going to stop
14 you right here, Jim. You're going to get into
15 attorney-client privilege, and I don't want you to
16 talk any more on that.

17 MR. McDONALD: Deanna, could you
18 please read back the question? It's a pretty
19 narrow question, Mr. Kozey.

20 (COURT REPORTER READ BACK)

21 **A. So they would be segregated by legal**
22 **services that provided them to me.**

23 Q. MR. McDONALD: So if I had access
24 to your computer, could I go to a file and discover
25 the documents that Jim Kozey reviewed for purposes

23

1 of preparing for today's testimony?

2 **A. On my computer specifically?**

3 Q. Or on the CP network?

4 **A. Yes.**

5 Q. And are those documents that you
6 personally selected to review?

7 **A. No.**

8 Q. They were selected by your counsel?

9 **A. They were selected by counsel as we**
10 **discussed, you know, different -- reviewed**
11 **different items and issues and...**

12 Q. All right. We've been slowly marching
13 through this preparation phase, Mr. Kozey, and I
14 just want to make sure that the loop is closed.
15 Did you do anything else to prepare for purposes of
16 today's deposition beyond what you've told us
17 already? For example, did you speak to anyone else
18 about it?

19 **A. I guess as far as prepping for the**
20 **deposition, I mean I've spoken to my boss about the**
21 **proceeding and the work that was ongoing obviously**
22 **but nothing specific to the deposition that I can**
23 **recall.**

24 Q. And who is your boss?

25 **A. My boss is Glen Wilson.**

24

1 Q. So you didn't have any conversations
2 about this deposition with Ms. Hucker outside of
3 the presence of counsel or did you?

4 **A. I mean I've talked to Liz but nothing**
5 **specific to any of the discovery documents or**
6 **anything like that.**

7 **We're going -- she's been involved**
8 **in going through part of the discovery on material**
9 **that was relevant to her particular subject area,**
10 **but we didn't -- her area of expertise is entirely**
11 **different than mine. So there's really not any**
12 **overlap.**

13 Q. How about Darlene Nagy, did you speak to
14 her about this deposition outside of the presence
15 of counsel?

16 **A. In general, we've talked about the**
17 **process and when we're going to show up here and**
18 **different things but nothing specific to any**
19 **individual document.**

20 Q. What do you recall about those
21 conversations?

22 **A. Well, this is going to be her first time**
23 **going through something like this, so she was**
24 **nervous and interested in how -- what to kind of**
25 **expect.**

25

1 Q. Did she express to you any concern that
2 there were things that maybe CP should have done
3 differently --

4 MR. HEMMING: Objection.

5 Q. MR. McDONALD: -- in this case?

6 MR. HEMMING: Objection,
7 characterization. Go ahead and answer if you know,
8 Jim.

9 **A. That CP should have done differently.**

10 Q. MR. McDONALD: Let me rephrase it.
11 As Mr. Hemming was right, it was a pretty vague
12 question.

13 **A. Okay.**

14 Q. Did she express to you any concern that
15 CP is facing a risk of liability in this case?

16 MR. HEMMING: Same objection, go
17 ahead and answer.

18 **A. I mean because there is a case, there's**
19 **a risk of liability. That's just -- but, you know,**
20 **with respect to did we do everything that we should**
21 **have done, I don't recall her raising anything like**
22 **that.**

23 Q. Do you recall at any time her suggesting
24 to you in words or substance that CP either knew or
25 should have known --

26

1 **A. No.**

2 Q. -- that the crude oil on Train 282 was
3 misclassified?

4 **A. No.**

5 Q. How about Lori Kennedy, did you have any
6 conversations with her outside of the presence of
7 counsel regarding your preparation for today's
8 testimony?

9 **A. No.**

10 Q. Is there anything else you did to
11 prepare for today that we haven't already talked
12 about?

13 **A. Not that I can think of.**

14 Q. If you know of it later, you can tell
15 me, okay? I'm dying to know.

16 Mr. Kozey, would you tell us your
17 educational background post high school?

18 **A. I have a bachelor of science degree in**
19 **ecology from the University of Calgary. I also**
20 **hold a master's degree in environmental design from**
21 **the University of Calgary. The bachelor's degree**
22 **was 1994, and the master's degree was completed in**
23 **2000.**

24 Q. What is the field of environmental
25 design?

27

1 **A. It's a -- it has three different wings**
2 **within it: It had industrial design, so building**
3 **designing products, it had architecture, and it had**
4 **environmental science. I -- my master's degree is**
5 **in the environmental science portion of that**
6 **faculty.**

7 Q. Were you working when you were going to
8 school for your bachelor of science degree?

9 **A. While I was in school?**

10 Q. Yes.

11 **A. So you're talking about the summer**
12 **portions?**

13 Q. At any time during your studies for your
14 bachelor of science work, were you employed?

15 **A. Yes, I was employed.**

16 Q. But just summers?

17 **A. Correct.**

18 Q. You were full-time student during the --

19 **A. Yes.**

20 Q. -- school year, okay. What were your
21 summer jobs?

22 **A. I worked for a company called Rainbow**
23 **Pipeline.**

24 Q. Are they affiliated with Mobil Oil?

25 **A. Yes, or they were at the time. I don't**

28

1 **know what's happened, Mobil's gone and...**

2 Q. Where's the Rainbow Pipeline?

3 **A. It ran from the Northwest Territories,**
4 **Alberta border into Edmonton, Alberta.**

5 Q. And what job or jobs did you have during
6 your summers working with the Rainbow Pipeline?

7 **A. I was a summer student, so did basically**
8 **everything nobody else wanted to do.**

9 **I also had a job following my first**
10 **degree working for the Rainbow Pipeline as a what**
11 **they call a pipeline gauger, and that was also had**
12 **a job as kind of a general maintenance guy.**

13 Q. We covered all of your summer jobs?

14 **A. I believe so.**

15 Q. At the Rainbow Pipeline?

16 **A. Best I can remember that far back.**

17 Q. All right. You graduated with a BS, I
18 think you told us, in 1994?

19 **A. Bachelor of science, yeah.**

20 Q. And am I correct that you received your
21 master's degree in 2000?

22 **A. Correct.**

23 Q. When did you start your master's
24 studies?

25 **A. I think 1997.**

29

1 Q. What were you doing between 1994 and
2 1997?

3 **A. I worked for Rainbow Pipeline.**

4 Q. So you graduated with your bachelor of
5 science, and then you went to work full-time at the
6 Rainbow Pipeline?

7 **A. Yeah, I couldn't find a job in my field,
8 downturn in the economy, wound up continuing,
9 basically getting a full-time version of my summer
10 student job for Rainbow Pipeline.**

11 Q. And tell us briefly if you would, what
12 were you doing during those three years at the
13 Rainbow Pipeline?

14 **A. So I guess as a -- I was a pipeline
15 gauger.**

16 Q. What does a pipeline gauger do?

17 **A. So pipeline gauger, there are lots of --
18 we would pig pipelines, so that's a procedure where
19 you push a scraper through a pipeline, through a
20 series of valves to clean out the water, basic
21 sediment, that type of thing.**

22 **I would -- was also responsible for
23 metering, so figuring out over and short, making
24 sure what it is we're putting in the pipeline
25 matches what's going out of the pipeline.**

30

1 **We would do, as part of kind of the
2 quality control of the product, we would sample for
3 the density of the product, and we would sample for
4 water content. And then we'd sample for basic
5 sediment. It sounds very fancy, but you put the
6 oil in a centrifuge and spin it really, really fast
7 for a defined period of time, and we can figure out
8 what it is. And you would use a hydrometer to
9 measure its density.**

10 Q. Anything else you did for the Rainbow
11 Pipeline?

12 **A. Yeah, and then, you know, I also
13 mentioned I did kind of a general maintenance man,
14 fixing pumps, pulling strainers, I can't think of
15 anything else.**

16 Q. What kind of oil flowed through the
17 Rainbow Pipeline?

18 **A. A variety of different oil. The
19 field -- I worked in one particular field in -- I
20 guess I should say I worked in two fields, Rainbow
21 Lake, Rainbow Field, and a place called Zama.**

22 Q. How do you spell the last one that you
23 mentioned?

24 **A. Z-A-M-A?**

25 Q. Zama?

31

1 **A. Zama.**

2 Q. Rainbow Lake, Rainbow Field, and Zama?

3 **A. Yeah, so Rainbow Lake was the city, and
4 they called -- it was called Rainbow Field as -- I
5 don't know if that was the correct geographic or
6 geological formation name or anything. We called
7 those two different fields --**

8 Q. Okay.

9 **A. -- because we operated in those two
10 different areas. Zama Lake is also a city in
11 Alberta.**

12 Q. And you mentioned that a variety of
13 types of oil flowed through this pipeline, what
14 varieties are we talking about?

15 **A. I guess all I know is there were
16 products with different densities.**

17 Q. And when you say "products with
18 different densities," in perhaps layman's terms,
19 are we talking about heavy crude versus medium
20 crude versus light crude, is that what you're
21 trying to connote here?

22 **A. No, I guess what I -- as a pipeline
23 operator, we never thought of heavy, light, and
24 medium crude. We were more interested in, well, I
25 guess the pipeline engineers were much more**

32

1 **interested in friction loss and different things.**

2 **So we would measure at what they
3 would call a legal automated custody transfer unit
4 or a LACT unit, the density, and it would be let's
5 say 800 kilograms per metre cubed, it could be
6 720 kilograms per metre cubed, but there was a
7 range in that field that I worked in.**

8 Q. So if I am understanding you, and that's
9 a big if, the issue between the densities had to do
10 with more with flow of the oil through the pipeline
11 and adjustments that needed to be made based on the
12 type of the density of the oil that was passing
13 through?

14 **A. Correct. And I believe there had to do
15 with some of the tariffs that the customers pay,
16 right? So if you have a higher density fluid, it
17 costs the company more money to push that through
18 the pipeline; therefore, you get charged more.**

19 **But that was clearly not my area,
20 but that would have been something I think the
21 pipeline did.**

22 Q. You stopped working for the Rainbow
23 Pipeline in 1997; am I right?

24 **A. Yeah, I believe so.**

25 Q. And you went back to school?

33

1 **A. Correct.**

2 Q. And when you went back for your master's
3 degree, did you go to school full-time or were you
4 working when you went back to school?

5 **A. I was working when I went to school.**

6 Q. And were you working for the Rainbow
7 Pipeline?

8 **A. No.**

9 Q. Who were you working for when you went
10 back for your master's degree?

11 **A. CP Rail.**

12 Q. How did it come about that you started
13 working for CP Rail?

14 **A. When I started in the faculty, the**
15 **professors that was my supervisor for my master's**
16 **degree, there was some alumni from that faculty at**
17 **CP Rail, and I was working on a project that was of**
18 **interest to the railway.**

19 **And so I wound up getting a summer**
20 **student job there and then worked on contract for a**
21 **number of years.**

22 Q. What was that project you were working
23 on that CP was interested in?

24 **A. I was working on greenhouse gas**
25 **emissions, locomotive fuel consumption.**

34

1 Q. Did you do anything else during this
2 tenure of employment with CP, other than this
3 greenhouse emissions study you mentioned?

4 **A. Can you restate the question?**

5 Q. Yes.

6 **A. I lost my train of thought.**

7 Q. Yes. During your tenure with CP when
8 you were getting your master's degree, did you do
9 any other work for CP besides this study of
10 greenhouse gas emissions that you mentioned?

11 **A. Yeah, I was working in the environmental**
12 **services department at the time, and so I did some**
13 **work on some policies and procedures, environmental**
14 **related. Also did some environmental auditing of**
15 **different facilities.**

16 Q. Am I correct that at this point in time,
17 CP was not hauling crude oil by rail?

18 **A. I don't know the answer to that.**

19 Q. You didn't have any connection to CP
20 operations --

21 **A. No.**

22 Q. -- hauling crude --

23 **A. Not at that time.**

24 Q. -- by rail during this period?

25 **A. Not at that time.**

35

1 Q. I'm just going to remind you again, you
2 know where I'm going with these questions, but if
3 you could wait until I'm finished, it would --
4 we'll have a cleaner record, and I won't have to
5 repeat.

6 **A. I apologize.**

7 Q. You don't need to apologize. It's
8 entirely normal, but we just sometimes need to
9 remind ourselves.

10 All right, how long did you work at
11 CP during this period?

12 **A. I think I worked there until 2000 --**
13 **till 2000, I can't remember.**

14 Q. Did your cessation of employment at CP
15 coincide with your obtaining your master's degree?

16 **A. No, it did not.**

17 Q. Had you left CP before you graduated
18 with your master's degree?

19 **A. I believe so.**

20 Q. All right. And did you go to work
21 full-time after you received your master's?

22 **A. Yes.**

23 Q. Where did you work?

24 **A. I worked for a company called Alpine**
25 **Environmental Consulting.**

36

1 Q. And what is the business of Alpine
2 Environmental Consulting?

3 **A. They were kind of a full-service**
4 **environmental consulting company doing a lot of,**
5 **you know, cleanups, historical contaminated sites,**
6 **water sampling, groundwater monitoring, a variety**
7 **of environmental-related functions.**

8 Q. Is Alpine located here in Alberta?

9 **A. They were located here.**

10 Q. In Calgary?

11 **A. They had offices in Calgary at the time,**
12 **Drayton Valley, a lot of the different oilfield**
13 **areas.**

14 Q. And what was your title when you worked
15 for Alpine Environmental Consulting?

16 **A. I switched jobs there several times, but**
17 **at one point I was kind of manager of compliance**
18 **and liability. I also worked -- changed functions**
19 **there and worked in the environmental assessment**
20 **group looking at pipeline approvals and different**
21 **things like that.**

22 Q. I think you mentioned that a lot of
23 their work involved cleanup activities related to
24 oil producing?

25 **A. Well, gas stations, it could be any**

37

1 **number of different things, but --**

2 Q. Did any of your work at Alpine involve
3 work related to oilfields?

4 **A. Yeah, so as manager of compliance and**
5 **liability, I did what they would call environmental**
6 **due diligence reviews for mergers and acquisitions.**
7 **So that would be where there's a data room with all**
8 **sorts of environmental information.**

9 Q. Am I understanding you correctly that
10 Alpine would be hired by one entity involved in a
11 potential merger or acquisition to conduct
12 environmental due diligence?

13 **A. Correct.**

14 Q. And you would be the guy that would be
15 sent to whatever the facility was to review
16 documents?

17 **A. Yeah, the data room.**

18 Q. Okay.

19 **A. Me, along with the team of individuals.**

20 Q. And what kind of mergers and
21 acquisitions are we talking about here?

22 **A. Mostly oilfield.**

23 Q. Okay.

24 **A. Some res -- well, not residential**
25 **property, industrial property.**

38

1 Q. And where were these oilfields located?

2 **A. All -- all throughout Alberta.**

3 Q. Did you conduct any due diligence in
4 connection with any potential merger or acquisition
5 that involved an oilfield or fields in the Bakken
6 Formation?

7 **A. No.**

8 Q. And as part of this due diligence, did
9 you come to learn about the properties of crude
10 oil?

11 **A. I would say no. The majority of what we**
12 **had done were looking at groundwater monitoring**
13 **programs they would have had set up at individual**
14 **facilities for the purpose of their permit or**
15 **whether they had some old historical contaminated**
16 **sites, but those would be old spill material.**

17 Q. Is there anything else that you did at
18 Alpine Environmental Consulting, beyond what you've
19 told us today?

20 **A. Not that I can remember.**

21 Q. And you left Alpine in what year?

22 **A. I believe it was in 2004.**

23 Q. And you went to work for CP?

24 **A. Correct.**

25 Q. How did it come about that you left

39

1 Alpine and went to work for CP again?

2 **A. Well, even while I was with Alpine, CP**
3 **was a large client of mine, and I guess staff**
4 **positions in certain companies are hard to come by,**
5 **and so I'd kind of kept my foot in the door.**

6 **And when a staff position opened**
7 **up, I applied and was the successful candidate.**

8 Q. And you've worked at CP since 2004?

9 **A. Correct.**

10 Q. Would you walk us through the various
11 positions that you've held at CP since 2004?

12 **A. Sure. In 2004, I was hired on as the**
13 **environmental audit program coordinator,**
14 **environmental audit coordinator and responsible**
15 **care coordinator. I can't remember, it must have**
16 **been I think 2006 I became manager of regulatory**
17 **affairs for the transportation of dangerous goods.**
18 **And somewhere between there and now, I became the**
19 **director hazardous materials transportation for CP.**

20 Q. And you've held that position since
21 approximately 2008?

22 **A. Yeah, somewhere in there.**

23 Q. What were your duties and
24 responsibilities as environmental program and
25 responsible care coordinator?

40

1 **A. So the -- I was responsible for the**
2 **environmental audit program, so looking at**
3 **different facilities with respect to compliance**
4 **with, you know, CP internal policy for**
5 **environmental procedures, compliance with**
6 **regulatory requirements, storage tanks, storage of**
7 **chemicals on site, just overall, you know,**
8 **environmental regulations.**

9 Q. Am I correct that during this period
10 2004 to 2006, CP was not engaged in the hauling of
11 crude oil by rail?

12 MR. HEMMING: Objection,
13 foundation. If you know, Jim.

14 **A. I don't know.**

15 Q. MR. McDONALD: You had no
16 involvement with crude-by-rail operations during
17 this period 2004 to 2006?

18 **A. Not that I can remember, no.**

19 Q. Tell us what your duties and
20 responsibilities were as the manager of regulatory
21 affairs, environment, dangerous goods, and
22 responsible care?

23 **A. Yeah, so responsible care's a program**
24 **with the -- at the time it was the Chemistry**
25 **Industry Association of Canada. It's a management**

41

1 system program where we would have CP's
2 environmental, health and safety management systems
3 audited against a standard, so I coordinated that.

4 And like with respect to regulatory
5 affairs for dangerous goods, it was mostly working
6 and representing CP at the minister's advisory
7 council in Canada, which is a multistakeholder
8 group working on different dangerous goods issues,
9 mostly, you know, new and proposed legislation,
10 changes, trends.

11 I would be responsible for
12 interacting with inspectors, transportation
13 industry's inspectors in Canada and FRA hazmat
14 inspectors in the United States on any issues
15 findings, you know, writing responses back to them,
16 addressing any issues that may have been
17 identified.

18 Q. Have we covered all of your duties and
19 responsibilities in that role?

20 A. As best I can remember, yeah, yes.

21 Q. During this period of time in that
22 particular job, which I'm not going to repeat, it's
23 enough, you know what I'm talking about; right?

24 A. Yes.

25 Q. Did you have any involvement at all in

43

1 hazardous materials for CP?

2 A. So I have two different branches
3 currently; I have one that deals primarily with
4 emergency response, so responding to any event
5 involving dangerous goods. And the other is kind
6 of the dangerous goods or hazardous materials
7 programs side, which is where we are responsible
8 for, you know, monitoring new and emerging
9 legislation, providing comments to different rule
10 makings, responsible for the internal training
11 programs that we have for our employees that
12 perform a function under the Transportation of
13 Dangerous Goods Regulations or the US Hazardous
14 Materials Regulations.

15 Q. And has that branching of
16 responsibilities been consistent since you assumed
17 the title in 2008 or is that a recent phenomenon?

18 A. I can't remember.

19 Q. I'm going to ask the court reporter to
20 mark as Kozey Exhibit 1 an organization chart
21 entitled "Safety, Environment, and Regulatory," and
22 it's dated January 25, 2013.

23 EXHIBIT 1 - Organization chart
24 entitled "Safety, Environment, and
25 Regulatory," dated January 25, 2013

42

1 CP's crude-by-rail operations?

2 A. I don't believe there was much crude at
3 that time. I can't remember anything specific
4 about crude oil.

5 Q. Was there anything that you did during
6 that period of time that involved classifications
7 of crude oil?

8 A. No.

9 Q. Analysis of the properties of crude oil?

10 A. No.

11 Q. You mentioned that entity called the
12 Chemistry Industry Association of Canada?

13 A. Correct.

14 Q. Did I get that right?

15 A. Correct.

16 Q. What do they do?

17 A. That's a chemical producers' industry
18 association where different chemical producers or
19 members, they use that as a, you know, information
20 sharing, best practice sharing kind of...

21 Q. Do those chemical producers include
22 petroleum producers?

23 A. No.

24 Q. All right. Tell us what have been your
25 duties and responsibilities as the director of

44

1 Q. MR. McDONALD: I'll ask you to take
2 a look at that document, Mr. Kozey, you can take
3 the official version if you hand that one back.

4 MR. HEMMING: Do you want this one
5 back, Paul?

6 MR. McDONALD: Do you need it,
7 Jack?

8 MR. WOODCOCK: It may be helpful.

9 MR. McDONALD: Christine, did you
10 want to follow along?

11 MS. PLANTE: I've got one.

12 MR. HEMMING: We can share this.

13 MR. McDONALD: Okay, thank you. I
14 didn't know you were coming, I would have made

15 another set of copies. Can we go off the record?

16 (DISCUSSION OFF THE RECORD)

17 Q. MR. McDONALD: All right,
18 Mr. Kozey, have you had an opportunity to look at
19 Kozey Exhibit 1?

20 A. Yes.

21 Q. Earlier today, you told me that your
22 boss was Glen Wilson?

23 A. Correct.

24 Q. Mr. Wilson shows up at the top of this
25 organizational chart; correct?

45

1 **A. Correct. That's the organizational**
2 **structure in 2013.**
3 Q. It's changed today?
4 **A. Correct.**
5 Q. All right. Can you explain to us, let's
6 see if we can do it in words, how this
7 organizational structure has changed, in terms of
8 people above and below you?
9 **A. Okay. So Mr. Bunce is no longer with**
10 **Canadian Pacific Railway. Mr. Shearer is now vice**
11 **president of safety and sustainability. Mr. Wilson**
12 **now reports up to Mr. Shearer. And then**
13 **Mr. Buckholtz now reports to me directly as the**
14 **manager -- system manager emergency response. And**
15 **that hazmat field specialists report up to**
16 **Mr. Buckholtz.**
17 **There are many more list --**
18 **reporting to Mr. Buckholtz now, but Scott Croome**
19 **would be I think the only one listed here that's**
20 **still employed with CP.**
21 Q. Are there any other changes to this
22 organizational chart, in terms of the way they
23 relate to your roles and responsibilities beyond
24 what you've told us already?
25 **A. No.**

46

1 Q. So the current organization chart has
2 two direct reports to you, am I right, Darlene Nagy
3 and Mr. Buckholtz?
4 **A. Correct.**
5 Q. Is there anybody below Darlene Nagy?
6 **A. Yes.**
7 Q. Who's that?
8 **A. James Martin and a new hire**
9 **Meagan Schumacher.**
10 Q. What are their titles?
11 **A. James Martin is a hazmat regulatory**
12 **reporting specialist, and Meagan is a specialist**
13 **hazardous materials.**
14 Q. Have we covered all of the changes now,
15 Mr. Kozey?
16 **A. As far as reporting up to me, yes.**
17 MR. McDONALD: Off the record.
18 (DISCUSSION OFF THE RECORD)
19 (BRIEF ADJOURNMENT)
20 Q. MR. McDONALD: Mr. Kozey, am I
21 correct that in connection with your role as the
22 director of hazmat programs, you have had
23 involvement in CP's crude-by-rail operations?
24 **A. In the transportation of crude, yes.**
25 Q. And when do you begin, when do you

47

1 recall first having involvement in that area of
2 CP's operations?
3 **A. As I recall crude oil really coming**
4 **online in 2010 I guess it would be, at least that's**
5 **when rail started to -- really started to move**
6 **crude by rail.**
7 Q. Are you familiar with the different
8 types of documentation that is issued in connection
9 with shipping of crude by rail?
10 **A. Different types -- I'm familiar with the**
11 **shipper's requirement to provide CP with a shipping**
12 **paper that contains all the information required by**
13 **legislation, regulation.**
14 Q. You're familiar with a document called a
15 "bill of lading"?
16 **A. Yes.**
17 Q. What is a bill of lading?
18 **A. Bill of lading is a shipping document**
19 **that contains information from origin, destination,**
20 **includes information on a number of cars, the car**
21 **numbers, date. There's also a description of the**
22 **product.**
23 Q. What kind of information about the
24 description of the product appears on a bill of
25 lading?

48

1 **A. So the classification as required by**
2 **Transportation of Dangerous Goods Regulations or**
3 **the US Hazardous Materials Regulations.**
4 Q. And how are hazardous goods classified,
5 are there different designations that pertain to a
6 particular hazardous good?
7 **A. Well, there are nine different classes**
8 **of dangerous goods.**
9 Q. Okay.
10 **A. You know, explosives, flammable gases,**
11 **compressed gas, toxic gas, flammable liquids,**
12 **flammable solids, oxidizers, toxic liquids, seven's**
13 **radioactive, eight is corrosive.**
14 (COURT REPORTER INTERRUPTED)
15 **A. Sorry, Class 7 is radioactive, Class 8**
16 **is corrosives, Class 9 is miscellaneous dangerous**
17 **goods.**
18 Q. What class is hazardous liquids?
19 **A. They can be Class 6.1, they could be**
20 **Class 3, flammable liquid. They could be**
21 **miscellaneous Class 9, and they could be Class 8**
22 **corrosives. That's just liquids in general you're**
23 **referring to?**
24 Q. Yeah.
25 **A. Yes.**

49

1 Q. What is the proper classification,
2 hazardous goods classification, for crude oil?

3 **A. Well, crude oil is a non-homogenous**
4 **substance, so it can be -- depending on its initial**
5 **boiling point and flashpoint, it can be Class 3**
6 **flammable liquid, it could be Packing Group I,**
7 **could be Packing Group II, could be Packing Group**
8 **III.**

9 **In the United States, there's a**
10 **separate class called a combustible liquid class,**
11 **which is for flashpoints above 60 degrees Celsius**
12 **and less than 93 degrees Celsius, and it can even**
13 **have flashpoints higher so that it wouldn't be a**
14 **product that's regulated under the Transportation**
15 **of Dangerous Goods Regulations or the US Hazardous**
16 **Materials Regulations.**

17 Q. So am I correct that when a product is
18 designated with a particular class, there are also
19 subcategories of classification, I think you
20 mentioning packing groups?

21 **A. Certain classes of dangerous goods or**
22 **hazardous materials have packing groups assigned to**
23 **them.**

24 Q. Are there any further subclassifications
25 for any types of goods, besides packing group?

50

1 **A. Yeah, there are divisions, so there's**
2 **gases are grouped into divisions instead of packing**
3 **groups. So Division 2.1 is flammable gas.**
4 **Division 2.2 is a compressed gas. Division 2.3 is**
5 **a toxic gas. I'm rusty on my radioactivity, but**
6 **there are different levels of radiation.**

7 Q. Again, this isn't a test; I'm mostly
8 concerned with the packing groups.

9 **A. Okay.**

10 Q. And the hazardous liquids. Are there
11 any other subclassifications beyond a packing group
12 for flammable liquids?

13 **A. No, not in the Transportation of**
14 **Dangerous Goods Regulations or the US Hazardous**
15 **Materials Regulations.**

16 Q. Who issues a bill of lading?

17 **A. The shipper.**

18 Q. The shipper is the person that's
19 transporting the goods on your train?

20 **A. The shipper is the one that offers for**
21 **transport to the railway dangerous goods for CP to**
22 **move.**

23 Q. And are different parties required to
24 sign a bill of lading?

25 **A. So the consignor or the shipper has to**

51

1 **provide a certification statement indicating that**
2 **they have appropriately classified, marked, and**
3 **packaged the product for transport. It's a**
4 **certification statement.**

5 Q. So the consignor has to sign the bill of
6 lading?

7 **A. Or a party acting on their behalf.**

8 Q. Does a representative of the receiver of
9 the goods also have to sign a bill of lading?

10 MR. HEMMING: Objection,
11 foundation. If you know, Jim.

12 **A. So when they reverse route the empty or**
13 **they ship the empty back, then they would be the**
14 **consignor, and they would have to sign a**
15 **certification statement.**

16 Q. MR. McDONALD: But on the bill of
17 lading transporting from Point A to Point B, is it
18 your testimony that the receiving entity is not
19 required to sign the bill of lading?

20 **A. I don't believe they have to.**

21 Q. And is the carrier required to sign a
22 bill of lading?

23 **A. Not under the Transportation of**
24 **Dangerous Goods Regulations or the US hazmat**
25 **regulations.**

52

1 Q. Is there any other requirement for a
2 carrier to sign off on a bill of lading that you're
3 aware of?

4 **A. So there is requirements for waste**
5 **disposal, so to generate a waste manifest for a**
6 **particular product, let's say it's contaminated**
7 **soil that meets certain criteria, I'm not an expert**
8 **in all the hazardous waste stuff, but basically**
9 **there's a multipart form where the shipper signs,**
10 **keeps a copy, the carrier signs, keeps a copy. The**
11 **next carrier, if there is a next carrier, signs and**
12 **keeps a copy. And then the -- ultimately the**
13 **disposer signs and keeps a copy, so there's a full**
14 **cycle version for regulated hazardous waste.**

15 Q. Let's put a bit of a finer put on it. A
16 bill of lading shipping crude oil from the Bakken
17 Formation in North Dakota to Saint John in Canada,
18 is the shipper required to sign that bill of
19 lading?

20 **A. The shipper would be required or if it**
21 **was originating in the United States to sign that.**

22 Q. Shipper is the rail carrier?

23 **A. No.**

24 Q. Excuse me, the shipper, the shipper is
25 the consignee?

53

1 **A. Correct.**

2 Q. Is the rail carrier required to sign
3 that bill of lading?

4 **A. No.**

5 Q. Is the receiving party required to sign
6 that bill of lading?

7 **A. No.**

8 Q. Is a waybill different from a bill of
9 lading?

10 **A. A waybill essentially takes the**
11 **information from the bill of lading, this is all**
12 **done electronically, and it puts that information**
13 **into we call a compressed waybill. And that's the**
14 **shipping document that the crew has in its**
15 **possession while the product is in transport.**

16 Q. Who issues a waybill?

17 **A. I guess the waybill is issued by the**
18 **original shipper. They provide us through bill of**
19 **lading system electronically all the information**
20 **that required us -- just basically a reformatting**
21 **of the waybill or of the bill of lading.**

22 Q. And am I correct in understanding that
23 the information on a waybill needs to match up to
24 the information on a bill of lading?

25 **A. All the information required by**

54

1 **regulation would need to match up.**

2 Q. And does the waybill contain the
3 classification of the goods, as well?

4 **A. Yes.**

5 Q. Are you familiar with the term "MSDS"?

6 **A. Yes.**

7 Q. It refers to a material safety data
8 sheet?

9 **A. Correct.**

10 Q. Before I ask you some questions about it
11 an MSDS, I want to back up a sec. Are you familiar
12 with the term "EDI"?

13 **A. Electronic data interchange.**

14 Q. Is that term synonymous with the bill of
15 lading?

16 **A. No.**

17 Q. What's the difference between EDI and a
18 bill of lading?

19 **A. Electronic data interchange is an**
20 **agreed-upon format for different parties to**
21 **interchange information. And so the rail carriers**
22 **use that to pass information back and forth for**
23 **interchanging different cars. Go ahead.**

24 Q. Are you finished?

25 **A. Yes.**

55

1 Q. Is this an exchanging of information
2 between the rail carriers?

3 **A. So there are different ways that CP can**
4 **get shipping instructions or shipping documents**
5 **from a shipper. So there are -- CP has a web**
6 **billing system which carrier or shippers can enter**
7 **information in -- excuse me, my nose is running --**
8 **and there are also older historic systems that are**
9 **used that are strict EDI, electronic data**
10 **interchange.**

11 **A 404, EDI 404 is something that we**
12 **would receive directly from a shipper, and then an**
13 **EDI 417 is something that we interchange between**
14 **rail carriers.**

15 Q. Are there exchanges of information
16 through this EDI process, with respect to every
17 shipment of goods?

18 **A. I don't know the answer to that.**

19 Q. Am I correct that there is a bill of
20 lading and a waybill that accompanies every
21 shipment of goods?

22 **A. Correct, yes.**

23 Q. You just don't know that there's also an
24 EDI for each particular shipment; is that fair?

25 **A. Yes.**

56

1 Q. What kind of information is exchanged in
2 an EDI?

3 **A. All the information that's required by**
4 **regulation.**

5 Q. Including classification of the goods?

6 **A. Correct.**

7 Q. I just want to make sure that there's no
8 ambiguity in your testimony.

9 The information that you've given
10 us about bill of lading and waybill and EDI, I
11 haven't specifically referred to any particular
12 time period; I'm assuming you were talking about
13 today. Are any of the answers that you gave to any
14 of the questions that I posed to you regarding
15 those documents different if we're talking about
16 the time period of 2012 through 2013?

