

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CITY OF OZARK, a municipal)
corporation)
Plaintiff,)
vs.) Civil Action No.
2:14-cv-02196-TLB
UNION PACIFIC RAILROAD COMPANY,)
ARKANSAS STATE HIGHWAY)
COMMISSION, as the Governing)
Body of the ARKANSAS STATE)
HIGHWAY AND TRANSPORTATION)
DEPARTMENT)
Defendants.)

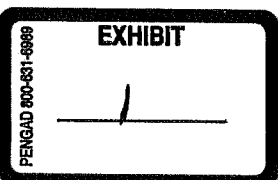
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VIDEOTAPED ORAL DEPOSITION OF
GEORGE B. SOLIZ
February 5, 2015

* * * * *

VIDEOTAPED ORAL DEPOSITION OF GEORGE B. SOLIZ,
produced as a witness at the instance of the Defendant
Union Pacific Railroad and duly sworn, was taken in
the above-styled and numbered cause on February 5,
2015, from 9:06 a.m. until 2:18 p.m., before Suzanne
Kelly, CSR No. 1260, in and for the State of Texas,
reported by stenographic method, at the Hampton Inn &
Suites, located at 1996 W. Henderson, Cleburne, Texas,
pursuant to Texas Rules of Civil Procedure and the
provisions stated on the record, if any.

JOB NO.: 2003936



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1 APPEARANCES

2

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8	demand letter from		
9	Janie Jones, dated		
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11	Exhibit 8 A copy of a nine-page	65	
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Page 10 1 Houston. 2 Q. How long did you live there? 3 A. Let's see. From 1982 to 2013. 4 Q. Mr. Soliz, did you attend high school? 5 A. Yes, I did. 6 Q. Where did you? 7 A. Graduated out of Rio Vista High School. 8 Q. Rio Vista? 9 A. Rio Vista, R-i-o V-i-s-t-a. 10 Q. And what town is that in? 11 A. Rio Vista. 12 Q. All right. What year did you graduate? 13 A. 1964. 14 Q. Did you attend college? 15 A. No. I did not. 16 Q. Other than high school, did you have any 17 other formal education? 18 A. No, I do not. 19 Q. What was your first job out of high 20 school? 21 A. I went to work for a range air company 22 called "Range Air," I think, in Cleburne Texas. 23 Q. Are you saying "Ranger"? 24 A. Range Air. Yeah. 25 Q. How long did you do that?	Page 12 1 do with grade crossings, did it? 2 A. No, sir. 3 Q. What was your next job with ATSF? 4 A. I started serving a four-year mechanical 5 apprenticeship with Santa Fe. 6 Q. That would have been about 1966? 7 A. Yes, sir. 8 Q. You said it was a four-year mechanical 9 apprenticeship? 10 A. Yes, sir. 11 Q. And was the intent that when you 12 finished those four years, you would be a carman 13 or some other type of -- 14 A. Well, then it would be classified as a 15 machinist. 16 Q. Your apprenticeship wouldn't have 17 anything to do with railroad grade crossings. 18 Would it? 19 A. No, sir. 20 Q. Did you successfully complete that 21 mechanical apprenticeship? 22 A. Yes, sir. 23 Q. Did you become a machinist? 24 A. Yes, sir. 25 Q. Would I call that "journeyman
Page 11 1 A. Maybe nine months. 2 Q. Did it have anything to do with the 3 railroad industry? 4 A. No. It did not. 5 Q. What was your next job? 6 A. Went to work for the Santa Fe Railroad, 7 actually, it's the Atchison, Topeka and Santa Fe 8 Railroad Company. 9 Q. Also called "ATSF"? 10 A. That's correct. 11 Q. What year did you go to work for ATSF? 12 A. 1965. 13 Q. And what was your position when you 14 joined? 15 A. Well, when I first started, I started 16 out as a laborer. 17 Q. How long did you do that? 18 A. Maybe eight months. 19 Q. Where were you when you started out as a 20 laborer for ATSF? 21 A. In the Locomotive Department. 22 Q. What town? 23 A. Cleburne, Texas. 24 Q. Working as a laborer in the Locomotive 25 Department of ATSF, that didn't have anything to	Page 13 1 machinist"? 2 A. Yes, sir. 3 Q. What year did you complete your 4 apprenticeship? 5 A. 1970. 6 Q. Where did you go to work as a machinist 7 in 1970? 8 A. At the Cleburne shops. 9 Q. What type of equipment did you work on? 10 A. We worked on locomotives. 11 Q. Would that include things like accident 12 damage? 13 A. To some extent, some, yes. 14 Q. Well, what other types of work did you 15 do as a machinist in the locomotive shop in 16 Cleburne? 17 A. Well, we serviced locomotives, done 18 30-day periodic inspections, mechanical federal 19 inspections on locomotives, just maintain 20 locomotives or the maintenance of locomotives. 21 Q. All right, sir. How long did you work 22 in that job as a machinist for the ATSF? 23 A. I guess up to 1974. 24 Q. What happened in 1974? 25 A. I went to work for the Federal Railroad

Page 14 1 Administration. 2 Q. Why was it that you left the ATSF? 3 A. Why? 4 Q. Yes, sir. 5 A. Well, I thought -- I thought I was 6 bettering myself by going to work for the FRA. 7 Q. When you joined the FRA in 1974, what 8 was your job title? 9 A. I was a Safety Inspector. 10 Q. Safety Inspector? 11 A. Actually MP & E motive, power and 12 equipment safety inspector. 13 Q. Describe what a motive, power and 14 equipment safety inspector does. 15 A. Well, the responsibilities was to 16 inspect locomotives, freight cars, investigate 17 accidents, grade crossing accidents. 18 Investigate complaints, investigate 19 fatalities. 20 More so just regular inspections. 21 Q. Going back to your job as a machinist 22 with ATSF. That didn't have anything to do with 23 railroad grade crossings. Did it? 24 A. No, sir. 25 Q. I take it the primary job of MP & E	Page 16 1 Q. Did you ever have the responsibility as 2 an MP & E safety inspector -- well, strike that. 3 Let me go back. 4 When you went to a grade crossing 5 accidents as an MP & E safety inspector, was your 6 job to look at the locomotive? 7 A. Yes, sir. 8 Q. Your job was not to look at the crossing 9 to see if it had any features to it that caused 10 the accident. Correct? 11 A. Well, no, several things we did. We 12 wanted -- we wanted to see if the horn was 13 sounded, the bell was ringing. 14 We wanted to check if it had 15 automatic crossing protection that it functioned 16 as -- as intended. 17 Q. But that wouldn't be your job? You 18 didn't have expertise in signals. Did you? 19 A. No, sir, I didn't. If I thought I had a 20 problem, you know, I would call in a signal 21 inspector to test the equipment. 22 Q. When you say "the equipment," you mean 23 the signals? 24 A. That's correct. 25 Q. Okay. You didn't have any expertise in
Page 15 1 safety inspector is to ensure that a railroad's 2 locomotives are safe to go out over-the-road or 3 in the yard. Is that correct? 4 A. Correct. 5 Q. I've been to a lot of grade crossing 6 accidents in the last 28 years. I've never once 7 seen an FRA person there conducting an 8 inspection. 9 When you were an MPE safety 10 inspector for the FRA, how many years did you do 11 that? 12 A. As an inspector? 13 Q. Yes, sir. From 1974 until when? 14 A. 1982. Excuse me. 1989. 15 Q. Fifteen years, roughly? 16 A. Yes. 17 Q. During those 15 years, how many times do 18 you think, as an FRA, MP & E safety inspector you 19 actually went to the scene of a grade crossing 20 accident? 21 A. Probably about 15. Maybe 20 times. 22 Q. Were those here in Texas? 23 A. The majority of them, yes. 24 Q. Did you ever come to any in Arkansas? 25 A. No, sir.	Page 17 1 track to see if maybe the track had contributed a 2 crossing accident. Did you? 3 A. If I thought the track was at issue, I'd 4 call a track inspector. 5 Q. Right. Your expertise was in 6 locomotives. Correct? 7 A. That is correct. 8 Q. You didn't have expertise in the design 9 and layout and function of the actual grade 10 crossings? 11 A. No, sir. 12 Q. Okay. After 1989, Mr. Soliz, did your 13 job change at the FRA? 14 A. Yes, sir. 15 Q. And I -- let me go back to the MP & E 16 safety inspector. Where were you located? 17 A. I first went to -- when I took -- took 18 the job with the FRA, I was headquartered out of 19 Louisville, Kentucky. I worked there for about 20 four and a half years. I moved from Louisville, 21 Kentucky, to Houston, Texas. There, I worked 22 there maybe five or six years and then I asked 23 for a lateral transfer to the Fort Worth area. 24 From the Fort Worth area, I was 25 promoted to the Chief Inspector. And that was in

Page 18 1 1989, I think, to Los Angeles, L.A., California. 2 And I stayed there probably two and a half years. 3 Q. Two and a half? 4 A. Yeah. 5 Q. So that takes us up to about 1992? 6 A. Yes, sir. 7 Q. Before -- before we go any farther, you 8 said in 1989, you were promoted to Chief 9 Inspector? 10 A. Well, Chief Inspector. At that time, 11 they called it "District Chief." And we had a 12 title change while I was there at L.A., and they 13 renamed us to Chief Inspectors. 14 Q. Were you still in the group of MP & E? 15 A. No, sir. I was in charge of all of the 16 duty disciplines. 17 Q. Tell me what those disciplines were. 18 A. There was the track discipline, the 19 signal discipline, hazardous materials 20 discipline, track discipline, and, of course, MP 21 & E, motor power and equipment. 22 Q. Let me make sure I wrote those down 23 correctly. You said the disciplines included 24 track, signal, haz-mat, MP & E? 25 A. That's correct.	Page 20 1 take it you were transferred? 2 A. Yes, sir. 3 Q. Okay. How long did you remain in the 4 Houston, Texas, office? 5 A. Until I retired in 2008. 6 Q. What was your job title from 1992 to 7 2008? 8 A. I served as a Chief Inspector and the 9 responsibility was to provide technical 10 information, technical advice to our regional 11 administrator. I reviewed accident reports 12 including the grade crossing accident. I was 13 assigned to conduct -- or to conduct special 14 inspections on railroads. I was also charged 15 with the responsibility of providing training for 16 a short line of railroads. 17 Q. How long were you Chief Inspector in 18 Houston, Texas, from 1998? Would that be until 19 you retired in 2008? 20 A. In 2008, yes, sir. 21 Q. I didn't know if your job title changed 22 at any time during that period. 23 A. No. 24 Q. Okay. And you said you would provide 25 information to the regional administrator of the
Page 19 1 Q. Any others? 2 A. No. I don't think so. 3 Q. So you supervised the people who were in 4 those different areas? 5 A. That's correct. 6 Q. How many track inspectors did you have? 7 A. I think I had three track inspectors. 8 Q. Signal inspectors? 9 A. Two, I think. 10 Q. Haz-mat? 11 A. Two. 12 Q. And MP & E? 13 A. Three. 14 Q. You held this position in Los Angeles 15 from 1989 to 1992? 16 A. Correct. 17 Q. Did you, yourself, go out to the scene 18 of grade crossing accidents while you were in 19 this role? 20 A. If I did, I can't remember one. 21 Q. All right. What happened in 1992, 22 Mr. Soliz? 23 A. I asked to be transferred to Houston, 24 Texas, office. 25 Q. You said you asked to be transferred. I	Page 21 1 FRA? 2 A. Technical advice, yes, sir. 3 Q. Review accident reports including 4 crossing accidents? 5 A. Correct. 6 Q. You didn't review all crossing accident 7 reports that happened in your region. Did you? 8 A. No. We had different areas of the 9 region assigned. Mine was pretty much the Texas 10 region. 11 Q. How many states did you have in your 12 region? 13 A. There was five states in Region 5. 14 Q. And what states were those? 15 A. There was Texas, Louisiana, Arkansas, 16 Oklahoma, New Mexico. 17 Q. Texas, Louisiana, Arkansas? 18 A. Did you get Louisiana? 19 Q. Yes, sir. Texas, Louisiana, Arkansas, 20 New Mexico and? 21 A. And Oklahoma. 22 Q. Okay. In your role as Chief Inspector 23 in Houston, Texas, from 1998 to 2000, did you 24 actually go to the scene to any grade crossing 25 accidents that happened?

Page 22

1 A. Yes. I did.
 2 Q. Approximately how many?
 3 A. I would just have to come up with a
 4 count. I mean maybe 25.
 5 Q. And what would be your purpose for going
 6 to those?
 7 A. It's not that the FRA investigated every
 8 railroad crossing and that it had to meet a
 9 certain criteria for the FRA to conduct an
 10 investigation. One of them is if a fatality was,
 11 you know, involved, or if the accident was going
 12 to receive news media or be something of interest
 13 to the public and then the FRA would assign the
 14 accident to an inspector.
 15 Q. Would the FRA -- the FRA had discretion
 16 whether to go or not go?
 17 A. That's correct.
 18 Q. In other words, just because a fatality
 19 happened didn't -- doesn't mean the FRA went to
 20 every fatality accident?
 21 A. No.
 22 Q. Okay.
 23 A. The only time it was -- if one fatality,
 24 again, if it was a newsworthy type accident, then
 25 the FRA would go. If it involved two fatalities,

Page 23

1 the FRA would go.
 2 Q. Were the disciplines that you supervised
 3 as Chief Inspector in Houston, Texas, those same
 4 disciplines that you supervised when you were
 5 Chief Inspector in Los Angeles?
 6 A. Okay. As a Chief Inspector, I had no
 7 supervisory responsibilities over the various
 8 inspectors. Well, one, a different title change,
 9 when the -- like I said, when I went to
 10 California, I was the District Chief, which gave
 11 me supervisory responsibilities over the various
 12 disciplines.
 13 When I -- when we had a title
 14 change to the Chief Inspector, that relieved us
 15 of the supervisory responsibilities.
 16 Q. And the title change happened when you
 17 were in Los Angeles?
 18 A. Yes, sir.
 19 Q. So when you came to Houston in 1998, you
 20 didn't have any supervisory responsibility over
 21 the FRA track inspectors or --
 22 A. You mean in 19 --
 23 Q. 19 --
 24 A. 19 -- what year did you say?
 25 Q. Let -- let me rephrase the question.

Page 24

1 You went to Los Angeles as a
 2 District -- District Chief in 1989.
 3 A. Correct.
 4 Q. While you were out there, the title
 5 changed to Chief Inspector.
 6 A. Correct.
 7 Q. Once the title changed, you no longer
 8 had supervisory responsibility over the different
 9 track inspectors, signal inspectors, those
 10 people.
 11 A. Unless I was assigned like one of the
 12 things that the Chief Inspector, you was always
 13 going to be assigned as the lead man or the
 14 person in charge at -- like at accident scene, or
 15 at special investigations or special inspections.
 16 You were going to be assigned the responsibility
 17 to oversee the -- the project or the
 18 investigation.
 19 Q. Of those 25 crossing accidents that you
 20 attended in Region 5, were any of them in
 21 Arkansas?
 22 A. No.
 23 Q. How many times were you assigned the
 24 Lead Investigator in those 25, approximately,
 25 crossing accidents?