17 **A. No.**

18 Q. All right, now let's talk about an MSDS.
19 Who issues an MSDS?

20 **A. A manufacturer of a chemical product or**
21 **a product, doesn't have to be to a chemical.**

22 Q. And what does an MSDS contain?

23 **A. An MSDS contains I guess first, you**
24 **know, an MSDS as required under different**
25 **legislation and the Transportation of Dangerous**

57

1 **Goods Regulations or the US Hazardous Materials**
2 **Regulations. It's the *Hazardous Product Act* in**
3 **Canada and under OSHA requirements in the United**
4 **States.**

5 **There are certain regulatory**
6 **obligations to have detailed information, including**
7 **the chemical and physical properties of the**
8 **product.**

9 **MSDSes, although not required and**
10 **do not always contain transportation information,**
11 **but they do have transportation information, i.e.**
12 **the classification of the product.**

13 MR. McDONALD: Could you read back
14 that last answer, please?

15 (COURT REPORTER READ BACK)

16 Q. MR. McDONALD: So I just want to be
17 clear that you're not aware of any statutory or
18 regulatory requirement that an MSDS contained
19 classification information for the product?

20 **A. That is correct.**

21 Q. But you are telling us that sometimes
22 that information is included?

23 **A. That information is sometimes included.**
24 **I guess part of the challenge is that information**
25 **is often kind of inconsistent with some of the**

58

1 **chemical and physical properties that they also**
2 **list on the MSDS.**

3 Q. Is there any rhyme or reason to why some
4 MSDSes contain transportation information and some
5 don't?

6 **A. I do not know why.**

7 Q. Are MSDSes required for crude oil?

8 MR. HEMMING: Objection, vague.
9 Could you -- required for what, for crude oil, I'm
10 just --

11 Q. MR. McDONALD: Well, you told us
12 that MSDSes are prepared pursuant to the Canadian
13 *Hazardous Product Act* and OSHA in the United
14 States?

15 **A. Correct.**

16 Q. Is a producer of crude oil required to
17 produce an MSDS for the crude oil it produces?

18 **A. So there -- they wouldn't be required to**
19 **produce an MSDS for the purpose of transportation,**
20 **but for workers that are exposed and handling in**
21 **that product, they produce that primarily so that**
22 **they can refer to an MSDS to understand the**
23 **chemical and physical properties, select the**
24 **appropriate personal protective equipment.**

25 Q. So am I correct that anybody who's

59

1 operating an oil-producing facility in North Dakota
2 is required to produce an MSDS for its product?

3 **A. So they -- the legislation around**
4 **MSDSes, I'm -- have to be cautious.**

5 **They're -- MSDSes are allowed to be**
6 **generic, and that's permitted by regulation. They**
7 **can cover a wide variety of products with similar**
8 **chemical and physical properties which is why on**
9 **the MSDSes you see these big broad ranges of**
10 **different chemical and physical properties.**

11 **My understanding is that the**
12 **producer would need to have some type of MSDS**
13 **representative of a product that would at least --**
14 **that would represent -- they would have to have an**
15 **MSDS that was -- that would represent, at least**
16 **cover generally, the product that they are**
17 **producing.**

18 Q. And are these MSDSes filed with any
19 governmental organizations?

20 **A. I do not know.**

21 Q. If a person wanted to obtain an MSDS
22 that pertained to a particular oilfield in North
23 Dakota, how would one go about finding it?

24 **A. I guess you would have to know what**
25 **producers are in that area, and you would ask them.**

60

1 **MSDSes typically don't identify the field name for**
2 **an oil product, i.e. the formation that it's coming**
3 **from.**

4 Q. Right, but if XYZ Oil Company,
5 multinational company --

6 **A. Yeah.**

7 Q. -- is operating a well outside of
8 Williston, North Dakota, and one wanted to know
9 what was the appropriate MSDS for the oil coming
10 out of that ground, you would contact XYZ
11 Corporation and ask for the MSDS?

12 **A. Yes.**

13 Q. Have you ever made requests of oil
14 producers for MSDSes?

15 **A. Me personally?**

16 Q. CP?

17 **A. Yes.**

18 Q. When?

19 **A. I've seen a lot of MSDSes in my career,**
20 **so I can't recall anything specific. I know I've**
21 **seen material safety data sheets for crude oil.**

22 Q. Have you seen material safety data
23 sheets for crude oil coming out of the Bakken
24 Formation?

25 **A. I have seen one for sure that I know of.**

61

1 Q. You're not aware of having seen any
2 others?

3 **A. Nothing I can recall specifically tied**
4 **to the Bakken crude oil.**

5 Q. When did you see that MSDS that you're
6 referring to?

7 **A. As part of the document review.**

8 Q. You haven't seen it beforehand?

9 **A. No, it was not addressed to me.**

10 Q. So it's your testimony that CP doesn't
11 receive MSDSes in connection with the shipment of
12 goods?

13 MR. HEMMING: Objection,
14 foundation. You can answer to the extent you know.

15 **A. Not typically, no.**

16 Q. MR. McDONALD: Yeah, I guess I can
17 save Mr. Hemming some objections later on. I only
18 want you to tell me what you know.

19 So if you don't -- if you don't
20 know the answer, I'm not trying to trap you into
21 binding CP on anything here. This is not CP's
22 deposition, this is your deposition.

23 So if you don't know, just tell me.
24 I'm not interested in you speculating, I just want
25 to know what you know.

62

1 So I don't know if we got an answer
2 to that question or not?

3 **A. I lost my train of thought on the**
4 **question.**

5 MR. McDONALD: Could we -- could we
6 read that back, please, Deanna?

7 (COURT REPORTER READ BACK)

8 **A. No, we do not receive MSDSes.**

9 Q. MR. McDONALD: Are you aware of CP
10 ever having asked a party to produce an MSDS and
11 being refused?

12 **A. No.**

13 Q. So when you ask for them, you get them?

14 MR. HEMMING: Objection,
15 mischaracterizes his answer. Go ahead and answer
16 the best you can.

17 **A. Yeah, I can't say how many people at CP**
18 **have asked for them that may or may not have got**
19 **them; I would be guessing at best.**

20 Q. MR. McDONALD: You have never been
21 refused?

22 **A. No, not that I can think of.**

23 Q. Nobody under your chain of command has
24 been refused; correct?

25 **A. No.**

63

1 Q. You're not aware of anybody above your
2 chain of command being refused a request for an
3 MSDS from a producer?

4 **A. Not aware of it; I don't know if**
5 **anybody's asked.**

6 Q. You talked earlier about the different
7 branches of your authority or your roles and
8 responsibility, one being basically hazmat
9 response?

10 **A. Correct.**

11 Q. If there is a spill of hazardous
12 materials being transported by CP train, does CP
13 request MSDSes for that product?

14 **A. So typically in what's required under**
15 **regulation in Canada and what's required under**
16 **regulation in the United States is for the**
17 **consignor to provide a 24-hour contact number. We**
18 **contact that number to get product-specific**
19 **information.**

20 It can be -- most often it's just a
21 material safety data sheet that they give us, and
22 it's mostly because we're now going to be exposed
23 to the product because we are involved in actually
24 responding to it.

25 So we use that MSDS to select

64

1 appropriate personal protective equipment, that
2 type of thing.

3 Q. So whenever there's a spill of a
4 hazardous product, CP's protocol is to obtain an
5 MSDS for the product?

6 **A. Is to contact the 24-hour number.**

7 Q. Yeah, apart from the 24-hour number, you
8 get MSDSes when you have a spill of a hazardous
9 product; isn't that right?

10 **A. Depends. The shipper doesn't have to**
11 **provide an MSDS; they can provide other information**
12 **on the product too. But typically we get an MSDS.**

13 Q. Are you aware of there being a spill of
14 hazardous product that was transported by CP where
15 you didn't obtain an MSDS for the product?

16 **A. I've been involved where there's been a**
17 **lot of confusion associated with obtaining a**
18 **material safety data sheet for a product.**

19 I can't remember the particular
20 event, but I know I was in my hotel room in Atlanta
21 where we had spilled what was a flammable liquid,
22 it was the waybill or the compressed waybill said
23 it was being shipped as flammable liquid NOS, not
24 otherwise specified, and we received a material
25 safety data sheet for UN1202, which was gasoline.

65

1 And that caused a lot of confusion.

2 But ultimately, they convinced us
3 that the properties of the product that we were
4 responding to were consistent with what was
5 outlined in the material safety data sheet so we
6 could select our appropriate personal protective
7 equipment.

8 Q. Are you aware of any instance in which
9 CP has had a spill of hazardous product where it
10 has not obtained an MSDS?

11 A. No.

12 Q. Is there an invoice that accompanies
13 every shipment of goods by CP?

14 A. I don't know the answer to that.

15 Q. You do know that CP does issue freight
16 invoices; isn't that right?

17 A. That would be true.

18 Q. And do the freight invoices contain
19 classification information for the goods?

20 A. I've never seen a freight invoice.

21 Q. Beyond the bill of lading and the
22 waybill and the EDI information and perhaps freight
23 invoices, are you aware of any other documents that
24 accompany the shipment of goods by CP?

25 A. We're required by regulation to have a

66

1 trained consist, C-O-N-S-I-S-T, that shows the
2 positioning train of each hazardous material. That
3 has to be updated if work is performed en route.

4 Q. What kind of work are you talking about?

5 A. Picking up cars, setting down cars.

6 Q. Does the train consist indicate the
7 classification information for the goods?

8 A. Does not contain all the classification
9 information.

10 Q. Does it contain some?

11 A. It might, I -- it'll contain probably
12 the UN number for hazardous materials.

13 Q. Anything else besides the train consist,
14 in terms of documentation that accompanies a
15 shipped shipment of goods by CP?

16 A. No.

17 Q. I'm going to ask the court reporter to
18 mark as Kozey Exhibit 2 an email from Brian
19 Townshend to Jim Kozey, dated April 19th, 2013,
20 with an attachment.

21 EXHIBIT 2 - Email from Brian
22 Townshend to Jim Kozey, dated
23 April 19, 2013, with an attachment

24 Q. MR. McDONALD: And I'll ask you to
25 take a look at that document, Mr. Kozey. You've

67

1 seen this document before, Mr. Kozey?

2 A. Just give me a moment, please.

3 Q. Okay.

4 MR. HEMMING: There's a few
5 documents, take your time to look at it.

6 A. I'm kind of confused as to...

7 Q. MR. McDONALD: Mr. Kozey, you can
8 take all the time you need, but really, all I want
9 you to tell us is whether or not the document that
10 is attached to the email, it shows up as pages 1
11 through 7, is in fact a bill of lading?

12 A. Correct.

13 Q. All right. And where do we see the
14 classification information on this bill of lading?

15 A. Should be the last page, page 7.

16 Q. What is the classification of this
17 shipment?

18 A. It's a -- it's a UN1267 petroleum crude
19 oil Class 3 Packing Group III.

20 Q. Ask the court reporter to mark as Kozey
21 Exhibit 3 an email chain involving Mike Pielak,
22 P-I-E-L-A-K, Jim Kozey, and others from April 3rd
23 of 2013.

24 EXHIBIT 3 - Email chain involving
25 Mike Pielak, Jim Kozey, and others,

68

1 dated April 3, 2013

2 Q. MR. McDONALD: Ask you to take a
3 look at that, Mr. Kozey, and again, take all the
4 time that you need, but my question to you is I
5 believe is simple and straightforward, and that is
6 whether or not the attachment to the email is in
7 fact a waybill?

8 MR. HEMMING: Could you clarify
9 which attachment? Looks like there might be a few,
10 Paul; I'm not sure if there are a few on here.

11 MR. McDONALD: Well, a waybill or
12 waybills.

13 A. Okay, so --

14 Q. MR. McDONALD: Let's try it a
15 different way, tell us what the attachments are,
16 Mr. Kozey?

17 A. So this -- page 2 is a work list, and
18 then -- and then pages 3 through 9 are compressed
19 waybills.

20 Q. And do they show us the classification
21 of these goods?

22 A. Yes, they do.

23 Q. Where do we see that?

24 A. We see that in the bottom left corner of
25 the compressed waybill.

69

1 Q. Where I'll just look at the first of
2 them, it says (as read):
3 "One tank car, UN1267, petroleum
4 crude oil, Class 3, PG II."
5 **A. Correct.**
6 Q. You're familiar with the derailment of a
7 CP train in Heron Bay, White River, Ontario?
8 **A. I know of that event.**
9 Q. Are these in fact the waybills that
10 pertain to the shipment of crude oil on that
11 particular CP train?
12 **A. Yes.**
13 Q. Ask the court reporter to mark as Kozey
14 Exhibit 4 an email from Dale Buckholtz to Jim Kozey
15 and Bill Hay, dated July 9, 2012.
16 **EXHIBIT 4 - Email from Dale**
17 **Buckholtz to Jim Kozey and Bill**
18 **Hay, dated July 9, 2012**
19 Q. MR. McDONALD: I'll ask you to take
20 a look at that, Mr. Kozey, and take your time and
21 look at it all if you'd like, but I really just
22 want to ask you a question about the attachment
23 that is the incident response report dealing with
24 an incident at the Portage, Wisconsin, yard, dated
25 July 2012. And I just want you to look at

70

1 Attachment H to that report and tell me if that is
2 an example of an MSDS for petroleum crude oil?
3 MR. HEMMING: Paul, can you -- I'm
4 having trouble finding it. Can you read me the
5 Bates number?
6 MR. McDONALD: Yes, the Bates
7 number is CP01555, starts there.
8 MR. HEMMING: Got it. Jim, do you
9 know what a Bates number is?
10 **A. I do not.**
11 Q. MR. McDONALD: In the bottom, lucky
12 you, margin, there you go, it's got a marking on
13 it, that's how we keep track of page numbers.
14 So it's -- I guess the question,
15 I'll just rephrase it, Mr. Kozey, is the document
16 that's part of this exhibit that begins with the
17 Bates Number CP01555 and ends in 01555.0014, a
18 material safety data sheet for petroleum crude oil.
19 **A. Yes, it's a material safety data sheet.**
20 Q. So CP had an incident at its Portage,
21 Wisconsin, yard involving some release of petroleum
22 crude oil; correct?
23 **A. Yes, I believe it was overloaded car.**
24 Q. And you asked the shipper for the MSDS
25 pertaining to that product; correct?

71

1 **A. Correct.**
2 Q. And they provided it to you; correct?
3 **A. Correct, and they're providing this for**
4 **the purpose of us responding to a spill, so we**
5 **needed information on how we were going to handle**
6 **the product, what personal protective equipment we**
7 **were going to use.**
8 Q. Was Northern Tier Energy the consignee?
9 **A. I don't see a compressed waybill in**
10 **here.**
11 Q. You can't tell who the shipper is from
12 the documents that are included in Kozey Exhibit 4?
13 **A. Unless you can point me to something**
14 **that I don't see, but our normal procedure would**
15 **have been to get the compressed waybill for the car**
16 **and contact the 24-hour number. I think we would**
17 **have got the material safety data sheet from --**
18 **from that 24-hour number.**
19 Q. Would you look at the page that has the
20 Bates Stamp Number CP01560, does that give you any
21 information?
22 **A. Could you run me through that --**
23 Q. CP01560?
24 **A. CP0155...**
25 Q. No, let's take it this way, turn into

72

1 the second page of the document, which is the
2 hazardous materials incident report?
3 **A. Yeah.**
4 Q. Am I correct that the shipper or offerer
5 of this product was Northern Tier Energy?
6 **A. Without the compressed waybill, I --**
7 **difficult to say, but that's what's filled out in**
8 **the --**
9 Q. All right.
10 **A. -- hazardous materials incident report.**
11 Q. Do you have any doubt that that's
12 accurate information?
13 **A. That lines up with the material safety**
14 **data sheet, but to be definitive, I'd have to see**
15 **the compressed waybill to know who the shipper was.**
16 Q. All right. We know that this was being
17 shipped to Irving Oil, correct, in Saint John,
18 New Brunswick?
19 **A. Again, I'd like to see the compressed**
20 **waybill.**
21 Q. Look at page that has the Bates stamp
22 CP01560?
23 MR. HEMMING: Would you point him
24 out to where in the collection it is perhaps in
25 the --

73

1 Q. MR. McDONALD: It's -- yeah, it's
2 towards the back, it's the third from --
3 third-from-the-last page.

4 **A. 156 -- okay, yeah, I found that.**

5 Q. All right.

6 **A. Sorry about that.**

7 Q. That's okay. So who's the consignee?

8 **A. I don't know. This isn't a legal**
9 **shipping document, so...**

10 Q. Okay. Do you have any doubt that this
11 was oil that was being shipped to Irving Oil in
12 Saint John, New Brunswick, based on the documents
13 you've seen here?

14 **A. I'm just not familiar with this**
15 **document, so I don't know what -- who's the**
16 **consignee and consignor.**

17 Q. All right, well, you typically get the
18 MSDS from the consignor; correct?

19 **A. We would call the 24-hour number that's**
20 **listed on the shipping document. It's not**
21 **necessarily the consignor. Shippers can use**
22 **third-party service providers to do that.**

23 Q. Okay, Mr. Buckholtz's email to you says
24 (as read):

25 "Per your request, here's the

74

1 documentation. This is how all
2 contractors should submit an
3 invoice. I once gave a class
4 documentation of railroad
5 perspective, they were my
6 students."

7 Is that what he wrote?

8 **A. That's correct.**

9 Q. Is that signifying to you that this
10 is -- this was done properly and this is accurate
11 information?

12 **A. That's what that statement would see**
13 **after going through it here. There are different**
14 **things that we would improve upon.**

15 Q. Sure. But did you understand that
16 Mr. Buckholtz was conveying to you that this is the
17 way the shipping information should be filled out?

18 **A. That's what that statement --**

19 Q. Okay, and again, if we look at the
20 hazardous materials incident report, it identifies
21 the shipper and offerer as Northern Tier Energy?

22 **A. Correct.**

23 Q. Do you have any reason to doubt that was
24 inaccurate information, particularly what
25 Mr. Buckholtz said to you in his cover email?

75

1 **A. I guess I would always refer to the**
2 **compressed waybill, but I haven't -- if they were**
3 **the consignor or they may have been one of the**
4 **producers that went into a group of tank cars, I**
5 **guess I just don't know the answer to that.**

6 Q. Do you have any doubt, based on the
7 documents that comprise this exhibit, that the
8 destination of this shipment was the Irving Oil
9 refinery in Saint John, New Brunswick?

10 **A. Just I can't see anywhere where it says**
11 **Irving Oil --**

12 Q. Well, look at --

13 **A. -- as the...**

14 Q. If you look at the hazardous materials
15 incident report at Item Number 13 --

16 **A. Yes.**

17 Q. -- it shows that the destination was
18 Saint John, New Brunswick?

19 **A. Correct.**

20 Q. You only shipped crude oil to
21 Saint John, New Brunswick, to the Irving refinery;
22 isn't that right?

23 **A. I don't know the answer to that. If any**
24 **other products, I'm sure they use other products in**
25 **their process.**

76

1 Q. You do know that CP shipped crude oil to
2 the Irving Oil refinery in Saint John,
3 New Brunswick?

4 **A. Well, CP would have shipped it to the**
5 **MMA and interchanged it with the MMA, and then it**
6 **would have been furthered to destination.**

7 Q. Are you aware that CP shipped crude oil
8 to any other party in Saint John, New Brunswick,
9 other than Irving Oil?

10 **A. No.**

11 Q. So do you have any doubt that this was a
12 shipment that was going to Irving Oil's refinery in
13 Saint John, New Brunswick?

14 **A. No.**

15 Q. Now, if you go back to the document that
16 we see at CP01560 --

17 **A. I have that in front of me.**

18 Q. All right. We see some information
19 here. This is -- this is a Canadian Pacific
20 document, is it not?

21 **A. Yes.**

22 Q. Do you know what this document is
23 called?

24 **A. I do not.**

25 Q. We see that the document is dated

77

1 June 14th, 2012; correct?

2 **A. Correct.**

3 Q. All right, and then we see below that
4 number that says 1,200, and then it says
5 Saint John, New Brunswick, and then it says 997
6 Stampede, North Dakota. Do you see that?

7 **A. Yes.**

8 Q. Do you have any doubt that this shipment
9 originated in Stampede, North Dakota?

10 **A. No, this would have originated --**
11 **appears to have originated in Stampede.**

12 Q. And is there anything that CP has ever
13 shipped out of Stampede, North Dakota, other than
14 crude oil?

15 **A. Not that I'm aware of.**

16 Q. So do you have any doubt that this was a
17 shipment of crude oil from Stampede, North
18 Dakota --

19 **A. Can you go back to that statement, have**
20 **we shipped anything else out of Stampede, North**
21 **Dakota?**

22 Q. Yes.

23 **A. Yes, we ship lots of things into**
24 **Stampede, North Dakota, frac sand for oil refining,**
25 **other materials so...**

78

1 Q. I think my question was shipping out?

2 **A. Oh.**

3 Q. So let me rephrase it, has CP ever
4 shipped anything out of Stampede, North Dakota,
5 other than crude oil?

6 **A. Not that I know.**

7 Q. So Mr. Kozey, again, looking at all of
8 these documents that comprise Kozey Exhibit 4, do
9 you have any doubt that this incident at the
10 Portage, Wisconsin, rail yard involved a shipment
11 of crude oil from Stampede, North Dakota, that was
12 on its way to the Irving Oil refinery in
13 Saint John, New Brunswick?

14 **A. No.**

15 Q. What was the classification of this oil
16 that came from North Dakota?

17 **A. This is a -- because this is a legal --**
18 **oh, there you go. This is UN1267 petroleum crude**
19 **oil Class 3, Packing Group II.**

20 Q. If we look at the first page of the
21 incident response, hazardous materials incident
22 response report, Item Number 16?

23 **A. Yeah.**

24 Q. That indicates the packing group is I?

25 **A. That's what is there, that appears to be**

79

1 **an error based on the previous document we looked**
2 **at.**

3 Q. And what was the previous document you
4 were looking at, was it -- was it the one that we'd
5 been referring to previously with the Bates
6 number --

7 **A. CP.**

8 Q. -- 01560?

9 **A. Correct.**

10 Q. Your testimony is that this was
11 classified as hazardous Class 3, Packing Group II?

12 **A. That's based on this document, which is**
13 **not a legal shipping document.**

14 Q. When you say "this document," it's the
15 one with the Bates stamp CP01560?

16 **A. Correct.**

17 Q. And where do we see the classification
18 on that document?

19 **A. About two thirds of the way down on the**
20 **left-hand side.**

21 Q. Okay, it says (as read): "One tank car"?

22 **A. Correct.**

23 Q. (As read):

24 "Petroleum crude oil,

25 Class 3/UN1267/PG II."

80

1 **A. Correct.**

2 MR. McDONALD: Let's take a
3 five-minute break.

4 (BRIEF ADJOURNMENT)

5 MR. McDONALD: I'm going to ask the
6 court reporter to mark as Kozey Exhibit 5 an email
7 from Mr. Kozey to Glen Wilson and others, dated
8 April 3rd, 2013.

9 **EXHIBIT 5 - Email from Mr. Kozey to**
10 **Glen Wilson and others, dated**
11 **April 3, 2013**

12 Q. MR. McDONALD: Ask you to take a
13 look at that document, Mr. Kozey, and am I correct,
14 sir, that this email chain is a transmission of the
15 MSDSes that pertained to the product that spilled
16 in the what we've been calling the White River
17 derailment?

18 **A. Yeah, there's nothing in the subject**
19 **line that denotes that, so...**

20 Q. Do you have any doubt that this is the
21 crude oil that was involved in the White River
22 derailment?

23 **A. I guess I can't confirm it. I can't**
24 **remember the material safety data sheet we looked**
25 **at at that time.**

81

1 Q. Well, you testified earlier that when CP
2 has an incident --

3 **A. Correct.**

4 Q. -- part of the reporting process and the
5 investigative process is to obtain an MSDS; right?

6 **A. Correct.**

7 Q. Was CP dealing with any other spill of a
8 hazardous substance in or around April 3rd of 2013?

9 **A. What was the date of the White River
10 event?**

11 Q. Well, I'm not here to answer the
12 questions, sir; I'm just trying to get your
13 recollection. Do you recall that the White River
14 event occurred in or around April 3rd of 2013?

15 **A. I can't remember the date, no.**

16 Q. Would you take a look at Kozey Exhibit 3
17 and see if that refreshes your recollection, sir?

18 **A. Yes, the White River event was around
19 April 3rd, 2013.**

20 Q. Okay, do you have any doubt that this
21 MSDS that is attached to Kozey Exhibit 5 is the
22 MSDS that you obtained in connection with your
23 investigation of the White River derailment?

24 **A. Based on dates, it would appear there's
25 a high probability that this is the MSDS from that**

82

1 **event.**

2 Q. Do you have any doubt that it's the MSDS
3 from that event?

4 **A. No.**

5 Q. Glen Wilson was your boss at this time,
6 April 3rd, 2013; am I right?

7 **A. I believe Chris Bunce was my boss at the
8 time.**

9 Q. What was Glen Wilson's title at this
10 time?

11 **A. I can't remember.**

12 Q. How about Jeff Peister?

13 **A. He was an environmental engineer for the
14 Ontario territory.**

15 Q. Who was Sergio Sabatini?

16 **A. Sergio would have been I can't remember
17 if he's a director, but the -- at that time, the
18 field emergency response reported up regionally,
19 and so Sergio would have had safety specialists and
20 hazmat specialists and environmental officers
21 reporting up to him regionally as the director of
22 that group.**

23 Q. And who was Scott Croome?

24 **A. Hazardous materials officer.**

25 Q. Why were you sending the MSDS to these

83

1 individuals?

2 **A. To provide information on the product at
3 the scene.**

4 Q. What was the origin of the oil that
5 spilled in the White River incident?

6 **A. It was from Alberta.**

7 Q. Do you know where in Alberta?

8 **A. I can't recall.**

9 Q. And if you take a look back at Kozey
10 Exhibit 3, what was the classification of the oil
11 that spilled in the White River incident?

12 **A. It was UN1267 petroleum crude oil,
13 Class 3, Packing Group II.**

14 Q. Did CP request an MSDS for the oil that
15 spilled in connection with the Lac-Mégantic
16 derailment?

17 **A. Post-derailment, there was a I guess an
18 investigation into the crude oil that was in being
19 transported. I think we were provided with 10
20 MSDSes from 11 different producers. It's in the
21 TSB report, it's somewhere around there.**

22 Q. Did CP conduct its own incident response
23 investigation as a result of the Lac-Mégantic
24 derailment?

25 **A. You have to be more specific on**

84

1 **"incident response," I'm not sure what you mean.**

2 Q. Well, we've seen that there was an
3 incident at the Portage, Wisconsin, yard.

4 **A. Correct.**

5 Q. And we've just talked about the White
6 River derailment.

7 **A. Yes.**

8 Q. What was the investigative response that
9 got triggered within CP as a result of those
10 incidents?

11 **A. As a result of -- so now let's -- are
12 you specifically talking about the Lac-Mégantic --**

13 Q. No.

14 **A. -- event?**

15 Q. No.

16 **A. So --**

17 Q. I'm just trying to get a sense of
18 whether there's any difference internally at CP in
19 the quality or the type of investigation that was
20 done in these three incidents, and I'll just pause
21 at a couple of things.

22 When the incidents occurred at
23 Portage, Wisconsin, and at White River, Ontario, CP
24 was actually transporting the goods; correct?

25 **A. Correct.**

85

1 Q. Was CP transporting the goods at the
2 time of the Lac-Mégantic disaster?

3 A. No.

4 Q. So was there a difference in the type of
5 an investigation that CP would undertake in those
6 different circumstances?

7 A. Yes.

8 Q. Explain that for us?

9 A. So in Portage, Wisconsin, it was, if I
10 recall correctly, an overloaded tank car. That
11 cause is pretty easy to determine, so no further
12 investigation is really required.

13 We would have advised the shipper
14 to evaluate their loading practices, to make sure
15 that they've got their appropriate controls in
16 place so that they don't offer overloaded cars
17 again.

18 White River, we had charge,
19 management, and control of the product at the time.
20 There was a formal investigation with the
21 Transportation Safety Board in Canada, and so we
22 would have contributed and participated in that
23 investigation.

24 And then with Lac-Mégantic where we
25 weren't -- didn't have charge, management, and

86

1 control of the product, we'd look at certain things
2 to determine, you know, if the processes we have in
3 place ensure that for our portion of the move, we
4 did everything in compliance with the applicable
5 rules and regulations.

6 Q. In a -- the typical case when there is
7 an incident involving another carrier in a train
8 that CP handed off to that carrier, you're
9 following me so far?

10 A. Yes.

11 Q. And the second carrier has a derailment,
12 does CP typically undertake an investigation in
13 those circumstances?

14 A. We typically look at the billing that we
15 received from the shipper. We look at the 417 that
16 we send to the receiving carrier to make sure that
17 all that information lines up. We will look at the
18 classification of the tank cars to ensure that
19 they're authorized for the product that was offered
20 to CP. And we'll look at the weights to make sure
21 that cars aren't overloaded.

22 But there's a lot of automatic
23 controls in place, computer program that does a lot
24 of this electronically; we just verify should there
25 be an event.

87

1 Q. Who is responsible for classifying
2 freight that is hauled by CP?

3 A. The consignor or importer.

4 Q. When you say "the consignor or
5 importer," are you using those terms
6 interchangeably?

7 A. So if it's a domestic shipment in Canada
8 or the United States, it's the shipper or the
9 consignor. If the product is moving from the
10 United States into Canada, the Canadian -- well,
11 the Canadian importer actually becomes the
12 consignor, as far as responsibility for
13 classification.

14 Q. When CP moves a train of goods from the
15 United States into Canada, is it considered a
16 importer for purposes of Canadian statutes or
17 regulations?

18 A. Say the origin and destination?

19 Q. Yes.

20 A. So the...

21 Q. Goods originate in the United States?

22 A. Yes.

23 Q. They are transported into Canada, is CP
24 considered an importer of those goods for purposes
25 of Canadian statutes or regulations?

88

1 A. No.

2 Q. Does CP ever have any responsibility for
3 classification of goods that it transports?

4 A. The rail carrier can become an importer
5 when the product originates in the United States
6 and is destined to the United States but transits
7 through Canada.

8 Q. So only when the goods go in and out of
9 Canada is the carrier considered an importer?

10 A. Correct.

11 Q. Now, I believe you told us earlier that
12 your awareness of crude by rail at CP beginning in
13 or around 2010 --

14 A. Correct.

15 Q. -- did CP ever undertake to educate
16 customers, shippers, consignors or consignees about
17 classification issues --

18 A. No.

19 Q. -- for crude oil?

20 A. CP as a rail carrier, as we talked about
21 before, is not an expert in classification. You
22 know, the way the regulations are set up is each
23 entity in the transportation cycle is assigned
24 regulatory obligations. You know, classification
25 of the product is the consignor's responsibility

89

1 'cause they are the product expert.

2 Q. But did CP ever reach out to actual or
3 potential customers to provide any form of
4 education or information about classification
5 issues?

6 A. We've issued some customer bulletins
7 when we had an issue identified by an FRA inspector
8 in or around late 2011.