Page 25

1 A. Well, pretty much every time, I was
 2 assigned as a Chief Investigator.
 3 Q. Of course, here again, you have no
 4 expertise in signal systems?
 5 A. That is correct.
 6 Q. And if you had a signal issue, you'd get
 7 with the FRA signal inspector and discuss it with
 8 him?
 9 A. That's correct.
 10 Q. You have no expertise in track issues?
 11 A. That's correct.
 12 Q. So if there was possibly a track issue,
 13 you would let your FRA track inspector deal with
 14 that issue?
 15 A. Correct.
 16 Q. Okay.
 17 A. One of the things as a Chief Inspector,
 18 you was cross-trained in various disciplines.
 19 You was cross-trained in track.
 20 You was cross-trained in signals,
 21 haz-mat, operating practices.
 22 And so, though, I didn't have an
 23 expertise in the -- in track inspection, I did
 24 have a good working knowledge to -- to the extent
 25 that if I had a track issue, I knew that I needed

Page 26 1 to call a track inspector or if I had a signal 2 issue, then I would call a signal dispatcher. 3 Q. I think I understand what you're telling 4 us, Mr. Soliz. You -- you knew enough about 5 track that if you thought there was a track 6 issue, you called the expert who was the track 7 inspector at the FRA? 8 A. Correct. 9 Q. And you knew just enough about signal 10 issues that if you thought there was a signal 11 issue, you would get the FRA signal inspector 12 involved because that was his area of expertise? 13 A. Correct. 14 Q. Not yours? 15 A. Correct. 16 Q. Okay. Same for track? 17 A. Uh-huh. 18 Q. Is that right? 19 A. Correct. 20 Q. But you still had expertise in the 21 motive, power and equipment? 22 A. Yes. And when I say "motive power and 23 equipment," I meant also freight cars. 24 Q. Right. 25 A. That required air brake tests, actually	Page 28 1 Q. Was that a completely voluntary decision 2 on your part, or were you asked by anybody to 3 leave? 4 A. No. Voluntary. 5 Q. What was your next employment or job 6 after you left the FRA in 2008? 7 A. Shortly after retiring, I kind of 8 started me a little consulting company or 9 business. 10 Q. And let me go back. What month in 2008 11 did you leave the FRA? 12 A. I think it was in July, 2008. 13 Q. What month was it that you formed the 14 consulting business? 15 A. Oh, gee. I don't know the month but 16 probably in 2009. 17 Q. Okay. And what's the name of your 18 business? 19 A. GBS Railroad Consulting, L.L.C. 20 I think it's on my business cards 21 there, GBS Railroad Consulting Services. 22 Q. Did you have to get any type of 23 professional license to start that company? 24 A. Other than we applied for the L.L.C. 25 (Deposition Exhibit Number 1 is
Page 27 1 the regulatory responsibility as motive power and 2 equipment was CFR Part 32 of the air brake 3 requirement; 231, safety appliances; 218, the 4 signal protection. 5 Q. That would be having to do with 6 locomotives and freight cars? 7 A. That's correct. 8 Q. Okay. 9 A. And/or the movement of trains. 10 Q. Well, when you say "movement of trains," 11 you're not talking about -- are you talking being 12 crew issues? 13 A. Yes. 14 Q. Okay. Which would be performing the air 15 brake test? That would be something? 16 A. Right. 17 Q. Sounding the horn? 18 A. Correct. 19 Q. Applying emergency brakes? 20 A. And under 215, the safety inspections. 21 Q. Okay. And why was it that you left the 22 FRA until 2008? 23 A. Well, I wanted to retire. 24 Q. How old were you in 2008? 25 A. Sixty-two years old.	Page 29 1 marked.) 2 Q. (By Mr. Tucker) Mr. Soliz, I'm going to 3 hand you what I'm going to mark as "Deposition 4 Exhibit Number 1," which was provided to us by 5 the Plaintiff's attorney, Mr. Brockett, and ask 6 you if that is a current copy of your CV or 7 resume that you provided to him in this case. 8 A. Yes, sir. It is. 9 Q. Okay. We're going to start a pile of 10 exhibits so you can just set it over there. 11 A. Okay. 12 Q. Thank you. Have you had any other 13 employment since 2009 when you started GBS 14 Railroad Consulting? Did you work somewhere down 15 the street at another job? Anything like that. 16 That's what I'm asking. 17 A. No, sir. I don't. 18 Q. So you were in -- we are in 2015 now. 19 So you have had your consulting business for 20 approximately six years? 21 A. Yes, sir. 22 Q. How many employees does your consulting 23 business have? 24 A. Two. Me and my wife. 25 Q. Does your wife do any of the actual

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Page 30 1 work? 2 A. No. She does all the bookkeeping. 3 Q. You do the work? 4 A. I do the work. 5 Q. Do you run the business out of your 6 home? 7 A. Yes, sir. 8 Q. Does your consulting business do 9 anything other than work on cases in litigation? 10 A. Yes. 11 Q. Tell me -- tell me what GBS Consulting 12 does. 13 A. We -- or I do, I provide regulatory or 14 information held by short-line railroad or 15 compliance with the various regulations that 16 apply to that particular railroad. 17 Q. Who is that railroad? 18 A. Well, I have like five different 19 short-line railroads that I provide service for. 20 Q. Are they all in the state of Texas? 21 A. There are -- one was in New Mexico. 22 Q. Are the others in Texas? 23 A. Yes. The others are in Texas. 24 Q. Name the railroads please? 25 A. Okay. The Texas Southeastern, the	Page 32 1 Q. Okay. When you were at the ATSF 2 Railroad, did you ever give a deposition? 3 A. No, sir. 4 Q. When you -- 5 A. Again, trying to think back, I don't 6 know that I ever did. 7 Q. When you were with the FRA, did you ever 8 give a deposition? 9 A. Yes, sir. 10 Q. How many times? 11 A. Maybe five times, maybe six. 12 Q. None of those involved grade crossing 13 accidents, did they? 14 A. Not a grade crossing accident. 15 Q. Whether I say a "deposition," I'm 16 talking about what we are doing here today. 17 A. Okay. 18 Q. I'm not talking about testimony that you 19 gave outside of the litigation context. 20 Are you sure that you actually gave 21 five depositions when you were at the FRA? 22 A. That were involved in accident, train 23 accident, not necessary grade crossing accident. 24 Q. Was it a -- a deposition that you gave 25 in the context of a lawsuit like we're here in
Page 31 1 Moscow, Camden & St. Augustine Railroad which is 2 in Camden, Texas. 3 The Frontier Railroad, well, it's 4 the Frontier Company, owned two railroads, the 5 Frontier and Logistics Railroad and they just 6 opened up a new one just south of San Antonio 7 called the "Next Railroad." 8 Then, I have the SR & N which 9 stands for the "Sabine River & Northern 10 Railroad." 11 And then throughout the six years I 12 done a little work for various other little 13 railroads. 14 But they were my main -- my main 15 railroads I provided service for. And mainly, 16 it's training and in compliance with Part 240 or 17 242. 18 Q. Are you talking about CFR -- or excuse 19 me, you are talking about 49 CFR, Part 240 and 20 Part 242? 21 A. Yes. 22 Q. And Part 240 is what? 23 A. Part 240 is engineer certification. 24 Q. And Part 242 is? 25 A. Is conductor certification.	Page 33 1 today? 2 A. Correct. 3 Q. Because I didn't think that FRA people 4 could be subpoenaed to give depositions. 5 A. Every now and then, we do serve as an -- 6 as an expert. Not an expert witness but we get 7 subpoenaed to come to testify in a deposition. 8 And, in fact, I've had one representative from 9 the attorney's office, federal attorney's office, 10 U.S. Attorney's Office to represent us in a 11 couple of depositions there in Houston. 12 Q. Since you formed GBS Consulting, have 13 you given any depositions? 14 A. Not related to a railroad grade crossing 15 accident. 16 Q. Have you given any depositions since 17 forming GBS Consulting at all? 18 A. Yes, I have. 19 Q. How many? 20 A. Three, I think. 21 Q. Because I'm going to pass you what I am 22 going to mark as "Exhibit Number 2" to your 23 deposition. 24 (Deposition Exhibit Number 2 is 25 marked.)

Page 34 1 Q. (By Mr. Tucker) It's a series of e-mails 2 back and forth between you and Plaintiff's 3 attorney, Christopher Brockett. 4 A. Uh-huh. 5 Q. And we had asked for a list of cases 6 that you had testified in, by way of deposition 7 or trial testimony over the past four years, and 8 it looks like you sent Mr. Brockett an e-mail 9 saying that you had not -- says, "Worked a law 10 case" in the past four years. 11 A. That's correct. 12 Q. So that means you haven't given any 13 depositions or testified in a trial in the last 14 four years? 15 A. That's correct. 16 Q. You mentioned, though, that you have you 17 given three depositions since forming GBS 18 Consulting? 19 A. In 2009. 20 Q. All three of them? 21 A. Yes, sir. 22 Q. Did they involve three separate 23 lawsuits? 24 A. Two separate lawsuits. 25 Q. Okay. Tell me what it was that you were	Page 36 1 Railroad that retained you? 2 A. Yes. No. It wasn't -- it was the 3 Plaintiff's attorneys. 4 Q. Do you recall who they were? 5 A. No. 6 Q. Do you recall who the KCS attorneys 7 were? 8 A. No. 9 Q. And your testimony was that the KCS had 10 failed to comply with certain federal regulations 11 that caused or contributed to the accident? 12 A. Correct. 13 Q. And do you have a copy of that 14 deposition? 15 A. No, sir. 16 Q. What was the name of that lawsuit? 17 A. The lawsuit? It was -- I can't even 18 think of the gentleman's name versus KCS. 19 Q. So there was a conductor suing the 20 KCS -- I'm sorry. There was an engineer suing the 21 KCS, and a brakeman? 22 A. That's correct. 23 Q. What happened in that accident? 24 A. The brakeman failed to provide proper 25 protection on the shove movement. And while they
Page 35 1 deposited about three times in 2009. 2 A. It related to a -- an accident that 3 happened on the KCS Railroad. And -- 4 Q. That would be Kansas City Southern? 5 A. Yes, sir. 6 Q. Okay. What type of accident was that? 7 A. It was personal injuries. 8 Q. Are you talking about railroad employee 9 personal injuries? 10 A. Railroad employee personal injuries. 11 Q. And who was it that was injured? Was it 12 an engineer or a conductor, or whom? 13 A. It was an engineer and a brakeman. 14 Q. And what happened in that accident that 15 caused those people injuries? 16 A. They failed to comply with the operating 17 rules and federal regulations. 18 Q. Those employees did? 19 A. Yes, sir. 20 Q. Who were you retained by in that 21 lawsuit? 22 A. I don't remember the particular law 23 firm. But they were headquartered out of 24 Houston. 25 Q. So it was the Kansas City Southern	Page 37 1 were shoving cars to a coupling, they collided 2 with some standing cars, tank cars, and caused a 3 significant amount of damage and the engineer 4 claimed that he hurt his back. And later on, 5 they -- the brakeman sued the KCS and the same 6 law firm represented him. 7 Q. And -- 8 A. You -- you asked me if I was in a 9 deposition. I was in two depositions with the 10 engineer. I had to -- I was subpoenaed to go 11 court, and I was counting that one as a 12 deposition to -- for the brakeman. 13 Q. Okay. Let me make sure I understand 14 this: Engineer and brakeman are making a shove. 15 A. Uh-huh. 16 Q. And the cars are shoving, run in to some 17 standing railcars. Is that right? 18 A. That's correct. 19 Q. And the engineer hurt his back? 20 A. Correct. 21 Q. And brakeman was also hurt? 22 A. Well, later on, he claimed that he was 23 hurt. 24 Q. And the engineer was represented by a 25 law firm, in other words, he was the Plaintiff.

Page 38 1 Correct? 2 A. Correct. 3 Q. Suing KCS? 4 A. Correct. 5 Q. And you were retained to provide 6 testimony in the case? 7 A. Correct. 8 Q. And you provided testimony against the 9 KCS? 10 A. Correct. 11 Q. Okay. And that was the engineer's case. 12 Do you remember his name? 13 A. No, sir. 14 Q. Did you say you were deposed twice in 15 that case or just once? 16 A. I think I was deposed twice. 17 Q. Okay. Do you remember who the 18 Plaintiff's lawyer was for the injured? 19 A. No, sir, I do not. 20 Q. And you don't remember the name of the 21 lawyer for the KCS? 22 A. No, sir. 23 Q. And did that case actually go to trial? 24 A. Yes, sir. Well, the one with the 25 engineer --	Page 40 1 A. I was subpoenaed by the KCS attorneys to 2 appear in court as an expert witness. 3 Q. Because it had been your opinion 4 previously that the brakeman had committed rule 5 violations which caused the accident to happen? 6 A. Correct. 7 Q. And did the KCS pay you anything? 8 A. I don't know. It seemed like it was 9 like \$0.09 a mile or something. No. They didn't 10 pay me. 11 Q. Okay. They didn't retain you as an 12 expert witness? 13 A. No, sir. 14 Q. They just subpoenaed you? 15 A. Yeah. That's correct. 16 Q. Okay. Did the brakeman's case go to 17 trial? 18 A. Yes, it did. 19 Q. Where was it tried? 20 A. Beaumont, Texas. 21 Q. Who was the brakeman's name? 22 A. I don't remember. 23 Q. Who was the brakeman's lawyer? 24 A. I don't remember. Sorry about that. 25 Q. That's okay. I don't know if you know
Page 39 1 Q. Yes. 2 A. -- I think was settled out of court. 3 The one with the brakeman did go to 4 court. 5 Q. The same law firm that represented the 6 engineer also represented the brakeman? 7 A. Correct. 8 Q. Do you even remember the name of the 9 lawyer firm? 10 A. No, sir. 11 Q. Okay. But whoever the brakeman's lawyer 12 was also retained you to provide testimony in 13 that case? 14 A. Ask me that question again. 15 Q. Yeah. The -- the same lawyer 16 represented both the engineer and the brakeman. 17 Is that right? 18 A. Yes. 19 Q. And we talked about what you did for the 20 engineer. 21 A. The engineer. Correct. 22 Q. You were also retained by the brakeman's 23 lawyer to provide testimony in the case? 24 A. No, sir. 25 Q. You were not?	Page 41 1 these or not. That's why I'm asking you the 2 questions. 3 Do you know who the KCS lawyer was? 4 A. No, sir, I do not. 5 Q. Do you know the name of the judge, or 6 the Court? 7 A. No, sir. 8 Q. And did you actually testify at the 9 trial of that case? 10 A. Yes, I did. 11 Q. And I take it you gave testimony 12 consistent with your previous deposition 13 testimony which was that the brakeman committed 14 rule violations which caused or contributed to 15 the accident involving the locomotive engineer? 16 A. Let me, when I say, "the brakeman," 17 certainly the brakeman has the biggest 18 responsibility in shove movement. He controls 19 the shove movement. The -- that brakeman is 20 required to provide the engineer various -- some 21 type of information like the -- 22 Q. Car count? 23 A. The car count and distance to go. 24 The engineer should not have ever 25 acted unless he had that. But it was not

Page 42 1 provided and the engineer acted only on the 2 instructions of the brakeman. 3 Q. Okay. Have you testified by deposition 4 or trial in any other cases other than the one 5 involving the KCS engineer and the KCS brakeman? 6 A. No, sir. 7 Q. Have you worked on any lawsuits even 8 though you may not have testified, other than 9 those? 10 A. Other than this one, no, sir. 11 Q. Okay. Are you currently working on any 12 lawsuits right now? 13 A. No, sir. 14 Q. Other than this one, of course? 15 A. Yes, sir. 16 Q. So in the past six years, you've 17 testified two depositions and once at trial? 18 Three times? 19 A. Uh-huh. 20 Q. Is that right? 21 A. Correct. 22 Q. In a lawsuit such as what we're here on 23 today, do you have a minimum charge like a 24 retainer? 25 A. I don't have a retainer. I just charge	Page 44 1 Q. Okay. So, is that paid up front by the 2 Plaintiff's lawyer? 3 A. No, sir. 4 Q. Okay. If you wind up only working two 5 hours on a case and he says, "I don't need you 6 any more," then he owes you for two more hours? 7 A. For four hours, correct. 8 Q. Have you ever been to any Plaintiff 9 lawyer meetings like ATLA, A-T-L-A, anything like 10 that? 11 A. No, sir. 12 Q. Ever attended any seminar or 13 presentation on how to be a forensic witness? 14 A. No, sir. 15 Q. Have you ever advertised your services 16 as an expert witness for lawsuits? 17 A. Other than handing out business cards 18 and word of mouth, that's about it. 19 Q. Okay. Other than this case that we're 20 on today, City of Ozark versus Union Pacific 21 Railroad, do you have any other lawsuits that 22 you're working on? 23 A. No. 24 Q. With these short-line railroads that you 25 work with, how -- how many days a week are you
Page 43 1 by the hour. 2 Q. And what are your hourly rates? 3 A. Two hundred and fifty dollars per hour. 4 Q. Does that include everything that you do 5 from a site inspection to reviewing documents to 6 testifying in a deposition like we're here today? 7 A. Correct. 8 Q. And if you testify at trial, will it 9 also be \$250 an hour? 10 A. No, sir. 11 Q. What -- how much is that? 12 A. Three-fifty. 13 Q. Why does it bump up from 250 to 350? 14 A. Most expert witnesses do that. 15 Q. Any other reason? 16 A. Other than to make money, that's what 17 I'm in business for. 18 Q. Okay. But when a Plaintiff's lawyer 19 calls you and says, "I want to hire you on this 20 case that I have against a railroad," do you 21 charge any type of retainer up front? 22 A. No, sir, I do not. 23 Q. Is there a minimum charge when you -- 24 when you get retained? 25 A. Yes, sir. A minimum of four hours.	Page 45 1 actually working where you would leave your house 2 and go to work? 3 A. Oh, I go as they -- you know, as they 4 need me or they call for training and stuff like 5 that. I mean, I don't have like two days a week 6 or three days a week. It's just whenever they 7 decide to set up a training program or training 8 session that I -- they call me and we'll set it 9 up. Sometimes, it's for two days -- or one day, 10 two days. Sometimes, three days. 11 With the Mission Railroad in San 12 Antonio, sometimes, they are at least five days. 13 Q. Would that be in a year's period of 14 time? 15 A. No. That was five days all together. I 16 mean continuous one week there. 17 Q. How many days a year do you think you're 18 working doing this type of training with your 19 short-line railroads? 20 A. (No audible response.) 21 Q. Let me as far as days -- 22 A. I -- 23 Q. Hold on. Hold on. How about percentage 24 of the year? Do you think maybe 25 percent of 25 the year, you're working with the short-line

Page 46 1 railroads? 2 A. Probably about 25 percent. 3 Q. Okay. I take it that with your 4 short-line railroads, you're not working on grade 5 crossing issues? You're working with the 6 training of the train crews and other type of 7 training. Is that right? 8 A. That's correct. 9 Q. You've only testified one time at a 10 trial before? 11 A. That's correct. 12 Q. Were you ever excluded from testifying 13 at a trial that you -- the other lawyer said he 14 was going to have you testify? 15 A. No, sir. 16 Q. I guess it never came to that since you 17 gave two depositions in the engineer's case. Is 18 that right? 19 A. Yes. 20 Q. And that case didn't go to trial? 21 A. No. 22 Q. Okay. Tell me how and when you actually 23 got in to this case, City of Ozark versus Union 24 Pacific. 25 A. How? Mrs. Sandra Key was given my name	Page 48 1 Q. What was your connection with David 2 Westbrook? 3 A. He -- we kind of worked together on 4 different little projects for his railroad and I, 5 as a Chief Inspector in the Houston area, this 6 company that he worked for had various little 7 short-line carriers or little railroad operation 8 that fell under FRA. And he would was kind of 9 like the Superintendent or the guy in charge of 10 the various little operations, and I would -- 11 when I'd go out to make inspections, he and I -- 12 he would come with me and go with me during my 13 inspections. 14 Q. When you say "make inspections," you are 15 talking about of locomotives and freight cars? 16 A. Yes, sir. Or it could have been 17 locomotive freight cars or could be operating 18 practice issues or training issues like the hours 19 of service and stuff. 20 Q. Okay. I take it you had never been 21 retained by the Plaintiff's attorney, Christopher 22 Brockett, before. Is that correct? 23 A. That's correct. 24 Q. Have you ever been retained by his law 25 firm before?
Page 47 1 by a gentleman that I -- that I know that we 2 worked, kind of worked together. And she called 3 me and I think it was in 2013. Maybe 2012. I'm 4 not sure. 5 Q. Who was the gentleman that you worked 6 with? 7 A. His name was Mr. Westbrook. 8 Q. Where does Mr. Westbrook live? 9 A. Oh, I think he lives -- at one time, he 10 lived in Dayton, Texas. And then I think he 11 moved to Mississippi. He worked for a short-line 12 railroad called -- sorry. Escapes my mind, this 13 railroad. 14 But anyhow, they were headquartered 15 out of Atlanta, Georgia, and so he moved to 16 Mississippi. And at some point in time, he, I 17 guess, Ms. Key and Mr. Westbrook's paths crossed 18 and he furnished my name. And she called me to 19 come and inspect some crossings or get my opinion 20 about the power or subject. 21 Q. Okay. What's your connection with 22 Mr. Westbrook? And does he have a first name 23 that you can recall? 24 A. I think his first name is David 25 Westbrook.	Page 49 1 A. No, sir. 2 Q. Or by any Arkansas attorneys before? 3 A. No, sir. 4 Q. Have you ever published any articles, 5 books, treatises or technical papers? 6 A. No, sir. 7 Q. Have you ever published anything? 8 A. No, sir. 9 Q. Do you belong to any professional 10 organizations? 11 A. No, sir. 12 MR. TUCKER: We've been going for 13 almost an hour. Let's take five minutes. 14 THE VIDEOGRAPHER: We are going off 15 the record at 9:54. We are off the record. 16 (Recess taken.) 17 THE VIDEOGRAPHER: We are back on 18 the record at 10:04. 19 Q. (By Mr. Tucker) Mr. Soliz, we were 20 talking about your qualifications and your work 21 and experience and is it fair to say you are an 22 expert in locomotive and railcar inspection? 23 A. I would say so. Yes, sir. 24 Q. And in the training of locomotive 25 engineers and conductors?

Page 50 1 A. Yes, sir. 2 Q. Have you ever designed a public grade 3 crossing? 4 A. No, sir. 5 Q. Or a private grade crossing? 6 A. No, sir. 7 Q. So you wouldn't be an expert on grade 8 crossing design. Would you? 9 A. You say "on grade crossing design"? 10 Q. Right. 11 A. No, sir. 12 Q. And let me go over some other areas, I'm 13 trying to figure out all of the areas that you 14 may or may not be an expert in. 15 A. Uh-huh. 16 Q. Are you an expert on the type of warning 17 devices that should be installed at a grade 18 crossing? 19 A. I'm not an expert but I have knowledge 20 about advanced warning. 21 Q. What's your knowledge about what warning 22 devices should be installed at a grade crossing? 23 A. Other than that most of the states have 24 that jurisdiction and authority to set up or put 25 up the various types of advance warning signs for	Page 52 1 A. No, sir. 2 Q. Are you a certified locomotive engineer? 3 A. No, sir. 4 Q. Have you ever served as one? 5 A. No, sir. 6 Q. Are you a the certified conductor? 7 A. No, sir. 8 Q. Have you ever served as one? 9 A. No, sir. 10 Q. Are you an expert in train dispatching? 11 A. No, sir. 12 Q. Are you an expert in train operations 13 and scheduling of trains? 14 A. No, sir. 15 Q. Are you an expert in determining the 16 economic impact of train delays? 17 A. No, sir. 18 Q. Are you an expert in determining the 19 costs to maintain a crossing once it is 20 installed? 21 A. No, sir. 22 Q. Are you an expert in calculating the 23 capacity of rail line of a given train corridor? 24 A. I'm not sure I understand your question. 25 Q. Are you an expert in calculating the
Page 51 1 grade crossing. 2 Q. But you, yourself, wouldn't go out and 3 say, "Here's the type of warning devices we need 4 at this crossing"? 5 A. Like I -- no, sir, I do not. I did make 6 various recommendations during various, you know, 7 crossing accidents. I would make various 8 recommendations. 9 Q. I think I know the answer to this. I'm 10 just trying to drill down to it. You're not 11 claiming expertise in what warning devices should 12 be present at a grade crossing? 13 A. That's correct. 14 Q. Okay. That's all I'm getting at. 15 A. Uh-huh. 16 Q. Are you an expert on the physics of 17 track slack action and train forces? 18 A. I'm not an expert, but I was certainly 19 given a lot of training in slack action. 20 Q. Right. But as far as the physics? 21 A. No, sir. 22 Q. Okay. You're not an expert in that? 23 A. No, sir. 24 Q. Okay. Are you an expert in calculating 25 train stopping distances?	Page 53 1 capacity of a given train corridor, a section of 2 track? 3 A. No, sir. 4 Q. Are you an expert in determining the 5 quantified economic benefits to the public of 6 having a crossing opened up? 7 A. No, sir. 8 Q. Are you an expert in reconstruction of 9 highway accidents? 10 A. No, sir. 11 Q. Are you an expert in the reconstruction 12 and analysis of train derailments? 13 A. No, sir, though I have through the FRA 14 training, I've had various extensive training and 15 into the investigation of train accidents. 16 Q. But you wouldn't consider yourself an 17 expert in the reconstruction and analysis of 18 train derailments? 19 A. No, sir. 20 Q. Are you an expert in the analysis and 21 reconstruction of trespasser accidents? 22 A. No, sir. 23 Q. Are you an expert in the laws 24 surrounding property rights and property 25 liabilities?

Page 54 1 A. No, sir. 2 Q. Are you an expert in trained air brake 3 systems? 4 A. On the regulation, I would say I was. 5 On the -- the manufacturing of air brake 6 equipment and -- no, sir. 7 Q. When you say "I would be an expert in 8 the regulations on train air brake systems," tell 9 me what you mean by that. 10 A. What is required to comply with the 11 federal regulation regarding air brake tests. 12 Q. Regarding air brake testing? 13 A. Uh-huh. 14 Q. Is that a "yes"? 15 A. Yes. 16 Q. Okay. But as far as the -- the details 17 of how train air brakes work, would you -- would 18 you consider yourself an expert in that field? 19 A. Pretty much. 20 Q. Okay. Are you an expert in statistical 21 analysis? 22 A. No, sir. 23 Q. Are you an expert in the application and 24 meaning of train operating rules? 25 A. I have considerable knowledge. I don't	Page 56 1 Q. And I think you told me this. You've 2 not published any technical research papers on 3 any topics. Is that correct? 4 A. Correct. 5 Q. You told me that the way you got into 6 this case was you had worked in the past with a 7 Mr. David Westbrook. He gave your name to Sandy 8 Key and Ozark, and she called you. Right? 9 A. Correct. 10 Q. And I presume that was on the telephone? 11 A. Yes, sir. 12 Q. Do you recall approximately when it was 13 that Ms. Key called you? 14 A. Again, I want to say it was in 2012. 15 Q. Do you recall what month or what -- 16 A. No. I do not. 17 Q. -- time of year? 18 A. No. I do not. I mean, I have records. 19 I can go look at. But no. 20 Q. Do you have those records with you today 21 that you could look at as to when she first 22 called you about this case? 23 A. Can I look? 24 Q. Oh, yes, sir. 25 A. Well, if this letter was to Ms. -- Ms.
Page 55 1 know if I can be considered an expert. 2 Q. And you said you do consider yourself an 3 expert in the application of some 49 CFR 4 regulations? 5 A. Correct. 6 Q. That would be Part 240 and Part 242? 7 A. Correct. 8 Q. And 240 pertains to certification and 9 training of locomotive engineers? 10 A. Correct. 11 Q. And Part 242 pertains to certification 12 of -- of railroad conductors? 13 A. Correct. 14 Q. And training? 15 A. Part 232 is air brakes. 16 Q. Okay. 17 A. And Part 215 is freight car safety 18 standards. 19 Q. Would that -- those parts that you just 20 named for me, be the 49 CFR Regulations in which 21 you consider yourself an expert? 22 A. Correct. 23 Q. Are you an expert in vision and what 24 people can see in low light situations? 25 A. No, sir.	Page 57 1 Sandy K was -- Key was in September 29th, 2013. 2 So it was probably around 2013, and I said 2012 3 earlier. 4 Q. Yes, sir. 5 A. It had to be 2013. 6 Q. Can I see that momentarily? I think 7 I've got a copy of that letter. 8 A. (Witness hands counsel a document.) 9 Q. I will look at my files just to make 10 sure. I will hand you the original back. 11 (Deposition Exhibit Number 3 is 12 marked.) 13 Q. (By Mr. Tucker) Just for the record, 14 since we've identified it, let me make a copy of 15 the letter that you sent to Ms. Sandy Key dated 16 September 29th, 2013, Exhibit Number 3 to your 17 deposition, Mr. Soliz, and if you will just 18 confirm that's the same letter? 19 A. Yes. 20 Q. Okay. Thank you. Now, when Ms. Key 21 called you, tell me what -- what she said, how 22 you got into the case, what y'all talked about in 23 that first conversation. 24 A. Well, she -- Ms. Key told me that she 25 had been trying for quite a while and -- with

Page 58 1 various meetings with the Union Pacific Railroad 2 to have the crossing reinstalled that was 3 never -- that the City of Ozark never gave 4 authority to remove. And she asked if I would 5 come down and -- let me back up. 6 She attended a meeting with the 7 Union Pacific Railroad and various other various 8 City Managers and in this meeting the Union 9 Pacific Railroad expressed various concerns, 10 safety concerns, and Ms. Key asked me to come 11 down and evaluate if those issues were -- were as 12 serious as the UP indicated. And we -- I came 13 down and we made a set up a particular date, I 14 went down there and made the inspection looked at 15 where the Oliver Street crossing was at. And we 16 also looked at, I think, five other crossings. 17 (Deposition Exhibit Number 4 is 18 marked.) 19 Q. (By Mr. Tucker) Before we get in to your 20 site inspection, Mr. Soliz, did you receive a 21 copy of the Notice of Deposition for your 22 deposition here today? 23 A. Did I receive notice? Yes, sir, I did. 24 Q. What I'm -- what I'm handing you is 25 Exhibit Number 4, which is document entitled,	Page 60 1 his or her deposition and trial testimony. 2 Production should include those items furnished 3 to or reviewed by the witness and prepared by a 4 consulting or non-testifying expert." 5 Mr. Soliz, do you have any items 6 that would fall within the definition of 7 Paragraph Number 1 on Exhibit "A"? 8 A. Yes, sir, I do. 9 Q. Okay. Did you bring those with you? 10 A. Yes, sir. I did. 11 Q. Let's talk about what you have. And 12 first of all, it may be easier if I asked you. 13 You brought today a binder with some documents in 14 it? 15 A. Correct. 16 Q. Have does that constitute your entire 17 file in this case? 18 A. Pretty much. 19 Q. Okay. What would not be in that binder 20 that you would consider to be part of your file? 21 A. Photographs that I took. 22 Q. Okay. Are those the photographs that 23 wound up being part of the affidavit that you -- 24 that you submitted in this case? 25 A. Some of them.
Page 59 1 "Notice of Deposition." Where it says we were 2 going to take your deposition here today 3 beginning at 9:00 a.m., and you showed up. I 4 wondered if you had seen that document before. 5 A. No, sir. 6 Q. Will you -- 7 A. The e-mail is the only document I saw. 8 Q. And did that e-mail just say you needed 9 to show up here today at 9:00 o'clock? 10 A. Yes, sir. 11 Q. Turn to the third page of Exhibit 4, if 12 you would, please. 13 A. Okay. 14 Q. Were you made aware of these 12 15 different items that we asked you to bring on 16 Exhibit "A" of the Notice of Deposition? 17 A. No, sir. 18 Q. Well, let me ask you if you have any of 19 these things and if you do, did you bring them 20 with you today? And I'll -- I'll read them in to 21 the record. Number 1 says, "Copies of all 22 documents and tangible things, including all 23 reports, physical models, compilations of data, 24 tapes and other materials, prepared or to be 25 prepared by or for the witness in anticipation of	Page 61 1 Q. So there are some photographs that 2 didn't make it into your affidavit that you took? 3 A. Yes, sir. I -- now, the photographs 4 were submitted to Sandy, or Ms. -- Ms. Key. And 5 I have those on my phone here. But they're just 6 of the crossings that we looked at. 7 Q. Did you also submit all of your 8 photographs to the Ozark's attorney, 9 Mr. Brockett? 10 A. No, sir. 11 Q. Okay. So -- but Ms. Key has all those, 12 and you have the rest of them on your phone? 13 A. Yes, sir. 14 Q. Did you print the -- 15 A. No, sir. 16 Q. Okay. Well, let me finish. 17 A. Okay. 18 Q. It's all right. Did you print the 19 photographs off your phone that are not included 20 in your affidavit in this case? Or are they 21 still on your phone? 22 A. That's correct. 23 Q. They're still on your phone but they 24 haven't been printed? 25 A. That's correct.

Page 62 1 Q. Okay. At some point, we'll probably 2 need to get a copy of those. 3 But other than the photographs that 4 have not been printed on your phone, is there 5 anything else you would consider to be part of 6 your file that is not in the binder that we have 7 here? 8 A. Other than the little cover that Ms. Key 9 gave me that represented the Ozark, the little 10 photo where I kept this information in, I didn't 11 bring that photo. 12 Q. Okay. But that doesn't have any 13 bearing -- 14 A. No, sir. 15 Q. -- on anything in this case? 16 A. No, sir. 17 Q. Well, let's -- let's talk about what 18 you've got there in your folder. We've already 19 made an exhibit of the September 9, 2013, letter 20 that you sent to Sandy Key. Is that right? 21 A. Yes. I don't think that I have anything 22 that you probably don't already have. 23 Q. Well, let's -- let's look. 24 A. Okay. 25 Q. What else do you have?	Page 64 1 were part of that demand letter? Okay. 2 Q. (By Mr. Tucker) All right. We'll make 3 this one -- let's see. Number 4 is the notice. 4 You can keep that in front of you. Number 5 will 5 be the house numbers. 6 (Deposition Exhibit Number 5 is 7 marked.) 8 A. And that was part of it. 9 Q. (By Mr. Tucker) This is part of Exhibit 10 Number 5? 11 A. Yes, sir. 12 Q. And what you are showing me is -- 13 A. I think it's all part of that demand 14 letter. 15 Q. Looks like a Missouri Pacific 16 right-of-way map. Is that correct? 17 A. Yes. 18 Q. Okay. It's two pages. We will attach 19 the file but.. 20 MR. TUCKER: Do you have a 21 paperclip? 22 Q. (By Mr. Tucker) All right. Mr. Soliz, I 23 have attached those other two pages that appear 24 to be Missouri Pacific right-of-way map or val 25 map to Exhibit Number 5.
Page 63 1 A. This was probably some of the exhibits 2 that Mr. Brockett furnished your office. It was 3 concerning the demand letter. 4 Q. Let me look at it. It's a two-page 5 document that says, "City of Ozark, Arkansas 6 House Numbers." Is that right? 7 A. Yes, sir. 8 Q. The first page says "March, 1962." And 9 the second page refers to? 10 A. To all of the residents that lived on 11 the south side of the track down there. 12 Q. On Oliver Street and then it says, 13 "North Oak Street" and "East Spring Street." Is 14 that right? 15 A. Yes, sir. 16 Q. I don't know if I have this or not. 17 A. Okay. 18 Q. Mr. Soliz. Can we mark this as "Exhibit 19 Number 5" and get the original back to you? 20 A. You can. 21 Q. Okay. Let's just do that. 22 THE WITNESS: Christopher, do you 23 have any problem with that? Christopher? Do you 24 have any problem with me furnishing or providing 25 a copy of some of the exhibits, I think, that	Page 65 1 What's the next document you have, 2 sir? 3 A. Other thing is the affidavit provided by 4 Bill Huston. 5 Q. Huston? 6 A. Huston? Yes. Bill Huston. 7 Q. Okay. We'll mark that as "Exhibit 8 Number 6." And for the record, at the top of the 9 page it lists the case number and it says, 10 "Document 10-3 filed 9-24-14." 11 All right, sir. What else do you 12 have? 13 (Deposition Exhibit Number 6 is 14 marked.) 15 A. I have the correspondence between your 16 law firm and the law firm of Christopher 17 Brockett. 18 Q. (By Mr. Tucker) All right. You've 19 handed me a packet of correspondence here. 20 A. I think that was what they made 21 reference to as the demand letter. 22 Q. Okay. That would be demand letter from 23 the City of Ozark to Union Pacific. And that's 24 dated May 12th, 2014, and it's a letter from 25 Mr. Brockett to Ms. Jamie Jones. Is that