9 Q. Tell us about that?

10 A. There was an issue identified by an FRA
11 inspector where he saw UN1267, petroleum crude oil,
12 I can't remember the packing group, being shipped
13 in the AAR-211 tank car.

14 Q. Mm-hmm?

15 A. And I guess his opinion at that time was
16 that that was not authorized by the regulation.

17 We subsequently did an
18 investigation to figure out what, if any, shippers
19 were moving crude oil UN1267, petroleum crude oil
20 Class 3 in AAR class cars, and as it turned out,
21 there was a special provision in the US regulations
22 that actually authorized that use of that class of
23 tank car, provided its flashpoint exceeded a
24 particular threshold. I can't remember it off the
25 top of my head, but it's Special Provision B1 in

90

1 the US Hazardous Materials Regulations.

2 Q. So to whom did CP extend this outreach?

3 A. We have, like all the other Class 1
4 railways, you know, our standard approach to
5 communicating with customers is to issue a customer
6 bulletin. And so that would have gone out to I
7 can't remember at the time, whether it went out to
8 all customers or whether we targeted crude or not,
9 crude customers or not.

10 Generally it's easier for us
11 process-wise to just send it out through the
12 customer bulletin process that goes to everybody.

13 Q. During this period of time, were you
14 familiar with the major oil producers for whom CP
15 provided shipping in the United States and Canada?

16 A. I can't say that I would know all the
17 different producers, but I would know some of them
18 for sure.

19 Q. In this period 2010 to 2013, were you
20 familiar with the major producers in the Bakken
21 Formation?

22 A. I would say Western Petroleum was one
23 that was I was well aware of.

24 Q. What about the others?

25 A. I can't recall.

91

1 Q. You don't recall any of the other major
2 producers of Bakken crude in the 2011 to 2013 time
3 frame?

4 A. I can't remember.

5 Q. Do you recall any other customer
6 bulletins that CP issued that dealt with crude oil
7 transportation in any way prior to the Lac-Mégantic
8 incident in July of 2013?

9 A. No, nothing in advance of what was done
10 in and around late 2011, early 2012.

11 Q. That's the 211 tank car issue you were
12 talking about --

13 A. Correct.

14 Q. -- previously?

15 A. Yeah.

16 Q. How about the rail industry, was there
17 communication or sharing of information among the
18 carriers prior to the Lac-Mégantic incident about
19 classification issues generally?

20 A. No, I can't recall anything specific on
21 classification. There was a lot of interest in and
22 around 2010 on the tank car side where we were
23 looking at enhancing the DOT-111 tank car, but
24 nothing directly related to crude oil or
25 classification to crude oil.

92

1 Q. Who was responsible for correcting a
2 known or suspected classification error?

3 A. So a known -- ultimately, the consignor
4 needs to provide the correction. If a carrier has
5 reason to believe there's an issue with, say,
6 incomplete billing or anything like that, they
7 advise the consignor for it to be corrected. This
8 all happens in realtime in the electronic age.

9 So we have a lot of controls in
10 place that automatically reject shipping
11 instructions for incomplete information, an
12 automatic notification sent back to the consignor,
13 and it's corrected kind of realtime.

14 Q. So if I'm understanding your testimony
15 correctly, your testimony is that it's the
16 consignor's obligation to correct an error in
17 classification?

18 A. Just trying to think of how that's
19 worded in the regulations.

20 MR. HEMMING: I'll object if it
21 calls for you to give a legal opinion, but if you
22 know, you can answer the question.

23 A. Yeah, I mean if the carrier has
24 responsible -- reason to believe there's an error,
25 then they are to contact the -- or to stop the

93

1 shipment, contact the consignor to get it
2 addressed.

3 Q. MR. McDONALD: How did it come
4 about that CP got into the crude-by-rail business?

5 A. I really don't know other than our
6 tracks were probably located in a region where it
7 was going to be produced.

8 Q. Did it have something to do with a
9 dramatic increase in production and a limited --
10 well, limited or no supply of pipeline capacity for
11 certain areas that were producing oil?

12 A. I believe that to be a true statement.

13 Q. I'm going to have the court reporter
14 mark as Kozey Exhibit 6 copy of a board of
15 directors briefing, Canadian Pacific crude by rail.

16 EXHIBIT 6 - Document, copy of a
17 board of directors briefing,
18 Canadian Pacific crude by rail

19 Q. MR. McDONALD: Have you seen this
20 document before, Mr. Kozey?

21 A. Not that I can remember.

22 MR. WOODCOCK: Can we go off the
23 record?

24 MR. McDONALD: Yeah, let's go off
25 the record.

94

1 (DISCUSSION OFF THE RECORD)

2 (COURT REPORTER READ BACK)

3 Q. MR. McDONALD: All right,
4 Mr. Kozey, I'm going to represent for purposes of
5 the record that the last page of the document is a
6 screenshot with a highlighted section that is
7 pertaining to this document that suggests to us
8 that the date of this document is July 11, 2013.

9 Your counsel has indicated that he
10 will undertake an investigation to attempt to
11 confirm or deny that that's the date of this
12 document that we've put before you?

13 MR. HEMMING: Confirm, deny, or if
14 we don't have information that we feel we can
15 confirm, deny, we'll tell you that.

16 MR. McDONALD: Thank you.

17 UNDERTAKING NO. 1 - To confirm or
18 deny that the date of July 11,
19 2013, on Kozey Exhibit 6 is in fact
20 correct

21 Q. MR. McDONALD: Mr. Kozey, looking
22 at this document, does it suggest to you that it's
23 more likely than not a 2013 document?

24 A. I have no idea. This is something I've
25 never seen.

95

1 In -- in general, this is I would
2 say more of a marketing document that's going to
3 the board of directors to be briefed on crude by
4 rail. I wouldn't -- I'm just not involved in that
5 side of the business.

6 Q. Okay, well, I'd like you to look at the
7 last paragraph on the first page?

8 A. Last paragraph.

9 Q. On page 1, the first sentence reads (as
10 read):

11 "CP is the only railway with access
12 to all the Bakken light sweet, the
13 medium-grade oil-producing regions
14 in mid-Alberta, and the heavier oil
15 production in northern Alberta and
16 Saskatchewan."

17 Did I read that correctly?

18 A. Yes, that's what it says.

19 Q. And is it your understanding that in or
20 around 2013, CP was the only railway with access to
21 all of the Bakken light sweet?

22 A. I guess I'd disagree with that statement
23 'cause BNSF has access into the Bakkan area.

24 Q. Did they in 2013?

25 A. I don't know.

96

1 Q. And this sentence, if I'm understanding
2 it correctly, links different types of oil or
3 grades of oil to different regions. Do you see
4 that?

5 A. I do see that. I mean, again, when
6 you're describing something as light and sweet,
7 that encompasses a lot of different types of crude.
8 I mean even Alberta produces some light sweet
9 crude, so it's very difficult to, you know, use
10 this as a definitive.

11 This is a briefing for the board
12 that's a 50,000-foot kind of overview I would
13 guess.

14 Q. Is the oil produced in the Bakkan light
15 sweet crude oil?

16 A. I believe so, yes.

17 Q. And is the oil produced in the
18 oil-producing regions in mid-Alberta medium-grade
19 oil?

20 A. I don't know.

21 Q. And how about northern Alberta and
22 Saskatchewan, do they produce heavier oil?

23 A. I mean based on my experience when I was
24 pipelining up north, it could be heavy or medium or
25 light, just depending on where it's being produced

97

1 **from the formation, what wells. There's a great**
 2 **deal of variability between wells, and even regions**
 3 **within a formation, there can be a lot of different**
 4 **chemical and physical properties because as we**
 5 **talked about before, crude oil is not a homogenous**
 6 **product.**

7 Q. This document goes on to talk about the
 8 pace of growth of crude by rail. I'd like you to
 9 take a look at the third page of the document under
 10 the heading "CP's Growth in Crude By Rail." And I
 11 understand that you told me previously that this is
 12 not a side of the business that you're involved in.

13 But do the numbers that appear here comport with
 14 your understanding about the pace of the growth of
 15 CP's crude-by-rail operations between 2010 and
 16 2013?

17 **A. Yeah, I mean that's consistent with what**
 18 **I had mentioned earlier. It was in and around 2010**
 19 **is when we started to see --**

20 Q. Right.

21 **A. -- crude oil coming on and a lot of**
 22 **volumes being produced at that time.**

23 Q. Okay, so it doesn't surprise you that
 24 this is saying there were about 500 carloads in
 25 2010?

98

1 **A. No.**

2 Q. And it doesn't surprise you that that
 3 had grown to 53,500 carloads in 2012?

4 **A. No.**

5 Q. And it doesn't surprise you that in
 6 January of 2013's volumes reached an annualized
 7 rate of 70,000 carloads?

8 **A. No, no.**

9 Q. Now, this document we saw on the first
 10 page talked about three different types of oil, the
 11 light sweet, the medium, and the heavy oil. Do you
 12 recall looking at that?

13 **A. All right.**

14 Q. Explain to me the differences between
 15 light crude oil, medium crude oil, and heavy crude
 16 oil?

17 MR. HEMMING: Object on
 18 foundation. If you can, Jim.

19 **A. I mean I can't articulate. There's --**
 20 **it's based on EPI gravity, and other than that, you**
 21 **know, light, medium, and heavy is not a term that's**
 22 **used for the purpose of transportation. It's not**
 23 **part of classification of crude oil. You know,**
 24 **it's just something I'm not familiar with enough.**

25 Q. MR. McDONALD: Well, you sometimes

99

1 use "light," "medium," and "heavy" as a distinction
 2 between the different types of oil, don't you?

3 **A. I've described when we were learning**
 4 **about crude oil, we did some research into crude**
 5 **oil and kind of tried to I guess basically learn.**

6 **And so I believe we came across**
 7 **light, medium, and heavy, but I can't distinguish**
 8 **the difference off the top of my head.**

9 Q. Did I hear you correctly, you said that
 10 when you were learning about crude oil, you did
 11 some research about it?

12 **A. Yeah, in and around 2010 when -- when**
 13 **crude oil was first coming on, the entire industry**
 14 **was learning about the transportation of crude oil**
 15 **by rail. And so, you know, we did the Google**
 16 **search and tried to learn a little bit about crude**
 17 **oil.**

18 Q. All right.

19 **A. How producers talk about it, versus how**
 20 **carriers talk about it.**

21 Q. Did this investigation take place under
 22 your authority?

23 MR. HEMMING: Objection to the
 24 term "investigation," but go ahead and answer it
 25 the best you can, Jim.

100

1 Q. MR. McDONALD: I'll say "research,"
 2 that's your term.

3 **A. Sure.**

4 Q. "Investigation's" mine.

5 **A. Yes, I was asked to learn more about**
 6 **crude oil in and around 2010 I would guess when**
 7 **crude oil was starting to come on.**

8 Q. Who asked you to do that?

9 **A. Oh, it would have been my boss at the**
 10 **time, it probably was Chris Bunce at that time.**

11 Q. And you mentioned doing some Google
 12 searches?

13 **A. Yeah.**

14 Q. Is that all you did?

15 **A. Yeah, I mean we went to, if I remember**
 16 **right, the American Petroleum Institute, API has a**
 17 **website, talks about crude oil.**

18 **In Canada, Canadian Association of**
 19 **Petroleum Crude Oil or Canadian Association of**
 20 **Petroleum Producers has a website. I can't recall**
 21 **doing much else.**

22 **EPA describes -- Environmental**
 23 **Protection Agency describes crude oil in different**
 24 **ways. I think that's all I can recall.**

25 Q. So is it your testimony that you just

101

1 did Internet research looking at different websites
2 to gather information about the different types of
3 crude oil?

4 **A. Yeah, that's all I can remember.**

5 Q. Did anybody else at CP do anything
6 beyond that that you know of?

7 **A. Not that I know.**

8 Q. Did you or anyone else at CP attend any
9 conferences that dealt with crude oil
10 characteristics?

11 **A. Not that I know of.**

12 Q. Did you or anyone else at CP attend any
13 conferences or seminars that dealt with
14 transportation of crude oil?

15 **A. I could say I -- I hadn't, but I don't
16 know of any other -- I can't -- I can't confirm
17 whether anybody else attended any type of
18 transportation-related conference on crude oil.**

19 Q. Did your research include the proper
20 classification of crude oil?

21 **A. We would have looked at the regulations
22 in Canada and the United States. We would have
23 looked at what are the legal authorized
24 classifications for crude oil, but as far as, you
25 know, any analytical testing or tests, no, we**

102

1 **wouldn't have done anything like that.**

2 Q. Did you obtain any MSDSes for crude oil
3 as part of this research that you did?

4 **A. Don't believe so, no.**

5 Q. Did you have discussions with other
6 carriers or any other third parties regarding
7 characteristics of crude oil?

8 **A. Not that I can recall.**

9 Q. So you said this investigation took
10 place in 2010?

11 MR. HEMMING: Objection to the
12 characterization of investigation.

13 Q. MR. McDONALD: Excuse me, the
14 research, I use those interchangeably, and I
15 apologize. I don't want to put words in your
16 mouth, Mr. Kozey.

17 **A. I can't --**

18 Q. How long did your research project take?

19 **A. I can't remember.**

20 Q. I mean was it months, was it weeks, was
21 it days?

22 **A. Oh, it would have been relatively short,
23 just to provide, you know, a high level summary.**

24 Q. And did there come a point in time after
25 that initial research that you or anyone else at CP

103

1 dug in a little deeper on these issues?

2 **A. So I guess like our primary focus would
3 have been about what are the transportation
4 requirements associated with crude oil. So, you
5 know, looking at what's the authorized container
6 that's permitted, we would have looked at any
7 special handling requirements from train
8 operations, you know. We're really trying to make
9 sure that we understood what we needed to do as a
10 carrier per the transportation of crude oil.**

11 Q. So I guess my question, I don't think I
12 got an answer to it, did there come a point later
13 on that -- that you did undertake a more intensive
14 properties of crude oil, proper classification of
15 crude oil?

16 **A. No.**

17 Q. Did you or anyone else at CP undertake
18 any analysis or research or investigation into
19 safety issues surrounding crude by rail?

20 **A. We looked at I guess as part of the work
21 that was being on -- undertaken by the tank car
22 committee to improve the DOT-111 tank car, there
23 was some investigation into the performance of
24 flammable liquids in the events of a derailment.**

25 **At that time, the derailments were**

104

1 **primarily associated with ethanol, but in general,
2 I mean we had an understanding that, you know,
3 crude oil's a Class 3 flammable liquid, and just
4 like any of the other Class 3 flammable liquids, by
5 definition, it's flammable, so there's the
6 potential of fire under the right conditions.**

7 **In a derailment, we also looked at
8 there's another proper shipping name for crude oil,
9 which is UN3494, petroleum crude oil sour, which is
10 for crude oil that contains hydrogen sulphide. We
11 would have recognized that as a potential safety
12 issue because of its different classification as
13 some different properties that in the event of an
14 emergency, we would need to be aware of in order to
15 properly respond.**

16 Q. This is all in 2010?

17 **A. I can't remember the specific years.**

18 Q. All right. We'll have the court
19 reporter mark as Kozey Exhibit 7 an email from
20 Lori Kennedy to Glen Wilson, Jim Kozey, and others,
21 dated March 12, 2013.

22 **EXHIBIT 7 - Email from Lori Kennedy
23 to Glen Wilson, Jim Kozey, and
24 others, dated March 12, 2013**

25 Q. MR. McDONALD: Have you seen that

105

1 document before, Mr. Kozey?

2 **A. Just one moment, please.**

3 Q. Sure.

4 **A. Yes, I've seen this before.**

5 Q. All right, this is an email that

6 Ms. Kennedy sent to you and others?

7 **A. Correct.**

8 Q. Ms. Kennedy's email talks about a

9 brainstorming session that occurred on March 7 of

10 2013?

11 **A. That's what it says.**

12 Q. Tell us about that brainstorming

13 session?

14 **A. I can't remember it.**

15 Q. You don't remember anything of it?

16 **A. No.**

17 Q. Do you have any idea why there was a

18 conversation at this time about crude oil

19 transportation and related safety issues?

20 **A. Yeah, so there were kind of two things**

21 **going on in and around this time.**

22 **Based on looking at this, I think**

23 **this was primarily there was a lot of media**

24 **attention at that time where there was a lot of**

25 **comparisons being made between crude oil moving by**

106

1 **rail and crude oil moving by pipe, a lot to do**

2 **with, you know, safety performance. And part of**

3 **this, if I look at this, it appears that we're, you**

4 **know, identifying different data requirements so**

5 **that we can make comparisons, in terms of moving**

6 **crude by rail versus crude by pipeline.**

7 Q. And is Ms. Kennedy involved in this

8 process because she's a marketing person and it's

9 important for CP to gets its message out, is that

10 the reason for her involvement?

11 **A. Lori would have been I think she's**

12 **the -- at this time was the director of regulatory**

13 **affairs.**

14 Q. Okay.

15 **A. And I can't recall, but she was assigned**

16 **kind of coordinating this effort.**

17 Q. Okay. Now, she includes two attachments

18 to her email; correct?

19 **A. If you're referring to appears to be a**

20 **Word document and then a spreadsheet of some kind.**

21 Q. Yes.

22 **A. Yes.**

23 Q. The Word document is two pages long, and

24 it's entitled "SER Crude Oil Research and

25 Assessment Requirements"?

107

1 **A. Correct.**

2 Q. Who prepared that document?

3 **A. I believe Ms. Kennedy put that together.**

4 Q. Why do you believe that?

5 **A. So I believe that because the email says**

6 **(as read):**

7 "Attached is a summary of research

8 from our brainstorming session."

9 So she compiled whatever was done during

10 that brainstorming session.

11 Q. All right, and that first document, its

12 objective was to support the position that

13 transportation of crude oil by rail is viable and

14 safe?

15 **A. I guess the objective was to do some**

16 **research and -- and evaluate modal comparison. I**

17 **mean I think we were trying to get our story out**

18 **like pipeline was getting it out. I don't know**

19 **whether we were trying to make it safe, we're just**

20 **trying to gather the facts so that we had a -- had**

21 **a story.**

22 Q. If you turn over to the second page,

23 there's a heading that's entitled "Definitions"?

24 **A. The first page of the Word document?**

25 Q. Second page, second page of the Word

108

1 document?

2 MR. HEMMING: He's missing -- he's

3 missing a page in his exhibit. The first page of

4 your Word document is missing.

5 MR. McDONALD: You know what, I

6 think we're in the wrong order, I think -- I think

7 the stapling is wrong. The first page of your Word

8 document I believe is the second page. Does it say

9 page 2 of 2 at the bottom?

10 **A. Yes, it does.**

11 MR. McDONALD: I think it's just

12 misstapled. Let's just go off the record.

13 (DISCUSSION OFF THE RECORD)

14 Q. MR. McDONALD: So I would ask you

15 now, Mr. Kozey, to turn over to the corrected

16 second page, the definitions section?

17 **A. Yes.**

18 Q. Where did the information come from that

19 shows up in the definitions boxes?

20 **A. I assume that probably came from the**

21 **brainstorming session, which I probably**

22 **participated in, but I cannot remember.**

23 Q. Okay.

24 **A. But I guess -- I guess what's kind of**

25 **important to note is like our understanding at the**

109

1 **time, because we were trying to make a comparison**
 2 **of crude by rail versus crude by pipe, you know,**
 3 **our understanding at the time was the crude oil**
 4 **moving in pipelines was -- tended to be the lighter**
 5 **crude, and as a result, we described it as Packing**
 6 **Group I or II in here on this document.**

7 **But that is not a full and complete**
 8 **definition of all the potential classifications of**
 9 **crude oil.**

10 MR. McDONALD: Could you read back
 11 the question that I asked?

12 (COURT REPORTER READ BACK)

13 Q. MR. McDONALD: So I think your
 14 answer veered off in another direction, but I just
 15 wanted to make sure I heard you.

16 **A. Sure.**

17 Q. It was the people who attended the
 18 brainstorming session came up with that definition
 19 of crude oil?

20 **A. I believe that to be true.**

21 Q. All right.

22 **A. Based on the object that we were trying**
 23 **to...**

24 Q. And in this document, you're defining
 25 crude oil, at least with respect to classification,

111

1 Q. Well, you do know that heavy crude gets
 2 moved through pipelines too; right?

3 **A. It can get moved through pipeline.**

4 Q. And heavy crude is not typically
 5 designated Packing Group I or II, is it?

6 **A. I've never seen any definitive**
 7 **analytical sampling that says heavy crude is**
 8 **Packing Group III only, medium crude is Packing**
 9 **Group II only. There's kind of a broad range of**
 10 **chemical and physical properties.**

11 **If you're talking about very high**
 12 **level, I mean you can make generalizations like**
 13 **that, but you have to be very careful about trying**
 14 **to make definitive statements at a very high level.**

15 Q. But if you are making a high level
 16 evaluation, isn't it true that heavier, heavy crude
 17 is typically properly classified as Packing Group
 18 III?

19 **A. It tends to have a lower flashpoint,**
 20 **which means it could be classified as Packing Group**
 21 **III, it could be a combustible liquid, or it could**
 22 **even be nonregulated, but it doesn't discount the**
 23 **potential that it could be Packing Group II 'cause**
 24 **what you saw in the White River incident that we**
 25 **talked about, that was supposedly Alberta heavy**

110

1 as ID Number UN1267, but some states may require
 2 UN1203; correct?

3 **A. Correct.**

4 Q. And you identified it as Hazardous
 5 Class 3; correct?

6 **A. Correct.**

7 Q. And the appropriate packing group would
 8 be designated Packing Group I or II?

9 **A. Correct, that's what we believe when we**
 10 **were trying to do a compare of rail versus truck**
 11 **versus pipeline, crude and pipe.**

12 Q. And I just want to make sure that I
 13 understand your testimony. You're saying this --
 14 this is -- the crude oil you're talking about here
 15 is light crude?

16 **A. I'm talking about the crude oil we**
 17 **believe to be transported in the pipeline.**

18 Q. And I think you said earlier it was
 19 light crude?

20 **A. I can't say that all pipelines are light**
 21 **crude oil, but what we believed at the time was a**
 22 **relatively a fair comparison would be to compare**
 23 **statistics around moving Packing Group I and II**
 24 **crude oil with the crude oil that's being moved in**
 25 **pipeline.**

112

1 **crude oil, and that was being shipped as Packing**
 2 **Group II.**

3 Q. Why do you say it was Alberta heavy
 4 crude?

5 **A. We -- in general we refer to Alberta**
 6 **crude as heavier. Again, this is a high level**
 7 **statement that...**

8 Q. Well, didn't we just look at a high
 9 level statement about crude, and I'm referring to
 10 Exhibit 6, which is the board level document,
 11 didn't they talk about here medium-grade oil
 12 produced in the regions of mid-Alberta?

13 **A. And heavier in northern Alberta.**

14 Q. Right. But there is -- I mean it's not
 15 to say that all the Alberta being -- all the oil
 16 being produced in Alberta is heavy?

17 **A. Correct, it's just like the same, you**
 18 **can't say definitively that all the crude oil**
 19 **produced out of the Bakkan is medium, it just**
 20 **doesn't work that way.**

21 MR. McDONALD: Let's go off the
 22 record.

23 (DISCUSSION OFF THE RECORD)

24 Q. MR. McDONALD: So Mr. Kozey, just
 25 to hopefully put an end to this and move on, you

113

1 don't know sitting here today that the oil that was
 2 involved in the White River derailment was Alberta
 3 heavy crude, do you?
 4 **A. No.**
 5 Q. It could have been medium crude?
 6 **A. Based on the characteristics of the**
 7 **product that we saw when we were transferring from**
 8 **damaged tank cars to other tank cars, we would**
 9 **believe that it was -- it was -- I mean again, I**
 10 **don't know how to draw the line between medium**
 11 **and -- and heavy, but it was thick we'll say. How**
 12 **that constitutes into heavy crude, light crude, I**
 13 **don't know.**
 14 Q. You just don't know?
 15 **A. Correct.**
 16 Q. You're shaking your head, was that a
 17 yes?
 18 **A. Yes.**
 19 Q. All right, would you look at the second
 20 attachment to Kozey Exhibit 7, which is the
 21 spreadsheet. Did this spreadsheet come out of the
 22 brainstorming session that was held on March 7?
 23 **A. I believe this was put together after**
 24 **that, based on the research and assessment**
 25 **requirements Lori developed. I believe she**

114

1 **developed the spreadsheet to try and fill in some**
 2 **of those items that we were looking for.**
 3 Q. Okay.
 4 **A. If that makes sense.**
 5 Q. Okay. Now, I would like you to look at
 6 the first page of that spreadsheet.
 7 **A. Sure.**
 8 Q. Particularly Item 9.
 9 **A. Yeah, I see that.**
 10 Q. The heading there is "Safety HazCom,"
 11 and it has some action items there for yourself and
 12 Ms. Nagy?
 13 **A. Correct.**
 14 Q. So as a result of this brainstorming
 15 session and the follow-up, you and Ms. Nagy were
 16 tasked to identify potential risks and concerns
 17 associated with the transportation of crude oil?
 18 **A. Correct.**
 19 Q. You were to assess the current status of
 20 identified risks, including data analysis where
 21 available; correct?
 22 **A. Yes, that's what it says there.**
 23 Q. All right, and you were to build
 24 incident, an incident summary or summaries to
 25 capture incidents involving crude trains?

115

1 **A. Correct.**
 2 Q. And you were to assess existing controls
 3 that are in place to address the identified risks?
 4 **A. Correct.**
 5 Q. And lastly on this set of action items,
 6 you were to summarize the data and information and
 7 draft messaging that addresses the potential risks
 8 and concerns and supports CP's position that rail
 9 is safe?
 10 **A. That's what that says, yes.**
 11 Q. And did you and Ms. Nagy in fact follow
 12 up on all of those action items?
 13 **A. I believe we produced a document**
 14 **somewhere, I think I saw it as part of the**
 15 **discovery.**
 16 Q. Would you turn to the sixth page of that
 17 spreadsheet, Mr. Kozey, the beginning of the page
 18 lists under the topic heading for activities
 19 "Transport Canada Activity." Do you see that?
 20 **A. I do.**
 21 Q. All right. And there was supposedly a
 22 meeting to take place with Transport Canada. Do
 23 you see that?
 24 **A. I do.**
 25 Q. All right. And the topic of that

116

1 meeting was going to be Bakkan oil by rail; am I
 2 right?
 3 **A. That's what that topic says there, yes.**
 4 Q. And then there's a background section in
 5 this spreadsheet that talks about the basis for the
 6 presentation being a BNSF presentation?
 7 **A. I see that statement there.**
 8 Q. Do you know what BNSF presentation that
 9 document is referring to?
 10 **A. No, I do not.**
 11 Q. Do you recall seeing a BNSF presentation
 12 regarding Bakkan and/or oil by rail?
 13 **A. I can say that -- I've seen a lot of**
 14 **presentations by BNSF, but I can't recall anything**
 15 **specific.**
 16 MR. McDONALD: Mr. Hemming, I'm
 17 going to make a request that you search for and if
 18 it exists, produce that document to us. We've not
 19 been able to find it in our document review.
 20 MR. HEMMING: Okay, are you going
 21 to, will you give it to me in a normal document
 22 request channels or just --
 23 MR. McDONALD: I can follow this up
 24 with a letter.
 25 MR. HEMMING: Please.

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

117

1 MR. McDONALD: But I'm going to
2 request it for now.
3 MR. HEMMING: Please.
4 MR. McDONALD: Sure.
5 **UNDERTAKING NO. 2 - To provide the**
6 **BNSF presentation referred to in**
7 **Kozey Exhibit 7.**
8 MR. McDONALD: I'm going to ask the
9 court reporter to mark as Kozey Exhibit 8 an email
10 from Darlene Nagy to Jim Kozey, dated March 28,
11 2013, with an attachment.
12 **EXHIBIT 8 - Email from Darlene Nagy**
13 **to Jim Kozey, dated March 28, 2013,**
14 **with an attachment**
15 Q. MR. McDONALD: You've seen that
16 document before?
17 **A. Yes. Just give me a moment to --**
18 Q. Sure.
19 **A. -- go through it here.**
20 Q. Take your time.
21 **A. Is there a duplicate in here?**
22 Q. Can I see your version, Mr. Kozey?
23 MR. McDONALD: Let's go off the
24 record.
25 (DISCUSSION OFF THE RECORD)

118

1 Q. MR. McDONALD: What has happened
2 here is that combined into the one exhibit is two
3 emails.
4 **A. Okay.**
5 Q. I'll ask you to confirm this for me.
6 All of the pages, with the exception of the last
7 one, is the email from Ms. Nagy to you that I
8 represented the document is comprised of, but the
9 last page of the document is your return email to
10 her that simply says, "Looks good." Confirm for me
11 if you would that that's correct.
12 MR. HEMMING: Can you ask that
13 question one more time, Paul? You lost me.
14 MR. McDONALD: Sure.
15 Q. MR. McDONALD: This document is
16 actually two documents, this exhibit is two
17 documents combined as one. It's Darlene Nagy's
18 email to Mr. Kozey of March 28, and that's every
19 page of the document, with the exception of the
20 last page. And the last page of the document is
21 Mr. Kozey's reply to Ms. Nagy, just simply saying,
22 "Looks good."
23 Is that correct, Mr. Kozey?
24 **A. Yes.**
25 Q. Okay. You knew at the time that one of

119

1 the risks associated with crude by rail was fire
2 and explosion?
3 **A. Correct, any Class 3 flammable liquid**
4 **has a potential for fire and/or explosion under the**
5 **right conditions.**
6 Q. If you go to the second page of
7 Ms. Nagy's attachment under "Rail Accidents," do
8 you see that?
9 **A. Yes.**
10 Q. Are these CP Rail accidents or CP
11 accidents, as well as other carriers?
12 **A. These -- this would be an aggregate of**
13 **different railroads incidents involving I believe**
14 **flammable liquids at the time. Majority of these**
15 **are ethanol.**
16 Q. Okay.
17 **A. If I recall correctly.**
18 Q. Are they all ethanol?
19 **A. I can't say.**
20 Q. Are these all of the rail accidents that
21 you were aware of at the time or is this just a
22 sampling?
23 **A. I don't know. I mean I know there have**
24 **been accidents involving flammable liquids, but**
25 **these tended to be larger events, as far as the**

120

1 **number of cars involved.**
2 Q. If you turn to the eighth page of
3 Ms. Nagy's attachment, she lists some proper
4 shipping names and classifications there at the
5 bottom of the page. Do you see that? It says on
6 the bottom of the document, page 8?
7 **A. Yes.**
8 Q. And is there -- she's referring to sour
9 crude oil?
10 **A. Correct.**
11 Q. Why is this document talking about sour
12 crude oil?
13 **A. 'Cause in and around that time, this was**
14 **something new that was coming into the industry.**
15 **They're drafting an amendment to Schedule 1 of the**
16 **Transportation of Dangerous Goods Regulations to**
17 **include this new proper shipping name for sour**
18 **crude oil.**
19 Q. Okay.
20 **A. So it was just something unique that we**
21 **were going to have to figure out whether there were**
22 **going to be any specific rail transportation**
23 **requirements for a new PSN or not, proper shipping**
24 **number.**
25 Q. So is this document just pertaining to

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

121

1 basically this sour crude oil issue?

2 **A. This entire document?**

3 Q. Yes.

4 **A. No.**

5 Q. Yes, well, it's the only, as I see it,
6 the only section that deals with classification is
7 dealing with sour crude, am I wrong on that?

8 **A. Yes, that's the only section on**
9 **classification.**

10 Q. But your testimony is that this document
11 isn't simply related to issues surrounding sour
12 crude?

13 **A. Correct.**

14 Q. Or is it that you don't remember?

15 **A. No, this in general is about crude oil**
16 **and different issues we were working through. This**
17 **was a new classification that was going to be out**
18 **there, so we put it in to keep track of what we**
19 **were going to do about it.**

20 MR. McDONALD: Off the record.

21 (DISCUSSION OFF THE RECORD)

22 (Proceedings ended at 12:31 p.m.)