Page 66 1 correct? 2 A. That's correct. 3 Q. Okay. We will make that Number 7. What 4 else do you have? 5 (Deposition Exhibit Number 7 is 6 marked.) 7 A. And I have my affidavit. 8 Q. (By Mr. Tucker) All right. Sir. We 9 will make your affidavit Number 8. 10 (Deposition Exhibit Number 8 is 11 marked.) 12 Q. (By Mr. Tucker) Next? 13 A. And again, it's I think this is all part 14 of that demand letter. I didn't have any 15 particular order. 16 Q. That's fine. This is what you have 17 handed me is a one-page document that says "Union 18 Pacific Railroad Company," looks to be part of a 19 right-of-way map or a val map and then, in blue 20 pen is written "Oliver Street" on it. Do you see 21 that? 22 A. Uh-huh. 23 Q. Did you write that on there? 24 A. I don't think I did. 25 Q. Do you know who did?	Page 68 1 letter. 2 A. Uh-huh. 3 (Deposition Exhibit Number 11 is 4 marked.) 5 Q. (By Mr. Tucker) Okay. I'm not sure. 6 That probably was, too. 7 You've handed me a one-page 8 document someone has written at the top in blue 9 pen, "Arkansas Highway Department." Is that your 10 handwriting? 11 A. No, sir. 12 Q. Do you know whose it is? 13 A. No, sir. 14 Q. And this then it says, "Oliver Street" 15 and has some information. Correct? 16 A. Correct. 17 Q. We will mark that as "Exhibit Number 18 12." 19 (Deposition Exhibit Number 12 is 20 marked.) 21 Q. (By Mr. Tucker) Next? 22 A. These are two aerial photos of -- of 23 Ozark depicting the railroad. 24 Q. All right. The first one is, for lack 25 of a better phrase, I'm going to say higher up in
Page 67 1 A. No, sir, I do not. 2 Q. Okay. We'll make this Exhibit Number 9. 3 (Deposition Exhibit Number 9 is 4 marked.) 5 Q. (By Mr. Tucker) What else do you have, 6 sir? 7 A. Exhibit "J." 8 Q. Exhibit "J" says, from the "Arkansas 9 Municipal League Handbook Page 30." And we'll 10 make this "Exhibit Number 10." 11 (Deposition Exhibit Number 10 is 12 marked.) 13 Q. (By Mr. Tucker) Where did this one come 14 from. Do you know? 15 A. I would think that's all part of that 16 demand letter. 17 Q. Okay. 18 A. That Mr. Brockett e-mailed me, and I 19 made copies of it. 20 Q. All right. And at the top of -- you've 21 handed me one page that says, "Exhibit I Legal 22 Definition of Dedication." Is that right? 23 A. Correct. 24 Q. Make that "Exhibit Number 11." It 25 probably was part of the Plaintiff's demand	Page 69 1 the sky than the second one. 2 A. Correct. 3 Q. Okay. We will mark the first one. 4 A. I'm sorry. Why don't we do all three of 5 them. All the same thing. 6 Q. Okay. We will mark the first one 7 "Exhibit 13," and it looks to me, Mr. Soliz that 8 these two documents are -- these two photographs 9 are exactly the same. Is that right? 10 (Deposition Exhibit Number 13 is 11 marked.) 12 A. It appears to me to be the same thing. 13 Q. (By Mr. Tucker) Okay. And it's an 14 overhead photograph more zoomed in, but it also 15 shaded in area that says, "Corps of Engineers 16 lease area to City of Ozark, 1.8 acres." Is that 17 correct? 18 A. Correct. 19 Q. Okay. We will mark this "Number 14." 20 (Deposition Exhibit Number 14 is 21 marked.) 22 Q. (By Mr. Tucker) What's next? 23 A. The next is a blueprint, and I'm sure, 24 again, a part of the demand letter, and it's an 25 old blueprint of -- that shows or depicts where

Page 70 1 the Oliver Street crossing, Oliver Street was 2 located in the City of Ozark. 3 Q. Do you know where you obtained this? 4 A. Part of the demand letter, I am thinking 5 that I got from Mr. Brockett. 6 Q. Mr. Brockett? 7 A. Mr. Brockett, yes. 8 Q. Okay. I will mark that "Exhibit Number 9 15." 10 (Deposition Exhibit Number 15 is 11 marked.) 12 Q. (By Mr. Tucker) Do you have any other 13 items there in your file, Mr. Soliz? 14 A. No, sir. 15 Q. I see that you have some handwritten 16 notes, a little tablet. What does that tell us? 17 A. Just about some training in San Antonio 18 that I did with Mission Railroad. 19 Q. Doesn't have anything to do with this 20 case? 21 A. No. 22 Q. Do you have any notes that pertain to 23 this case, City of Ozark versus Union Pacific? 24 A. Yes, I do. 25 Q. Can you tell me what those are?	Page 72 1 A. Right. 2 Q. Okay. Did you bring your documents with 3 respect to invoices, fees, costs, things of that 4 nature? 5 A. No, sir, I did not. 6 Q. Do you have those? 7 A. Yes, sir, I do. 8 Q. Okay. Let's -- 9 A. You mean in connection with this? 10 Q. Yes, sir. 11 A. Yes, sir. I can provide them. 12 Q. Okay. I'm going to mark as Exhibit 13 Number 17 a piece of paper and I'll put 14 "Mr. Soliz invoices." 15 (Deposition Exhibit Number 17 is 16 marked.) 17 Q. (By Mr. Tucker) And -- 18 A. And there are just two. One where I 19 billed Ms. Key for the site visit, and the second 20 is the one I invoiced Mr. Brockett's attorney 21 office for the affidavit. 22 Q. Okay. I have written down on a piece of 23 paper Deposition Exhibit 17, and I wrote 24 "Mr. Soliz invoices and information relative to 25 billing," and you can forward that to
Page 71 1 A. It's all probably the same thing. I 2 list here in the letter to Sandy Key, and it was 3 just about the different crossings we looked at 4 when I made that site visit. 5 Q. Are those notes at your house or office? 6 A. They are at my house, yes, sir. 7 Q. What I will do, if you don't mind, if 8 you can forward those to Mr. Brockett, he can 9 send them to the Court Reporter, and we can make 10 them Exhibit Number 16 to your deposition, and I 11 am going to write "Mr. Soliz handwritten notes." 12 Okay? 13 A. Okay. 14 (Deposition Exhibit Number 16 is 15 marked.) 16 Q. (By Mr. Tucker) Did you consult any 17 studies or reports or technical literature, 18 articles, in forming your opinions in this case? 19 A. Yes. Well, I consulted the FRA safety 20 data. 21 Q. Anything else? 22 A. Other than -- no. 23 Q. Okay. And I think later on in your 24 affidavit, we get into that. Right? I mean, I 25 think you cite that.	Page 73 1 Mr. Brockett so he can get it to the Court 2 Reporter. 3 A. Mr. Brockett has already gotten one -- 4 one invoice. He probably doesn't have the one. 5 Q. That you sent to Ms. Key? 6 A. That's correct. 7 Q. How much was approximately, was the 8 invoice you sent to Ms. Key? 9 A. I think somewhere around \$2,500. 10 Q. How much was the invoice you sent to 11 Mr. Brockett? 12 A. I think it was maybe \$1,500. 13 Q. Okay. And you told me with the 14 exception of some photographs on your phone that 15 have not yet been printed -- you brought your 16 entire file with you? 17 A. Yes. Some of these photographs have 18 been printed. 19 Q. Okay. But some have not? 20 A. That's correct. 21 Q. Well, let's make Deposition Number 18 -- 22 I'm just going to put all photos, just to make 23 sure that we have all of them. 24 (Deposition Exhibit Number 18 is 25 marked.)

Page 74 1 A. Okay. 2 Q. (By Mr. Tucker) I will put "all of 3 Mr. Soliz's photos." 4 And you can send those to 5 Mr. Brockett so that he can get them to the Court 6 Reporter to be Exhibit Number 18? 7 A. Correct. We can do that. 8 Q. All right, sir. Did you make any 9 videotapes when you were at the scene or when you 10 were in Arkansas in connection with this case? 11 A. On the iPhone, you have a -- 12 the function of whether you are going to take 13 photos or videos. And some of the things I did, 14 it was a video that I was taking, and I don't 15 know if I can print that out to you or not but I 16 know I print the photos that -- 17 Q. Are you relying on that video for any 18 opinions? 19 A. No. Just other than -- 20 Q. General information? 21 A. General information. I think it was 22 depicted in -- I think those 17 cars that was on 23 the siding. 24 Q. When you were in Arkansas in connection 25 with this case, did you take any measurements	Page 76 1 name of Mr. R.D. Getty. Getty? 2 Q. Mr. Royce Gattis? 3 A. Yes, sir. 4 Q. G-a-t-t-i-s? 5 A. I think that's correct. 6 Q. What did Mr. Gattis tell you? 7 A. He just provided transportation and took 8 me to the various crossings, railroad crossing 9 sites that we visited. 10 Q. Mr. Soliz, do you expect to examine any 11 more records as we sit here today, in connection 12 with this case that you know of? 13 A. No, sir. 14 Q. Did you ask for any records or 15 information to help in this case but were not 16 able to get those records or information? 17 A. No, sir. 18 Q. And you told me the only literature or 19 tables or standards or articles or books that you 20 looked at was the FRA accident history for the 21 Oliver Street crossing. Correct? 22 A. No, sir. I looked at two different UP 23 System Timetables. 24 Q. Okay. Anything else other than those 25 and the FRA accident history?
Page 75 1 while you were there? 2 A. No, sir. 3 Q. Did you read any statements or 4 affidavits in connection with your work on this 5 case? 6 A. Yes, sir. 7 Q. What would those be? 8 A. Some of the correspondence that Sandy 9 Key had with the Arkansas Highway Department, and 10 I think some of the correspondence between Sandy 11 Key and the Union Pacific Railroad. 12 Q. Do you have any of that in your file? 13 A. No, sir. No, sir. 14 Q. Do you have any of that back at your 15 office? 16 A. No, sir. 17 Q. Was it just sent to you in an e-mail 18 form and you read it and deleted it? 19 A. No, sir. I reviewed it during the site 20 visit. 21 Q. Okay. But you didn't keep any copies? 22 A. No, sir. 23 Q. Did you, yourself interview anyone in 24 connection with your work on this case? 25 A. I only worked with a gentleman by the	Page 77 1 A. That's the only thing. 2 Q. Did you analyze anything in this case 3 through the use of computers? 4 A. No, sir. 5 Q. Or any other technical or specialized 6 equipment? 7 A. No, sir. 8 Q. We are going to go over your affidavit 9 in a moment, Mr. Soliz, but before we do, let me 10 ask you a few preliminary questions. 11 Are you aware that several years 12 ago, the FRA made it a stated goal that 25 13 percent of low volume crossings in the United 14 States be closed? 15 A. Yes, sir. 16 Q. Why do you think they made that a goal? 17 A. Well, from various FRA studies and 18 working with the various cities or -- or 19 metropolitan areas they wanted to close crossings 20 that was -- that was one, not utilized by the 21 general public and/or where -- and I'll give you 22 a particular case why or one reason, it happened 23 in Dayton, Texas. There was an auto accident 24 there, a train and auto accident that this -- 25 this family was using or passing over a crossing

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1 where there were no protection. One bogged down
 2 from this particular crossing. There was another
 3 road crossing that was better served and had
 4 railroad protection crossing gates, signals and
 5 all that.

6 And those were the type of
 7 crossings that the FRA and the various
 8 communities worked together to close. It was not
 9 necessarily just to close the crossings. It was
 10 to make sure that we could provide the general
 11 public a safer method of crossing the railroad
 12 tracks than those that would not protect it.

13 Q. The FRA as you said wanted to close 25
 14 percent of low-volume crossings?

15 A. Well, again, it didn't particularly
 16 specify low-volume crossings. It was crossings
 17 that, one, no -- no longer had use or that there
 18 were other crossings that we more favorable,
 19 safer to use than those without protection. Did
 20 not necessarily mean low-volume crossings. We
 21 have low-volume crossing -- railroad crossings
 22 throughout the United States. They don't close
 23 all of those down.

24 Q. I know that, but are you aware that the
 25 FRA stated it was a goal to close 25 percent of

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1 low-volume crossings in the United States?

2 A. I was not aware that the FRA made that
 3 statement.

4 Q. Okay. Our Videographer says we have got
 5 to change the tape in five minutes. So let's
 6 take a short break.

7 THE VIDEOGRAPHER: We are going off
 8 the record at 10:36. We are off the record.

9 (Recess taken.)

10 THE VIDEOGRAPHER: This is Tape 2
 11 of the deposition. We are back on the record at
 12 10:42.

13 Q. (By Mr. Tucker) Mr. Soliz, assuming the
 14 FRA stated it was a goal to close 25 percent of
 15 low-volume crossings in the United States, would
 16 you agree that that made -- that that goal made
 17 sense in terms of improving crossing safety?

18 A. Like I said, you're the one that is
 19 saying that the FRA said they wanted to close 25
 20 percent of all of the low-volume crossings, and
 21 like I stated, there is low-volume crossings
 22 throughout the Continental United States that the
 23 FRA never intended to close. There was lots --
 24 there were, in connection to low volume
 25 crossings, there were also other things that we

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1 had to look at, like was there a crossing that
 2 was in that particular area that provided a safer
 3 means for the general public than that particular
 4 crossing. The fact that the crossing had a low
 5 volume of traffic did not -- was not one of the
 6 indicators that would be considered in the
 7 closing of a crossing.

8 Q. Would you agree with me that the
 9 proposed Oliver Street crossing in Ozark,
 10 Arkansas, if it went in, it would be a low-volume
 11 crossing?

12 A. Yes, sir.

13 Q. Do you agree that the safest crossing is
 14 one that doesn't exist?

15 A. I don't know that I can say that.

16 Q. Well, if there is no crossing there,
 17 then there's no potential for a car to hit a
 18 train -- or a train car?

19 A. The mere fact that there is a track in
 20 your -- or a rail line in your city creates
 21 various hazards and safety concerns. Just the
 22 fact that there's a crossing there does not
 23 necessarily mean that that creates any more than
 24 the rail line, itself.

25 Q. Would you agree with me that there is no

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1 crossing, then there's not an opportunity for a
 2 train to hit a car that's trying to get over the
 3 tracks?

4 A. Well, I'd like to agree with you but
 5 there have been incidents where there have been
 6 cars on the crossing or there were no crossings
 7 and we -- trains have struck the cars. So I'm
 8 saying -- but yes.

9 Q. With that rare exception, 99 times out
 10 of 100 when a train hits a car it's in the
 11 crossing --

12 A. Yes.

13 Q. -- and that removes the possibility for
 14 those type of accidents?

15 A. Correct.

16 Q. In that sense would you agree that the
 17 safest crossings in one that does not exist. In
 18 that sense?

19 A. In that sense, yes.

20 Q. Okay. Do you know since the FRA goal of
 21 closing low-volume-crossings was announced, that
 22 thousands of crossings have been closed and that
 23 the number of crossing accidents has declined
 24 significantly?

25 A. Well, I don't know that the mere fact

Page 82 1 that the -- that closing the crossings was all -- 2 was all -- was all due to the closure of 3 crossings, the number of grade crossings. I 4 mean, the number of grade crossing accidents was 5 reduced. 6 Of the -- the FRA, when they 7 announced the closing of the crossings, we also, 8 the FRA created a discipline that -- that worked 9 with communities involving a -- highway rail 10 crossing safety. 11 The inspector here in Region 5, her 12 name was Carolyn Cook, she worked closely with -- 13 with the various community to provide operational 14 lifesaver. The FRA works very closely with 15 communities, school districts, trucking 16 companies, providing operational lifesaver. 17 There is a strong operational 18 lifesaver there in the State of Arkansas. They 19 attend a lot of our short-line seminars. 20 So I ain't going to say that the 21 fact that the number of rail crossings, the 22 number of rail crossing accidents reduction was 23 all attributed to the closure of low-volume 24 crossings. 25 Q. But do you think closure of low-volume	Page 84 1 Q. And you retired from the FRA in 2008? 2 A. Correct. 3 Q. You did not have expertise in that 4 discipline. Did you? 5 A. No, sir. 6 Q. Okay. Would you agree with me that 7 flashing lights and gates at a crossing only 8 provide warning that a train is approaching the 9 crossing, that they won't absolutely prevent an 10 accident? 11 A. Correct. 12 Q. But a closed crossing will absolutely 13 prevent an accident at that location. Won't it? 14 Ninety-nine times out of 100? 15 A. Yes, sir. 16 Q. Unless somebody just drives up over the 17 tracks where there is no road. Right? 18 A. Correct. 19 Q. Okay. Are you aware of what Section 130 20 funding is all about from the federal government, 21 the Section 130 program? 22 A. No, sir. 23 (Deposition Exhibit Number 19 is 24 marked.) 25 Q. (By Mr. Tucker) Let me hand you what I
Page 83 1 crossings had an effect on the accident rate 2 going down? 3 A. I'm sure it had some effect, yes. 4 Q. Who was the lady that you mentioned? 5 A. Her name is Carolyn Cook. 6 Q. Carolyn Cook? 7 A. Yes. 8 Q. Is she still with the FRA? 9 A. To my knowledge, she is. 10 Q. And what was her discipline, did you 11 say? 12 A. Grade crossing safety. I'm not sure of 13 at that title but I think it's something like 14 that. 15 Q. Grade crossing safety? 16 A. Uh-huh. 17 Q. What -- I'm sorry. You will have to say 18 "yes" or "no." 19 A. Yes, sir. 20 Q. When was that discipline created? What 21 year? 22 Let me ask the question 23 differently. 24 A. I'm not sure. Sometime, I think, around 25 maybe 2000. No. Yeah. 2000.	Page 85 1 am going to mark as "Deposition Exhibit Number 2 19." This is a report dated July 21, 2005, 3 issued by Kenneth Mead in the Inspector General's 4 office of the Department of Transportation. Do 5 you see that on the front page? 6 A. Yes, sir. 7 Q. And on the second paragraph there, what 8 does Mr. Mead say caused most of the 39 percent 9 decline in collisions over a 10-year period? 10 Would you please read the highlighted portion? 11 A. He said, "The number of grade crossing 12 collisions declined by 39 percent and fatalities 13 fell by 47 percent to 332 death in 2003. Most of 14 the -- most of progress FRA achieved came from 15 closing about 41,000 crossings and installing 16 automatic gates and flashing lights at about 17 4,000 other crossings and a high problem ability 18 for collisions." 19 Q. All right, sir. 20 A. Or had a high probability for 21 collisions, so... 22 Q. And the date on Page 1 says, "July 21, 23 2005," on Page 1. See where I'm pointing to? 24 A. Yes, sir. 25 Q. That was while you were still at FRA?