23 -----
24 (Proceedings to recommence at 1:15 p.m.)
25 -----

123

1 MR. HEMMING: Take your time if
2 you need to look at the testimony.

3 **A. I would assume that's correct.**

4 Q. MR. McDONALD: And Glen was Glen
5 Wilson?

6 **A. Mr. Glen Wilson, yes.**

7 Q. What were the circumstances of their
8 giving testimony to a senate committee?

9 **A. I don't know.**

10 Q. If you look at the opening paragraph of
11 the transcript, it says that (as read):

12 "The Senate Committee on Energy,
13 the Environment, and National
14 Resources was meeting to study the
15 current state of the safety
16 elements of the bulk transport of
17 hydrocarbon product in Canada."

18 **A. I see that.**

19 Q. Is that right?

20 **A. That's correct.**

21 Q. So that was what this hearing was about?

22 **A. Correct.**

23 Q. If you look at it is it pronounced Feigel
24 or -- Breanne's name?

25 **A. Breanne Feigel.**

122

1 (Proceedings recommenced at 1:19 p.m.)

2 JAMES MICHAEL KOZEY, previously sworn,
3 questioned by Mr. McDonald:

4 MR. McDONALD: I'm going to ask the
5 court reporter to mark as Kozey Exhibit 9 an email
6 from Keith Shearer to Breanne Feigel and others,
7 dated June 5th, 2013.

8 **EXHIBIT 9 - Email from Keith**
9 **Shearer to Breanne Feigel and**
10 **others, dated June 5, 2013**

11 Q. MR. McDONALD: Have you seen this
12 document before, Mr. Kozey?

13 **A. Just give me a moment --**

14 Q. Sure.

15 **A. -- to refresh my memory here. I've seen**
16 **this before.**

17 Q. Okay. And you received that document
18 back in June of 2013?

19 **A. Correct.**

20 Q. All right. The senate committee
21 transcript that Breanne has attached was testimony
22 that was given by Brent and Glen; am I correct?

23 **A. I'd have to look through to determine**
24 **that, Mr. Dornian and Mr. Wilson, D-O-R-N-I-A-N.**

25 Q. Brent Dornian; correct?

124

1 Q. Feigel, if you look at the first email
2 in the sequence, which is her June 5th email of
3 2:27 p.m., do you see that one underneath --

4 **A. Yes.**

5 Q. -- the top email, the subject line is
6 "Minutes, June 5, Weekly Crude-By-Rail Safety
7 Meetings." You see that?

8 **A. I see that subject, yes.**

9 Q. And were you at CP conducting weekly
10 crude-by-rail safety meetings at this point in
11 time?

12 **A. I can't recall, but that's what the**
13 **subject line states.**

14 Q. Did this group of people who are the
15 addressees on these emails meet on a regular basis
16 to discuss crude-by-rail safety?

17 **A. It would -- based on the subject matter**
18 **experts there, you'd have communications in public**
19 **affairs for CP, you'd have a marketing group, you'd**
20 **have environment, and you'd have hazardous**
21 **materials. And I can't recall how long we did**
22 **weekly safety meetings, but it appears that we had**
23 **a series of meetings.**

24 Q. You have no recollection --

25 **A. No.**

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

125

1 Q. -- of having these meetings on a weekly
2 basis?
3 **A. No.**
4 Q. Do you know when these meetings started?
5 **A. No, I do not.**
6 Q. Do you know when they ended?
7 **A. No, I do not.**
8 Q. If we looked at your calendar, would we
9 be able to determine that?
10 **A. I don't think my calendar keeps**
11 **appointments back that far.**
12 Q. If you turn to the second page of the
13 document under the heading "Safety Regulator and
14 Enviro," do you see that?
15 **A. Yes.**
16 Q. It says (as read): "Brent raised a Q --"
17 I imagine that's question; yes?
18 **A. I would guess so, yes.**
19 Q. All right, (as read):
20 " -- around trying to educate
21 stakeholders on categories of DGS."
22 What did you understand DGS to stand
23 for?
24 **A. It would be dangerous goods.**
25 Q. And then it says (as read):

126

1 "-- bitumen versus heavy crude
2 versus sweet crude"?
3 **A. Yes.**
4 Q. Then it goes on to say (as read):
5 "Volatility factors, cleanup
6 factors, etcetera."
7 **A. Yes.**
8 Q. (As read):
9 "A cheat sheet would be helpful."
10 **A. I see that.**
11 Q. All right, and then it says (as read):
12 "Darlene/Jim had started a document
13 on densities and flashpoints that
14 can be shared with the group."
15 Did I read that correctly?
16 **A. That's what it says, yeah.**
17 Q. And Breanne is referring to yourself and
18 Darlene Nagy?
19 **A. Correct.**
20 Q. And had you and Darlene in fact started
21 a document that dealt with densities and
22 flashpoints?
23 **A. I think that might have been the**
24 **document that we were referring to earlier where we**
25 **had done the research on crude oil that outlined**

127

1 **what we were kind of -- can't remember the date of**
2 **the document, I apologize, but it is Exhibit Number**
3 **8.**
4 Q. Are you sure that's the document?
5 **A. No.**
6 Q. Okay. I'm going to have the court
7 reporter mark as Kozey Exhibit 10 two emails with
8 attachment, the first from Darlene Nagy to Jim
9 Kozey, dated June 7, 2013, and the second from Jim
10 Kozey to Darlene Nagy, dated June 11, 2013.
11 Could we go off the record?
12 **EXHIBIT 10 - Two emails with**
13 **attachment, the first from**
14 **Darlene Nagy to Jim Kozey, dated**
15 **June 7, 2013, and the second from**
16 **Jim Kozey to Darlene Nagy, dated**
17 **June 11, 2013**
18 Q. MR. McDONALD: And these were in
19 fact emails exchanged between yourself and Ms. Nagy
20 on the 7th and the 11th of June, 2013; correct?
21 **A. Yes.**
22 Q. Let's look at Darlene's email to you of
23 June 7, and I would like you to put next to that
24 Kozey Exhibit 9?
25 **A. Sorry, June 1st...**

128

1 Q. Her email to you on the top on Kozey
2 Exhibit 10?
3 **A. Yeah.**
4 Q. And I would like you to open Kozey
5 Exhibit 9 to the second page, and we just looked at
6 that document, Mr. Kozey, and noted that Breanne
7 had mentioned in her email that you and Darlene had
8 started a document on densities and flashpoints
9 that can be shared with the group?
10 **A. That's what it says, yes, correct.**
11 Q. And then if we look over at Kozey
12 Exhibit 10, her email to you says (as read):
13 "For Breanne, please have a look."
14 **A. Correct.**
15 Q. Does looking at Kozey Exhibit 10 refresh
16 your recollection that the document that Breanne is
17 referring to in Kozey Exhibit 9 is in fact the
18 document that is attached to the emails --
19 **A. Yes.**
20 Q. -- that we've marked as Kozey Exhibit
21 10?
22 **A. Yes.**
23 Q. So that's the document?
24 **A. Correct.**
25 Q. All right. So am I correct in looking

129

1 at Kozey Exhibit 10, Mr. Kozey, that Darlene's
2 email to you is her draft of the document to be
3 sent to Breanne and the rest of the group that are
4 attending these weekly meetings?

5 **A. Correct.**

6 **Q.** And that your follow-up email is your
7 revision to the document that Darlene had sent to
8 you, the attachment to your email?

9 **A. I can't recall modifying it, but I'd**
10 **have to look through line by line to see what I**
11 **modified.**

12 **Q.** Well, I can show you, sir, I'm not going
13 to mark this as an exhibit, but we've done a
14 compare right between the two documents?

15 **A. Sure.**

16 **Q.** And take all the time you need. If you
17 want to look at this, you can, but I would like you
18 to confirm for me that the document that you
19 attached to your email to Darlene Nagy on June 11th
20 is your revision to the document that she sent to
21 you on June 7th. Take all the time that you need.

22 **MR. HEMMING:** Jim, if it's
23 helpful, please feel free to get rid of the staple
24 so you're not flipping back and forth if you need
25 to look to do a comparison.

130

1 **A. Yes, that appears to be a revision.**

2 **Q.** MR. McDONALD: Okay, what documents
3 or any did you rely on in preparing your revisions
4 to that document?

5 **A. I can't remember.**

6 **Q.** Did you speak to anybody in connection
7 with the revisions that you made to that document?

8 **A. I can't remember.**

9 **Q.** Did anybody assist you in making those
10 revisions to the document?

11 **A. Not that I can recall.**

12 **Q.** Let's look at your revised version of
13 the document. Was this in fact shared with the
14 people who attended the weekly meetings regarding
15 safety?

16 **A. I can't remember.**

17 **Q.** All right. You talked about three,
18 well, you talked about four different types of
19 crude oil in this document; correct?

20 **MR. HEMMING:** I think there's --
21 well, go ahead and take your time and read the
22 document.

23 **Q.** MR. McDONALD: Five different types
24 of crude oil?

25 **MR. HEMMING:** There you go.

131

1 **MR. McDONALD:** Thank you, Paul.

2 **A. That's correct.**

3 **Q.** MR. McDONALD: And those were light
4 crude oil, medium crude oil, heavy crude oil, extra
5 heavy crude oil, and sour crude oil?

6 **A. Correct.**

7 **Q.** You described light crude oil as having
8 an API gravity greater than 31.1 degrees API;
9 correct?

10 **A. Correct.**

11 **Q.** And you further explained that it floats
12 on water and will have a low flashpoint?

13 **A. Correct.**

14 **Q.** And then in parenthesis, you put (as
15 read):

16 "DOT Class 3 flammable -- flammable
17 liquid Packing Group I. "

18 **A. Correct, that's a generalization about**
19 **light crude oil. That it would typically be**
20 **Packing Group I material.**

21 **Q.** You did not identify any other packing
22 groups as Packing Group I; isn't that right?

23 **A. That's what the statement says.**

24 **MR. HEMMING:** Are you just talking
25 about the light crude oil paragraph?

132

1 **MR. McDONALD:** Yes.

2 **Q.** MR. McDONALD: All right, let's
3 move on to the medium crude paragraph. You talked
4 about its API gravity information, the fact that it
5 too floats on water and has a low flashpoint. And
6 you indicated that its classification was DOT
7 Class 3 flammable liquid, Packing Groups I and II.

8 **A. Yeah.**

9 **Q.** Correct?

10 **A. Generally speaking, medium crude oils**
11 **would be Packing Group I and II.**

12 **Q.** But the only packing groups that you
13 listed for purposes of this document were Packing
14 Groups I and II for medium crude oil; isn't that
15 right?

16 **A. That's what the document says, yes.**

17 **Q.** All right. And I'm not going to go
18 through the rest, but is it correct to say, sir,
19 that the only types of crude oil that you indicated
20 a Packing Group III/IV were heavy crude oil and
21 extra heavy crude oil?

22 **A. That's true.**

23 **Q.** All right. Would you go back to Kozey
24 Exhibit 9, are all of the addressees, both the tos
25 and the carbon copies to Breanne Feigel's email,

133

1 are they all of the people who were involved at
2 this period of time on behalf of CP in the
3 crude-by-rail safety meetings?

4 **A. I can't remember.**

5 Q. Sitting here today, do you know if
6 there's anyone else who was involved in those
7 meetings, other than the addressees on these
8 emails?

9 **A. I don't know.**

10 Q. And you were the one, you and Darlene
11 Nagy were the ones who were tasked to provide a
12 cheat sheet to the group about the characteristics
13 of crude; correct?

14 **A. Correct.**

15 Q. And you told them that light crude had a
16 packing group of I, and you didn't indicate that
17 any other packing group was indicated or
18 appropriated; isn't that right?

19 **A. Correct. I mean this is just a high**
20 **level summary produced to provide some**
21 **generalizations about different types of crudes and**
22 **the potential packing groups that they would be in.**

23 Q. But you and Darlene are tapped as the
24 responsible parties for getting --

25 **A. Correct.**

134

1 Q. -- back to the group, and you told the
2 group that light crude oil is Packing Group I, and
3 you didn't say it could have been any other others;
4 you just told them Packing Group I. Isn't that
5 right?

6 **A. That's correct.**

7 MR. HEMMING: Jim, if you have to
8 give any complete answer, go ahead.

9 **A. Okay.**

10 MR. McDONALD: I'm going to ask the
11 court reporter to mark as Kozey Exhibit 11 an email
12 from Jim Kienzler to Glen Wilson and Chris Bunce,
13 carbon copied to Jim Kozey and Bill Hay.

14 **EXHIBIT 11 - Email from**
15 **Jim Kienzler to Glen Wilson and**
16 **Chris Bunce, carbon copied to**
17 **Jim Kozey and Bill Hay**

18 Q. MR. McDONALD: Have you seen this
19 document before, Mr. Kozey?

20 **A. Yes.**

21 Q. Who's Jim Kienzler?

22 **A. He would have been -- he was in the**
23 **safety department associated with CP; I can't**
24 **remember his specific title.**

25 Q. So Kienzler receives from Ryan Borkofsky

135

1 risk assessment final packages?

2 **A. Yes.**

3 Q. Do you see that in the first email of
4 the chain? And who's Ryan Borkofsky?

5 **A. Well, he's a CP employee; I can't**
6 **remember if he was an account manager or working in**
7 **transload services.**

8 Q. The -- under the signature line to his
9 email, it identifies him as a transload services
10 manager. Was that in fact his title?

11 **A. I believe that to be true, yes.**

12 Q. All right. And so Borkofsky forwards
13 these packages to Kienzler, and Kienzler forwards
14 them to you and others; correct?

15 **A. Correct.**

16 Q. What was in these packages?

17 **A. So I guess as part of setting up a**
18 **transload facility, we conduct a risk assessment**
19 **associated with transloading the product.**
20 **So we look at ensuring that the**
21 **location's appropriate for transloading, so there**
22 **were regulatory requirements in terms of setback**
23 **distances from places of public assembly, schools,**
24 **hospitals, that type of thing.**

25 **There are requirements to,**

136

1 **depending on the flashpoint of the product, to be**
2 **grounded and bonded. There are requirements that**
3 **have transload facilities set back from the main**
4 **line. So depending on the class of product, there**
5 **are different setback distances requirement --**
6 **required.**

7 **They also look at truck traffic**
8 **patterns that flow into and out of the facility to**
9 **determine if we need to put traffic control**
10 **measures in. Yeah, I think that kinds of covers**
11 **the risk assessment process.**

12 Q. And these packages, there -- appear to
13 be labelled Estevan, did I say that right?

14 **A. Estevan.**

15 Q. Estevan, TFR?

16 **A. Yeah, Estevan transfer.**

17 Q. Estevan transfer, okay, Big Gully
18 transfer, and Tilley transfer?

19 **A. Correct.**

20 Q. T-I-L-L-E-Y, where are those transfer
21 stations located, transloading stations?

22 **A. Estevan, Big Gully, and Tilley, those**
23 **are actual city names.**

24 Q. Okay.

25 **A. Estevan is in Saskatchewan, Tilley is in**

137

1 **Alberta, and Big Gully, I can't recall.**

2 Q. And did CP commission or obtain risk
3 assessment packages with respect to all of the
4 transloading facilities that it was associated
5 with?

6 **A. I can't say for certain that we'd done**
7 **that for all the different transload facilities we**
8 **have. We transload a lot of different products.**

9 Q. Were these risk assessment packages that
10 are being mentioned in this document, are these
11 transloading facilities that CP has an ownership
12 interest, either directly or through an affiliate?

13 **A. I don't know the answer to that.**

14 Q. So would it be the normal course for CP
15 to receive a risk assessment for a transload
16 facility at which it conducted some operations?

17 **A. So it would be normal if we were going**
18 **to allow a third party operator onto our property**
19 **to transload, that we would ensure it meets kind of**
20 **all the regulatory obligations in advance of that**
21 **operation starting.**

22 Q. Did you allow a third party operator
23 onto CP's property at New Town?

24 **A. I don't know the answer to that.**

25 Q. Who would know?

138

1 **A. It'd have to be someone in the marketing**
2 **team or contracts team or something like that.**

3 Q. Give me a name?

4 **A. Brent Dornian probably.**

5 Q. You mentioned these risk assessment
6 packages that are mentioned in this email,
7 including some analysis of flashpoint of the
8 product?

9 **A. Is the...**

10 Q. I think you testified earlier when I was
11 asking you questions about the transload facilities
12 that are mentioned in Kozey Exhibit 11, that these
13 assessments included some assessment of the
14 flashpoint of the product?

15 **A. So the requirements that we're**
16 **evaluating on apply to the class of the product,**
17 **not the individual packing groups and/or**
18 **flashpoint.**

19 **So setback distances apply to all**
20 **Class 3 flammable liquids; there's no**
21 **differentiation between Packing Group I, Packing**
22 **Group II, Packing Group III.**

23 MR. McDONALD: This is a question
24 for your counsel. Paul, we did not receive the
25 attachments to these emails, and I'm going to ask

139

1 you if you would please make sure that we get
2 copies of those?

3 MR. HEMMING: I'll review them.
4 I'm not sure if they were actually attached to this
5 email. I mean there's no -- all these other emails
6 that have attachments are showing something where a
7 file is attached.

8 MR. McDONALD: Okay.

9 MR. HEMMING: I don't -- I'll look
10 into it and get back to you.

11 MR. McDONALD: Okay.

12 MR. HEMMING: That's all I can
13 promise. I don't know if they're actually attached
14 to this email.

15 MR. McDONALD: Well, if it's just a
16 link, we would like somebody to access the link and
17 send us the copies of these final packages, please.

18 MR. HEMMING: I will investigate.

19 MR. McDONALD: Okay.

20 **UNDERTAKING NO. 3 - To provide the**
21 **attachments to Kozey Exhibit 11**

22 Q. MR. McDONALD: Did you ever make
23 any presentations to the Railway Association of
24 Canada regarding transportation of crude by rail?

25 **A. Made a lot of presentations through the**

140

1 **railway association dangerous goods committee to**
2 **the RAC, I guess it's the safety and operations**
3 **management committee there.**

4 **I know we've talked about tank cars**
5 **and lots of other issues; crude oil was included in**
6 **one or -- I have talked about crude oil.**

7 Q. Have you talked about classification
8 issues with respect to crude oil?

9 **A. No, not classification issues.**

10 Q. Have you attended any other gatherings
11 of any of those bodies where classification of
12 crude oil was discussed?

13 **A. No.**

14 Q. I'm going to ask the court reporter to
15 mark as Kozey Exhibit 10 a document entitled "Crude
16 By Rail Frequently Asked Questions"?

17 MR. HEMMING: What number did you
18 say?

19 MR. WOODCOCK: I think we're on 12;
20 is that right?

21 **EXHIBIT 12 - Document entitled**
22 **"Crude By Rail Frequently Asked**
23 **Questions"**

24 Q. MR. McDONALD: Have you seen that
25 document before, Mr. Kozey?

141

1 **A. Yes.**

2 Q. All right. This document also has as
3 the last page a screenshot of some metadata
4 information, and I'll make this statement/question
5 of -- to or of your counsel.

6 MR. McDONALD: Our information,
7 Mr. Hemming, indicates that this document is the
8 updated version as of March 6, 2013, and we'll ask
9 that you take a look at your version of the
10 metadata and let us know whether you will confirm
11 that, deny that, or tell us that you can do
12 neither?

13 MR. HEMMING: Sure, where do you
14 see, I'm confused, where do you see the March date?

15 MR. McDONALD: The March date is
16 not appearing on that screenshot; it only shows the
17 create date. But what I can tell you is what I was
18 expecting to see on that metadata page was the
19 updated date of March 6th of 2013, that's what I
20 want you to confirm from the metadata, whether this
21 is an updated version as of March 6th, 2013.

22 MR. HEMMING: We'll look into it
23 and get back to you.

24 MR. McDONALD: Thank you.
25

142

1 **UNDERTAKING NO. 4 - To confirm from**
2 **the metadata at KozeY Exhibit 12**
3 **whether this is an updated version**
4 **as of March 6, 2013**

5 Q. MR. McDONALD: What is this
6 document, Mr. KozeY?

7 **A. This document is a summary of crude by**
8 **rail and some frequently asked -- asked questions.**
9 **The date of this document again was...**

10 Q. Well, we believe it is as of March 6th,
11 2013, for purposes of our questioning, the
12 questioning here; I'm going to ask that you assume
13 that?

14 **A. Okay.**

15 MR. McDONALD: So would you read
16 back the last question, please?

17 (COURT REPORTER READ BACK)

18 **A. It's a document entitled "Crude By Rail**
19 **Frequently Asked Questions."**

20 Q. MR. McDONALD: Can you expand upon
21 that answer, sir?

22 **A. Looks like a summary document. There**
23 **was a lot of attention at the time in the media,**
24 **again, rail versus -- rail transportation of crude**
25 **oil versus pipeline transportation of crude oil.**

143

1 **And what we were trying to do for I guess some of**
2 **the folks internally was kind of put together some**
3 **answers to individual -- or questions that they**
4 **were either seeing from the media or from other**
5 **parties that we may kind of interact with.**

6 Q. Did you have any input into the
7 preparation of this document?

8 **A. I can't recall, but I would guess so.**

9 Q. When did you first see this document?

10 **A. Can't remember.**

11 Q. It was prior to your preparations for
12 this deposition; am I right?

13 **A. I saw this as part of the discovery**
14 **process.**

15 Q. Did you see this document or a prior
16 version or a subsequent version during this period
17 of time that you talked about in the spring of 2013
18 when there was a lot of media attention regarding
19 the relative safety of crude oil transportation by
20 pipeline versus rail?

21 **A. I can't recall.**

22 Q. You don't recall seeing it in 2013?

23 MR. HEMMING: He just told you
24 that.

25 **A. I can't -- there's so many documents**

144

1 **produced in this proceeding, I'm having a hard**
2 **time.**

3 Q. MR. McDONALD: Do you have a
4 recollection of being presented with specific
5 questions and being asked to come up with proposed
6 answers?

7 **A. I get asked questions all day every day;**
8 **I can't really remember this specific document.**

9 Q. I'm going to ask the court reporter to
10 mark as KozeY Exhibit 13 a PowerPoint presentation
11 entitled "Operating in Your Community."

12 **EXHIBIT 13 - PowerPoint**
13 **presentation entitled "Operating in**
14 **Your Community"**

15 Q. MR. McDONALD: Have you seen that
16 document before, Mr. KozeY?

17 **A. Just give me one moment, please. I**
18 **can't recall seeing this.**

19 Q. Do you know that PowerPoint
20 presentations were used by CP in connection with
21 its ongoing relations with customers or communities
22 in which its rail operations were conducted?

23 **A. We have a communications and public**
24 **affairs group that does reach out to different**
25 **communities in which we operate.**

145

1 Q. Are you aware that they sometimes use
2 PowerPoint presentations in those --
3 **A. In general, yes.**
4 Q. -- outreach efforts?
5 **A. Yeah.**
6 Q. If you look at the title of this
7 document, does it indicate to you that this is a
8 PowerPoint that was likely used in connection with
9 outreach to a particular community?
10 **A. Yes.**
11 Q. A town or a municipality, you don't know
12 whether this one was ever actually used?
13 **A. I don't.**
14 Q. You've seen this document before today?
15 **A. No, I can't recall seeing this ever**
16 **before.**
17 Q. All right, if you look at page 7 of the
18 document, there's a section entitled "Transload
19 Overview"?
20 **A. I see that.**
21 Q. And it's talking about the product?
22 **A. Correct.**
23 Q. And the bullet point is (as read):
24 "Sweet crude oil Class 3, UN1267
25 Packing Group I/II."

146

1 **A. I see that. And so just let me -- so**
2 **this appears to be a presentation for the Tilley**
3 **crude transload facility.**
4 Q. Okay.
5 **A. And so I don't know whether that**
6 **facility is classifying all their crude oil as**
7 **Packing Group I or II.**
8 Q. Tilley is a town in Alberta?
9 **A. I believe so.**
10 Q. But you don't know to whom this
11 PowerPoint was shown?
12 **A. No.**
13 Q. Would you turn back to Kozey Exhibit 12
14 and turn over to page 12 of the document?
15 **A. Yes.**
16 Q. There's a section there that deals with
17 product information and then a series of questions
18 underneath that?
19 **A. Correct.**
20 Q. All right. Looking at these pages of
21 the documents, sir, does it refresh your
22 recollection that you and/or Diane [sic] Nagy were
23 asked to provide the information that made its way
24 into this document?
25 MR. HEMMING: Objection to

147

1 characterization. Answer if you know, Jim.
2 **A. I can't recall.**
3 Q. MR. McDONALD: Would there be
4 anyone else at CP who would have been a more likely
5 candidate than yourself or Diane Nagy to provide
6 the product information that went into this section
7 of the document?
8 **A. No.**
9 Q. So you were the most likely people to
10 have provided the information?
11 **A. Correct.**
12 Q. You simply don't recall having done it?
13 **A. I just can't recall, no. So your -- I**
14 **guess I don't get to ask the questions.**
15 MR. HEMMING: No.
16 Q. MR. McDONALD: So if you'll just
17 follow along with me on this section of the
18 frequently asked questions document.
19 **A. What page are you on, sir?**
20 Q. I'm on page 11, product information?
21 **A. Yes.**
22 Q. The response to a question or the
23 suggested response to a question whether there are
24 different types of crude oil is that in fact there
25 are different types, examples would be light,

148

1 medium, and heavy. And we've talked about that
2 previously; right?
3 **A. Correct.**
4 Q. There is a specific question here, "What
5 is light crude oil?" And then there goes into an
6 explanation of what exactly light crude is?
7 **A. I see that.**
8 Q. And a following-on question about what
9 is heavy crude and a description of what that is;
10 correct?
11 **A. Correct.**
12 Q. And then there's a question that says,
13 "What is crude oil sweet?" And then there's a
14 description?
15 **A. Yeah, I see that.**
16 Q. An answer with bullet points. Is crude
17 oil sweet a type of light crude oil?
18 **A. I'm just not sure why they re -- phrase**
19 **that question that way, but it's basically asking**
20 **the question what is sweet crude oil.**
21 Q. Is sweet crude oil a type of light crude
22 oil or is it the same thing?
23 **A. Sweet versus sour is a measure of the**
24 **concentration of hydrogen sulphide in the crude**
25 **oil.**

149

1 Q. And is sweet crude oil only referring to
2 light crude oil?

3 **A. I can't say for sure.**

4 Q. Have you ever heard of sweet heavy crude
5 oil?

6 **A. Yes. I guess what's interesting to note**
7 **in this description of sweet crude oil is, you**
8 **know, again, we're trying to generalize at a high**
9 **level what is sweet crude oil.**

10 Q. Right.

11 **A. And we say it's, you know, typically**
12 **Packing Group I or II. But then we look down**
13 **further at the flashpoint ranges here as in the**
14 **document here, and it says it's kind of from minus**
15 **40 to a hundred degrees Celsius.**

16 **So even though it's, you know,**
17 **we're generically describing sweet crude oil is**
18 **typically Packing Group I or II, that flashpoint**
19 **range covers Packing Group I, Packing Group II,**
20 **Packing Group III; it even covers combustible**
21 **liquid class in the United States, and it would**
22 **even cover non-regulated crude oil.**

23 **So you just -- when we're**
24 **generalizing at a high level, it's just we're not**
25 **generalizing for the purpose of classification for**

150

1 **transportation 'cause that's not what the railway's**
2 **doing. These are broad statements just to**
3 **characterize crude oil into big buckets so that**
4 **people can get some familiarization with the**
5 **properties of the crude oil.**

6 Q. Well, just to be fair, your
7 characterization of this document suggested that
8 what the document says that the packing group is
9 typically, I or II, in fact it only mentions
10 Packing Group I or II; there's no mention of
11 Packing Group III, is there?

12 **A. But the flashpoint range covers**
13 **Packing Group III.**

14 Q. No, when I look at the question what is
15 crude oil sweet --

16 **A. Yes.**

17 Q. -- the answer is (as read):

18 "Crude oil sweet is classified
19 under US hazardous materials
20 regulations as..."

21 And then there are a number of bullet
22 points. And the third bullet point down says
23 Hazard Class 3, and the fourth bullet point down
24 says Packing Group I or II?

25 **A. Correct, and this appears to be taken**

151

1 **from a material safety data sheet, which again**
2 **shows, you know, what some of the flashpoint ranges**
3 **could be for sweet -- sweet crude oil.**

4 Q. Are you speculating, sir, because
5 previously you told me that you didn't even know
6 whether you had input into this document?

7 MR. HEMMING: I think he's
8 answering your question as best he can, Paul.

9 MR. McDONALD: Well, I don't want
10 him to speculate.

11 **A. No, I guess as you -- as we discussed, I**
12 **would -- I or Darlene would have been probably the**
13 **best source of information --**

14 Q. MR. McDONALD: Right.

15 **A. -- to provide this in the document.**

16 Q. Okay. Are you telling me now that it
17 was you who provided this information?

18 **A. I can't be certain as to who provided**
19 **that, myself or Darlene.**

20 Q. And was this information based on a
21 particular material data safety sheet or a series
22 of those documents?

23 **A. I can't recall.**

24 Q. Is the oil that comes out of the ground
25 in the Bakken light sweet crude oil?

152

1 **A. I don't know the answer, whether it's**
2 **all light sweet or too many different producers,**
3 **too many different wells. We know from analytical**
4 **testing after the derailment that there are crude**
5 **oils coming out of the Bakken formation that are**
6 **Packing Group I, Packing Group II, Packing Group**
7 **III combustible liquids and even non-regulated**
8 **crude oils coming out of the Bakkan.**

9 Q. But isn't Bakkan oil referred to as
10 light sweet crude?

11 **A. Generally at a high level.**

12 Q. Yes?

13 **A. Yes.**

14 Q. Do you know whether or not this document
15 was actually used by people at CP who were
16 responding to the questions that appear in the
17 document?

18 **A. I do not know.**

19 Q. Who would know?

20 MR. HEMMING: If you know, Jim.

21 **A. I don't know. I don't know who the --**
22 **this was ultimately distributed to. It was in**
23 **draft form, I don't believe it ever got finalized.**

24 MR. McDONALD: Ask the court
25 reporter to mark as Kozey Exhibit 14 a document

153

1 entitled "SER Crude Oil Research and Assessment
2 Requirements."

3 **EXHIBIT 14 - Document entitled "SER**
4 **Crude Oil Research and Assessment**
5 **Requirements"**

6 Q. MR. McDONALD: Have you seen that
7 document before, Mr. Kozey?

8 **A. I can't recall seeing this individual**
9 **document but --**

10 MR. McDONALD: Off the record.
11 (DISCUSSION OFF THE RECORD)

12 Q. MR. McDONALD: Ask you to look at
13 Kozey Exhibit 7, please. This is the email from
14 Lori Kennedy to yourself and others attaching two
15 documents, and my question to you is if you look at
16 Kozey Exhibit 7 and look at the first attachment --

17 **A. Yes.**

18 Q. -- does it look similar to you to the
19 document we've marked as Kozey Exhibit 14?

20 **A. It does.**

21 Q. Is it your understanding that these are
22 just simply different drafts of the same document?

23 **A. Yeah, or it could be a duplicate copy.**
24 **I don't know if you've done a compare on those.**

25 Q. But like the attachment to Kozey Exhibit

154

1 14, this document defines crude oil, among other
2 things, as Hazard Class 3, Packing Group I or II;
3 correct?

4 **A. Correct, this again was the time where**
5 **we were trying to do comparison between rail and**
6 **pipeline, and our understanding at the time was**
7 **that Packing Group I and II material was most**
8 **likely what was being transported in pipeline.**

9 **So that's why I believe the**
10 **document says that.**

11 Q. Are you speculating about that, sir?

12 **A. I guess I wouldn't be speculating. We**
13 **were doing comparison between crude oil, crude by**
14 **rail and crude by pipeline at the time. Our**
15 **understanding at the time was that the majority of**
16 **the crude oil in pipeline was lighter, sweeter**
17 **crude, not speculating, that's what we understood.**

18 Q. Well, if we look at, to be fair, if we
19 look at Kozey Exhibit 14 under the objective, the
20 objective here is talking about your transport of
21 crude oil by rail; right?

22 **A. That it is -- yes.**

23 Q. And crude oil is capital C, capital O;
24 correct?

25 **A. Correct.**

155

1 Q. And then your definitions section, you
2 defined the term capital C, capital O as Packing
3 Group I or II. So we're talking about the oil that
4 you're transporting by rail, are we not?

5 **A. See, we're transporting more crude oil**
6 **by rail than just Packing Group I or II material**
7 **here. So I guess I don't --**

8 **What I recall at the time was that**
9 **this was focused around crude-by-rail comparison**
10 **because that's primarily what was going on at the**
11 **time.**

12 **If I was asked to provide a full**
13 **description of crude oil, I would say crude oil's**
14 **Packing Group I, Packing Group II, Packing Group**
15 **III combustible liquid or even non-regulated**
16 **material. And we currently move crude oil in all**
17 **those broad bases of categories.**

18 Q. But there's no mention in this document,
19 Kozey Exhibit 14, of pipeline transportation, is
20 there? This is just talking about your
21 transportation of crude oil by rail?

22 MR. HEMMING: I'll object to that
23 characterization. It says "pipeline" all over it.

24 **A. Yeah.**

25 Q. MR. McDONALD: But the objective is

156

1 to justify what you're doing, all of your crude by
2 rail, not crude by rail that would otherwise be
3 carried by pipeline. Isn't that right?

4 **A. No, I disagree with that statement. If**
5 **we were trying to do all crude by rail, that's**
6 **either an error in description or**
7 **misrepresentation. It's just not inaccurate. This**
8 **is a draft document, I don't know what else to say.**

9 MR. McDONALD: Off the record.
10 (DISCUSSION OFF THE RECORD)

11 (BRIEF ADJOURNMENT)

12 Q. MR. McDONALD: Mr. Kozey, are you
13 aware of a derailment in a corresponding crude oil
14 spill that occurred in Luther, Oklahoma?

15 **A. I can't recall any specifics.**

16 Q. I'm going to have the court reporter
17 mark as Kozey Exhibit 15 a letter from the American
18 Association of Railroads to the Pipeline and
19 Hazardous Materials Safety Administration, dated
20 March 9, 2011.

21 **EXHIBIT 15 - Letter from the**
22 **American Association of Railroads**
23 **to the Pipeline and Hazardous**
24 **Materials Safety Administration,**
25 **dated March 9, 2011**

157

1 Q. MR. McDONALD: Have you seen that
2 document before?

3 A. Yes.

4 Q. What is it?

5 A. This is a petition for rule-making.

6 Q. All right, in what respect?

7 A. So at this time, I had just joined the
8 tank car committee, the Association of American
9 Railroads tank car committee in July of 2010.

10 At that point, there had been a
11 serious derailment in 2009 on the CN Railway in
12 Cherry Valley, and that kind of spurred the
13 industry's desire through the tank car committee to
14 basically get a better tank car for -- or make
15 improvements to the DOT-111 tank car.

16 Q. And this document contains as an exhibit
17 or an attachment a spreadsheet that deals with some
18 prior derailments and spills. Do you see that?

19 A. I do.

20 Q. And the second spill that's listed here
21 is a spill that occurred in 2008 in Luther,
22 Oklahoma?

23 A. Second spill I have is Springfield,
24 Missouri.

25 Q. I'm sorry, I missed Lafayette, Spill

158

1 Number 3 is Luther, Oklahoma?

2 A. Oh, yes, okay.

3 Q. You see it there?

4 A. Yes.

5 Q. As part of the rule-making process, did
6 you have any discussion with your tank car
7 committee members about the Luther, Oklahoma,
8 spill?

9 A. Nothing specific to Luther, Oklahoma,
10 that I can recall.

11 Q. May I have the court reporter make as
12 Kozey Exhibit 16 Federal Railroad Safety
13 Administration report of its investigation of that
14 derailment and spill.

15 EXHIBIT 16 - Federal Railroad
16 Administration report of the
17 Luther, Oklahoma, spill, dated
18 August 22, 2008

19 Q. MR. McDONALD: Have you seen this
20 document before?

21 A. No.

22 Q. If you would turn to page 5 of 7 of that
23 document?

24 A. I'm on page 5 of 7.

25 Q. All right, and the section that talks

159

1 about the synopsis of the accident?

2 A. Yes, I see that.

3 Q. The third paragraph down there talks
4 about the derailment of 14 cars, 8 tank cars
5 derailed, and 3 were breached in the side of the
6 tank shell. Do you see that?

7 A. I do.

8 Q. And these were tank cars carrying crude
9 oil?

10 MR. HEMMING: Objection,
11 foundation. He testified he didn't know anything
12 about the accident, but go ahead.

13 A. I mean it says here that it was, you
14 know, crude oil Packing Group I, Class 3, UN1267,
15 and there was a fire.

16 Q. MR. McDONALD: This is the first
17 time that you're learning that this Luther,
18 Oklahoma, derailment resulted in fire?

19 A. Yes, that I can recall.

20 Q. You were aware of at least one
21 derailment of a train carrying crude oil that
22 resulted in a fire prior to the Lac-Mégantic
23 derailment; isn't that right?

24 A. We had a derailment at White River which
25 we discussed before, and there was a fire during

160

1 cleanup operations, yes.

2 Q. A fire during the cleanup operations?

3 A. Correct.

4 Q. What do you mean by that?

5 A. The train derailed; there was no fire.

6 As part of the recovery process, we were cutting in
7 cutoff trenches to recover crude oil, and there was
8 a spark from a piece of equipment under a rock we
9 believe that ignited a small fire, which was
10 subsequently extinguished.

11 Q. How long in time after the derailment
12 did this fire take place?

13 A. I'd have to look at the TSB report.

14 Q. I know you said it, but will you say it
15 again, what do you claim was the cause of the fire?

16 A. We were putting in cutoff trenches to
17 prevent the crude oil from entering a creek or a
18 river, I can't remember which it was. And that's
19 pretty standard protocol for preventing product
20 from migrating slope was to cut a trench in the
21 ground and have the material either flow overland
22 into the trench or be captured in the groundwater
23 that's moving subsurface in the trench.

24 And we believe a spark from the
25 bucket, the excavator, caused a small fire.

161

1 Q. And what's the basis for that belief?

2 **A. It occurred during the trenching**
3 **operation.**

4 Q. And why do you think it was a bucket
5 from the trenching operation that caused the spark?

6 **A. I can't think of anything else.**

7 Q. Would you turn back to Kozey Exhibit 9,
8 this is the emails, the email chain involving
9 Breanne Fiegel where she's attached the transcript
10 of proceedings before the Standing Senate Committee
11 on Energy, the Environment and Natural Resources?

12 **A. Correct.**

13 Q. That occurred on June 4, 2013?

14 **A. Correct.**

15 Q. Were you present when the testimony was
16 given before those senators?

17 **A. No.**

18 Q. Did you read the transcript of the
19 proceeding?

20 **A. I can't recall. I received it; I**
21 **probably skimmed through it.**

22 Q. Have you read it at any time?

23 **A. Not that I can recall.**

24 Q. June 4, 2013, was after the White River
25 derailment; correct? I think we determined earlier

163

1 last question, the testimony that was given by
2 Mr. Wilson and Mr. Dornian before this Senate
3 Committee on Energy, the Environment and Natural
4 Resources on June 4, 2013, was after you had --

5 **A. Yes.**

6 Q. -- had the White River derailment. All
7 right. Will you take a look at the page that is
8 Bates stamped CP01634.0002?

9 **A. Okay, I have that page in front of me.**

10 Q. All right. The second question by
11 Senator Wallace put to Mr. Wilson was (as read):

12 "Have you found your equipment to
13 be effective in responding to a
14 bitumen incident or have you had
15 one?"

16 Did I read that correctly?

17 **A. Something must be wrong.**

18 MR. HEMMING: Yeah, he's on a
19 different -- you want to go to --

20 Q. MR. McDONALD: 22.

21 **A. Oh, 22, not 2, I apologize.**

22 Q. It's okay. Did I read Senator Wilson's
23 question correctly?

24 **A. Senator Wilson?**

25 Q. Excuse me, Senator Wallace?

162

1 that that occurred in April of 2013?

2 **A. That's correct.**

3 Q. Satisfy yourself if you need to, but --

4 **A. I can't remember where to look, sir.**

5 Q. Okay.

6 MR. HEMMING: Jim, you don't need
7 to look through these to try to determine that. If
8 he wants to point you to something, he can.

9 Q. MR. McDONALD: I'll do that for
10 you.

11 **A. Oh, okay.**

12 Q. I'm happy to.

13 **A. That's fine.**

14 Q. Perhaps if you look at Kozey Exhibit 5,
15 it will refresh your recollection that the White
16 River derailment --

17 **A. Oh, correct.**

18 Q. -- was in April of 2013?

19 **A. Thank you very much.**

20 Q. And does it refresh your recollection --

21 **A. Yes.**

22 Q. -- that this was in fact when the White
23 River derailment --

24 **A. It was in and around April 3rd, 2013?**

25 Q. And again, just to close the loop on my

164

1 **A. Question was (as read):**

2 "Have you found your equipment to
3 be effective in responding to a
4 bitumen incident or have you had
5 one?"

6 Q. Right.

7 MR. HEMMING: Can you give him the
8 whatever the definition of "equipment" is, Paul?

9 MR. McDONALD: I don't know what
10 you're talking about. I just was reading the
11 question that the senator posed.

12 MR. HEMMING: I'll refrain from
13 commenting further.

14 Q. MR. McDONALD: Now, Mr. Wilson's
15 response is (as read):

16 "We have had a couple of incidents
17 involving crude. We have not had a
18 fire, so we have not tested it in
19 that way. But it has been tested
20 in other industries and many other
21 ways that we are confident it would
22 be very capable in response."

23 Did I read that correctly?

24 **A. That's correct.**

25 Q. Now, Mr. Wilson was aware of the White

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

165

1 River derailment; correct?

2 **A. Yes.**

3 Q. He was involved in CP's follow-up
4 investigation of the incident; isn't that right?

5 **A. I can't say whether he was involved with
6 the TSB or not, I can't remember.**

7 Q. Your internal investigations he
8 certainly was a part of; correct?

9 **A. Again, I reported to Chris Bunce at that
10 time, and I can't remember Glen's position in April
11 of 2013.**

12 Q. Well, his statement to the senate
13 committee that "we have not had a fire" is a false
14 statement, isn't it?

15 **A. That would be --**

16 MR. HEMMING: I'll object to the
17 characterization. I don't know that it is a false
18 statement. He's talking about equipment, the fire.

19 MR. McDONALD: Well, should we
20 swear you in, Mr. Hemming?

21 MR. HEMMING: No, I'm making an
22 objection on the line of questioning.

23 MR. McDONALD: Well, make your
24 objection.

25 MR. HEMMING: He can answer the

166

1 best he can.

2 Q. MR. McDONALD: Right.

3 **A. So I guess we've -- we have a lot of
4 emergency response equipment, everything from boom
5 trailers and skimmers and all sorts of things.**

6 **We also have fire-fighting
7 trailers, which are essentially a fire station
8 engine with fire-fighting foam. And I guess at
9 that time, we wouldn't have had a fire in which
10 we've actually tested our fire-fighting trailers.**

11 Q. Do you know whether or not Mr. Wilson
12 knew that there was a fire in connection with the
13 White River derailment?

14 **A. I do not know.**

15 Q. Do you agree with me that it is a false
16 statement to say that "we've not had a fire" with
17 respect to the couple of incidents CP has had
18 involving crude?

19 **A. We have had a fire involving crude.**

20 Q. So that statement was false?

21 **A. Correct.**

22 Q. You've mentioned the TSB investigation
23 of the White River incident.

24 **A. Yes.**

25 Q. Who at CP was involved in the response

167

1 to the TSB's investigation, besides yourself?

2 **A. So it would have been myself and
3 primarily a gentleman by the name of Mierk Wericki,
4 he was at the time one of the CP's
5 accident/incident investigators.**

6 **He also had like the -- our
7 materials lab and testing program reporting up
8 through him, but he's left CP I don't know how long
9 ago.**

10 Q. Could you spell Mr. Wericki's last name?

11 **A. W-E-R-I-C-K-I, Mierk, M-I-E-R-K maybe.**

12 Q. And you mentioned a materials lab and
13 testing facility?

14 **A. Correct.**

15 Q. What does that do?

16 **A. So we test different components when
17 they failed, different pieces of railway equipment,
18 wheels, different things like that.**

19 Q. So you test CP's property, not goods?

20 **A. Correct.**

21 Q. Did you ever do tests of goods that have
22 been shipped or --

23 **A. No.**

24 Q. -- spilled at this facility?

25 **A. No.**

168

1 Q. I'll ask the court reporter to mark as
2 Kozey Exhibit 17 PowerPoint presentation deck
3 entitled "Safe Transport of Hydrocarbons,"
4 presented at the Standing Senate Committee on
5 Energy, the Environment and Natural Resources,
6 March 6, 2013.

7 **EXHIBIT 17 - PowerPoint
8 presentation deck entitled "Safe
9 Transport of Hydrocarbons,"
10 presented at the Standing Senate
11 Committee on Energy, the
12 Environment and Natural Resources,
13 dated March 6, 2013**

14 Q. MR. McDONALD: Have you seen that
15 document before, Mr. Kozey?

16 **A. Just one moment while I flip through.**

17 Q. All right.

18 **A. I recognize some slides in here, but I
19 can't recall if I've seen the entire presentation
20 as it -- as it sits in front of me.**

21 Q. Do you know whether or not this
22 PowerPoint presentation was made to the Standing
23 Senate Committee of Energy --

24 **A. I do not.**

25 Q. -- the Environment and Natural

169

1 Resources?

2 **A. I do not.**

3 Q. Did you assist in the preparation of any
4 of the slides?

5 **A. Probably the last slide.**

6 Q. It's entitled "Emergency Preparedness
7 and Response"?

8 **A. Correct, it would have been Slide 12.**

9 Q. That's the slide entitled "Safe
10 Transportation of Hazardous Commodities"?

11 **A. Correct.**

12 Q. How about Slide Number 6, entitled
13 "Origin Capabilities"?

14 **A. No, I would not have prepared that.**

15 Q. Do you know who did?

16 **A. No, I do not.**

17 Q. Have you seen it before today?

18 **A. Probably through the discovery process
19 I've come across this.**

20 Q. You don't know whether you saw it before
21 then?

22 **A. No.**

23 Q. Do you believe that at least as of March
24 of 2013, the information conveyed on that slide was
25 accurate?

170

1 **A. I guess I would -- don't know where the
2 source of this information came from, so I really
3 don't know how to answer that. I didn't prepare
4 it, I don't know the source.**

5 **Again, this is a really high level
6 overview of the different types of I guess regions
7 producing crude oil, but within each of those
8 regions, there's a degree of variability for sure.**

9 Q. I know you didn't prepare it, and I
10 don't know, I know that you know -- I know that you
11 don't know what the source documents are, but my
12 question to you was sitting here today, do you
13 believe any of the information presented on this
14 slide is inaccurate?

15 **A. I guess I would say at a high level,
16 this provides a good overview, but when we look
17 specifically within a particular region or
18 formation, we know there's a great deal more
19 variability than can be articulated in a single
20 description like light oil.**

21 **And so, you know, this is not any
22 information that we would use for the purpose of
23 classification of product for transportation.**

24 Q. Am I interpreting this document
25 correctly as showing that the oil that comes out of

171

1 the Bakken Formation is light oil?

2 **A. That's what the document indicates.**

3 Q. Ask the court reporter to mark as Kozey
4 Exhibit 18 an email from Elizabeth Hucker to
5 Jim Kozey, dated November 10, 2012, with an
6 attachment.

7 **EXHIBIT 18 - Email from
8 Elizabeth Hucker to Jim Kozey,
9 dated November 10, 2012, with an
10 attachment**

11 Q. MR. McDONALD: Have you seen this
12 document before, Mr. Kozey?

13 **A. Yes.**

14 Q. You received that email from Ms. Hucker
15 on November 10 of 2012?

16 **A. Correct.**

17 Q. She refers to a letter you are preparing
18 or a letter that's being prepared for NS. Is that
19 Norfolk Southern?

20 **A. Can you just point out where it states
21 that there?**

22 Q. The subject line of the email that
23 Ms. Hucker --

24 **A. Oh, okay.**

25 Q. -- is forwarding?

172

1 **A. Yes.**

2 Q. What is the letter being prepared for
3 NS?

4 **A. So I mentioned earlier where an
5 inspector in and around late 2011 had identified an
6 issue with crude oil being shipped in an AAR
7 Class 211 tank car. And as it turned out, this was
8 actually an error on the inspector's part where
9 there is a special provision, Special Provision B1
10 that allows a shipper to ship crude oil in an AAR
11 211 class car.**

12 **And we were working with the
13 regulators at the time, we were working with NS
14 because it was identified by inspector on NS's
15 line, and we had delivered the train or
16 interchanged the train to NS.**

17 **And so we were trying to get to the
18 bottom of what was actually required by regulation
19 for the shipper because it is a shipper's
20 responsibility to, you know, classify the product,
21 select a legal authorized package, and there was
22 some uncertainty because of the FRA, Federal
23 Railroad Administrator -- Administration hazmat
24 inspector raised this as an issue.**

25 **And so we were working on an**

173

1 **interpretation with the regulator and with the**
2 **shipper and to advise NS.**

3 Q. So am I correct that NS is going to
4 write a letter, and they wanted to know whether
5 anything they're stating in the letter is
6 inconsistent with CP's position, is that the
7 context of this?

8 **A. I can't recall. We were really kind of**
9 **the lead on this because the shipper was NuStar,**
10 **and they were CP's customer.**

11 Q. Yeah.

12 **A. And so we were interacting directly with**
13 **the shipper and the regulator.**

14 Q. Okay. So your customer, NuStar, is
15 asking whether or not you agree with or disagree
16 with anything that's stated in the proposed letter?

17 **A. Correct.**

18 Q. All right. And did you disagree with
19 anything that was stated in this letter?

20 **A. No.**

21 Q. And Mr. Pullen's proposed email mentions
22 that Canadian bitumen crude oil from Western Canada
23 is much different in characteristics from the
24 majority of the light sweet crude oil being shipped
25 on the railroads in the US; correct?

174

1 **A. That's his statement, there.**

2 Q. Right, and he identifies the source of
3 that oil as Bakken and Eagle Ford; correct?

4 **A. Correct. You have to remember like as**
5 **we saw in the previous exhibit, Exhibit 17, there**
6 **are light oils produced in Canada, as well, but**
7 **Mr. Pullen's oil, NuStar's oil, had a higher**
8 **flashpoint than would typically be seen from the**
9 **Bakken or Eagle Ford Formation.**

10 Q. Right, he's talking about undiluted
11 Canadian heavy bitumen?

12 **A. Correct.**

13 Q. Right, and he's contrasting it with
14 light sweet crude oil which is the oil that comes
15 out of the Bakken; correct?

16 **A. Correct.**

17 Q. Ask the court reporter to mark as Kozey
18 Exhibit 19 an email chain beginning with an email
19 from Jim Kozey to Keith Shearer, dated August 30,
20 2013.

21 **EXHIBIT 19 - Email chain beginning**
22 **with an email from Jim Kozey to**
23 **Keith Shearer, dated August 30,**
24 **2013**

25 Q. MR. McDONALD: You recognize this

175

1 document, Mr. Kozey?

2 **A. I do.**

3 Q. It's an email chain that you were
4 involved in; correct?

5 **A. Correct.**

6 Q. Now, this is a series of emails that are
7 all post Lac-Mégantic derailment; right?

8 **A. Correct.**

9 Q. And if we work from the back forward,
10 this thing starts with some news about the Bakken
11 blitz on railed crude; am I right? The title of a
12 press piece, (as read):

13 "US regulators begin blitz on
14 Bakken railed crude."

15 Do you see that?

16 **A. I'm just reading it.**

17 Q. Okay.

18 **A. Yeah, I believe at the time this was**
19 **where the Federal Railroad Administration through**
20 **the Pipeline Hazardous Material Safety**
21 **Administration were undertaking a testing, a**
22 **sampling program in the Bakken region to determine**
23 **if products were being appropriately classified.**

24 Q. And the email chain begins on the
25 morning of August 29th when Chantal Renaud sends an

176

1 email to several people, Stacy Terlecki, Anne Marie
2 Davies, and Keegan Loxam?

3 **A. Yes.**

4 Q. Do you see that?

5 **A. I do.**

6 Q. Those are all CP people?

7 **A. Yes.**

8 Q. And as we move up the emails, we see the
9 second in the chain is from crude pricing. Do you
10 see that?

11 **A. Correct.**

12 Q. And it is signed "Luke." Do you know
13 who Luke is?

14 **A. Just trying to remember his last name, I**
15 **can't remember his last name. He at the time was**
16 **very new employee to the company and kind of got**
17 **involved in the crude portfolio. And so he's**
18 **asking questions, and, you know, based on this**
19 **question, he's -- clearly doesn't understand the**
20 **classification of crude oil.**

21 Q. He's asking a question about the
22 classification of crude oil; correct?

23 **A. He's -- yeah, he's asking if CP as a**
24 **company categories its crude is Classification 3,**
25 **which isn't correct; it would be Class 3, UN1267.**

177

1 Q. And so after Luke sends his email, Anne
2 Marie Davies forwards it on to Keith Shearer?
3 **A. Correct.**
4 Q. Basically asking him to follow up?
5 **A. Yeah.**
6 Q. And then Shearer laterals the ball to
7 you?
8 **A. Correct.**
9 Q. And says, "Jim, this is for you"?
10 **A. Yeah.**
11 Q. And then you provide a very detailed
12 response, which is the email that we see on pages 1
13 and 2 of the document?
14 **A. Correct.**
15 Q. Did you consult any documents to prepare
16 the detailed email that you sent in response to
17 Keith Shearer's request?
18 **A. I clearly consulted the regulations in**
19 **both Canada and the United States.**
20 Q. Anything else?
21 **A. Not that I can recall.**
22 Q. Did you discuss this email or the
23 contents of the email with anyone before you sent
24 it?
25 **A. Not that I can recall.**

178

1 Q. You just sat down and did it yourself?
2 **A. Not that I -- as best -- I can't recall.**
3 Q. You don't recall doing anything, other
4 than sitting down and reviewing those regs and
5 typing out the email?
6 **A. Correct.**
7 Q. Okay, so you have an executive summary
8 here; right?
9 **A. Yeah.**
10 Q. And what you're doing is describing how
11 crude oil is classified according to the Canadian
12 Transportation of Dangerous Goods Regulations and
13 the United States Hazardous Materials Regulations;
14 correct?
15 **A. Correct.**
16 Q. All right. So in the executive summary,
17 the third, I don't know how it's broken up,
18 different versions of this look different. But
19 there is a sentence that begins what looks like in
20 the third paragraph of the executive summary that
21 reads (as read):
22 "Packing Group III crude is heavier
23 and has a higher flashpoint. This
24 would tend to come out of the
25 Lloydminster area."

179

1 Did I read that correctly?
2 **A. That's correct.**
3 Q. And where is Lloydminster?
4 **A. It's in Alberta.**
5 Q. (As read):
6 "The Packing Group I/II material is
7 lighter and has a lower flashpoint
8 and tends to originate in Southern
9 Saskatchewan and North Dakota."
10 Did I read that correctly?
11 **A. Yeah, that's correct. Again, this is a**
12 **big, broad generalization about, you know, large**
13 **formation with multiple producers and multiple**
14 **wells, you know. And we know from the**
15 **post-derailment testing that, you know, anything**
16 **out of the Bakken crude could be Packing Group I,**
17 **Packing Group II, Packing Group III.**
18 Q. But people within the organization are
19 asking you specific questions about classification,
20 and you only list that North Dakota crude is
21 properly classified as Group I and II; isn't that
22 right?
23 MR. HEMMING: That's not what it
24 says, Paul.
25 **A. No, that's -- again, so restate the**

180

1 **question, please?**
2 MR. McDONALD: Sure. Would you
3 read it back?
4 (COURT REPORTER READ BACK)
5 **A. So that's a generalization about North**
6 **Dakota crude. It is not, you know, a legal**
7 **classification for the purpose of transportation.**
8 **The -- as I mentioned before, the**
9 **testing that was done after it shows packing**
10 **group -- it could be Packing Group I, II, or III.**
11 **We know there's a high degree of variability in the**
12 **crude, which is why it's the shipper's obligation**
13 **to provide the carrier with appropriate**
14 **classification prior to transportation.**
15 **This is a -- as again, executive**
16 **summary, high level overview. If we look at how**
17 **crude oil is classified on the next page, this**
18 **articulates how it can be classified, Packing Group**
19 **I, Packing Group II, Packing Group III, but to**
20 **generalize and say all packing group -- all the**
21 **crude from North Dakota or Saskatchewan is**
22 **explicitly Packing Group I or II is false.**
23 Q. MR. McDONALD: Well, we've seen a
24 number of documents that you've authored that talk
25 about North Dakota light crude.

181

1 **A. Understood.**

2 Q. And you never advised anybody that it
3 was properly classified as Packing Group III; isn't
4 that right?

5 **A. Like from the rail transportation**
6 **perspective, whether it's Packing Group I or**
7 **Packing Group II or Packing Group III, it makes no**
8 **difference.**

9 **From our responsibility to**
10 **transport it, it belongs in the same tank car. We**
11 **get the same -- we get the same shipping document,**
12 **there's no special handling requirements. From our**
13 **perspective, Packing Group I, Packing Group II,**
14 **Packing Group III makes no material difference.**

15 **So yes, am I generalizing about,**
16 **you know, broad-brush strokes about Bakken crude is**
17 **generally Packing Group I and II, that's true, but**
18 **with respect to the actual classification of every**
19 **possible scenario in the Bakken crude, that's not**
20 **what this is intended to do.**

21 Q. I didn't say that.

22 **A. It's just a high level overview of what**
23 **in general packing groups come out of those**
24 **formations.**

25 Q. And I'm just pointing out the fact that

182

1 all of the communications that we've seen that
2 you've had internally about the proper packing
3 group for North Dakota crude, you never mentioned
4 that Packing Group III is appropriate, do you?

5 **A. I do not. Just I'm trying to generalize**
6 **or else I would have to articulate all the detail**
7 **in this detailed description to everybody about**
8 **special provisions, exceptions, combustible**
9 **liquids, and they would not get anything out of**
10 **that.**

11 **This is to provide kind of a high**
12 **level so that people that are not technical experts**
13 **can get some understanding around what they can**
14 **typically see out of different regions.**

15 Q. Well, you simply could have said that
16 North Dakota oil could have been Packing Group I,
17 II, or III, but you didn't. You only said it's I
18 or II?

19 **A. Oh, absolutely, because I could say**
20 **every formation would be the same, and that**
21 **provides no generic differentiation between**
22 **anything 'cause every formation can be Packing**
23 **Group I, Packing Group II, Packing Group III. It**
24 **doesn't matter from the rail side.**

25 **But to provide people with some**

183

1 **kind of understanding of the different properties,**
2 **it's okay to generally at a high level, again, this**
3 **is not intended for classification. The shipper's**
4 **responsible for classification, they gotta provide**
5 **the right classifications to the carrier. The**
6 **carrier validates that it's a legal authorized**
7 **shipping description, and we accept the package and**
8 **transport it.**

9 Q. You don't believe that you had any duty
10 to inquire further if your position that you've
11 articulated internally to CP is that North Dakota
12 crude is properly classified as I and II, and you
13 get a shipment that identifies it as Packing Group
14 III, you don't think you had any obligation to make
15 any further inquiry?

16 **A. No.**

17 Q. None at all?

18 **A. None.**

19 MR. HEMMING: For the record, he
20 didn't say North Dakota oil is only Packing Group I
21 or II. The question certainly implied it.

22 Q. MR. McDONALD: So I think you
23 testified earlier that it doesn't matter to the
24 railroads whether or not the packing group
25 classification is I, II, or III. Did I understand

184

1 your testimony?

2 **A. With respect to transportation**
3 **requirements.**

4 Q. What about safety preparedness?

5 **A. Again, all of those products by**
6 **definition are Class 3 flammable liquids, they all**
7 **have the ability to catch fire as we've discussed.**
8 **Based on our emergency plans,**
9 **preparedness, the staging of equipment, there's**
10 **nothing unique about fighting a fire that's Packing**
11 **Group I, fighting a fire that's Packing Group II,**
12 **fighting a fire that's Packing Group III.**

13 Q. Do the Canadian authorities care whether
14 there's a difference between Packing Group I, II,
15 or III?

16 MR. HEMMING: Objection,
17 foundation. If you know, Jim.

18 **A. The regulations articulate Packing Group**
19 **I, Packing Group II, Packing Group III.**

20 Q. MR. McDONALD: And what about the
21 kind of cars that are used; doesn't that matter if
22 you're using DOT-111s, doesn't that matter whether
23 or not the classification was Packing Group I, II,
24 or III?

25 **A. DOT-111 is an authorized package for**

185

1 DOT-111 or for UN1267, petroleum crude oil, Packing
2 Group I, II, or III.

3 Q. You did know, though, that if there was
4 a misclassification of crude oil as Packing Group
5 III when it should have been Packing Group I or II,
6 that there was an increased risk to public safety?

7 A. No, I guess I -- you have to remember
8 how the packing group system works.

9 So the regulations describe packing
10 group as Packing Group I's high risk, Packing Group
11 II's medium risk, Packing Group III is lower risk.
12 I can't remember the exact verbiage in the
13 regulations, but generally those three big buckets.
14 And you have to look at what those packing groups
15 are being determined from, and that's the level of
16 risk.

17 So if you look at Packing Group I,
18 its initial boiling point. Packing Group II is a
19 little bit higher flammability range. Packing
20 Group III is another higher flammability range.

21 So the risk is about those
22 different packing groups is how easy a fire can
23 start, the risk to public safety, if any of those
24 Packing Group I, Packing Group II, or Packing Group
25 III materials is -- is similar.

186

1 Q. You don't agree with me that if you had
2 crude that was misclassified as Packing Group III
3 when it should have been classified as Packing
4 Group I, there would be an increased risk to public
5 safety and employee exposure?

6 A. I guess the -- I'd say that the
7 potential for a fire is higher based on the
8 differences in flashpoint, you know, whether
9 there's an increased risk to public safety is kind
10 of unique to a particular event or not.

11 Q. Well, isn't that what you told your team
12 in your email? If you look at the second page of
13 your email, the document that -- the paragraph that
14 begins (as read):

15 "In addition, the classification of
16 the product..."

17 Do you see that paragraph? The second,
18 the third sentence of the paragraph reads (as
19 read):

20 "If petroleum crude oil UN1267
21 Class 3 is misclassified as PG III
22 when it should be classified as
23 PG I, there is an increased risk to
24 public safety and employee
25 exposure."

187

1 A. Correct.

2 Q. Isn't that what you told your team?

3 A. That's correct.

4 Q. Was that a true statement when you made
5 it?

6 A. Correct.

7 Q. Is it a true statement today?

8 A. Yes.

9 Q. Was it a true statement before the
10 Lac-Mégantic derailment?

11 A. Yes.

12 Q. I'm going to -- I'm going to ask the
13 court reporter to mark as Kozey Exhibit 20 a
14 document from Region 8 hazardous material team
15 inspection, Bakken Formation, North Dakota,
16 entitled "Summary, North Dakota, The Next Hazardous
17 Material Frontier."