Page 86 1 A. Yes, sir. 2 Q. Okay. Are you familiar with the 3 Railroad Highway Grade Crossing Handbook? The 4 revised edition, 2007? 5 A. I'm sure I had a copy in our office, the 6 FRA office there in Houston. But -- and I 7 probably looked at it. 8 Q. Let me hand you what I'm going to mark 9 as -- 10 A. And I probably looked at this 11 correspondence but I mean I... 12 (Deposition Exhibit Number 20 is 13 marked.) 14 Q. (By Mr. Tucker) Let me hand you an 15 excerpt from Section 4, and if you'll turn to 16 Page 2 under Section B, what is the title of that 17 section, sir? 18 A. Elimination. 19 Q. All right. Will you read the 20 highlighted section, please? 21 A. It says, "The first alternative that 22 should always be considered for a highway-rail 23 at-grade -- at-grade crossing is elimination. 24 Elimination can be accomplished by grade crossing 25 separation -- separating the crossing, closing	Page 88 1 A. Yes. 2 Q. Okay. I brought -- 3 A. The ones I printed out was not. 4 Q. I brought those. What -- what exhibit 5 number is your affidavit? 6 A. 8. 7 Q. All right. Let me read the first 8 paragraph, if you will read along with me to make 9 sure I read it correctly. 10 A. The affidavit? 11 Q. Yes, sir. 12 A. Okay. 13 Q. As a matter of fact, at the top, it says 14 -- gives the case number and says, "Document 23, 15 filed 11-13-14." Is that correct? 16 A. (No audible response.) 17 Q. Do you see at the top of the page gives 18 the case number and says, "Document 23"? 19 A. Okay. I'm looking. Mine says, "In the 20 United States District Court for the Western 21 District of Arkansas, Fort Smith Division." 22 Q. Okay. All right. That's fine. Is 23 it -- is it entitled, "Affidavit of George B. 24 Soliz of GBS Consulting Services, L.L.C."? 25 A. Yes.
Page 87 1 crossing to highway traffic, or closing the 2 crossing to railway traffic through abandonment 3 of a relocation of the rail line. Elimination of 4 the crossing provides the highest level of 5 crossing safety because the point of -- of 6 intersection between highway and the railroad 7 crossing is removed." 8 Q. Let me read that last sentence again. 9 It says, "Elimination of a crossing provides the 10 highest level of crossing safety because the 11 point of intersection between highway and 12 railroad is removed." 13 Do you see that? 14 A. Yes. I do. 15 Q. And do you agree with that, sir? 16 A. Not 100 percent. 17 Q. Okay. If you would, get your affidavit 18 in front of you, which I believe is Exhibit 19 Number what? 20 A. Did we put my affidavit in here? 21 Exhibit what? My affidavit, I have no exhibits 22 attached to. 23 Q. Okay. You mean when you submitted it, 24 the exhibits that you submitted that were 25 attached to your affidavit?	Page 89 1 Q. Okay. Let me read Paragraph 1, if 2 you'll read along with me. It says, "I am a 3 resident of the state of Texas. I am more than 4 21 years of age. I have lived in Texas for all 5 of my life approximately 64 years. I'm making 6 this affidavit with my own personal knowledge and 7 personal site inspection." 8 "The statements made by me are for 9 rebuttal and opposition to the affidavit of Bill 10 Huston." That's H-u-s-t-o-n. "Manager of Train 11 Operations for Union Pacific Railroad Company." 12 Did I read that correctly? 13 A. Correct. 14 Q. All right. When did you make a site 15 inspection to Ozark? 16 A. I think you had 64 years in there. 17 Q. Yes, sir. When was it that you made the 18 site inspection to Ozark? 19 A. It had to be some part of the first of 20 September. I don't know. Or it could have been 21 even -- it could be in August. 22 Q. Of what year? 23 A. I don't have that date in this 24 correspondence. And this came shortly 25 thereafter.

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1 Q. Okay. Let's identify what you're
 2 looking at. You're looking at the September 9,
 3 2013, letter from you to Sandy Key?
 4 A. Correct.
 5 Q. So your site inspection, you are telling
 6 me was probably in August, 2013 or early,
 7 September 2013?
 8 A. Probably in the late part of August,
 9 2013.
 10 Q. Okay. Who was with you in the site
 11 inspection?
 12 A. Mr. Royce --
 13 Q. Gattis?
 14 A. -- Gattis.
 15 Q. G-a-t-t-i-s. Is that right?
 16 A. Yes, sir.
 17 Q. Anybody else with you on the site
 18 inspection?
 19 A. No, sir.
 20 Q. What different places did you inspect?
 21 A. We looked at the location where the
 22 Oliver Street crossing was located.
 23 Q. Where it used to be?
 24 A. Where it used to be.
 25 Q. Okay. What else?

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1 A. Then we look at five -- five other
 2 crossings that was east of our -- yeah, east of
 3 Ozark.
 4 Q. Do you remember what names of those
 5 crossings were?
 6 A. Not offhand.
 7 Q. What town they were in?
 8 A. They were, I guess, outside -- this
 9 Franklin County, just outside the city limits of
 10 Ozark.
 11 Q. Were they the five crossings immediately
 12 to the east of where the Oliver Street crossing
 13 was located?
 14 A. Yes, sir.
 15 Q. What other things did you look at on
 16 your site inspection?
 17 A. Oh, we looked at the -- the two house
 18 tracks.
 19 We looked at the siding, the number
 20 of cars that were on the siding.
 21 Q. What else? Anything else?
 22 A. We also looked at the -- the track
 23 location, the site there at the location, the
 24 particular location where I saw that on the south
 25 side of the track, there was a lot of tall grass,

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1 trees, that would restrict the view from Ozark to
 2 the river.
 3 We also -- I also saw that on the
 4 north side, there was a lot of debris, track
 5 debris that created safety hazards.
 6 There was a lot of Maintenance of
 7 Way track components like ties, tie plates,
 8 stuff. Those tie plates was scattered throughout
 9 the cross -- railroad property there.
 10 Pretty much it.
 11 Q. Okay. How long did it take to you
 12 conduct this site inspection?
 13 A. Pretty much a day.
 14 Q. You mentioned that your affidavit that
 15 you had in your file, did not have the
 16 photographs that you had attached to it. Is that
 17 right?
 18 A. That's correct.
 19 Q. Okay. Let me hand you what I'm marking
 20 as "Exhibit Number 21."
 21 (Deposition Exhibit Number 21 is
 22 marked.)
 23 Q. (By Mr. Tucker) And are these the
 24 photographs you attached to your affidavit,
 25 Mr. Soliz?

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1 A. Yes, sir.
 2 Q. In your site inspection there at the
 3 location where the Ozark -- excuse me -- the
 4 Oliver Street crossing used to be, were you on
 5 both the north side of the tracks and the south
 6 side? In other words, between the tracks and the
 7 Arkansas River?
 8 A. No, sir. We stood on the north side of
 9 the track.
 10 Q. So you didn't actually cross the tracks.
 11 Is that right?
 12 A. No, sir.
 13 Q. Did you take these photographs that
 14 are -- were part of your affidavit?
 15 A. Yes, sir. You asked me if I crossed the
 16 tracks?
 17 Q. Yes, sir.
 18 A. I'm not sure that I didn't cross the
 19 main tracks.
 20 Q. To get between the main track and the
 21 siding?
 22 A. To take pictures of those cars, yes,
 23 sir. I'm not sure that I did. But I can't tell
 24 you that I didn't.
 25 (Deposition Exhibit Numbers 22 and

Page 94

1 23 are marked.)

2 Q. (By Mr. Tucker) I am going to hand you

3 what I am going to mark as "Deposition Exhibit

4 Number 22" and "23," and they were are blow-ups

5 of photographs that you took in the location of

6 where the Oliver Street crossing used to be and

7 the smaller pictures are part of your affidavit.

8 But will you look at 22 and 23 and confirm that

9 those pictures are part of the photographs that

10 you took in your affidavit?

11 A. Yes, sir.

12 Q. You're talking about 22 is one of them?

13 A. 22, yes, sir.

14 Q. Okay.

15 A. And your Number 23 there also.

16 Q. And those are photographs that you took?

17 A. Yes, sir.

18 Q. And the box cars that we see on 22 and

19 23 those were on the siding. Is that right?

20 A. Yes, sir.

21 Q. And the track that's open would be the

22 main line. Correct?

23 A. Yes, sir.

24 Q. Approximately how close were you to the

25 main line when you took these two photographs?

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1 A. Maybe -- from the main line?

2 Q. Yes, sir.

3 A. Probably maybe 25 feet.

4 Q. All right. When you conducted your site

5 inspection at this location, did you know that

6 you were on Union Pacific property?

7 A. Yes, sir.

8 Q. Did anybody --

9 A. Well --

10 Q. Did anybody give you --

11 A. You asked me did I know I was on Union

12 Pacific property? I'm not sure whether the --

13 where the Union Pacific Railroad line probably

14 starts or where the City probably starts but was

15 I could have passed, maybe got on UP property,

16 yes.

17 Q. Did you do anything to ascertain how far

18 the Union Pacific right-of-way was on both sides

19 of the tracks?

20 A. No, sir. I did not.

21 Q. Did you ask for permission to be on

22 Union Pacific property?

23 A. I don't know that I was on Union Pacific

24 property but if I was, I -- no, sir, I did not

25 get permission.

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1 Q. Why -- why did you not ask for

2 permission to be on Union Pacific property?

3 A. Never occurred to me to ask. I mean I

4 was doing something for the City. And I thought

5 with -- with working with the City, I mean, I

6 didn't know whether it would be an issue.

7 Q. You understand that when you go on to

8 someone else's property without permission,

9 that's called "trespassing?"

10 A. That's correct.

11 Q. And I can tell you that Union Pacific

12 owns 50 feet on both sides of the tracks.

13 A. Okay.

14 Q. So when you took these photographs --

15 A. I was probably on Union Pacific

16 property.

17 Q. And you would have been trespassing.

18 Correct?

19 A. Yes, sir.

20 Q. And no one gave you permission to do

21 that. Did they?

22 A. No, sir.

23 Q. As a former FRA inspector, you realize

24 it's against rules and regulations for you to be

25 that close to Union Pacific's tracks without

Page 97

1 permission?

2 A. No, sir.

3 Q. You don't know that?

4 A. As a safety inspector, I had the

5 authority to get on the property.

6 Q. But you're -- that was when you were

7 with the FRA?

8 A. That's correct.

9 Q. You are no longer with the FRA?

10 A. That's correct.

11 Q. And you didn't have any permission to be

12 here?

13 A. No, sir, I did not.

14 Q. In the Roadway Worker Protection section

15 of 49 CFR, 214.317, you'd be required to obtain

16 limits of protection such as a form B from the

17 Union Pacific. Correct?

18 A. No, sir.

19 Q. Why not?

20 A. I was not in the foul zone.

21 Q. Do --

22 A. Nor was I performing any Maintenance of

23 Way equipment -- I mean, work, nor am I a

24 railroad employee.

25 Q. But you'll agree even a private citizen

Page 98 1 doesn't have the right to go on to Union Pacific 2 property? 3 A. When we talk about the right, you know, 4 I cross a crossing and it's over UP track. 5 Q. No, sir. No, sir. The photographs in 6 22 and 23 are nowhere near a crossing. 7 A. In this case that you're making 8 reference to, no, I do not -- and I already said, 9 no, sir. If I was on the UP property, I did not 10 get permission. 11 Q. Okay. And there's no crossing that we 12 can see in photographs 22 and 23? 13 A. I think at the time -- and I didn't take 14 photos but I think at the time, there was some 15 evidence that there was a crossing there. 16 Q. No, sir. That's not my question. My 17 question is in photographs 22 and 23 there is no 18 crossing going over the railroad tracks? 19 A. No, sir. 20 Q. What I just said is correct? 21 A. Correct. 22 Q. Okay. Let's look at Paragraph 2 of your 23 affidavit. Do you have it in front of you? 24 A. Okay. 25 Q. I'm going to read it and if you'll read	Page 100 1 railroad, my dad retired from the Atchison Topeka 2 & Santa Fe Railroad. He was in the Maintenance 3 of Way Department. We lived in a section house 4 probably 300 feet from the railroad track. 5 To the east of our house, there was 6 a railroad crossing there in the City of Rio 7 Vista. The City of Rio Vista had three railroad 8 crossings. One on the south end, one on the 9 north end and one down the center, going down the 10 center of Rio Vista. 11 Growing up from the age of six to 12 18, I crossed railroad crossings and I played on 13 the railroad track and so, I have a pretty good 14 knowledge and experience about the hazards that 15 presents itself at crossings with low volume, 16 auto-traffic or -- or dealing train traffic. 17 Q. Let me ask you this: If the Oliver 18 Street crossing gets reinstalled, do you know 19 what type of crossing surface it would have? 20 A. No, sir. 21 Q. Do you know how wide it would be? 22 A. No, sir. 23 Q. Or how long it would be? 24 A. No, sir. 25 Q. If the Oliver Street crossing gets
Page 99 1 along with me, Mr. Soliz, it says, "In addition, 2 the affidavit is made to provide the Court with 3 information and an opinion that reinstalling the 4 Oliver Street vehicular rail crossing, the quote 5 Oliver Street crossing, end quote, does not cause 6 any more safety concerns than those in small town 7 communities with low volume, vehicular traffic, 8 passing over railroad crossings experience every 9 day." 10 "Further, the inspection work and 11 loss of railcar capacity that UP complains that 12 it would suffer would be minimal." 13 "Finally, the risk of safety of the 14 railroad employees and the general public is 15 slight at the Oliver Street crossing location." 16 Did I read Paragraph 2 correctly? 17 A. Correct. 18 Q. All right. You say that reinstalling 19 the Oliver Street crossing does not cause any 20 more safety concerns than those in small 21 communities with low-volume traffic. 22 First, on what basis do you make 23 that statement? 24 A. I'm second generation railroad. I will 25 give you a little history. Second generation	Page 101 1 reinstalled, do you know if vehicles are going to 2 be going over that crossing, or is it going to be 3 a pedestrian crossing? 4 A. Well, I'm assuming it's going to be a -- 5 a vehicular crossing. 6 Q. What do you base that assumption on? 7 A. Because at one time, it was a vehicular 8 crossing. 9 Q. At one time, it was a vehicle crossing, 10 but that was before the Corps of Engineers 11 inundated the Arkansas River pool and -- and 12 flooded a lot of that land up near the tracks. 13 Correct? 14 A. Well, the land is not flooded now. Or 15 it wasn't when I -- when I made my site visit. 16 Q. I take it you don't know the history of 17 the McClellan-Kerr navigation project on the 18 Arkansas River. Do you? 19 A. No, sir. 20 Q. You don't know before the Corps 21 engineers inundated the Ozark pool how much land 22 was available south of the railroad tracks? 23 A. No, sir. 24 Q. And after they brought that pool up, how 25 much land that took away south of the railroad