18 EXHIBIT 20 - Document from Region 8
19 hazardous material team inspection,
20 Bakken Formation, North Dakota,
21 entitled "Summary, North Dakota,
22 The Next Hazardous Material
23 Frontier"

24 Q. MR. McDONALD: Have you seen this
25 document before, Mr. Kozey?

188

1 A. Not that I can recall, no.

2 Q. Do you recall, well, do you know what
3 the Region 8 hazardous materials group is?

4 A. Is there a date on this document
5 somewhere as to when this was done?

6 MR. HEMMING: Is this something
7 you produced to us?

8 MR. WOODCOCK: Doesn't have a Bates
9 number; I don't think so.

10 MR. HEMMING: I'd just like to
11 know where it's from, that's all.

12 MR. McDONALD: Would you read back
13 the question, please?

14 (COURT REPORTER READ BACK)

15 A. So it would be Federal Railroad
16 Administrator hazardous materials inspectors have
17 territories divided up in the United States into
18 different regions. Region 8 is -- appears to be
19 for the Bakken Formation or in that -- it would
20 cover that territory.

21 Q. MR. McDONALD: And were you aware
22 that in October of 2011, that group conducted a
23 focused inspection to determine if the boom in the
24 Dakotas, specifically the Bakken Formation, was of
25 a magnitude that it will impact rail safety or

189

1 present a safety concern --

2 **A. No.**

3 Q. -- to HM transportation?

4 **A. Sorry, no, I can't recall.**

5 Q. You weren't --

6 **A. Same as --**

7 Q. -- aware of that investigation?

8 **A. No.**

9 Q. Not whether you saw this document, were

10 you aware that an investigation was being done in

11 2011?

12 **A. Not that I can recall, no.**

13 Q. If you look on page 9 of the document,

14 it's an Item Number 6 listed as a new issue. It

15 talks about several new companies shipping crude

16 oil as petroleum crude oil 3, PG III, I guess

17 that's Classification 3, Packing Group III?

18 **A. Yes, I see that.**

19 Q. Do you agree?

20 MR. HEMMING: Are you asking him

21 to agree with what the document --

22 MR. McDONALD: No, about my

23 interpretation of the document.

24 **A. So could you --**

25 Q. MR. McDONALD: Yeah, it seems that

190

1 what they're conveying here in their shorthand, if

2 you will, is that they've identified several new

3 companies shipping crude oil that is classified as

4 Group 3, Packing Group III, when in fact the MSDSes

5 are showing that it should have been classified as

6 PG I or PG II?

7 **A. Yeah, it's -- I see that there, I mean,**

8 **and this is part of I think a lot of the learning**

9 **some of the FRA inspectors were doing is that we**

10 **know that the material safety data sheets are not a**

11 **transportation document. We know they often have**

12 **chemical and physical properties that are actually**

13 **inconsistent with the transportation information**

14 **provided on the MSDS, i.e. the classification of**

15 **crude oil.**

16 **So it looks like they were looking**

17 **at that, and then they ask them to provide -- they**

18 **were getting some testing done.**

19 Q. Were you or was anyone else at CP aware

20 at any time prior to the Lac-Mégantic derailment

21 that some shippers were shipping petroleum crude

22 that was labelled as PG III when in fact the MSDSes

23 showed it should have been labelled PG I or PG II?

24 **A. We would have been in possession of an**

25 **MSDS showing -- MSDSes showing Packing Group I or**

191

1 **Packing Group II, but I can't confirm whether we**

2 **knew that the product was actually moving is**

3 **something else.**

4 **Again, because you have to remember**

5 **that what's being loaded in the train for the**

6 **purpose of transportation comes from different**

7 **producers, from different wells, from different**

8 **parts of the Bakken Formation. So, you know, the**

9 **only definitive classification is the one the**

10 **shipper offers the carrier.**

11 **Again, the MSDS is something that**

12 **you can't rely on.**

13 **If we look at the TSB report into**

14 **the Lac-Mégantic incident, they say that's**

15 **especially true, especially when we're dealing with**

16 **non-homogenous products or products that are being**

17 **mixed and blended, which is exactly what's**

18 **happening in the Bakken region.**

19 Q. So are you telling me that prior to

20 Lac-Mégantic, CP had in its possession an MSDS from

21 one or more producers that listed their product as

22 PG I or PG II which you knew they were shipping as

23 PG III?

24 **A. No, that's not a true statement. Oh,**

25 **hold on, we would have been in possession of an**

192

1 **MSDS from the Bakken region that was part of the**

2 **discovery process that showed Packing Group I or**

3 **II.**

4 Q. And whose MSDS was that?

5 **A. I want to say Conexis, but I'm not**

6 **certain.**

7 Q. And this is prior to Lac-Mégantic, CP

8 had this MSDS in its possession?

9 **A. Correct.**

10 Q. What was the name of the company, I

11 didn't catch it?

12 **A. I believe it's Conexis, but I'm not**

13 **certain.**

14 Q. And was Conexis shipping its crude oil

15 on CP's railway?

16 **A. I believe it's one of the many producers**

17 **that Western Petroleum was receiving crude oil**

18 **from. As we saw with Train 606-282, there are**

19 **multiple producers with multiple MSDSes all being**

20 **mixed and blended into an individual train. Some**

21 **of those MSDSes were Packing Group I and II, some**

22 **were Packing Group III only. Again, the TSB**

23 **investigation report provides great detail on the**

24 **subsequent investigation.**

25 Q. So you knew prior to Lac-Mégantic that

193

1 your DOT-111 railcars were the DOT 111 railcars
2 that you were transporting were being filled with
3 oil from multiple locations?

4 **A. We knew that they were -- there was a**
5 **transload operation, so producers were getting**
6 **wells or getting oil from what we would assume**
7 **would be different wells and putting them into**
8 **different railcars.**

9 **Again, the operator of the**
10 **transload facility, Western Petroleum is the**
11 **shipper in that case, and they would be responsible**
12 **for providing CP with a classification of the**
13 **product prior to offering it for transport.**

14 Q. Did you know whether or not Western
15 Petroleum was testing the oil that was flowing
16 through the transloading facility at New Town?

17 **A. I do not.**

18 Q. Did you ever ask?

19 **A. I did not.**

20 Q. Did you have any concern knowing that
21 the oil that was put into these DOT-111s at New
22 Town was coming from various different locations,
23 and you knew from an MSDS that you had that at
24 least one of those was calling for a classification
25 of Packing Group I or II --

194

1 **A. No, I --**

2 Q. -- and --

3 **A. Sorry, finish your question, sorry.**

4 Q. I guess I'll just start it over. You
5 didn't have a concern that there was the
6 possibility that the classifications that Western
7 Petroleum was providing to you might have been
8 inaccurate?

9 **A. No, the -- if I remember looking at the**
10 **material safety data sheet, the transportation**
11 **section showed Packing Group I, Packing Group II,**
12 **but if you looked at the chemical and physical**
13 **properties that the producers are actually required**
14 **by law to include on there, the flashpoint ranges**
15 **for the crude oil spanned from Packing Group I to**
16 **even above Packing Group III.**

17 **So, you know, even looking at that**
18 **MSDS with the flashpoint ranges, I would see no**
19 **reason provided that the product is within the**
20 **realm of the -- prior to being offered within the**
21 **range of flammable limits on the material safety**
22 **data sheet, I would see no reason to be...**

23 Q. But you didn't know that, you didn't
24 know what the ranges were of the product that was
25 being loaded into the DOT-111s?

195

1 **A. Well, the one material safety data sheet**
2 **we showed -- had showed a big broad range.**

3 Q. This is the MSDS that you mentioned that
4 showed Packing Group I or II?

5 **A. Correct.**

6 Q. So if I'm understanding you, you're
7 saying that even though that MSDS identified in the
8 transportation information, that the product should
9 be PG I or PG II, you're saying that the flashpoint
10 range was broad enough to allow for a PG III?

11 **A. Correct.**

12 Q. But the producer was telling you it's
13 supposed to be PG I and PG II?

14 **A. I don't know why the producers do that.**
15 **I don't know why they're allowed to produce generic**
16 **MSDSes that cover broad ranges of properties.**

17 **But that's, again, because the MSDS**
18 **is not a transportation document, we don't rely on**
19 **it for the purpose of transportation.**

20 Q. Why did you have this MSDS in your
21 possession?

22 **A. I believe it was requested by Mr. Loxam**
23 **for some reason. I don't know why he requested it.**

24 Q. Why do you think it was requested by
25 Mr. Loxam?

196

1 **A. I'd be speculating.**

2 MR. HEMMING: Thanks, you saved me
3 on an objection, Jim.

4 MR. McDONALD: I'm going to ask the
5 court reporter to mark as Kozey Exhibit 21 an email
6 chain that originates with an email from Matthew
7 Forister to a number of recipients, including
8 Mr. Kozey, dated August 8, 2013.

9 **EXHIBIT 21 - Email chain that**
10 **originates with an email from**
11 **Matthew Forister to a number of**
12 **recipients, including Mr. Kozey,**
13 **dated August 8, 2013**

14 Q. MR. McDONALD: You received that
15 email on August 8th of 2013?

16 **A. Yes.**

17 Q. And the email is attaching a report from
18 Sam Chapman. Do you see that?

19 **A. Yeah, I see that.**

20 MR. HEMMING: Which email are you
21 referring to, Paul?

22 MR. McDONALD: The email from
23 Forister to the distribution group, it says (as
24 read):

25 "Please find attached Sam Chapman's

197

1 report."

2 My question to you, Mr. Kozey, is which
3 is the report that was attached?

4 **A. I'm really confused.**

5 MR. HEMMING: What's the Bates
6 number of the email, Paul?

7 MR. McDONALD: CP3664.

8 MR. HEMMING: First page, can I
9 see your version? I'm not sure I got the same one
10 as you do. Top one, got it.

11 Q. MR. McDONALD: Are any of the
12 attachments to this document Sam Chapman's report?

13 MR. HEMMING: Objection,
14 foundation. If you know, Jim.

15 **A. Yeah.**

16 Q. MR. McDONALD: And I'm trying to
17 interpret, as perhaps you are too, Mr. Kozey, but I
18 just want to see if you can help me figure this
19 out.

20 Is Sam Chapman's report the email
21 that appears below Forister's email where Chapman
22 sends an email to Forister and then he has an
23 attachment, is the email, do you understand that
24 Chapman's email to Forister is the report that
25 Forister is referring to as Chapman's report?

198

1 **A. I don't know.**

2 Q. If you don't know, you don't know,
3 that's all right. I'm just seeing if you can give
4 me a little bit of an assist here in figuring out
5 whether I'm missing the Chapman report or not.

6 **A. Sorry, I can't recall this.**

7 Q. Okay, fair enough.

8 **A. Looks like...**

9 Q. I'm going to ask you to look at the
10 attachments, and I want you to look at the page
11 with the Bates Stamp Number CP3665.0001, first page
12 with the bar graphs on it?

13 **A. Okay.**

14 Q. All right. This is providing
15 information about a hazmat seminar that occurred on
16 May 21 to 23 in Addison, Texas. Do you see that at
17 the top?

18 **A. I can't read this, it's too small.**

19 Q. Okay. See if you can follow along with
20 me, the title on the top. Do you agree with me
21 that it reads (as read):

22 "2013 AAR/BOE Hazmat Seminar"?

23 **A. Yes.**

24 Q. (As read):

25 "May 21-23, Addison, Texas"?

199

1 **A. I can see that.**

2 Q. And "AAR" stands for "American
3 Association of Railroads"?

4 **A. Correct.**

5 Q. And "BOE" stands for "Bureau of
6 Explosives"?

7 **A. Correct.**

8 Q. Did you attend that seminar?

9 **A. I can't -- I've been to lots of these.**

10 Q. All right. Well, if we look at the
11 attendance list, the participants list, and we look
12 at page Bates Stamp CP3665 dash -- I mean .20,
13 lists your name there?

14 **A. Yeah, I see that.**

15 Q. All right, and identifies you as a
16 speaker?

17 **A. Hmm, okay.**

18 Q. What did you present on at that seminar?

19 **A. I have no idea.**

20 Q. All right. If we look at the workshop
21 names on the first page, sir, and we work our way
22 down to the one, two, three, four, five, six,
23 seven, eight, nine, tenth item there, tell me if
24 you agree with my reading.

25 The title is -- the workshop name

200

1 is "Crude Oil Properties and Response
2 Considerations." Do you see that?

3 **A. I can't read that.**

4 Q. Well, if you will trust me that that's
5 what it says, does it refresh your recollection
6 that you presented a workshop at that seminar on
7 crude oil properties and response considerations?

8 MR. HEMMING: Let him read all the
9 workshop names or tell him what they say since he
10 can't read the document.

11 Q. MR. McDONALD: Well, I think it
12 would be cumbersome to read them all, but I'm just
13 asking you whether or not you recall presenting at
14 this seminar in May of 2013 at a workshop entitled
15 "Crude Oil Properties and Response Considerations"?

16 **A. I do not recall.**

17 Q. If you had presented at that seminar,
18 would you have had materials that you distributed
19 and/or used?

20 **A. Likely there would have been kind of
21 PowerPoint presentation produced.**

22 Q. Do you know whether that was produced in
23 this litigation?

24 **A. No, I don't.**

25 MR. McDONALD: Paul, I'm going to

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

201

1 request that we be provided with a copy of those
2 materials?

3 MR. HEMMING: I don't know that he
4 was the presenter of those materials or has them.

5 MR. McDONALD: Well, whatever
6 materials that pertain to his presentation at this
7 seminar we would like to have.

8 MR. HEMMING: I don't know that
9 he's presented. We'll certainly investigate.

10 MR. McDONALD: Okay.

11 MR. HEMMING: But I don't think
12 you've established he's presented at any of these
13 20 some workshop names, which he can't read.
14 I mean if you want to talk about
15 each of these 20, go ahead, it might refresh his
16 recollection.

17 MR. McDONALD: No, I don't want to
18 stay here all night long. The question is this,
19 he's identified as a speaker at this conference;
20 we'd like to know the materials that he used in
21 connection with this presentation.

22 **A. I think I might have been -- I'd have to**
23 **check, but I might have been the chairman of the**
24 **AAR hazardous materials committee, so I might have**
25 **done the introductory and speech and something like**

202

1 **that.**

2 MR. HEMMING: We'll review to see
3 if he's done any materials.

4 MR. McDONALD: I'm going to broaden
5 that request, and we will put this in writing for
6 you. But we want all materials that he prepared or
7 received at this conference if he has them in his
8 possession.

9 **A. Okay.**

10 **UNDERTAKING NO. 5 - To provide all**
11 **materials that you prepared or**
12 **received that pertain to your**
13 **presentation at the seminar in May**
14 **of 2013 entitled "Crude Oil**
15 **Properties and Response**
16 **Considerations"**

17 MR. McDONALD: I'll ask the court
18 reporter to mark as Kozey Exhibit 22 an email from
19 Paul Weiss to Lee Deck with cc's to several
20 individuals, including Jim Kozey. Did I mention
21 the date, April 26, 2013.

22 **EXHIBIT 22 - Email from Paul Weiss**
23 **to Lee Deck with cc's to several**
24 **individuals, including Jim Kozey,**
25 **dated April 26, 2013**

203

1 Q. MR. McDONALD: You received this
2 email from Mr. Weiss on April 26, 2013?

3 **A. Give me a moment --**

4 Q. Mm-hmm.

5 **A. -- to figure out what this is about.**

6 MR. McDONALD: Can you read back
7 the last question, please?

8 (COURT REPORTER READ BACK)

9 **A. Yes.**

10 Q. MR. McDONALD: And if you take a
11 look at the waybills that are attached,
12 Mr. Kozey --

13 **A. Do we have a copy of the actual**
14 **inspector's report as part of this or...**

15 Q. This is -- this is just the document I'm
16 working with here. If you look at the waybills,
17 can you confirm for me that these are the waybills
18 that accompanied the returned shipment of railcars
19 from the Irving refinery in Saint John,
20 New Brunswick, back to the New Town transloading
21 facility?

22 **A. So these shipments originated in**
23 **Saint John and are destined to New Town, yeah, (as**
24 **read): "Residue last contain," so appears they are**
25 **empty going back for loading.**

204

1 Q. So these were railcars that went from
2 New Town's transloading facility to Saint John
3 carrying Bakken crude; correct?

4 MR. HEMMING: I'll object to the
5 characterization. Give him the waybill if you want
6 for that movement.

7 Q. MR. McDONALD: Well, I don't -- I
8 don't need you to take this information off the
9 waybill. I want you to use your knowledge, your
10 experience and your common sense, Mr. Kozey.

11 Are these waybills waybills that
12 accompanied train cars that were originally filled
13 with Bakken crude oil or transported to Saint John,
14 New Brunswick, unloaded at the Irving refinery, and
15 then sent back empty by Irving to the New Town
16 transloading facility?

17 **A. I guess I can't be a hundred percent**
18 **certain 'cause I assume there's some -- I assume**
19 **Irving received oil from other shippers, and**
20 **there's even some --**

21 Q. These are returned shipments of empty
22 cars to World Fuels in New Town, North Dakota;
23 isn't that right?

24 **A. Well, there's something confusing here**
25 **'cause there's some originating in Vancouver to --**

205

1 **to Underwood, North Dakota. So I don't really**
 2 **understand that. There's one from Albany going to**
 3 **New Town.**

4 Q. Okay, let's just work with the first
 5 waybill, then, it appears on the page that has
 6 Bates Stamp Number CP06490?

7 **A. I see that.**

8 Q. Okay, this is a railcar that's going
 9 back to World Fuel Services; correct?

10 MR. HEMMING: Objection,
 11 foundation. You haven't established where the
 12 movement originated from. Go ahead and answer if
 13 you know, Jim.

14 **A. Yeah, I mean this shipment originates**
 15 **from Saint John, New Brunswick, and is destined**
 16 **back to New Town, North Dakota.**

17 Q. MR. McDONALD: Right. Well, we can
 18 get very technical, but do you believe that there's
 19 any doubt that this is a return shipment of a car
 20 to Western Petroleum?

21 **A. Again, you're going to kind of get me to**
 22 **speculate a little bit.**

23 Q. I don't want you to speculate, but are
 24 you aware of any reason Irving Oil would be sending
 25 a car back to World Fuel Services in New Town,

206

1 other than the return of a car that Western
 2 Petroleum had shipped to it?

3 **A. And I guess I don't know what other**
 4 **shippers that Irving would have received crude oil**
 5 **from, so there's a potential for other cars to be**
 6 **used and returned.**

7 **So I -- I mean in general, it would**
 8 **appear that this is likely a shipment from --**
 9 **returning from Saint John to New Town.**

10 Q. Do you have any doubt?

11 **A. Possibility exists.**

12 Q. Well, anything's possible, but do you
 13 have a doubt that this is anything, other than the
 14 return of a car that originated in New Town, made
 15 its way to New Brunswick and is on its return way
 16 back to New Town?

17 **A. So you're asking me without a doubt,**
 18 **which means a hundred percent certainty, which**
 19 **means I can't say a hundred percent certain.**

20 Q. 99?

21 **A. Yes.**

22 Q. What would we need to know whether or
 23 not this was in fact a car that came out loaded
 24 with Bakken oil to Saint John, New Brunswick, and
 25 then was returned to New Town?

207

1 **A. You need the loaded waybill.**

2 Q. Now, you received these waybills in
 3 April of 2013 pre Lac-Mégantic derailment?

4 **A. Correct.**

5 Q. Why were these being sent to you?

6 **A. It appears that an inspector, his report**
 7 **isn't attached here, but there's some**
 8 **correspondence with an FRA hazmat inspector. He's**
 9 **taken issue with it it appears. Mr. Weiss is**
 10 **talking with Mr. Deck, who's the FRA hazardous**
 11 **materials inspector, about a particular waybill for**
 12 **a car, UTLX211112, with a commodity description of**
 13 **UN3475 ethanol and gasoline mixture.**

14 Q. Did Western Petroleum ship all of its
 15 Bakken crude oil under a Packing Group III
 16 designation prior to the Lac-Mégantic derailment?

17 **A. I don't know the answer to that.**

18 Q. Who would know?

19 **A. I don't know.**

20 Q. Were you generally aware that they
 21 classified their oil shipments as PG III?

22 **A. Following the derailment, once we**
 23 **started looking at their shipping information, yes.**

24 Q. Were you aware before the Lac-Mégantic
 25 derailment that they shipped most, if not all, of

208

1 their oil under a classification of PG III?

2 **A. No, not me individually.**

3 Q. Was somebody on your team aware?

4 **A. Not that I know.**

5 Q. Who at CP would have been aware?

6 **A. In general, the -- all the shipping**
 7 **documentation is electronic, so individuals don't**
 8 **typically review it.**

9 **We have processes and controls in**
 10 **place to make sure that we got a legal authorized**
 11 **shipping description from the shipper, but people**
 12 **don't sit and review waybills to figure out what**
 13 **shipper's moving what. As long as we get a legal**
 14 **authorized shipping description for the product, we**
 15 **accept it for transport.**

16 Q. See no evil, hear no evil, fear no evil?

17 **A. No, that's not true. We've got a lot of**
 18 **controls built into electronic systems, and you**
 19 **looking at that document or reviewing a particular**
 20 **waybill, you'd have no reason to believe it was**
 21 **anything other than what is stated by the shipper.**

22 Q. Well, let's work with your 99 percent
 23 certainty that this is the return of a tank car
 24 that originated in New Town?

25 **A. Correct.**

209

1 Q. Sent by Western Petroleum, and it was
2 labelled PG III, and it goes to Saint John under
3 that classification.

4 A. Yeah.

5 Q. But it comes back with a return
6 classification of PG I as shown on this waybill.
7 Weren't there any controls in place at CP to pick
8 up this discrepancy?

9 A. No, there's no reason to identify this
10 as a discrepancy.

11 So Irving would have been the
12 shipper of the residue, right? That's what we saw.
13 Shipment, residue tank car shipment. There's
14 specific provisions in the Transportation of
15 Dangerous Goods Regulations where if a consignor
16 for flammable liquids anyway is uncertain of the
17 classification, they can classify it all as Packing
18 Group I. If they're uncertain whether it's Packing
19 Group II or III, they can classify it as Packing
20 Group II.

21 So, you know, I don't know what the
22 shipper does for offloading, we don't know whether
23 the -- they clean the car or rinse the car with
24 something else. They may decide they don't want to
25 sample a tiny bit of residue for classification,

210

1 and so they, as authorized by regulation, could
2 classify it as Packing Group I.

3 Q. And am I correct that the applicable
4 regulations in Canada and the United States require
5 that if the shipper doesn't know what the proper
6 packing group designation should be for hazardous
7 materials, that they must designate it as PG I?

8 MR. HEMMING: Could you clarify
9 the point in time the question you're asking?

10 Q. MR. McDONALD: At any point in
11 time, and then we can get more specific?

12 A. So if the shipper doesn't know for
13 Class 3 flammable liquids, they should be taking
14 advantage of the provision in the regs that allows
15 them to ship it as Packing Group I.

16 Q. If they don't know whether it's I, II,
17 or III, aren't they required to designate it as
18 PG I?

19 A. If they don't know, correct.

20 Q. And was that the case prior to the
21 Lac-Mégantic derailment?

22 MR. HEMMING: Objection,
23 foundation. If you know what the shipper knew, go
24 ahead and answer.

25 Q. MR. McDONALD: No, no, this is a

211

1 hypothetical question pre Lac-Mégantic derailment.
2 Shipper is shipping hazardous liquids, Class 3.

3 A. Yeah.

4 Q. And they don't know whether it's Packing
5 Group I, Packing Group II, or Packing Group III.
6 Are they not required to classify it as PG I?

7 A. In Canada that would be a true
8 statement.

9 MR. HEMMING: Before you start on
10 the next one, is this a good time for a bathroom
11 break?

12 MR. McDONALD: Oh, yeah, sure.
13 (BRIEF ADJOURNMENT)

14 MR. McDONALD: I'll ask the court
15 reporter to mark as Kozey Exhibit 23 an article
16 from the *Globe and Mail* entitled "How Bakken Crude
17 Moved From North Dakota to Lac-Mégantic."

18 EXHIBIT 23 - Article from the *Globe*
19 *and Mail* entitled "How Bakken Crude
20 Moved From North Dakota to
21 Lac-Mégantic"

22 Q. MR. McDONALD: Mr. Kozey, have you
23 read this article before?

24 A. Not that I can recall.

25 Q. Well, this is published a couple days

212

1 after the Lac-Mégantic derailment.

2 MR. HEMMING: It says July 8,
3 2014, Paul.

4 MR. McDONALD: You're right.

5 Q. MR. McDONALD: A year and a couple
6 days after the Lac-Mégantic derailment.

7 A. And it was subsequently updated.

8 Q. Yeah.

9 A. In 2017.

10 Q. Yeah. Okay, I would like to direct your
11 attention to the last paragraph on the first page,
12 it's the paragraph that begins with (as read):

13 "A class action lawsuit alleges..."

14 Do you see that?

15 A. I do.

16 Q. The second sentence there mentions a
17 PowerPoint presentation by Irving Oil, dated one
18 month before the accident, indicated that a source
19 sampling program to test the crude was almost
20 non-existent. Do you see that?

21 A. I see that.

22 Q. Have you ever seen that PowerPoint
23 referred to in the article?

24 A. We -- I've seen it after the derailment,
25 post derailment.

213

1 Q. Did anyone at CP see that PowerPoint pre
2 derailment?

3 **A. Not to my knowledge.**

4 Q. Would you turn to the last page of the
5 document, the last paragraph of the article is
6 talking about a search warrant filed by the RCMP.
7 Do you see that?

8 **A. I don't see RCMP, but I see...**

9 Q. The prior paragraph, it mentions the
10 search warrant?

11 **A. Okay, yeah.**

12 Q. And the last paragraph is talking about
13 the warrant?

14 **A. Correct.**

15 Q. It mentions in the last paragraph that
16 the warrant alleged that Irving had access to a
17 November 2012 test conducted in North Dakota that
18 showed that the crude should be designated Packing
19 Group I. Do you see that sentence?

20 **A. I do see that.**

21 Q. Do you know what test the article is
22 referring to?

23 **A. No idea.**

24 Q. You're not aware of any test that
25 occurred in November 2012 that showed that crude

215

1 of emails in a chain that's encompassing this same
2 date, dealing with the same subject.

3 If you turn -- if you just read
4 down from the document, you'll see that there's one
5 from Mr. Bunce to you. Below that there's one from
6 Ms. Nagy to Mr. Bunce. After that, we see
7 essentially a copy of Ms. Nagy's email to
8 Mr. Bunce. And then the email chain begins with an
9 email from Glen Wilson to Darlene Nagy. Do you see
10 that?

11 **A. I do.**

12 Q. So am I correct that at this point in
13 time, CP's trying to get a handle on the
14 classification of the goods that were carried on
15 Train 282?

16 **A. So I believe this was following the
17 derailment, regulators had raised concerns
18 associated with the classification of the crude oil
19 in Train 282, and we were doing some digging into
20 what we were moving out of Stampede, North Dakota,
21 New Town, North Dakota, and Harvey, North Dakota.**

22 Q. And the investigation revealed that the
23 only producer that was classifying its cargo as
24 PG III was Western Petroleum?

25 **A. That is correct.**

214

1 should be designated as Packing Group I?

2 **A. No.**

3 Q. You know that the crude oil that was on
4 Train 282 that derailed in Lac-Mégantic was
5 transporting crude from the Bakken Formation in
6 North Dakota?

7 **A. Yes. Could we go off the record for
8 just a second?**

9 MR. McDONALD: Yeah, sure.

10 (DISCUSSION OFF THE RECORD)

11 MR. McDONALD: I'm going to ask the
12 court reporter to mark as Kozev Exhibit 34, 24,
13 yes, an email from Chris Bunce to Glen Wilson with
14 a cc to Jim Kozev and others, dated July 19, 2013.

15 **EXHIBIT 24 - Email from Chris Bunce
16 to Glen Wilson with a cc to
17 Jim Kozev and others, dated July
18 19, 2013.**

19 Q. MR. McDONALD: You received that
20 email from Mr. Bunce on July 19th of 2013?

21 **A. Sorry, I'm just thumbing through this, I
22 don't remember what this was about.**

23 **Yes, I received it from Mr. Bunce
24 on July 19, 2013.**

25 Q. And then we see that there are a series

216

1 Q. Everyone else was shipping as either
2 PG I or PG II?

3 **A. That's correct.**

4 Q. That was information that Canadian
5 Pacific knew prior to the Lac-Mégantic derailment?

6 **A. We would have had waybills indicating
7 that Western was shipping it as Packing Group III
8 and others were shipping it as Packing Group II.**

9 Q. And CP knew that some of the oil that
10 Western Petroleum was shipping was oil that came
11 from Conexis; right?

12 MR. HEMMING: Objection,
13 foundation. If you know.

14 **A. I don't know whether that was being --
15 how much was -- again because it was being
16 transloaded into railcars from different producers,
17 the ability to a draw straight line from Conexis's
18 single classification to the classification offered
19 for transport in any particular train at any
20 particular time is impossible.**

21 Q. MR. McDONALD: No, I'm not asking
22 about classifications. I think you told us earlier
23 that you understood that Conexis shipped its oil
24 through transloading facilities on Western
25 Petroleum's cars. Yes?

217

1 **A. I received the MS -- CP received a**
2 **material safety data sheet that was described as**
3 **Bakken crude oil from Conexis.**

4 Q. And you knew that they shipped through
5 Western Petroleum; correct?

6 **A. I did not know that at the time.**

7 Q. CP knew it at the time?

8 MR. HEMMING: Objection,
9 foundation. Go ahead.

10 **A. I don't know. There's so many producers**
11 **in that area, I can't state for a fact whether it**
12 **was -- our relationship was with Western Petroleum,**
13 **not the individual producers that --**

14 Q. MR. McDONALD: Now, Mr. Bunce's
15 email to Glen Wilson on the first page of Kozey
16 Exhibit 24, he says (as read):

17 "Obviously it's noteworthy that
18 Western Petroleum has classified
19 the crude in their shipments as
20 Packing Group III, and the other
21 crude coming out of North Dakota is
22 categorized as PG II."

23 That's what he wrote; correct?

24 **A. Correct. Again, this is all following**
25 **the derailment where we knew that sampling was**

218

1 **conducted that actually proved out that the crude**
2 **oil in Train 606-282 was not properly classified as**
3 **Packing Group III.**

4 Q. And do you believe it was noteworthy
5 that Western Petroleum was classifying its crude as
6 PG III and everyone else was classifying it as PG
7 II?

8 **A. Post derailment, it was noteworthy**
9 **because we knew that it was inappropriately**
10 **classified. But before, pre derailment, whether it**
11 **was Packing Group III or Packing Group II wouldn't**
12 **have raised any concern from my perspective.**

13 Q. Is all of the oil that CP shipped out of
14 the Bakken oil that it picked up at transloading
15 facilities?

16 **A. I don't know the answer to that.**

17 Q. Well, the oil that CP did pick up at
18 transloading facilities, CP was aware that the
19 stuff that was coming into these transloading
20 facilities was coming from multiple different wells
21 throughout the Bakken region; isn't that right?

22 **A. I guess that would be a true statement.**

23 Q. And you knew that in any particular
24 railcar, there was the chance, if not the
25 likelihood, that that railcar would contain oil

219

1 from a number of different producers; correct?

2 **A. Correct.**

3 Q. And you knew that some producers
4 classified their product as PG I and PG II;
5 correct?

6 **A. Some producers in the formation had**
7 **classified their product as...**

8 Q. And you didn't have any concern that a
9 Western Petroleum railcar that's containing a
10 mixture of oil from a number of different sources,
11 some of which is identified as to be classified as
12 PG I and PG II, is then classified only as PG III
13 when it ships out under CP's authority?

14 **A. No, you're assume that we would have**
15 **known that different producers -- there are**
16 **different producers that had shipped their product**
17 **as Packing Group I or II, but we'd have no reason**
18 **to believe that if it was being produced from a**
19 **particular small region within the Bakken, that I**
20 **mean it could all be Packing Group III from a small**
21 **group of wells. Again, we just don't know.**

22 Q. Did you know whether the producers were
23 testing at the transloading facilities?

24 **A. I did not know.**

25 Q. Well, then wouldn't it have been the

220

1 right thing to do if they weren't testing to
2 identify it as PG I, didn't you just tell us that
3 that was the obligation, if you didn't know the
4 correct packing group, you should have identified
5 it as PG I?

6 MR. HEMMING: Objection,
7 characterization. Go ahead.

8 **A. Your first statement, can you read that**
9 **back, please, the first?**

10 (COURT REPORTER READ BACK)

11 **A. So to state that we knew they weren't**
12 **testing at the point of loading would be an**
13 **inaccurate statement. We didn't know that Western**
14 **wasn't providing, you know, aggregate or what's the**
15 **right word here, I guess aggregate sampling to**
16 **account for the variability in the types of crude**
17 **that they were loading into the --**

18 Q. MR. McDONALD: Well, forget about
19 aggregate sampling. Each individual railcar has to
20 be appropriately labelled; right?

21 **A. Correct.**

22 Q. And you knew that at the time those cars
23 were being loaded from tank trucks, that nobody was
24 sampling the oil that was going into this mixture
25 in a particular railcar; isn't that right?

221

1 **A. No, we didn't know that they were not**
2 **sampling it at the point prior to offering it**
3 **for -- prior to offering it for transport.**

4 Q. CP knew that there was no testing going
5 on at the transloading facilities?

6 **A. Disagree.**

7 MR. HEMMING: Objection to the
8 form and the characterization. Go ahead and
9 answer.

10 **A. No.**

11 Q. MR. McDONALD: Did CP have an
12 ownership interest in the New Town facility?

13 **A. Not that I know of.**

14 Q. A CP affiliate?

15 **A. Not that I know.**

16 Q. If CP knew that there was no testing
17 going on at the transloading facility and CP also
18 knew that oil from multiple sources was being
19 combined in a particular railcar and CP knew that
20 there was the possibility that the producer could
21 have labelled its product PG I or PG II and that
22 another producer whose oil was put into that
23 railcar labelled -- classified its oil as PG III,
24 wouldn't the regulations have required that the
25 shipment be labelled PG I?

222

1 MR. HEMMING: Objection, calls for
2 speculation and mischaracterizes.

3 **A. Yeah, so I guess the important**
4 **distinction we need to recognize is that that**
5 **provision, to classify it if you're uncertain, only**
6 **applies in Canada.**

7 Q. MR. McDONALD: But you knew the
8 Bakken oil that was being shipped to Irving was
9 going into Canada?

10 **A. Correct; however, you can't use the**
11 **regulations that you're transporting into. You**
12 **have to use the origination regulations for the**
13 **purpose of classification, right?**

14 **So take, for example, if we were**
15 **going to ship something to a country with no**
16 **dangerous goods regulations, you couldn't use that**
17 **for your Canadian portion of the move.**

18 **The same applies in rail, you have**
19 **to meet the regulatory requirements in the US prior**
20 **to offering it into Canada.**

21 Q. Well, let's deal with Train 282.

22 **A. Sure.**

23 Q. You knew that train was coming into
24 Canada?

25 **A. Correct.**

223

1 Q. And assume for purposes of my question
2 that CP was aware that there was no testing being
3 done on the oil that was being loaded from the
4 trucks onto the CP Rail cars --

5 **A. Okay, that's not true, but assuming**
6 **that.**

7 Q. What's not true?

8 **A. That we knew.**

9 Q. Okay. Assume for purposes of my
10 question that you did know, CP did know that this
11 oil was coming from different locations within the
12 Bakken --

13 **A. Yes.**

14 Q. -- and if no testing was done and CP
15 already had an awareness that you've told us that
16 some Bakken producers classified their oil as PG I
17 or PG II, wouldn't it have been required to have
18 classified that oil as PG I?

19 MR. HEMMING: Objection, calls for
20 speculation.

21 Q. MR. McDONALD: If the testing was
22 not done at the transloading facility?

23 MR. HEMMING: Same objection.

24 **A. Again, that's not a -- you're not**
25 **authorized to -- allowed to do that in the United**

224

1 **States. You have to classify the product**
2 **correctly. You're not allowed to -- if you're**
3 **uncertain, you're not allowed to call it Packing**
4 **Group I in the United States.**

5 Q. MR. McDONALD: Say that again?

6 **A. So the provision we talked about where**
7 **you're allowed to, if you're uncertain of the**
8 **classification of a flammable liquid, you can call**
9 **it Packing Group I.**

10 Q. You have to call it Packing Group I?

11 **A. In Canada.**

12 Q. Yes.

13 **A. That's an authorized --**

14 Q. Right.

15 **A. There's a provision in the regulations**
16 **that allows you to do that. There is no equivalent**
17 **in the United States.**

18 Q. Right, right, but you knew this train
19 was going to Canada?

20 **A. But again, even though I know it's going**
21 **to Canada, you cannot use a Canadian provision that**
22 **isn't inconsistent with US law. So you cannot do**
23 **that.**

24 Q. The shipper can classify it any way it
25 wants.

225

1 MR. HEMMING: I'll object, that's
2 not a question.

3 Q. MR. McDONALD: You knew that the
4 stuff was coming into Canada, the oil on Train 282?

5 **A. Yes.**

6 Q. Right? And you knew that it was
7 labelled PG I?

8 MR. HEMMING: Excuse me.

9 **A. Was it labelled PG I?**

10 Q. MR. McDONALD: It was classified --
11 excuse me, PG III?

12 **A. We knew it was PG III, correct.**

13 Q. Right. And you had an awareness that
14 there was the possibility that some of that oil
15 might have been required to be classified as PG I
16 or PG II?

17 **A. Again, I don't know what wells were
18 PG I, PG II.**

19 **At the time we would have known
20 there were -- oil was being produced and trucked
21 into the facility from different wells, but whether
22 an individual well was Packing Group I or Packing
23 Group II, we knew there was variability, but we
24 didn't know whether there was any variability in
25 what was being put into Train 282.**

226

1 Q. Well, you knew there had to be some
2 variability because you knew that it all came from
3 different sources; you knew that?

4 **A. Well, there was variability, but whether
5 there was any variability in flashpoint, I would be
6 guessing.**

7 Q. We're up to 25, I'll ask the court
8 reporter to mark as Kozey Exhibit 25 an email from
9 Bill Hay to Jim Kozey, dated Tuesday, December 13,
10 2011.

11 **EXHIBIT 25 - Email from Bill Hay to
12 Jim Kozey, dated Tuesday,
13 December 13, 2011**

14 Q. MR. McDONALD: You received that
15 email from Mr. Hay on December 13, 2011?

16 **A. Just one moment, please.**

17 (DISCUSSION OFF THE RECORD)

18 Q. MR. McDONALD: As I recall it, you
19 received this email from Bill Hay on December 13,
20 2011; correct?

21 **A. Correct.**

22 Q. What was Bill Hay's job title?

23 **A. He was -- he had the field emergency
24 response team reporting up to him at that time.**

25 Q. And who was Michael Wilkin?

227

1 **A. He would have been a hazardous materials
2 officer for CP.**

3 Q. Underneath Mr. Hay?

4 **A. Correct.**

5 Q. All right. And who was Arthur
6 Feygelson?

7 **A. He was an account manager for CP.**

8 Q. He sent you an MSDS from Global on
9 October 31 of 2012?

10 **A. Correct.**

11 Q. Why was he sending you that MSDS?

12 **A. Can't recall.**

13 Q. Is this MSDS in addition to the MSDS
14 that you told us earlier that CP had received prior
15 to the Lac-Mégantic derailment from a company you
16 thought was named Conexis?

17 **A. Correct.**

18 Q. Okay. So you had at least two MSDSes
19 for crude oil coming out of the midwest --

20 **A. Correct.**

21 Q. -- prior to the Lac-Mégantic derailment?

22 **A. As best I can recall.**

23 Q. Did you request that Mr. Feygelson
24 obtain the MSDS from Global?

25 **A. I can't recall.**

228

1 Q. And Bill Hay forwards that on to Chris
2 Bunce and says (as read):

3 "For your reading pleasure"?

4 **A. Yeah.**

5 Q. Basically, it says (as read):

6 "This stuff is going to be a
7 problem."

8 Did I read that correctly?

9 **A. That's what it says. You have to
10 remember, Mr. Hay is a -- running the emergency
11 response program for CP, and so, you know, if we
12 look at some of the chemical and physical
13 properties of this particular product, if you look
14 at page 10 of the document, it has a specific
15 gravity of .63, which floats on water, to 2, which
16 means it's twice as heavy as water.**

17 **So recovery, if that's spilled in
18 the waterbody, would be extremely difficult. You
19 know, if we look at the flashpoint of the product
20 in this MSDS, the flashpoint says it's minus 40
21 Celsius to a hundred degrees Celsius, again, that
22 kind of covers the Packing Group I, Packing Group
23 II, Packing Group III range and then into the
24 combustible liquid range on the United States.**

25 **So his primary focus would be**

229

1 **around kind of emergency response, not**
2 **classification of product.**

3 Q. You're speculating, though; right?

4 **A. Yes.**

5 Q. Now, this MSDS looks like it comes from
6 Continental Resources. Is that an affiliate of
7 Global as you understand it?

8 **A. Pardon me?**

9 Q. This MSDS appears to be coming from an
10 entity called Continental Resources. They're an
11 affiliate of Global as you understand it?

12 **A. I do not know that. Whether Continental**
13 **is producing oil and selling it to Global, I'm**
14 **uncertain --**

15 Q. Okay.

16 **A. -- as to what the contractual**
17 **relationship is.**

18 Q. All right. And this MSDS does contain
19 transportation information, doesn't it?

20 **A. It does.**

21 Q. Where do we find that?

22 **A. Section 14 on page 14.**

23 Q. Okay, and what it says for
24 transportation information is that this product is
25 Hazard Class III, Packing Group I or II; is that

230

1 right?

2 **A. That's correct, but as I pointed out,**
3 **the chemical and physical properties show the**
4 **flashpoint range from minus 40 to a hundred degrees**
5 **Celsius, so covering the full gamut of different**
6 **packing groups and different classifications for**
7 **the purpose of transportation.**

8 Q. Is flashpoint the only factor that's
9 taken into account in assigning a packing group?

10 **A. Initial boiling point.**

11 Q. Does this document show you anything
12 about initial boiling point?

13 **A. Let me see, doesn't state initial**
14 **boiling point, but it gives a boiling point range**
15 **of 500 to 590 degrees Celsius, which means it**
16 **actually can't be Packing Group I material. The**
17 **boiling point is too high to be appropriately**
18 **classified as Packing Group I.**

19 Q. Where are you looking?

20 **A. Page 10, physical and chemical**
21 **properties, about the fifth one down.**

22 Q. Mm-hmm, mm-hmm, well, you didn't test
23 this stuff; Continental Resources did. Isn't that
24 right?

25 MR. HEMMING: Objection,

231

1 foundation, if you know.

2 **A. Sorry, the question was?**

3 Q. MR. McDONALD: You didn't test this
4 stuff.

5 **A. I did not test it, no.**

6 Q. Continental would have had to have
7 tested it in order to prepare an MSDS; correct?

8 MR. HEMMING: Objection,
9 foundation, if you know.

10 **A. Correct.**

11 Q. MR. McDONALD: You know that you
12 need to test the product in order to prepare an
13 MSDS; isn't that right?

14 **A. Correct.**

15 Q. And they determined that the packing
16 group was I or II, not III?

17 **A. That's the transportation information**
18 **they -- that's put on there, but again, this is why**
19 **we can't rely on a material safety data sheet for**
20 **the purpose of classification. Even following the**
21 **derailment with all the testing that was done in**
22 **Canada and the United States, the federal**
23 **government on either side of the border never**
24 **definitely came out and said all Bakken crude must**
25 **be classified as Packing Group I or II. They**

232

1 **couldn't do that because they knew they had a**
2 **range.**

3 Q. It's too variable?

4 **A. Correct, it's too variable, and we knew**
5 **that you can't rely on a material safety data sheet**
6 **because following the derailment, they implemented**
7 **a bunch of regulatory changes that required a**
8 **special provision 92 in Canada for crude oil where**
9 **you have to have detailed sampling program that**
10 **accounts for the variability and any mixing, the**
11 **same in the United States, under 17341 where you're**
12 **required to have a sampling program for unrefined**
13 **petroleum products.**

14 Q. Well, I appreciate your attempt to
15 distance yourself from the information in this
16 document, but isn't it a fact that there was only
17 one of the producers of the oil that you shipped
18 that used Packing Group III?

19 **A. To my knowledge out of the Bakken, true.**

20 Q. And the MSDSes that you had from other
21 producers required that it be I or II?

22 **A. Well, the midst doesn't require -- is**
23 **not required for the purpose of classification.**

24 Q. Well, they --

25 **A. It's a general generic document that's**

233

1 **used for worker exposure and worker safety; it is**
2 **not proof of classification.**

3 Q. It's not -- I -- I will accept that,
4 it's not proof of classification. But the material
5 safety data sheets, the only ones you had in your
6 possession, indicated transportation information,
7 and both of them stated that the proper
8 classification is I or II?

9 MR. HEMMING: Objection,
10 foundation. He didn't say he only had two MSDSes
11 in his possession; he said he had two in his
12 possession that, like this one, said PG I or II.

13 MR. McDONALD: Wait a minute, now
14 that's different from what I heard earlier.

15 Q. MR. McDONALD: Did you have other
16 MSDSes in your possession prior to the Lac-Mégantic
17 derailment?

18 **A. I had -- I've seen many MSDSes; I can't**
19 **recall where they're all from or what formation.**

20 Q. Well, we better clear this up because I
21 thought you had testified pretty clearly that prior
22 to the Lac-Mégantic derailment, CP only had two
23 MSDSes in its possession. Is that not accurate?

24 **A. That I can specifically recall that are**
25 **tagged Bakken crude oil, either tied to this one to**

234

1 **Global, which I didn't remember, and then the other**
2 **one was specific to Western Petroleum.**

3 Q. Okay, so the -- I just want to make sure
4 that the record's clear, and I apologize --

5 **A. No, that's okay.**

6 Q. -- if this is repetitive. Prior to the
7 Lac-Mégantic derailment, the only MSDSes that CP
8 had in its possession for Bakken crude were the two
9 that you've mentioned already?

10 **A. I can't say that for certain.**

11 Q. To the best of your knowledge, those are
12 the only two that were in CP's possession?

13 MR. HEMMING: And I'll object to
14 the characterization that this one is specific to
15 Bakken. It says it's from the Midwest, and the
16 manufacturer says it's from Oklahoma.

17 **A. Can you state the question again,**
18 **please?**

19 MR. McDONALD: That's entirely
20 inappropriate coaching, Paul, and you know that.

21 MR. HEMMING: You're
22 misrepresenting the document as a Bakken.

23 MR. McDONALD: I don't need you --

24 MR. HEMMING: That's not coaching
25 when you're misrepresenting the content, Paul.

235

1 MR. McDONALD: No, it is coaching,
2 it is coaching.

3 MR. HEMMING: It is not.

4 MR. McDONALD: You have an
5 opportunity to conduct your own examination if you
6 want, but that's just blatant coaching.

7 MR. HEMMING: I disagree.

8 Q. MR. McDONALD: Is this MSDS dealing
9 with oil coming out of Oklahoma --

10 MR. HEMMING: I'll object,
11 foundation. If you know.

12 Q. MR. McDONALD: -- as your counsel
13 has testified to?

14 MR. HEMMING: I didn't say -- I
15 didn't testify to anything, Paul. I say it's
16 listed in Oklahoma as the manufacturer.

17 MR. McDONALD: No, that's not what
18 you said.

19 MR. HEMMING: Well, she can read
20 back what I said, if you want.

21 Q. MR. McDONALD: You understood this
22 to be an MSDS that dealt with Bakken crude oil in
23 2011. Am I right?

24 **A. I understood this to be MSDS from**
25 **Global.**

236

1 Q. Yes, you weren't shipping any crude from
2 anywhere in the Midwest, other than from North
3 Dakota; isn't that right?

4 **A. We ship crude out of the St. Paul -- to**
5 **the St. Paul refinery in Minnesota, sorry, there's**
6 **just so many products we move, so many different**
7 **locations.**

8 Q. You were not moving any crude oil from
9 the United States other than crude oil that was
10 produced in North Dakota; isn't that right?

11 MR. HEMMING: Objection,
12 foundation. If you know, Jim.

13 **A. So I don't know of all the locations**
14 **where crude is being produced from within the**
15 **United States that we transport. We receive**
16 **crude -- I guess I just don't know.**

17 Q. MR. McDONALD: When you received
18 this MSDS from Mr. Feygelson, did you understand
19 that we were talking about Bakken crude here?

20 **A. If it originated out of the Central**
21 **Midwest, I don't know why this was particularly**
22 **asked for.**

23 Q. No, I'm just trying to clear up the
24 apparent confusion --

25 **A. Understood.**

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

237

1 Q. -- where I would suggest there is none,
2 that this is an MSDS that was in connection with
3 your involvement in CP's shipments of Bakken crude
4 oil, yes or no?

5 **A. This -- this would be from one producer.**

6 MR. McDONALD: Take a break.

7 (BRIEF ADJOURNMENT)

8 MR. McDONALD: I have no further
9 questions at this time.

10 MR. HEMMING: I probably just have
11 one or two and get out of here.

12 QUESTIONS BY MR. HEMMING:

13 Q. Mr. Kozey, do all rail carriers that are
14 in the chain of delivery of crude oil from
15 New Town, North Dakota, to Irving Oil in
16 New Brunswick, receive whatever happened to be the
17 shipper's classification of the crude oil with
18 respect to that movement?

19 **A. Correct. So in the case of Train 282,**
20 **CP was the originating carrier, we interchange that**
21 **with the MMA, Montreal, Maine & Atlantic Railway.**
22 **We would have, through an EDI 417, provided them**
23 **with the same classification that we would have**
24 **received.**

25 **And the same goes for the reverse**

239

1 **That would have first gone to the MMA. The MMA**
2 **would then produce an EDI 417 to CP, and we would**
3 **have received it that way.**

4 Q. If somebody other than MMA was the first
5 carrier in the delivery chain of the empties from
6 Irving Oil in New Brunswick back to New Town,
7 North Dakota, would the first carrier receive it?

8 **A. Yes.**

9 MR. HEMMING: Okay, that's all I
10 had.

11 MR. McDONALD: I have nothing
12 further, Mr. Kozey. Thank you for your time and
13 your testimony.

14 -----
15 (Proceedings ended at 4:47 p.m.)
16 -----

238

1 **route backwards. The MMA would have received the**
2 **classification from Irving Oil, and then they would**
3 **have passed it by 417 to CP rail, and we would have**
4 **received that information for our portion of the**
5 **move.**

6 Q. You actually I think you answered my
7 second question. Is the same thing true on the
8 reverse movement of empties from Irving Oil in
9 New Brunswick, in New Brunswick to New Town,
10 North Dakota, do all carriers in the delivery chain
11 receive whatever happened to be Irving Oil's
12 classification of the empty cars?

13 **A. Yes.**

14 Q. Are you able to say who gets them first
15 or last in that chain of delivery?

16 **A. Can you state the question again?**

17 Q. Sure, I'll rephrase it. On the empty
18 movements from Irving Oil in New Brunswick back to
19 New Town, North Dakota, which carrier in the chain,
20 if any, are first to receive the shipper's, in this
21 case Irving Oil, their classification of the
22 empties?

23 **A. So the MMA would have received either --**
24 **I don't know how the billing worked from Irving,**
25 **but either electronic bill of lading or EDI 404.**

240

1 Certificate of Transcript

2
3 I, the undersigned, hereby certify that the
4 foregoing pages 1 to 239 are a complete and
5 accurate transcript of the proceedings taken down
6 by me in shorthand and transcribed from my
7 shorthand notes to the best of my skill and
8 ability.

9 Dated at the City of Calgary,
10 Province of Alberta, this 19th day of February,
11 A.D. 2019.

12
13
14
15 "Deanna M. DiPaolo"

16 Deanna M. DiPaolo, CSR(A)
17 Official Court Reporter
18
19
20
21
22
23
24
25

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

		241	
1		<u>ERRATA SHEET</u>	
2	Page Line	Change	Reason for Change
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21	By the above corrections, if any, I hereby sign my		
22	deposition.		
23	_____		
24	JAMES MICHAEL KOZEY		
25	Dated this __ day of ____, 2019.		

		243	
1	EXHIBIT 5 - Email from Mr. Kozey to Glen Wilson	80	
2	and others, dated April 3, 2013		
3			
4	EXHIBIT 6 - Document, copy of a board of directors	93	
5	briefing, Canadian Pacific crude by rail		
6			
7	EXHIBIT 7 - Email from Lori Kennedy to Glen	104	
8	Wilson, Jim Kozey, and others, dated March 12,		
9	2013		
10			
11	EXHIBIT 8 - Email from Darlene Nagy to Jim Kozey,	117	
12	dated March 28, 2013, with an attachment		
13			
14	EXHIBIT 9 - Email from Keith Shearer to Breanne	122	
15	Feigel and others, dated June 5, 2013		
16			
17	EXHIBIT 10 - Two emails with attachment, the first	127	
18	from Darlene Nagy to Jim Kozey, dated June 7,		
19	2013, and the second from Jim Kozey to Darlene		
20	Nagy, dated June 11, 2013		
21			
22	EXHIBIT 11 - Email from Jim Kienzler to Glen	134	
23			
23	Wilson and Chris Bunce, carbon copied to Jim Kozey		
24			
24	and Bill Hay		
25			
25			

		242	
1		- I N D E X -	
2		JAMES MICHAEL KOZEY	
3		February 13, 2019	
4	The following is a listing of exhibits, undertakings and		
5	objections as interpreted by the Court Reporter.		
6	The transcript is the official record, and the index is		
7	provided as a courtesy only. It is recommended that the		
8	reader refer to the appropriate transcript pages to ensure		
9	completeness and accuracy.		
10	***EXHIBITS***		
11	EXHIBIT 1 - Organization chart entitled "Safety,	43	
12	Environment, and Regulatory," dated January 25,		
13	2013		
14			
15	EXHIBIT 2 - Email from Brian Townshend to Jim	66	
16	Kozey, dated April 19, 2013, with an attachment		
17			
18	EXHIBIT 3 - Email chain involving Mike Pielak, Jim	67	
19	Kozey, and others, dated April 3, 2013		
20			
21	EXHIBIT 4 - Email from Dale Buckholtz to Jim Kozey	69	
22			
22	and Bill Hay, dated July 9, 2012		
23			
23			
24			
25			

		244	
1	EXHIBIT 12 - Document entitled "Crude By Rail	140	
2	Frequently Asked Questions"		
3			
4	EXHIBIT 13 - PowerPoint presentation entitled	144	
5	"Operating in Your Community"		
6			
7	EXHIBIT 14 - Document entitled "SER Crude Oil	153	
8	Research and Assessment Requirements"		
9			
10	EXHIBIT 15 - Letter from the American Association	156	
11	of Railroads to the Pipeline and Hazardous		
12	Materials Safety Administration, dated March 9,		
13	2011		
14			
15	EXHIBIT 16 - Federal Railroad Administration	158	
16	report of the Luther, Oklahoma, spill, dated		
17	August 22, 2008		
18			
19	EXHIBIT 17 - PowerPoint presentation deck entitled	168	
20			
20	"Safe Transport of Hydrocarbons," presented at the		
21			
21	Standing Senate Committee on Energy, the		
22			
22	Environment and Natural Resources, dated March 6,		
23			
23	2013		
24			
24			
25			

JAMES MICHAEL KOZEY - February 13, 2019 - CONFIDENTIAL

245

1 EXHIBIT 18 - Email from Elizabeth Hucker to 171
2 Jim Kozey, dated November 10, 2012, with an
3 attachment
4
5 EXHIBIT 19 - Email chain beginning with an email 174
6 from Jim Kozey to Keith Shearer, dated August 30,
7 2013
8
9 EXHIBIT 20 - Document from Region 8 hazardous 187
10 material team inspection, Bakken Formation, North
11 Dakota, entitled "Summary, North Dakota, The Next
12 Hazardous Material Frontier"
13
14 EXHIBIT 21 - Email chain that originates with an 196
15 email from Matthew Forister to a number of
16 recipients, including Mr. Kozey, dated August 8,
17 2013
18
19 EXHIBIT 22 - Email from Paul Weiss to Lee Deck 202
20
21 with cc's to several individuals, including
22
23 Jim Kozey, dated April 26, 2013
24
25

247

1 UNDERTAKING NO. 4 - To confirm from the metadata 142
2 at Kozey Exhibit 12 whether this is an updated
3 version as of March 6, 2013
4
5 UNDERTAKING NO. 5 - To provide all materials that 202
6 you prepared or received that pertain to your
7 presentation at the seminar in May of 2013
8 entitled "Crude Oil Properties and Response
9 Considerations"
10
11 ***OBJECTIONS***
12 OBJECTION TAKEN to answering the question: Let's 9
13 see if we can break this down a little bit,
14 Mr. Kozey, can you tell me how many times you
15 met with legal counsel?
16
17
18
19
20
21
22
23
24
25

246

1 EXHIBIT 23 - Article from the *Globe and Mail* 211
2 entitled "How Bakken Crude Moved From North Dakota
3 to Lac-Mégantic"
4
5 EXHIBIT 24 - Email from Chris Bunce to Glen Wilson 214
6 with a cc to Jim Kozey and others, dated July 19,
7 2013.
8
9 EXHIBIT 25 - Email from Bill Hay to Jim Kozey, 226
10 dated Tuesday, December 13, 2011
11
12 ***UNDERTAKINGS REQUESTED***
13 UNDERTAKING NO. 1 - To confirm or deny that the 94
14 date of July 11, 2013, on Kozey Exhibit 6 is in
15 fact correct
16
17 UNDERTAKING NO. 2 - To provide the BNSF 117
18 presentation referred to in Kozey Exhibit 7
19
20 UNDERTAKING NO. 3 - To provide the attachments to 139
21
22 Kozey Exhibit 11
23
24
25

EXHIBIT F

From: Bill Hay <Bill_Hay@cpr.ca>
Sent: Tuesday, December 13, 2011 4:12 PM
To: Jim Kozey <jim_kozey@cpr.ca>
Subject: FW: MSDS
Attach: crude_oil_sweet (1).pdf

From: Bill Hay
Sent: Thursday, November 03, 2011 7:09 AM
To: Chris Bunce
Subject: FW: MSDS

For your reading pleasure. Basically it says this stuff is going to be a problem

From: Michael Wilken
Sent: Wednesday, November 02, 2011 8:23 AM
To: Dale Buckholtz; Mike Ball; William Fairfield; Scott Croome; Bill Hay
Subject: FW: MSDS

Here is a recent MSDS for crude coming out of the mid-west.

Mike

From: Arthur Feygelson
Sent: Monday, October 31, 2011 5:20 PM
To: Jim Kozey
Cc: Chris Bunce; Michael Wilken
Subject: FW: MSDS

From Global...

Arthur Feygelson
arthur_feygelson@cpr.ca
Account Manager - Chemicals
CANADIAN PACIFIC
PO Box 489, Dunmore PA 18512 USA
P 570 344 5781
F 570 344 5782
C 917 453 7337
Customer Service 888 333 8111
Tariffs & Bulletins: <http://www.cpr.ca/en/customer-centre/tariffs/Pages/default.aspx>

EXHIBIT G

SECTION 1 — PRODUCT AND COMPANY IDENTIFICATION

Material Name: Crude Oil, Sweet

Synonyms: Crude Oil; Field Crude; Petroleum Crude; Petroleum Oil; Rock Oil; Sweet Crude

Chemical Family: Petroleum hydrocarbons

Molecular Formula: Mixture

Product Description: A complex mixture of hydrocarbons, containing variable amounts of impurities.

Product Use: Refinery / Chemical manufacturing feedstock; Fuel.

Manufacturer: Continental Resources, Inc.
HSE Department
302 N. Independence
Enid, Oklahoma 73702

Telephone: 580.233.8955 (General)
1.800.424.9300 (Emergency – Within USA & Canada)
+1 703.527.3887 (Emergency – Outside USA & Canada, Collect Calls Accepted)

SECTION 2 — HAZARDS IDENTIFICATION

Emergency Overview

DANGER



Highly flammable liquid and vapor (H225).
May be fatal if swallowed and enters airways (H304).
Causes mild skin irritation (H316).
Causes serious eye irritation (H319).
Harmful if inhaled (H332).
May cause cancer (H350).
May cause long lasting harmful effects to aquatic life (H412).

PREVENTION

Obtain special instructions before use (P201).
Do not handle until all safety precautions have been read and understood (P202).
Keep away from heat / sparks / open flames / hot surfaces – no smoking (P210).
Ground / bond container and receiving equipment (P240).

Use explosion-proof electrical / ventilating / lighting equipment (P241).

Use only non-sparking tools (P242).

Take precautionary measures against static discharge (P243).

Avoid breathing dust / fume / gas / mist / vapors / spray (P261).

Wash thoroughly after handling (P264).

Do not eat, drink, or smoke when using this product (P270).

Use only outdoors or in a well-ventilated area (P271).

Avoid release to the environment (P273).

Wear gloves / eye protection / face protection (P280).

Use personal protective equipment as required (P281).

RESPONSE

IF SWALLOWED: Immediately call a poison control center or doctor / physician. Do not induce vomiting (P301 + P310 + P331).

IF ON SKIN (or hair): Rinse skin with water and mild soap. Wash contaminated clothing before reuse (P303 + P361 + P353 + P363).

IF INHALED: Remove victim to fresh air and keep at rest in a position comfortable for breathing. Call a poison control center or doctor / physician if you feel unwell (P304 + P340 + P312).

IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing (P305 + P351 + P338).

If exposed / concerned: Get medical advice / attention (P308 + P313).

If skin irritation occurs: Get medical advice / attention (P332 + P313).

If eye irritation persists: Get medical advice / attention (P337 + P313).

IN CASE OF FIRE: Use dry chemical, carbon dioxide, or foam for extinction (P370 + P378).

STORAGE/DISPOSAL

Store in a well-ventilated place. Keep container tightly closed. Keep cool (P403 + P233 + P235).

Store locked up (P405).

Dispose of contents / container in accordance with local / regional / national / international regulations (P501).

Hazards Information

Physical Form: Liquid

Flash Point: -40 to 100 °C (-40 to 212 °F)

Explosive Limits: 0.4% (LEL) – 15% (UEL)

OSHA: Flammable Liquid

Toxic

Irritant

Carcinogen

GHS: Flammable Liquids – Category 2

Acute Toxicity – Category 4

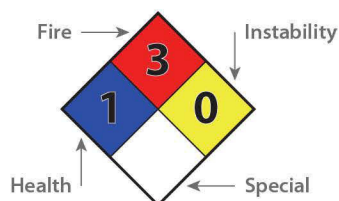
Skin Corrosion / Irritation – Category 3

Serious Eye Damage / Eye Irritation – Category 2A

Carcinogenicity – Category 1A

Aspiration Hazard – Category 1

Long-Term Hazards to the Aquatic Environment – Category 3

NFPA**Potential Health Effects**

- Eye Health Effects:** Contact with eyes may cause moderate to severe irritation.
- Skin Health Effects:** May cause skin irritation with prolonged or repeated contact. Liquid may be absorbed through the skin in toxic amounts if large areas of skin are exposed repeatedly.
- Inhalation Health Effects:** May contain or release toxic hydrogen sulfide vapor, which may accumulate in the vapor spaces of storage and transport compartments. Exposure to high concentrations of hydrogen sulfide (>1000 ppm) will cause immediate unconsciousness and death through respiratory paralysis. Signs and symptoms of overexposure to hydrogen sulfide include respiratory and eye irritation, dizziness, nausea, coughing, a sensation of dryness and pain in the nose, and loss of consciousness. Odor does not provide a reliable indicator of the presence of hazardous levels in the atmosphere.
- Ingestion Health Effects:** Ingestion may cause aspiration of the liquids into the lungs. Aspiration may result in chemical pneumonia, severe lung damage, respiratory failure, or even death. Ingestion may also cause gastrointestinal problems, or central nervous system effects similar to alcohol intoxication. In severe cases, tremors, convulsions, loss of consciousness, coma, respiratory arrest, and death may occur.
- Carcinogenic Effects:** Repeated and prolonged exposure may be harmful and may cause cancer.