Page 102 1 tracks? 2 A. I do not have that knowledge other than 3 the -- the history that was given in the demand 4 letter. 5 Q. Okay. What -- if the crossing goes in, 6 and is called the "Oliver Street crossing," 7 what's going to be on the south side of the 8 tracks? What's the City going to do? 9 A. From discussion with Sandy Key it's 10 going to be trails, walking trails, maybe a 11 little park. 12 I think there might even be a -- 13 some type of boat dock there on the south side on 14 the river. 15 Q. If a car -- if Oliver Street crossing 16 gets reinstalled and a car drives over it, where 17 is that car going to go? 18 A. Maybe to the park, maybe to somebody 19 that wants to walk the trails. Maybe they're 20 going to go visit the boat dock. 21 Q. Do you know how much -- how close -- 22 strike that. 23 Do you know how close the actual 24 water from the Arkansas River is in some 25 locations to the siding track there in Ozark?	Page 104 1 safety concerns than those in small communities"? 2 A. Correct. 3 Q. What safety concerns are there at this 4 crossing that you compared against other 5 low-volume crossings in small communities? What 6 safety concerns are you talking about? 7 A. Maybe an auto accident. 8 Maybe a -- a -- maybe a pedestrian 9 gets struck by a train. 10 But you know, that's about only 11 thing I can think of. 12 Q. Are you talking about a train versus 13 vehicle, automobile -- strike that? 14 You're talking about a train versus 15 vehicle accident at the crossing, or a train 16 versus pedestrian accident at the crossing? 17 A. Correct. 18 Q. And you also mentioned, your 19 understanding, that there might be a boat dock on 20 the other side of the tracks there in the 21 Arkansas River? 22 A. Correct. 23 Q. Did you do anything to analyze how many 24 people might utilize the boat dock on a daily 25 basis and walk over the Oliver Street crossing if
Page 103 1 A. You know, no, I do not. But in that 2 particular location, it's a sizeable area there 3 that can be utilized. 4 Q. Do you know that at some locations south 5 of the railroad tracks, the Arkansas River is 6 within 15 feet of the side tracks? 7 A. No, sir. I did not know that. 8 Q. If vehicles are allowed to go over the 9 proposed Oliver Street crossing, what would the 10 average daily traffic count be? 11 A. I -- be minimal traffic going over 12 there, I'm sure. You know, it -- like I said. 13 It -- 14 Q. Did you do anything to analyze how much 15 traffic would be going over the crossing if it 16 goes back in? 17 A. No, sir. I did not. 18 Q. If pedestrian -- strike that. 19 If the Oliver Street crossing goes 20 back in, did do anything to analyze how many 21 pedestrians might use the crossing on average 22 each day? 23 A. No, sir. 24 Q. Do you see in your affidavit that you 25 reference, it says, "Doesn't cause any more	Page 105 1 it goes back in? 2 A. No, sir. 3 Q. Do you know how many boat slips they are 4 talking about on this dock? 5 A. No, sir. 6 Q. Fair to say you really don't have a good 7 idea about how much use the Oliver Street 8 crossing would get on a daily basis if it goes 9 back in? 10 A. My -- my service to the Ozark -- the 11 City of Ozark, was to determine the hazard at the 12 crossing and not necessarily how many people were 13 going to use the park walkways or the dock. That 14 was not what they hired me to do. 15 Q. Okay. You know just from common 16 experience that people who go boating and fishing 17 sometimes drink alcohol while they're boating and 18 fishing. Right? 19 A. There are a lot of people that don't, 20 too. 21 Q. Do you think it's wise that folks who 22 have been out in the hot sun drinking alcohol tie 23 up at the boat dock and walk across these 24 railroad tracks? 25 A. Like I said, the potential for that is

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1 no more than any other places where we have
 2 pedestrian crossings going across the railroad
 3 tracks just like in New Orleans. We have rail
 4 lines that goes right down to the City of New
 5 Orleans right there where they hold Mardi Gras
 6 every day and, you know, they have Mardi Gras
 7 there. And I don't know that they have ever
 8 reported a pedestrian accident. And they are
 9 certainly drinking there at the Mardi Gras.
 10 Q. Well, but that poses unique safety
 11 concerns when you have got people who have been
 12 drinking that are walking across a crossing going
 13 over live railroad tracks. Doesn't it?
 14 A. You know, I don't know that I have
 15 anything to base yes or no on that question.
 16 Q. You certainly think it's ill-advised,
 17 don't you, that people who have been drinking
 18 very much alcohol cross -- cross where there are
 19 live railroad tracks?
 20 A. Yes, sir.
 21 Q. Do you know that according to FRA
 22 statistics, one of the leading causes of
 23 trespasser fatalities is alcohol use?
 24 A. That was certainly not the case in
 25 Region 5.

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1 Q. Can you tell me what the leading cause
 2 of trespasser fatalities is?
 3 A. In Region 5?
 4 Q. Yes, sir.
 5 A. It was Mexican people coming from Mexico
 6 riding on Union Pacific trains or KCS trains
 7 or -- or citizens there like in the City of
 8 Houston that -- that they were you know, they're
 9 either intoxicated or on drugs or they wanted to
 10 commit suicide or -- I mean, in fact, just the
 11 FRA now looking at various fatalities as people
 12 wanting to commit suicide. I mean, they
 13 certainly wouldn't be intoxicated.
 14 Q. Is it your understanding that there
 15 might be a boat ramp put in on the south side of
 16 the tracks if this crossing goes in?
 17 A. Again.
 18 Q. Is it your understanding that one day
 19 there might be a boat ramp put in on the south
 20 side of the trucks if this Oliver Street crossing
 21 goes back in?
 22 A. Yes, sir.
 23 Q. If a boat ramp is put in, that would
 24 mean that folks would be hauling long boat
 25 trailers up and over the tracks. Right?

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1 A. Not necessarily so.
 2 Q. Some would be.
 3 A. Yeah. From what I put -- as from the
 4 conversation about a boat dock is that people
 5 that were on the river, using the river, would
 6 tie up to the boat dock.
 7 I never heard of -- of anyone ever
 8 mentioning that they were going to be a...
 9 Q. Boat ramp?
 10 A. Boat ramp there.
 11 Q. Okay. If a boat ramp were to go in
 12 there, wouldn't that heighten the risk of those
 13 people going over the crossing if they're towing
 14 a boat behind them?
 15 A. No more so than anywhere else where we
 16 have a river and a boat ramp.
 17 Q. But you would agree with me there's a
 18 certain risk when an automobile goes over the
 19 crossing -- crossing live railroad tracks? There
 20 is a certain risk.
 21 A. No more risk than a long --
 22 Q. Wasn't my question. Wasn't my question.
 23 There is a certain risk when a vehicle goes --
 24 uses a crossing to go over railroad tracks?
 25 A. Yes.

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1 Q. That risk is increased the longer the
 2 vehicle is?
 3 A. I'm not in a position to answer that
 4 question yes or no.
 5 Q. Okay. Maybe we can shortcut some of
 6 this.
 7 What was Carolyn somebody's name
 8 again?
 9 A. Carolyn Cook.
 10 Q. Cook. Okay. Her position with the FRA
 11 was what one more time?
 12 A. She was the, I guess, inspector and
 13 manager of grade crossing inspections and...
 14 Q. And grade crossing safety?
 15 A. Uh-huh. Grade crossing safety.
 16 Q. Okay. And that's not a discipline you
 17 were ever in?
 18 A. Correct.
 19 Q. And that's not expertise that you have.
 20 Correct?
 21 A. Yes, sir.
 22 Q. Okay. Do you have expertise in
 23 determining that if a crossing goes in and goes
 24 over a siding, how that can adversely impact
 25 railroad operations? Is that something you have

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1 expertise in?

2 A. Are you asking me if I am an expert on

3 that is that?

4 Q. Yes, sir.

5 A. No, sir. I am not.

6 Q. Did you make any calculations about site

7 distance if the crossing goes back in there at

8 Oliver Street?

9 A. I made reference to what the separation

10 at the crossing would -- would require by

11 Arkansas ordinance or regulation.

12 Q. Okay.

13 A. At 300 feet.

14 Q. Okay. I think I know what you're

15 telling me.

16 A. And no, sir. Did I make any other type

17 of -- of site distance like measurements of any

18 kind? No, sir, I did not.

19 (Deposition Exhibit Number 24 is

20 marked.)

21 Q. (By Mr. Tucker) I think what you're

22 telling me, Mr. Soliz, and I -- first of all, I'm

23 going to hand you Exhibit Number 24, part of the

24 Arkansas statutes. Do you see down at the

25 bottom, it says, "B"? Paragraph B?

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1 A. Paragraph what?

2 Q. Paragraph B, the very last one on the

3 page?

4 A. Yes, sir.

5 Q. And that one says that it's unlawful for

6 a railroad company to obstruct a street crossing

7 for more than 10 minutes. Is that right?

8 A. Yes, sir. That's exactly so.

9 Q. Okay. And what you were telling me a

10 moment ago is if the train is going to be over

11 the proposed Oliver Street crossing, and it's

12 going to be stopped more than 10 minutes, the

13 railroad is going to have to separate that train?

14 A. Yes, sir.

15 Q. Okay. And they're going to need to

16 separate it where there's 300 feet on both sides

17 of the crossing of open view?

18 A. Correct.

19 Q. In other words, you can't have railcars

20 any closer than 300 feet to the east of the

21 crossing or any closer than 300 feet to the west

22 of the crossing?

23 A. Yes, sir.

24 Q. Okay. That's what I thought you were

25 talking about --

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1 A. Uh-huh.

2 Q. -- just a second ago. I wanted to make

3 sure we were saying the same thing.

4 A. Okay.

5 Q. Okay. And -- and other than that

6 distance of 300 feet on both sides of the

7 crossing, you said you didn't take any site

8 distance measurements?

9 A. No, sir.

10 Q. Is that -- is what I said correct?

11 A. Yes, sir.

12 Q. Okay. Good. I just want to make sure

13 that I understood what you were telling me.

14 Do you know what "clearing site

15 distance" means in railroad terminology?

16 A. Somewhat, yes, sir.

17 Q. Okay. Tell me what that means.

18 A. That means an unobstructed view of -- of

19 the right-of-way.

20 Q. Did you make any calculations about how

21 much clearing site distance would be needed at

22 this crossing for maximum Union Pacific timetable

23 speed through this area?

24 A. No, sir. And to answer your question

25 that you asked me earlier about permission, I

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1 didn't -- didn't other than if I, like you said,

2 if y'all owned 50 feet on both sides of the

3 right-of-way there, then I may have fouled the 50

4 feet. I'm not sure I did but other than that,

5 taking the photo, I didn't get on Union Pacific

6 property to take any kind of measurements.

7 Q. Okay. Do you know what the maximum

8 timetable speed is for trains going through the

9 City of Ozark?

10 A. The old timetables that I made reference

11 to earlier showed 45 miles per hour.

12 Q. Based on timetable speed of 45 miles per

13 hour, would you know how to calculate what

14 clearing site distances needed for this crossing?

15 A. No, sir. Though there is some federal

16 regulations pertaining to when warning had to be

17 given.

18 Q. You are talking about --

19 A. In advance of crossings.

20 Q. Right. You're talking about how long

21 flashing lights have to operate before a train

22 reaches a crossing, or how long flashing lights

23 have to activate before reaching a crossing?

24 A. Correct.

25 Q. Okay. Let's --

Page 114 1 A. Not only that. Also, the railroad 2 display signs on their right-of-way that tells 3 the engineer when to start sounding the horn and 4 bell. 5 Q. Looking at Paragraph 2 of your 6 affidavit, you state the inspection work. I'm 7 looking at the bottom of Page 1. 8 A. Okay. 9 Q. The inspection work and loss of railcar 10 capacity that UP complains that what it would 11 suffer would be minimal. Do you see that? 12 A. Yes, sir. 13 Q. What did you calculate as the loss of 14 capacity? 15 A. I took in a 300 feet separation and -- 16 and I divided that figure by -- normally a 70 17 foot, pretty much a standard car length and so, I 18 used that to come up with I think a figure of 19 eight cars that were probably lost. 20 Q. When you say "300 feet," you mean 300 21 feet on both sides? 22 A. That's correct. That would make it 600 23 feet. 24 Q. Okay. Time out. The Court Reporter 25 can't get us both down when we talk at the same	Page 116 1 A. -- Huston made reference to in his 2 comments. They didn't have that when the 3 crossing was there. 4 Q. They didn't have that? 5 A. When the cross, when the Oliver Street 6 crossing was there, and it was there until 1991, 7 they had to separate the crossing. 8 So, they only gained the additional 9 car capacity that the manager of train operations 10 listed in his affidavit. 11 Q. Will you agree with me that the most 12 common length of a railcar in the railroad 13 industry is 50 feet? 14 A. No. 15 Q. You think it's 70 feet? 16 A. Railcars in our industry in the -- in 17 the railroad industry varies in a lengths, and 18 you can have a car shorter than 50 feet. You can 19 have them all the way up to 89 feet. 20 Q. Okay. But isn't the most common length 21 of a railcar in the industry 50 foot? 22 A. No, sir. Sixty feet. 23 Q. But we will agree that if a train is 24 going to be on the crossing whether it's on the 25 main line or on the siding for more than 10
Page 115 1 time. I'm going to do my very best to let you 2 finish answering the question before I start 3 asking you another one, but while I'm asking it, 4 please let me finish just so she can get us both 5 down on the record. Okay? 6 Let me rephrase that. When you 7 mentioned 300 feet of clearance, you mean 300 8 feet on both sides of the crossing. Correct? To 9 split the train? 10 A. Well, when they split the train between 11 one end of the car to the other end with probably 12 be 600 feet. 13 Q. Exactly. That's what I was getting at. 14 A. Uh-huh. 15 Q. Okay. Six hundred feet. And I think 16 later in your affidavit, that would constitute 20 17 percent of the storage capacity of this siding. 18 A. I didn't figure a percentage. 19 Q. Okay. When you say that the loss of 20 railcar capacity would be minimal, what do you 21 consider to be minimal? 22 A. Okay. First of all, you know, the Union 23 Pacific Railroad gain, the -- the A car or the 12 24 cars that Mr. Horton or -- 25 Q. Huston?	Page 117 1 minutes, we're going to have to separate that 2 train and create a total of 600 feet separation 3 between the railcars? Three hundred feet on one 4 side of the crossing and 300 feet on the other? 5 A. Yes, sir. 6 Q. Now, the Manager of Train Operations, 7 Bill Huston said that that would reduce the 8 storage capacity of the siding by 20 percent. 9 Can you -- 10 A. I saw that in his. 11 Q. Do you have anything on which to agree 12 with him or disagree with him? 13 A. I disagree with him. 14 Q. You think that -- 15 A. I don't know what he was using to 16 calculate the number of cars that he was losing. 17 My calculation is that -- and I told you how I 18 did that. I -- 70 car -- -- I mean eight cars is 19 what I came up with. 20 Q. Regardless of whether we say eight cars 21 or 12 cars, we agreed it's 600 foot loss of 22 storage capacity when you -- when you have to 23 separate a train at the crossing? 24 A. At that particular crossing? 25 Q. Yes. Right?

Page 118 1 A. Yes, sir. 2 Q. We're agreed on 600 foot loss of storage 3 capacity. And if the railroad wanted to store, 4 let's say, cars there for a particular length of 5 time on the storage track or Maintenance of Way 6 equipment, they're going to have 600 feet that 7 they can put those cars or -- or Maintenance of 8 Way equipment on. Correct? 9 A. Yes, sir. 10 Q. And in other words, if the crossing goes 11 back in, the storage capacity of the sidetrack is 12 going to be reduced by 600 feet? 13 A. Yes, sir. 14 Q. Okay. What I'm asking you is: 15 Percentage-wise, how much does that cut in to the 16 storage capacity that currently exists now at 17 this location? 18 A. I said "eight cars." 19 Q. Let's go footage. 20 A. Okay. 21 Q. Footage. Everybody agrees 600 foot. 22 The railroad says 600 feet. You say 600 feet. 23 So if the railroad wants to store 24 railcars there on the storage track or 25 Maintenance of Way equipment and loses 600	Page 120 1 A. I know what you're saying. I -- 2 Q. Let's get back to my question, though. 3 We are all agreed that the loss of 4 capacity would be 600 feet of storage capacity. 5 A. Correct. If the crossing goes back in. 6 Q. Now, if that is in fact a 20 percent 7 loss of capacity, you would agree that that loss 8 of capacity is a significant number? 9 A. No, sir. I do not. 10 Q. Why not? 11 A. Because significant, 20 percent, you 12 know, if you just said there was 10 cars capacity 13 and you lost one car, would that be a significant 14 amount of cars? I mean you're asking -- I don't 15 think that a 20 percent loss at that location 16 particularly siding would be as significant 17 amount of cars. 18 Q. If you owned a manufacturing business 19 and I came in and took 20 percent of it away, 20 wouldn't that be significant loss to you? 21 A. It would be according to whether -- what 22 kind of business I was in. If I was in the 23 junkyard business and I had tons of junk out 24 there and somebody came and got a 20 percent of 25 that junk, I don't know that that would be a -- a
Page 119 1 hundred feet of capacity what percentage is that 2 of the total capacity to store railcars or 3 equipment on the storage? 4 A. Unless I figured it, I don't know 5 offhand. I don't know that I would agree with 6 him. He listed 25 percent. 7 Q. Okay. I believe he said 20 percent. 8 A. Twenty percent. 9 Q. But you don't know what the percentage 10 is? 11 A. No, sir. 12 Q. If it is, in fact, 20 percent loss of 13 storage capacity at this location if the crossing 14 goes back in, that is a significant loss of 15 capacity. Isn't it? 16 A. Again. 17 Q. Twenty percent? 18 A. Again, he -- he made reference to 12 19 cars. And again, that 12 cars -- or that 20 capacity was only gained after the -- the illegal 21 removal -- or unauthorized removal of the 22 crossing. 23 Q. That's not my question. 24 A. I know. I'm saying that -- 25 Q. I know.	Page 121 1 sizeable loss. 2 Q. Let me rephrase it. If I came in and 3 confiscated 20 percent of your annual income, 4 just took it away from you, that would be a 5 significant loss. Wouldn't it? 6 A. Yes, sir. 7 Q. Okay. In Paragraph 2, you mentioned 8 that the risk of safety is slight if Oliver 9 Street crossing goes back in. Are you aware 10 there are methods to perform a risk or hazard 11 analysis? 12 A. No, sir. 13 Q. Okay. And you did not perform a risk or 14 hazard analysis to support that statement. 15 Correct? 16 A. No, sir. 17 Q. Is what I said correct? 18 A. Correct. 19 Q. Okay. You didn't make any calculations 20 to determine quote the risk of safety. Did you? 21 A. Correct. Mine was all based on 22 experience. 23 Q. You're not a certified safety 24 professional? 25 A. No, sir.

Page 122 1 Q. And do you know any methods used by 2 safety professionals to quantitatively analyze 3 the risk of an incident? 4 A. No, sir. 5 Q. Do you know what "FMEA" stands for? 6 A. No, sir. 7 Q. And so you would not have performed an 8 FMEA analysis at this location. Would you? 9 A. Correct. 10 Q. When you say that there's a slight risk 11 of safety at this crossing, how do you define 12 "slight"? Can you quantify that for me? 13 Are you talking about one incident 14 per 1,000 trains or per 500 trains, or do you 15 have any numbers? Can you quantify it at all? 16 A. When I made reference to the minimal 17 safety concerns or hazards, it was based upon the 18 FRA databank that they established for at-grade 19 crossings. And at that particular time, they 20 showed nothing ever occurring there at the 21 crossing there at -- or at the Oliver Street 22 crossing. 23 Q. And you mentioned the FRA safety data 24 and that's just jumping ahead, that's on Page 5, 25 Paragraph 14 of your report that says, "I	Page 124 1 cause of a grade crossing accident when you were 2 with the FRA? 3 A. Yes, sir. 4 Q. How many? 5 A. I wouldn't know. I mean after 34 years, 6 probably I'm going to say maybe 15. 7 Q. What was the primary cause of the grade 8 crossing accidents that you investigated? 9 A. The -- the violation of the motor 10 vehicle operator. 11 Q. Either poor judgment by the motor 12 vehicle operator or risky driver behavior? 13 A. Correct. 14 Q. Did you ever recommend any preventative 15 solutions in these grade crossing accidents that 16 you investigated? 17 A. Yes, sir. 18 Q. What would those have been? 19 A. I would recommend like stop signs. 20 I would recommend advance -- like 21 highway crossings, advance -- advance warning 22 signs. 23 Q. Did you ever recommend that a crossing 24 be closed? 25 A. No, sir.
Page 123 1 reviewed FRA safety data concerning UP train 2 accident/incidents for Ozark Franklin County, 3 Arkansas, and no reports were found. The search 4 covered all train accidents including those with 5 trespasser injuries or fatalities from 6 January 2010 through July, 2014." 7 Is that correct? 8 A. Yes, sir. 9 Q. All right. So you -- you looked at a 10 four-year period for the FRA safety data? 11 A. Yes, sir. 12 Q. And the crossing was out in 13 January 10th. Wasn't it? January, 2010. Wasn't 14 it? 15 A. Yes, sir. 16 Q. Did you ever, when you were -- strike 17 that. 18 When you were with the FRA, did you 19 ever work with the NTSB, National Transportation 20 Safety Board at a grade crossing accident? 21 A. Yes, sir. 22 Q. On how many occasions? 23 A. Probably on three different occasions, I 24 think probably. 25 Q. Did you ever author a report as to the	Page 125 1 Q. I may have asked you this one before. 2 Have you ever had any courses in physics? 3 A. No, sir. 4 Q. In looking at Paragraph 5 of your 5 affidavit, Mr. Soliz, it says that, "In August of 6 2013, I traveled to Ozark, Arkansas," so that 7 tells us when you there. Right? 8 A. Yes, sir. 9 Q. That gives us the answer we were looking 10 for earlier. And you state, "I personally 11 observed that the trackage in this area was not 12 totally utilized with the exception of the 17 13 railcars standing on the siding." Correct? 14 A. Correct. 15 Q. And if this proposed Oliver Street 16 crossing went in, those cars would have to be 17 separated such that there was 300 feet on both 18 sides of the crossing? 19 A. Yes, sir. 20 Q. Okay. 21 A. If the crossing was -- if the Oliver 22 Street crossing -- 23 Q. Was blocked? 24 A. -- was there today, yes, sir, they would 25 have had -- where the cars were left standing,

Page 126 1 yes, sir, they would have had to separate the 2 crossing. 3 Q. Did you do anything to calculate what 4 would have been full utilization of the trackage 5 in the area? 6 A. No, sir. 7 Q. Because it says, "I notice the trackage 8 was not totally utilized"? 9 A. Okay. 10 Q. But you didn't do anything to calculate 11 what -- 12 A. No, sir. 13 Q. What total utilization was? You didn't 14 do anything to make that calculation? 15 A. No, sir. 16 Q. Okay. Did you measure the capacity of 17 the siding there at Ozark? 18 A. Did I measure the capacity? 19 Q. The total footage capacity. 20 A. No, sir. 21 Q. Fair to say if the railroad had 17 cars 22 on the day you were there, a week later, they 23 might have had 40 cars in that sidetrack? 24 A. Yes, sir. 25 Q. Okay.	Page 128 1 had to be separated at the Oliver Street crossing 2 and then later reconnected? 3 A. At the Oliver Street crossing? 4 Q. Yes, sir. 5 A. No, sir. 6 Q. Did you perform any sort of study as to 7 how often the railroad uses the siding at Ozark 8 for either train meets or storing equipment? Any 9 type of study? 10 A. No, sir. 11 Q. And if you didn't do that, then you 12 can't state as a professional opinion that -- 13 that opening a crossing at Oliver Street would 14 not interfere with railroad operations. Correct? 15 A. That is not correct. 16 Q. Why not? 17 A. During my 34 years of working within the 18 railroad industry as an FRA inspector, I 19 witnessed many train operations over railroad 20 crossings. And I witnessed many train crews 21 making the coupling after the separation. And 22 we're talking anywhere from two minutes to up to 23 10 minutes. 24 Q. Do you know what railroad operations 25 will be through Ozark in five years, or 10 years
Page 127 1 A. I think Mr. Hudson -- 2 Q. Huston. 3 A. Huston. Excuse me. Indicated that 4 siding there had a capacity of 60 cars. 5 Q. Well, regardless of -- I think he's 6 using a 50-foot car. 7 A. Okay. 8 Q. Okay. If the railroad needed to use all 9 the space on the siding at Ozark, all available 10 space for operational purposes and they had to 11 separate the cars at the crossing, which cut out 12 600 feet of total capacity, would you agree that 13 that wouldn't materially interfere with 14 railroad -- railroad operations? 15 A. No, sir. 16 Q. Why not? 17 A. They have crossings all up and down the 18 Union Pacific Railroad and that did not pose a -- 19 separating the crossing did not pose any -- 20 any -- any, I guess -- I want to say. I don't 21 say that it delays the operation, if it does. 22 It's a minimal amount of time that it would be 23 delayed. 24 Q. Did you do any calculations to determine 25 what type of train delays would result if trains	Page 129 1 from now? 2 A. No, sir. 3 Q. In your career, you've seen how some 4 tracks suddenly become very busy because 5 businesses open up or mines open up along their 6 lines and traffic increases? 7 A. Yes, sir. I have also seen the 8 opposite. 9 Q. That could happen in Ozark. Couldn't 10 it? Where the traffic increases substantially 11 going through Ozark? 12 A. Yes, sir. 13 Q. Let's say if -- if in two years Union 14 Pacific decided to extend the Ozark crossing to 15 two miles in length and started meeting trains 16 there every day, if they had to cut the Ozark 17 crossing for train meets, that would affect 18 railroad operations. Wouldn't it? 19 A. They have sidings at Milepost 467 -- B 20 467 and at Milepost B 462, I think, and each one 21 of those sidings are 7,602 feet long which would 22 probably give them a car capacity of anywhere 23 from 108 cars to 110 cars, again, depending on 24 car size. I'm not too sure why the Union Pacific 25 would want to extend this crossing at Oliver

Page 130 1 Street at the -- at -- at Ozark. 2 Q. But they could decide to extend it if 3 they wanted to. 4 A. Yes, sir. That's -- that's their 5 prerogative, yes. 6 Q. All right. And the two side tracks that 7 you mentioned, would they be both east and west 8 of Ozark? 9 A. Yes, sir. 10 Q. Okay. And do you know what those 11 sidings are primarily used for? 12 A. Train meets. 13 Q. Okay. And those -- you are right. 14 A. Okay. 15 Q. Those sidings being longer, they can 16 accommodate those long coal trains that move 17 through. Right? 18 A. Okay. Yes, sir. 19 Q. And do you know that the Ozark siding is 20 used primarily for storage of equipment and train 21 meets of local trains? 22 A. In the -- in the old time tables that I 23 made reference to, they made reference to that 24 trackage there as Ozark as "business tracks." 25 Q. But you can still conduct train meets	Page 132 1 A. Yes, sir. 2 Q. And if we take -- let's -- let's say the 3 train, there's -- strike that. 4 Let's say there's going to be a 5 train meet in Ozark and there are no cars on the 6 sidetrack. Okay? 7 A. Okay. 8 Q. And let's say you have got a train 9 that's just barely the right size to fit in the 10 siding. Okay? And it's got to sit there and 11 wait on a train coming down the main line. 12 Now, if that train has to be cut at 13 the Ozark Street (sic) crossing and it would now 14 extend out and foul the main line because it 15 wouldn't fit in the siding any more, then that 16 siding can't be used for that particular train 17 meet. Correct? 18 A. Depending on the lengths of the train 19 that -- that they were meeting. 20 Q. Well, no, I think we will both agree on 21 this. Let's say -- let's say the capacity to 22 hold the train in the siding is three feet. 23 Okay? 24 Let's say you had a train that was 25 2,800 feet. And it's going to go into the siding
Page 131 1 there at Ozark. Can't you? 2 A. If you had a short train, yes, sir. 3 Q. And local trains as opposed to, like, 4 through freights are typically shorter trains? 5 A. They could have train meets there. If 6 they didn't have any cars stored on -- on that 7 siding. If they had cars stored on that siding, 8 they would have had to utilize the other two 9 sidings. 10 Q. And if the other two sidings were 11 already being used, in other words, the 12 dispatcher put a train in both of those sidings, 13 then those sidings would not be available to put 14 another train in? 15 A. That's correct. 16 Q. Like a -- 17 A. And if they wanted to have a train meet 18 there in Ozark, they would have to ascertain 19 whether they had storage cars on that siding. If 20 they had storage cars there, they couldn't have a 21 train meet. 22 Q. And if you didn't have storage cars on 23 there, you could have a train meet provided that 24 the train going in to the siding was short enough 25 to fit into that siding?	Page 133 1 and stay there until a train on the main line 2 passes. 3 A. Okay. 4 Q. But, the train in the siding is going to 5 be there for longer than 10 minutes. Let's just 6 say an hour. 7 A. Okay. 8 Q. Now you've got to cut that train. 9 A. Correct. 10 Q. That's in the siding, and it's got -- 11 we're going to have 300 feet on both sides of the 12 crossing. 13 And now, that train is going to 14 actually, because of the separation at the 15 crossing, that train is going to extend in to the 16 main line and foul the main line traffic? 17 A. Correct. 18 Q. In that situation, you couldn't use the 19 Ozark siding for a train meet because of the 20 Oliver Street crossing? 21 A. No, sir. Let's say that the train that 22 they were going to meet is on the main track, 23 let's say that car -- that train consisted of 30 24 cars. They could leave the car that went in to 25 the siding that was not big enough for the siding

Page 134 1 to hold, could leave cars out on the main track, 2 let this car -- 30-car-train go by and as it goes 3 by, they could go ahead and pull forward. And it 4 would be just as they pull forward, they clear up 5 and ride on going through. And that's done every 6 day. 7 Q. But that increases train delays to do it 8 that way as opposed to just running straight 9 through. Right? You're going to delay it, some 10 train doing it that way? 11 A. Well, you're going to delay a train when 12 you put them in the siding for a meet. 13 Q. And you'll agree that tray delays cause 14 inefficiency or the railroad doesn't -- a 15 railroad is not as efficient when you have train 16 delays? 17 A. Okay. Well, you know, if you're going 18 to say -- just talking that if the train has got 19 to go into a siding and delays a train, is there 20 a train delay? Yes, it's a train delay. 21 Q. Okay. But I can give you an example, 22 and you know you'll agree with this, of a train 23 meet in Ozark that can't happen if the crossing 24 at Oliver Street's got to be cleared 300 feet of 25 both sides. Right? I mean, there's going to be	Page 136 1 train crew to sit in their locomotive cab at a 2 train meet, or is it safer that they have to get 3 down on the ground, walk back and cut across it? 4 A. Well -- well, the crew is not going 5 to -- the crew won't be getting out of the 6 locomotive compartment. It will only be -- in 7 most cases nowadays, there is a two-man crew. It 8 would be the conductor that had to get on the 9 ground and walk back there to make the 10 separation. 11 Q. I agree with that. Do you think it's 12 safer for that conductor at a train meeting to be 13 sitting in the cab of this locomotive, or is it 14 safer for him to get down on the ground and walk 15 back to the crossing and cut the crossing? 16 A. It would be safer for the conductor to 17 be in the cab of the locomotive. 18 Q. All right. And are you aware that most 19 employee injuries of train engineers and yardmen 20 are due to slips, trips and falls? 21 A. Yes, sir. I am. In the pictures -- one 22 of the pictures that I -- part of the exhibit, 23 you could see all the debris is down along siding 24 of the track. That certainly adds to that trip 25 and falling and...
Page 135 1 situations like that? 2 A. Yes, sir. I agree with you. I'm 3 just -- that's all I'm saying, that let's say the 4 train that's coming out of Little Rock, Arkansas 5 had 80 cars. And the train that was coming -- 6 going north from Van Buren to Little Rock -- 7 timetable directions. 8 Q. That would be south. 9 A. South. Yeah. Right. South. You're 10 right. They would -- couldn't make a train meet 11 there. 12 Q. Here is a good scenario. We don't have 13 to use exact footage but let's say we got a train 14 going north that can fit in to the siding -- 15 A. Uh-huh. 16 Q. -- barely, and let's say we have a train 17 going south toward the Little Rock that's a mile 18 long. And the dispatcher of Union Pacific wants 19 to have a train meet there. If the Oliver Street 20 crossing is installed and that train in the 21 siding has to be broken apart to where it now 22 can't fit in the siding, then you can't have a 23 train meet there in Ozark. Correct? 24 A. That's correct. 25 Q. Okay. Do you think it's safer for a	Page 137 1 Q. And -- and trips, slips and falls happen 2 to train and enginemen just by walking through 3 ballast that -- that -- where there is no debris. 4 Correct? 5 A. Yes. 6 Q. Okay. When you separate a train, 7 Mr. Soliz, and then you're going to reconnect the 8 train, that falls under the heading of "Switching 9 Movements." Correct? 10 A. I agree. 11 Q. Okay. Just -- just so we're in 12 agreement, I've got the FRA regulation I'll pass 13 to you that I'll mark as "Exhibit Number 25." 14 And if you'll read the highlighted 15 section into the record just -- just what's been 16 highlighted there? 17 (Deposition Exhibit Number 25 is 18 marked.) 19 A. "Switching service means the 20 classification of a railroad freight and 21 passenger cars according to commodity are 22 destination; assembling cars for train 23 movements." 24 Q. (By Mr. Tucker) Okay. 25 A. Train into position.