Carcinogenic Effects			
Component	NTP	IARC	OSHA
Benzene (71-43-2)	Known Human Carcinogen	Group 1 - Carcinogenic	Specifically Regulated Carcinogen
Ethylbenzene (100-41-4)	Evidence of Carcinogenicity	Group 2B - Possible Carcinogen	Not established
Toluene (108-88-3)	Evidence of Carcinogenicity	Not established	Not established
Xylenes (1330-20-7)	Evidence of Carcinogenicity	Not established	Not established

Potential Environmental Effects

- Environmental Effects:** May cause harmful effects to aquatic life.

SECTION 3 — COMPOSITION / INFORMATION ON INGREDIENTS

Crude oil can contain minor amounts of sulfur-, nitrogen-, and oxygen-containing organic compounds as well as trace amounts of heavy metals like mercury, arsenic, nickel, and vanadium. Composition can vary significantly depending on its source.

Hazardous Components			
Name	CAS #	UN; EINECS	% (Weight)
Petroleum	8002-05-9	UN1267; 232-298-5	95 - 100%
Hexane	110-54-3	UN1208; 203-777-6	< 10%
Benzene	71-43-2	UN1114; 200-753-7	< 5%
Ethylbenzene	100-41-4	UN1175; 202-849-4	< 5%
Toluene	108-88-3	UN1294; 203-625-9	< 5%
Xylenes	1330-20-7	UN1307; 215-535-7	< 5%
Hydrogen sulfide	7783-06-4	UN1053; 231-977-3	< 0.5%

Note: All concentrations are in percent by weight unless ingredient is a gas. Gas concentrations are in percent by volume.

SECTION 4 — FIRST AID MEASURES**Eye Contact**

For direct contact, remove contact lenses if present. Immediately hold eyelids apart and flush the affected eye(s) with clean water for at least 20 minutes. Seek immediate medical attention.

Skin Contact

Remove contaminated shoes and clothing and cleanse affected area(s) thoroughly by washing with mild soap and water or a waterless hand cleaner. If irritation or redness develops and persists, seek medical attention.

Inhalation

If respiratory symptoms or other symptoms of exposure develop, move victim away from source of exposure and into fresh air. If breathing difficulties develop, oxygen should be administered by qualified personnel. If victim is not breathing, clear airway and immediately begin artificial respiration. Seek immediate medical attention.

Ingestion

Call a physician or poison control center immediately. Aspiration hazard: Do not induce vomiting or give anything by mouth because this material can enter the lungs and cause severe lung damage. If spontaneous vomiting occurs, lean victim forward to reduce the risk of aspiration and monitor for breathing difficulties. If victim is drowsy or unconscious, place on the left side with the head down. If possible, do not leave victim unattended and observe closely for adequacy of breathing. Seek immediate medical attention.

Notes to Physicians

At high concentrations hydrogen sulfide may produce pulmonary edema, respiratory depression, and/or respiratory paralysis. The first priority in treatment should be the establishment of adequate ventilation and the administration of 100% oxygen. Nitrite therapy (found in the cyanide antidote kit) has been suggested as a therapy for hydrogen sulfide exposure. Amyl nitrite is given by inhalation (for 30 seconds every minute until an intravenous line is established) followed by intravenous sodium nitrite (300 mg over absolutely no less than 5 minutes). This may aid recovery by forming sulfmethemoglobin, thus removing sulfide from combination in tissue. The antidotal efficacy of nitrite therapy is controversial, but is currently recommended if it can be started within the first few minutes after exposure. Nitrite therapy should not be allowed to interfere with the establishment of adequate ventilation and oxygenation. (*Source: ATSDR Toxic Substances Portal – Hydrogen Sulfide*).

Exposure Monitoring

Federal regulations (29 CFR 1910.1028) specify medical surveillance programs for certain exposures to benzene above the action level or PEL (specified in Section (i)(1)(i) of the Standard). In addition, employees exposed in an emergency situation shall, as described in Section (i)(4)(i), provide a urine sample at the end of the shift for measurement of urine phenol.

Medical Conditions Aggravated by Exposure

Conditions which may be aggravated by exposure include skin disorders and eye disorders. Exposure to high concentrations of this material may increase the sensitivity of the heart to certain drugs.

Other Comments

Before attempting rescue, first responders should be alert to the possible presence of hydrogen sulfide, a poisonous gas, and should consider the need for respiratory protection (see Section 8).

SECTION 5 — FIRE FIGHTING MEASURES

NFPA 704 Hazard Class:

Health:	1 (Slight)
Flammability:	3 (Serious)
Instability:	0 (Minimal)

Unusual Fire and Explosion Hazards

Flash point and explosive limits are highly dependent on the source. Unless otherwise indicated, treat as a FLAMMABLE LIQUID. This material can be ignited by heat, sparks, flames, or other sources of ignition. Vapors may travel considerable distances to a source of ignition where they can ignite, flash back, or explode. This substance may create a vapor/air explosion hazard indoors, in confined spaces, outdoors, or in sewers. Vapors are heavier than air and can accumulate in low areas. If container is not properly cooled, it can rupture in the heat of a fire. This substance will float and can be reignited on surface water. Hazardous combustion/decomposition products, including hydrogen sulfide, may be released by this material when exposed to heat or fire. Use caution and wear protective clothing, including respiratory protection.

Extinguishing Media

Dry chemical, carbon dioxide, or foam and water streams is recommended. Water spray is recommended to cool or protect exposed materials or structures. Carbon dioxide can displace oxygen; use caution when applying carbon dioxide in confined spaces. Water alone may be ineffective for extinguishment.

Protection of Firefighters

For fires beyond the initial stage, emergency responders in the immediate hazard area should wear protective clothing. When the potential chemical hazard is unknown, in enclosed or confined spaces, a self-contained breathing apparatus should be worn. In addition, wear other appropriate protective equipment as conditions warrant (see Section 8).

Firefighting Procedures

Small fires in the incipient (beginning) stage may typically be extinguished using handheld portable fire extinguishers and other fire fighting equipment. For larger fires, isolate immediate hazard area and keep unauthorized personnel out. Stop spill/release if it can be done safely. Move undamaged containers from immediate hazard area if it can be done safely. Water spray may be useful in minimizing or dispersing vapors and to protect personnel. Cool equipment exposed to fire with water, if it can be done safely. Avoid spreading burning liquid with water used for cooling purposes. For massive fires, the use of unmanned hose holders or monitor nozzles may be advantageous to further minimize personnel exposure. Major fires may require withdrawal, allowing the tank to burn. Large storage tank fires typically require specially trained personnel and equipment to extinguish the fire, often including the need for properly applied fire fighting foam.

Other Information

Combustion Products: Smoke, carbon monoxide, carbon dioxide, and other products of incomplete combustion. Hydrogen sulfide and oxides of nitrogen and sulfur may be formed.

Flammable Properties: See Section 9 for Flash Point, Flammable/Explosive Limits, etc.

SECTION 6 — ACCIDENTAL RELEASE MEASURES

Personal Precautions

Spillages of liquid product will create a fire hazard and may form an explosive atmosphere. Keep all sources of ignition and hot metal surfaces away from spill/release if safe to do so. The use of explosion-proof electrical equipment is recommended. May contain or release poisonous hydrogen sulfide gas. If the presence of dangerous amounts of hydrogen sulfide around the spilled product is suspected, additional or special actions may be warranted, including access restrictions and use of protective equipment. Stay upwind and away from spill/release. Avoid direct contact with material. For large spillages, notify persons down wind of the spill/release, isolate immediate hazard area, and keep unauthorized personnel out. Wear appropriate protective equipment, including respiratory protection, as conditions warrant (see Section 8).

Environmental Precautions

Stop spill/release if it can be done safely. Prevent spilled material from entering sewers, storm drains, other unauthorized drainage systems, and natural waterways. Use foam on spills to minimize vapors. Use water sparingly to minimize environmental contamination and reduce disposal requirements. If spill occurs on water notify appropriate authorities and advise shipping of any hazard. Spills into or upon navigable waters, the contiguous zone, or adjoining shorelines that cause a sheen or discoloration on the surface of the water, may require notification of the United States National Response Center (phone number: 800.424.8802).

Containment Procedures

Carefully contain and stop the source of the spill, if safe to do so. Protect bodies of water by diking, absorbents, or absorbent boom, if possible. Do not flush down sewer or drainage systems, unless system is designed and permitted to handle such material. The use of fire fighting foam may be useful in certain situations to reduce vapors. The proper use of water spray may effectively disperse product vapors or the liquid itself, preventing contact with ignition sources or areas/equipment that require protection – do not discharge solid water stream patterns into the liquid resulting in splashing.

Clean-up Procedures

Notify relevant authorities in accordance with all applicable regulations. Immediate cleanup of any spill is recommended. Take up with sand or other oil absorbing materials. Carefully shovel, scoop or sweep up into a waste container for reclamation or disposal. Response and clean-up crews must be properly trained and must utilize proper protective equipment (see Section 8).

SECTION 7 — HANDLING AND STORAGE

Handling

Flammable. May vaporize easily at ambient temperatures. The vapor is heavier than air and may create an explosive mixture of vapor and air. Beware of accumulation in confined spaces and low lying areas. Open container slowly to relieve any pressure. Do not enter confined spaces such as tanks or pits without following proper entry procedures such as ASTM D-4276 and OSHA 29 CFR 1910.146. Keep away from heat, sparks, and open flame. Electrical equipment should be approved for classified area. Take precautionary measures against static discharge. Bond and ground containers during product transfer to reduce the possibility of static-initiated fire or explosion. Refer to NFPA-70 and/or API RP 2003 for specific bonding/grounding requirements. Non-sparking tools should be used. Do not wear contaminated clothing or shoes. Keep contaminated clothing away from sources of ignition such as sparks or open flames.

Obtain special instructions before use. Do not handle until all safety precautions have been read and understood. May contain or release dangerous levels of hydrogen sulfide. Avoid breathing vapors or mists. Use only outdoors or in well-ventilated area. Wear protective gloves/clothing and eye/face protection. Wash thoroughly after handling. Use good personal hygiene practices and wear appropriate personal protective equipment.

Storage

This material may contain or release poisonous hydrogen sulfide gas. In a tank, barge, or other closed container, the vapor space above this material may accumulate hazardous concentrations of hydrogen sulfide. Check atmosphere for oxygen content, hydrogen sulfide, and flammability prior to entry. Confined spaces should be ventilated prior to entry. Keep container(s) tightly closed and properly labeled. Use and store this material in cool, dry, well-ventilated areas away from heat, direct sunlight, hot metal surfaces, and all sources of ignition. Store only in approved containers. The storage area should comply with NFPA 30 "Flammable and Combustible Liquids Code." Post area "No Smoking or Open Flame." Keep away from any incompatible material (see Section 10). Protect container(s) against physical damage. Outdoor or detached storage is preferred. Indoor storage should meet OSHA standards and appropriate fire codes.

"Empty" containers retain residue and may be dangerous. Do not pressurize, cut, weld, braze, solder, drill, grind, or expose such containers to heat, flame, sparks, or other sources of ignition. They may explode and cause injury or death. The cleaning of containers previously containing this product should follow API STD 2015 "Safe Entry and Cleaning of Petroleum Storage Tanks." All containers should be disposed of in an environmentally safe manner and in accordance with governmental regulations. Before working on or in tanks which contain or have contained this material, refer to OSHA regulations, ANSI Z49.1, and other references pertaining to cleaning, repairing, welding, or other contemplated operations.

SECTION 8 — EXPOSURE CONTROLS / PERSONAL PROTECTION

Suggestions provided in this section for exposure control and specific types of protective equipment are based on readily available information. Users should consult with the specific manufacturer to confirm the performance of their protective equipment. Specific situations may require consultation with industrial hygiene, safety, or engineering professionals.

Personal Protective Equipment



Respiratory Protection:

Avoid breathing dust, fume, gas, mist, vapors, and/or spray. Obtain special instructions before use. If engineering controls do not maintain airborne concentrations below recommended exposure limits (where applicable) or to an acceptable level (in countries where exposure limits have not been established), an approved respirator must be worn. Where there is potential for airborne exposure to hydrogen sulfide above exposure limits, a NIOSH approved, self-contained breathing apparatus (SCBA) or equivalent operated in a pressure demand or other positive pressure mode should be used. Under conditions where hydrogen sulfide is not detected, a NIOSH certified air purifying respirator equipped with organic vapor cartridges/canisters may be used. In the United States, if respirators are used, a program should be instituted to assure compliance with OSHA 29 CFR 1910.134. If benzene concentrations equal or exceed applicable exposure limits, OSHA requirements for personal protective equipment, exposure monitoring, and training may apply (OSHA 29 CFR 1910.1028 – Benzene).

Eye/Face Protection:

The use of eye protection (such as splash goggles) that meets or exceeds ANSI Z.87.1 is recommended when there is potential liquid contact to the eye. Depending on conditions of use, a face shield may be necessary.

Skin Protection:

The use of gloves impervious to the specific material handled is advised to prevent skin contact. Users should check with manufacturers to confirm the breakthrough performance of their products. Apron and long sleeves are recommended.

General Considerations:

When using, do not eat, drink or smoke. Always observe good personal hygiene measures, such as washing after handling the material and before eating, drinking, and/or smoking. Routinely wash work clothing and protective equipment to remove contaminants. Handle in accordance with good industrial hygiene and safety practice.

Engineering Controls

Use process enclosures, local exhaust ventilation, or other engineering controls to control airborne levels below recommended exposure limits. Provide adequate ventilation and minimize the risk of inhalation of vapors and mists. If current ventilation practices are not adequate to maintain airborne concentrations below the established exposure limits, additional engineering controls may be required.

Exposure Limits / Guidelines

Component	ACGIH	NIOSH	OSHA
Petroleum (8002-05-9)	Not established	CEIL: 1800 mg/m ³ TWA: 350 mg/m ³	Not established
Hexane (110-54-3)	TWA: 50 ppm	TWA: 50 ppm	TWA: 500 ppm
Benzene (71-43-2)	TWA: 0.5 ppm STEL: 2.5 ppm	TWA: 0.1 ppm STEL: 1 ppm	TWA: 1 ppm STEL: 5 ppm
Ethylbenzene (100-41-4)	TWA: 20 ppm	TWA: 100 ppm STEL: 125 ppm	TWA: 100 ppm
Toluene (108-88-3)	TWA: 20 ppm	TWA: 100 ppm STEL: 150 ppm	TWA: 200 ppm CEIL: 500 ppm
Xylenes (1330-20-7)	TWA: 100 ppm STEL: 150 ppm	Not established	TWA: 100 ppm
Hydrogen sulfide (7783-06-4)	TWA: 1 ppm STEL: 5 ppm	CEIL: 10 ppm	CEIL: 20 ppm

Note: State, local, or other agencies or advisory groups may have established more stringent limits. Consult an industrial hygienist or similar professional, or your local agencies, for further information.

Supplemental Information

Notations		
Component	Carcinogenicity	Skin / Sensitization
Petroleum (8002-05-9)	Not established	Not established
Hexane (110-54-3)	Not established	Potential significant contribution to overall exposure by the cutaneous route (ACGIH Skin Notation).
Benzene (71-43-2)	Confirmed human carcinogen (ACGIH A1).	Potential significant contribution to overall exposure by the cutaneous route (ACGIH Skin Notation).
Ethylbenzene (100-41-4)	Confirmed animal carcinogen with unknown relevance to humans (ACGIH A3).	Not established
Toluene (108-88-3)	Not classifiable as a human carcinogen (ACGIH A4).	Not established
Xylenes (1330-20-7)	Not classifiable as a human carcinogen (ACGIH A4).	Not established
Hydrogen sulfide (7783-06-4)	Not established	Not established

SECTION 9 — PHYSICAL AND CHEMICAL PROPERTIES

Physical Form:	Liquid
Color:	Varies (Amber / Brown / Black)
Odor:	Petroleum
Molecular Weight:	Varies
Boiling Point:	500 – 590 °C (932 – 1094 °F)
Melting Point:	-60 – -20 °C (-76 – -4 °F)
Specific Gravity:	0.63 – 2.00 @ 20 °C (68 °F)
Bulk Density:	5.25 – 9.18 lbs/gal
pH:	No data available
Water Solubility:	Negligible
Viscosity:	No data available
Partition Coefficient:	<0.1 (Water/Oil)
Vapor Pressure:	No data available
Vapor Density:	1.0 – 5.0
Evaporation Rate:	No data available
Volatiles:	No data available
Flash Point:	-40 – 100 °C (-40 – 212 °F)
Flash Point Test Method:	Estimate
Explosive Limits:	0.4% (LEL) – 15% (UEL)
Autoignition:	220 – 310 °C (428 – 590 °F)

SECTION 10 — STABILITY AND REACTIVITY

Stability:	Stable under normal ambient and anticipated conditions of use.
Conditions to Avoid:	Avoid high temperatures and all sources of ignition. Prevent vapor accumulation.
Incompatible Materials:	Avoid contact with strong oxidizing agents and strong reducing agents.
Hazardous Polymerization:	Not known to occur.

SECTION 11 — TOXICOLOGICAL INFORMATION

General Toxicity

Signs and Symptoms:	Effects of overexposure may include irritation of the digestive tract, irritation of the respiratory tract, nausea, vomiting, diarrhea and signs of nervous system depression (e.g., headache, drowsiness, dizziness, loss of coordination, disorientation and fatigue).
Aspiration Hazard:	May be fatal if swallowed and enters airways.
Skin Sensitization:	Not expected to be a skin sensitizer.
Respiratory Sensitization:	No data available.
Specific Target Organs:	At high concentrations (500 - 1000 ppm), hydrogen sulfide acts as a systemic poison, causing unconsciousness and death. In lower concentrations (50 – 500 ppm), hydrogen sulfide acts as a respiratory irritant, and may cause fluid in the lungs or bronchial pneumonia. Chronic exposure to hydrogen sulfide of 50 ppm or greater may include bronchitis and inflammation of the mucous membrane of the respiratory system. At 250 ppm hydrogen sulfide, chronic effects may include bronchial pneumonia and pulmonary edema.
Carcinogenicity:	May cause cancer, based on component information. Chronic application of crude oil to mouse skin resulted in an increased incidence of skin tumors. IARC concluded in its Crude Oil Monograph that there is limited evidence of carcinogenicity in animals, and that crude oil is not classifiable as to its carcinogenicity in humans (Group 3). It has not been listed as a carcinogen by NTP or OSHA.
Germ Cell Mutagenicity:	No data available.
Reproductive Toxicity:	No data available. Dermal exposure to crude oil during pregnancy resulted in limited evidence of developmental toxicity in laboratory animals. Decreased fetal weight and increased resorptions were noted at maternally toxic doses. No significant effects on pup growth or other developmental landmarks were observed postnatally.

Other Comments

This material may contain or liberate hydrogen sulfide, a poisonous gas with the smell of rotten eggs. The smell disappears rapidly because of olfactory fatigue so odor may not be a reliable indicator of exposure. Effects of overexposure include irritation of the eyes, nose, throat and respiratory tract, blurred vision, photophobia (sensitivity to light), and pulmonary edema (fluid accumulation in the lungs). Severe exposures can result in nausea, vomiting, muscle weakness or cramps, headache, disorientation and other signs of nervous system depression, irregular heartbeats, convulsions, respiratory failure, and death.

This material may contain varying concentrations of polycyclic aromatic hydrocarbons (PAHs), which have been known to produce a phototoxic reaction when contaminated skin is exposed to sunlight. The effect is similar in appearance to an exaggerated sunburn, and is temporary in duration if exposure is discontinued. Continued exposure to sunlight can result in more serious skin problems including pigmentation (discoloration), skin eruptions (pimples), and possible skin cancers.

This material may contain trace amounts of heavy metals, some of which may concentrate in vessels and equipment during production and processing operations. While some of these metals are known toxins, the hazard is dependent upon the extent of accumulation. Significant deposits of elemental mercury have the potential to create airborne vapors of the metal, which might result in a hazardous condition. Overexposure to mercury is known to cause neurologic effects and damage the kidneys and developing fetus.

Toxicological Effects of Components

Toxicological Information		
Component	Category	Data
Petroleum (8002-05-9)	Exposure Routes	Inhalation, ingestion, skin, and/or eye contact.
	Symptoms	Irritation eyes, nose, throat; dizziness, drowsiness, headache, nausea; dry cracked skin; chemical pneumonitis (aspiration liquid).
	Target Organs	Eyes, skin, respiratory system, central nervous system.
	Short-Term Exposure	No data available.
	Long-Term Exposure	No data available.
Hexane (110-54-3)	Exposure Routes	Inhalation, ingestion, skin, and/or eye contact.
	Symptoms	Irritation eyes, nose; nausea, headache; peripheral neuropathy: numb extremities, muscle weak; dermatitis; dizziness; chemical pneumonitis (aspiration liquid).
	Target Organs	Eyes, skin, respiratory system, central nervous system, peripheral nervous system.
	Short-Term Exposure	The substance irritates the skin. Swallowing the liquid may cause aspiration into the lungs with the risk of chemical pneumonitis. Exposure at high levels could cause lowering of consciousness.
	Long-Term Exposure	Repeated or prolonged contact with skin may cause dermatitis. The substance may have effects on the central nervous system and especially peripheral nervous system, resulting in polyneuropathy. Animal tests show that this substance possibly causes toxic effects upon human reproduction.
Benzene (71-43-2)	Exposure Routes	Inhalation, skin absorption, ingestion, skin, and/or eye contact.
	Symptoms	Irritation eyes, skin, nose, respiratory system; dizziness; headache, nausea, staggered gait; anorexia, lassitude (weakness, exhaustion); dermatitis; bone marrow depression; [potential occupational carcinogen].
	Target Organs	Eyes, skin, respiratory system, blood, central nervous system, bone marrow.
	Short-Term Exposure	The substance is irritating to the eyes, the skin and the respiratory tract. Swallowing the liquid may cause aspiration into the lungs with the risk of chemical pneumonitis. The substance may cause effects on the central nervous system, resulting in lowering of consciousness. Exposure far above the occupational exposure limit value may result in unconsciousness and death.
	Long-Term Exposure	The liquid defats the skin. The substance may have effects on the bone marrow and immune system, resulting in a decrease of blood cells. This substance is carcinogenic to humans..
Ethylbenzene (100-41-4)	Exposure Routes	Inhalation, ingestion, skin, and/or eye contact.
	Symptoms	Irritation eyes, skin, mucous membrane; headache; dermatitis; narcosis, coma.
	Target Organs	Eyes, skin, respiratory system, central nervous system.

	Short-Term Exposure	The substance is irritating to the eyes, the skin and the respiratory tract. Swallowing the liquid may cause aspiration into the lungs with the risk of chemical pneumonitis. The substance may cause effects on the central nervous system. Exposure above the OEL could cause lowering of consciousness.
	Long-Term Exposure	This substance is possibly carcinogenic to humans. The substance may have effects on the kidneys and liver, resulting in impaired functions. Repeated contact with skin may cause dryness and cracking.
Toluene (108-88-3)	Exposure Routes	Inhalation, skin absorption, ingestion, skin, and/or eye contact.
	Symptoms	Irritation eyes, nose; lassitude (weakness, exhaustion), confusion, euphoria, dizziness, headache; dilated pupils, lacrimation (discharge of tears); anxiety, muscle fatigue, insomnia; paresthesia; dermatitis; liver, kidney damage.
	Target Organs	Eyes, skin, respiratory system, central nervous system, liver, kidneys.
	Short-Term Exposure	The substance is irritating to the eyes and the respiratory tract. The substance may cause effects on the central nervous system. If this liquid is swallowed, aspiration into the lungs may result in chemical pneumonitis. Exposure at high levels may result in cardiac dysrhythmia and unconsciousness.
	Long-Term Exposure	The liquid defats the skin. The substance may have effects on the central nervous system. Exposure to the substance may enhance hearing damage caused by exposure to noise. Animal tests show that this substance possibly causes toxicity to human reproduction or development.
Xylenes (1330-20-7)	Exposure Routes	No data available.
	Symptoms	No data available.
	Target Organs	No data available.
	Short-Term Exposure	No data available.
	Long-Term Exposure	No data available.
Hydrogen sulfide (7783-06-4)	Exposure Routes	Inhalation, skin, and/or eye contact.
	Symptoms	Irritation eyes, respiratory system; apnea, coma, convulsions; conjunctivitis, eye pain, lacrimation (discharge of tears), photophobia (abnormal visual intolerance to light), corneal vesiculation; dizziness, headache, lassitude (weakness, exhaustion), irritability, insomnia; gastrointestinal disturbance; liquid: frostbite.
	Target Organs	Eyes, respiratory system, central nervous system.
	Short-Term Exposure	The substance is irritating to the eyes and the respiratory tract. The substance may cause effects on the central nervous system. Exposure may result in unconsciousness. Exposure may result in death. Inhalation of gas may cause lung oedema. The effects may be delayed. Medical observation is indicated. Rapid evaporation of the liquid may cause frostbite..
	Long-Term Exposure	No data available.

Note: Data for Exposure Routes, Symptoms, and Target Organs were obtained from the NIOSH Pocket Guide to Chemical Hazards. Data for Short- and Long-Term Exposure were obtained from the International Chemical Safety Cards from the International Occupational Safety and Health Information Centre.

SECTION 12 — ECOLOGICAL INFORMATION

Toxicity:	Experimental studies of acute aquatic toxicity show values for crude oil in the range of 10 to over 100 mg/L. Crude oil should be regarded as harmful to aquatic organisms, with the potential to cause long-term adverse effects.
Persistence & Degradability:	Most crude oils are not regarded as readily biodegradable, however low molecular weight components may be biodegradable.
Bioaccumulative Potential:	Hydrocarbon components in this substance have the potential to bioaccumulate.
Mobility:	Crude oil spreads as a film on the surface of water, facilitating loss of its lighter components by volatilization. In air, the volatile hydrocarbons undergo photodegradation. The lower molecular weight aromatic hydrocarbons and some polar compounds have low but significant water solubility. Some higher molecular weight compounds are removed by emulsification and these also slowly biodegrade; others adsorb to sediment and sink. A further removal process from water involving the heavier fraction is agglomeration to form tars, some of which sink.
Other Adverse Effects:	None anticipated.

SECTION 13 — DISPOSAL CONSIDERATIONS

The generator of a waste is always responsible for making proper hazardous waste determinations and must consider state and local requirements in addition to federal regulations.

This material, if discarded as produced, would not be a federally regulated RCRA "listed" hazardous waste. However, it would likely be identified as a federally regulated RCRA hazardous waste for the following characteristic(s) shown below. See Sections 7 and 8 for information on handling, storage and personal protection and Section 9 for physical/chemical properties. It is possible that the material as produced contains constituents which are not required to be listed in the MSDS but could affect the hazardous waste determination.

Container contents should be completely used and containers should be emptied prior to discard. Container residues and rinseates could be considered to be hazardous wastes.

EPA Waste Number(s):	D001 - Ignitability characteristic D018 - Toxicity characteristic (Benzene)
----------------------	--

SECTION 14 — TRANSPORTATION INFORMATION

DOT – United States – Department of Transportation

Shipping Name: PETROLEUM CRUDE OIL

ID Number: UN1267

Hazard Class: 3

Packing Group: I or II

Note: Some states may require UN1203 in some situations. Contact each jurisdiction for more information.

SECTION 15 — REGULATORY INFORMATION**United States Regulations**

CERCLA/SARA Section 311/312 (Title III Hazard Categories)

Acute Health:	Yes
Chronic Health:	Yes
Fire Hazard:	Yes
Pressure Hazard:	No
Reactive Hazard:	No

This material may contain one or more of the following chemicals identified by the EPA under Title 40 of the Code of Federal Regulations (CFR), including the CAA (40 CFR 50-97), CERCLA (40 CFR 302.4), SARA Section 302 (40 CFR 355 Appendix A), SARA Section 313 (40 CFR 372.65), and/or TSCA (40 CFR 700-766).

Components Listed by Selected Parts of US 40 CFR					
Component	CAA	CERCLA	SARA Section 302	SARA Section 313	TSCA
Hexane (110-54-3)	Yes	5000 lb final RQ	Not listed	1.0 % de minimis concentration	No
Benzene (71-43-2)	Yes	10 lb final RQ (received an adjusted RQ of 10 lbs based on potential carcinogenicity in an August 14, 1989 final rule)	Not listed	0.1 % de minimis concentration	No
Ethylbenzene (100-41-4)	Yes	1000 lb final RQ	Not listed	0.1 % de minimis concentration	Yes
Toluene (108-88-3)	Yes	1000 lb final RQ	Not listed	1.0 % de minimis concentration	No
Xylenes (1330-20-7)	Yes	100 lb final RQ	Not listed	1.0 % de minimis concentration	No
Hydrogen sulfide (7783-06-4)	No	100 lb final RQ	100 lb EPCRA RQ 500 lb TPQ	Not listed	No

This material may contain one or more of the following chemicals identified on individual state hazardous substances lists. Contact each jurisdiction for more information.

Hazardous Substance Lists						
Component	CA	MA	MN	NJ	PA	RI
Petroleum (8002-05-9)	No	Yes	Yes	Yes	Yes	Yes
Hexane (110-54-3)	No	Yes	Yes	Yes	Yes	Yes
Benzene (71-43-2)	Yes	Yes	Yes	Yes	Yes	Yes
Ethylbenzene (100-41-4)	Yes	Yes	Yes	Yes	Yes	Yes

Toluene (108-88-3)	Yes	Yes	Yes	Yes	Yes	Yes
Xylenes (1330-20-7)	No	Yes	Yes	Yes	Yes	Yes
Hydrogen sulfide (7783-06-4)	No	Yes	Yes	Yes	Yes	Yes

The following statement(s) are provided under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):

WARNING! This product contains a chemical known to the state of California to cause cancer.

WARNING! This product contains a chemical known to the state of California to cause reproductive/developmental effects.

SECTION 16 — OTHER INFORMATION

Version Information

Version: 1.0
Date of Issue: 2011-08-02
Status: FINAL

Guide to Abbreviations

ACGIH	American Conference of Governmental Industrial Hygienists
ANSI	American National Standards Institute
API	American Petroleum Institute
ATSDR	Agency for Toxic Substances and Disease Registry (United States)
CAA	Clean Air Act (United States)
CAS	Chemical Abstracts Service
CEIL	Ceiling Exposure Limit
CERCLA	The Comprehensive Environmental Response, Compensation, & Liability Act (United States)
CFR	Code of Federal Regulations (United States)
EINECS	European chemical Substances Information System
EPA	Environmental Protection Agency (United States)
GHS	Globally Harmonized System
IARC	International Agency for Research on Cancer
IOPC	International Oil Pollution Compensation
LEL	Lower Explosive Limit
NFPA	National Fire Protection Association
NTP	National Toxicology Program (United States)
OSHA	Occupational Safety and Health Administration (United States)
PEL	Permissible Exposure Limit (OSHA)
RQ	Reportable Quantity
SARA	Superfund Amendments and Reauthorization Act (United States)
STEL	Short Term Exposure Limit (15 minutes)
TLV	Threshold Limit Value (ACGIH)
TPQ	Threshold Planning Quantity
TSCA	Toxic Substances Control Act (United States)
TWA	Time Weighted Average (8 hours)
UEL	Upper Explosive Limit
UN	United Nations

Disclaimer / Statement of Liability

The information presented in this (Material) Safety Data Sheet is based on data believed to be accurate as of the date this (Material) Safety Data Sheet was prepared. However, neither Continental Resources, Inc., nor any of their subsidiaries, vendors, or contractors, assumes any liability whatsoever for the accuracy or completeness of the information contained herein. No responsibility is assumed for any damage or injury resulting from abnormal use or from any failure to adhere to recommended practices. The information provided above, and the product, are furnished on the condition that the person receiving them shall make their own determination as to the suitability of the product for their particular purpose and on the condition that they assume the risk of their use.