Page 138 1 Q. Okay. So, the -- assembling cars for 2 train movements, disconnecting and reconnecting 3 train cars, that falls under our FRA definition 4 of "switching"? 5 A. In -- in this, when they make reference 6 to "assembling cars," we're talking about in a 7 train yard where they're assembling cars. And 8 not necessarily where you're out here on the 9 siding and recoupling a train. 10 Q. Okay. 11 A. Because of separating and crossing. 12 Q. But you told me just a second ago that 13 separating a train and -- and reconnecting a 14 train falls under the broad heading of 15 "switching"? 16 A. I would say so. 17 Q. Okay. Do you know, do you know what 18 the -- 19 A. You know -- 20 Q. -- SOFA means? S-O-F-A. 21 A. Yes, sir. And I -- 22 Q. What does "SOFA" mean? 23 A. Let me -- can I go back a bit about what 24 you're talking about the switching? 25 I mean when -- it's -- it's a	Page 140 1 have marked as, "Exhibit Number 26," which is an 2 FRA report dated June, 2005, that says, "Safe 3 Placement of Train Cars, a Report." 4 I'll ask you to turn to Page Number 5 2, the second page in that document, and read 6 what's highlighted there. 7 A. Is says, "The most common cause of 8 fatalities of railroad employees as being 9 crushed, run over in switching operations. 10 According to the Switching Operations Fatality 11 Analysis" -- 12 Q. Slow down. Slow down. 13 A. -- "Working Group, there were 114 such 14 fatalities in the period of 1992 through 2002." 15 Q. Okay. You can put that to the side. 16 Would you agree that the act of coupling and 17 uncoupling cars causes a high percentage of 18 overall railroad fatalities and injuries? 19 A. Let me go back to the paragraph I just 20 read. It says, "The common cause of fatalities." 21 Okay? There is -- and that's -- the statement is 22 true. But... 23 Q. Let me ask the question a different way. 24 A. Okay. 25 Q. And I think maybe we can get there.
Page 139 1 common railroad or train operation experience 2 when you're having to couple cars at a crossing. 3 Would you consider it like a switching like where 4 we -- like the FRA intended this -- this 5 definition to -- to mean? I don't know that that 6 would be. But getting out and -- for a conductor 7 to get on a -- out of the cab, on the ground -- 8 he would -- he would make a couple. It's part of 9 a train operation. A train operation, I would 10 say would probably be switching. 11 Q. Okay. 12 A. But not in -- in the context of this 13 particular thing here. 14 Q. Okay. What does "SOFA" stand for, 15 S-O-F-A? 16 A. It stands for Switching Operations 17 Fatality Analysis. 18 Q. Okay. And do you agree that the most 19 common cause of fatalities to railroad employees 20 is being crushed or run over in a switching 21 operation? 22 A. No, sir. 23 (Deposition Exhibit Number 26 is 24 marked.) 25 Q. (By Mr. Tucker) Let me hand you what I	Page 141 1 As you said, it's -- it's safer for 2 a conductor to sit in the cab of a locomotive 3 during a train meet than it is to walk back to a 4 crossing, cut a train, have the train pull 5 forward and then reconnect the train later? 6 A. Correct. 7 Q. Okay. He's got more risk when he's on 8 the ground and going back to cut across it? 9 A. Correct. 10 Q. And if you increase the risk of a 11 conductor injury, that can affect train 12 operations. Can it not? 13 A. Correct. 14 Q. Okay. Let's look at -- 15 MR. TUCKER: Well, let's go off the 16 record for a moment. 17 THE VIDEOGRAPHER: We're going off 18 the record at 11:56. 19 (Recess taken.) 20 THE VIDEOGRAPHER: This is Tape 3 21 of the deposition. We are back on the record at 22 12:30. 23 Q. (By Mr. Tucker) Mr. Soliz, of course 24 you understand that in this case, the City of 25 Ozark wants to put the Oliver Street crossing

Page 142 1 back to where it was once years ago. Right? 2 A. Yes, sir. 3 Q. Okay. Is this the first time where a 4 crossing was proposed to be installed and you 5 were asked to look at the effect that the new 6 crossing would have on train operations and 7 safety issues? 8 A. Yes, sir. 9 Q. And I believe we covered this before we 10 broke for our lunch break, but you didn't do any 11 sort of risk analysis on the merits of having to 12 cut the crossing in Ozark versus not having to 13 cut the crossing. Did you? 14 A. Correct. 15 Q. Okay. I had a couple of questions about 16 Paragraph 6 in your affidavit with references to 17 the house tracks. Do you remember how many house 18 tracks there were in the area near where the 19 crossing used to be? 20 A. Two, I think. 21 Q. And you say it did not appear -- Union 22 Pacific utilized the house tracks in their 23 railroad operations. Do you see that in 24 Paragraph 6? 25 A. Yes, sir.	Page 144 1 railroad tracks ahead of the rail, pretty -- 2 pretty good indication that they haven't been 3 used in a while. 4 Q. But as we said a moment ago, the house 5 tracks weren't being used the day you were there 6 but they could have been used the week after you 7 were there? 8 A. Yes, sir. 9 Q. Okay. Isn't it true that rail traffic 10 is increasing throughout United States right now? 11 A. Yes, sir. Well, I want to -- you said 12 "right now." Right now, the economy is flowing 13 pretty good. To talk about, you know, if they 14 had a slight depression, then the rail traffic 15 slows down. 16 Q. But at least in 2014 and the first part 17 of 2015, rail traffic has increased over what it 18 was several years before? 19 A. You know, I don't have anything to say 20 yay or nay. But it appears to me. 21 Q. I'm not asking you to guess. 22 A. Uh-huh. 23 Q. I think one thing we can agree on 24 though, is traffic patterns change with the 25 economy?
Page 143 1 Q. If the house track wasn't used the day 2 you were there -- 3 (Phone sounds.) 4 Q. (By Mr. Tucker) -- it could have been 5 used the week before and the week after you were 6 there? 7 A. Correct. I'm sorry. I ain't going to 8 answer. But can I get? 9 (Conversation held off the record.) 10 THE VIDEOGRAPHER: Off the record 11 for just a minute. We are off the record. 12 (Conversation held off the record.) 13 THE VIDEOGRAPHER: We're back on 14 the record at 12:33. 15 Q. (By Mr. Tucker) Mr. Soliz, we were 16 talking about the house tracks, and I take it you 17 didn't sample the number of days to determine 18 that the railroad utilized the house tracks. Did 19 you? 20 A. No, sir. My -- my determination was 21 made on grassy conditions and not any visible 22 signs of usage in a walk -- 23 Q. The fact that is grass near the tracks 24 doesn't mean tracks are not being used. Does it? 25 A. Well, when you see rust going over the	Page 145 1 A. Yes. 2 Q. So what is normal today might change 3 dramatically tomorrow? 4 A. Yes, sir. 5 Q. And we don't want to make decisions 6 today that can hamper operations in the future. 7 Correct? 8 A. Correct. 9 Q. Okay. If the Oliver Street crossing 10 were to be reinstalled, do you know whether or 11 not the traffic control devices would be cross 12 buck signs or flashing lights or flashing lights 13 with gate arms? Do you know which of those would 14 be present at the crossing? 15 A. No, sir. 16 Q. Would that -- would the type of crossing 17 protection, if Oliver Street were to go back in, 18 would that have an effect on the hazard level of 19 the crossing? 20 A. Can you ask me that question again? 21 Q. Yes, sir. We don't know as we sit here 22 today, we don't know what type of traffic control 23 devices would go in if the crossing was 24 reinstalled? 25 A. Correct. The State of Arkansas, I

Page 146 1 think, has that prerogative or that jurisdiction. 2 Q. And depending on what type of traffic 3 control devices go in if the -- if the crossing 4 were to be reinstalled, that could affect how 5 dangerous it would be to vehicular traffic and 6 pedestrians? 7 A. From the conversation that I've had with 8 like Sandra Key, the City was requesting that the 9 crossing be reinstalled as it was. 10 It doesn't have automatic crossings 11 gates, it -- I think it had stop signs. And to 12 judge -- or how the basis of how much of a hazard 13 it would be created by the reinstallation of the 14 crossing, I guess you'd have to go to look at a 15 historical accident records and -- which I did, 16 and there was no indication of any grade crossing 17 accident, fatality at the grade crossing. 18 There wasn't no pedestrian 19 accidents. 20 There was no vandalism of any kind. 21 So, you know, when you -- it's kind 22 of tough or hard for me say that putting this 23 crossing is going to have a great impact because 24 there is nothing for me to say it is. The only 25 thing I can go back and say, base my comments	Page 148 1 A. There was a track gang in that area. 2 Q. Do you know if the rail traffic is 3 predicted to increase or decrease on these tracks 4 in the next 10 years? 5 A. No, sir, I do not. 6 Q. Do you know that there is some tracks 7 Union Pacific has that might have as many as 60 8 to 100 trains a day? 9 A. Yes, sir. North Platte had a huge rail 10 yard there. 11 Q. Do you know of any reason why these 12 tracks might not wind up having 60 trains a day 13 10 years from now? 14 A. No, sir. Nor can I tell you there ain't 15 going to be no trains there tomorrow. 16 Q. Understood. 17 A. Yeah. 18 Q. If the Oliver Street crossing was 19 reinstalled and train traffic increased to, let's 20 say, 60 trains a day, it would be very difficult 21 to take that crossing out. Wouldn't it? 22 A. I'm not too sure why the Union Pacific 23 Railroad would want to take the crossing out, 24 because I mean the Union Pacific Railroad has 25 numerous crossings where they have high train
Page 147 1 is -- is only creates minimal is because of the 2 history of it. 3 Q. The history you talked about were the 4 records you looked at, from 2010 to 215? 5 A. Not only that. It's also, the -- while 6 I was working there with FRA in Arkansas, I mean, 7 it wouldn't have made the investigation. I don't 8 know that there has ever been a grade crossing 9 accident there. 10 Q. Okay. 11 A. Or a fatality of any kind. And we never 12 received complaints of vandalism, pedestrian 13 traffic going across that track, or anything. 14 Q. In Paragraph 7 of your affidavit, you 15 mention that one train passed over what was 16 formerly Oliver Street in five hours. And my 17 question about that is, are you drawing any 18 statistical conclusion based on that observation? 19 A. No, sir. Just -- you know, it's -- at 20 that particular time, that comment was based on, 21 you know, it's not a high -- high-volume traffic 22 trackage for the UP Railroad. 23 Q. Do you know if there were any track 24 gangs working in the area that day, one way or 25 the other?	Page 149 1 volume that traffic goes there every day. I 2 mean, the fact that the crossing is there does 3 not impede or reduce the number of the train 4 volume. 5 Q. You understand that the railroad uses 6 the siding track in Ozark to store railcars and 7 rail equipment? 8 A. Yes, sir. 9 Q. And you also understand that the UP uses 10 the main line and the siding in Ozark for train 11 meets in that area at times? 12 A. I mean, I never witnessed a train meet 13 there. Okay? I did witness 17 cars being stored 14 on the siding. If there are train meets there... 15 Q. You don't know it? 16 A. No, sir. 17 Q. But if -- if railroad employees, 18 managers of train operations, have stated under 19 oath that the -- the siding and main line are 20 used in Ozark for train meets, you -- you 21 wouldn't dispute that. Would you? 22 A. Okay. In Mr. Huston's affidavit, he 23 made reference to train wrecks. I don't know 24 where he meant that in general, yes, used for 25 train meets. But he did not say or state or

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1 tell -- say it in his affidavit how many train
 2 meets are met there, or are they conducted on a
 3 daily basis or -- or anything. I mean --
 4 Q. Here is my question.
 5 A. Uh-huh.
 6 Q. Mr. Houston said that the main line and
 7 the siding in Ozark are use used for train meets.
 8 Right?
 9 A. Okay.
 10 Q. And you don't dispute that?
 11 A. I mean, if he says so, I -- you know, I
 12 don't dispute that.
 13 Q. Okay. I think I covered this earlier.
 14 Pardon me if I did. You've never been a train
 15 dispatcher. Have you?
 16 A. No, sir.
 17 Q. Or a supervisor of Corridor Operations?
 18 A. No, sir. But I received training in
 19 dispatching operations. I've never served as a
 20 dispatcher that was your question. No, sir.
 21 Q. Okay. Just so I can clear it up, let me
 22 ask again: You've never been a train dispatcher.
 23 Have you?
 24 A. No, sir.
 25 Q. Or supervisor of Corridor Operations?

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1 A. No, sir.
 2 Q. Or Superintendent of Operations?
 3 A. No, sir.
 4 Q. You've never been responsible for
 5 looking at a grid and making sure you get one --
 6 all of your trains you're responsible for from
 7 their origination to their destination as
 8 officially as possible?
 9 A. Never. No, sir.
 10 Q. Okay.
 11 A. Though I do have knowledge at how it's
 12 conducted and stuff.
 13 Q. Do you know the factors that go in to
 14 deciding which rail sidings can be utilized on a
 15 given day for train meets?
 16 A. The length of the train.
 17 Q. Any other factors you know of?
 18 A. Length of the train, the panel with the
 19 train crew, the -- the ability to get to the
 20 train crew.
 21 I mean, there are several factors
 22 goes into where they're going to have a train
 23 meet.
 24 Q. But you never decided where two
 25 trains -- two trains would meet where one could

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1 go into the siding and the other could go around
 2 the train?
 3 A. No, sir.
 4 (Phone sounds.)
 5 A. Can I?
 6 Q. (By Mr. Tucker) Yes.
 7 THE VIDEOGRAPHER: Off the record?
 8 THE WITNESS: Yes, please.
 9 THE VIDEOGRAPHER: We are going off
 10 the record at 12:43. We're off the record.
 11 (Conversation held off the record.)
 12 THE VIDEOGRAPHER: We're back on
 13 the record at 12:44.
 14 Q. (By Mr. Tucker) Fair to say, Mr. Soliz,
 15 you're not an expert in train meet and pass
 16 operations?
 17 A. No, sir.
 18 Q. What I said was correct?
 19 A. Yes, sir.
 20 Q. Okay. Let's look at Paragraph 10 of
 21 your affidavit. There is a sweeping curve in
 22 Ozark near the depot. Is there not?
 23 A. From the south, yes.
 24 Q. Okay. What I'm calling looking to the
 25 east.

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1 A. Yes. Yes. Yes. Yes.
 2 Q. Looking to the east?
 3 A. Yes, sir.
 4 Q. That's reflected in Exhibit Number 22?
 5 Which is the photograph you took?
 6 A. Okay. This one? We're looking at the
 7 same one?
 8 Q. Yes, sir. Fair to say that curve back
 9 to the east hampers a person's ability to see a
 10 train coming from the east?
 11 A. There is a lot of different things there
 12 that obstructs a good site distance from -- if
 13 you were standing on the south of the track. The
 14 visibility is -- is severely restricted because
 15 of trees and underbrush and stuff like that.
 16 If you stand on the north side of
 17 the track, the -- the obstruction is by far
 18 greater than on the south side.
 19 Q. But if somebody is coming from the south
 20 side going to the north and a train were coming
 21 from the east, the train is actually coming from
 22 behind them. Right?
 23 A. You mean a train going south?
 24 Q. Okay. Let's -- let's make sure we get
 25 our directions right. I'm not using timetable

Page 154 1 directions. 2 A. Okay. You're using geographic? Okay. 3 Q. Yeah. Compass directions. If somebody 4 is going from the river side toward town -- 5 A. Okay. 6 Q. -- south to north? 7 A. Okay. 8 Q. The current to the east severely 9 restricts that person's site distance down the 10 drive? 11 A. The vegetation. The curve doesn't. The 12 vegetation does. 13 Q. Well, the curve certainly does, doesn't 14 it? 15 A. Not necessarily. If there was no 16 vegetation and there was no restriction along the 17 track, there wouldn't be no restriction. The 18 curve, does not, itself, present a -- an 19 obstruction of view. I mean, I've been in lots 20 of traffic where there is curves and you -- you 21 can see for miles. It's -- what's along the 22 right-of-way that really obstructs the view of 23 the traffic. 24 Q. And I'm going to hand you what I'm going 25 to mark as "Exhibit Number 27." It's just a	Page 156 1 middle of the crossing, you -- you would be 2 correct. That the tangent track would by far 3 more of a sight distance from the curve. 4 Q. That's my point. 5 A. Yes. 6 (Deposition Exhibit Number 28 is 7 marked.) 8 Q. (By Mr. Tucker) You see I drew -- drawn 9 in Exhibit 28, a road going from south to north 10 and railroad tracks going from east to west? 11 A. Yes. 12 Q. And a motorist or a pedestrian going 13 from south to north is going to be able to see on 14 straight track a lot farther down the track than 15 they will if the road curves as in Exhibit Number 16 27? 17 A. And I don't mean to be argumentative. 18 I'm just telling you what I think. The driver 19 come -- 20 Q. Which one are you pointing to? 21 A. Exhibit Number 27 and Number 28. 22 Q. Okay. Go ahead. 23 A. If I was a driver going down traveling 24 on -- on Oliver Street from south to north, I 25 could see around the curve providing there would
Page 155 1 little drawing of mine. 2 (Deposition Exhibit Number 27 is 3 marked.) 4 Q. (By Mr. Tucker) You see I've drawn a 5 road there going from south to north? 6 A. Yes, sir. 7 Q. Okay. If a person is going from south 8 to north, and -- and the curves, the tracks 9 curve, to the south back to the east, that's 10 going to hamper someone going from south to north 11 from seeing an approaching train. Isn't it? 12 More so than a straight track? 13 A. I personally think it would increase the 14 visibility. If I was going down the track, going 15 from the south to the north end of the track -- 16 Q. No. No. No. You're not going down the 17 tracks. 18 A. I was going down the road. Excuse me. 19 I'm going down the road. I'm a -- I'm a driver. 20 And look over to my right and look around that 21 curve, I see if there was no vegetation, I could 22 see for a long ways. 23 Q. But it's always -- and I'm -- let me -- 24 A. Now, if I was at the center, standing in 25 the middle of the -- of the track right in the	Page 157 1 be no vegetation all the way into the crossing. 2 I would not be able see as far -- once I reached 3 the crossing, I certainly -- I could see more 4 down the tangent track to my left. Just because 5 I was nearing the center of the track. But as I 6 approached the curve that you are showing me is 7 to the right. So, as I come up, I have a lot 8 more view of this curve starting way over here as 9 I go through the crossing. 10 Q. Well, now, that -- 11 A. But the vegetation isn't. 12 Q. Let's -- let's do away with vegetation, 13 I'm just talking about any grade crossing. 14 A. Okay. Even -- even -- even if there was 15 no obstruction. 16 Q. No vegetation. 17 A. No vegetation. 18 Q. Okay. Now, listen, if I pull up to a 19 cross -- railroad tracks that are across a road 20 at a right angle, I can see a lot farther down 21 those tracks in both directions than if those 22 tracks curve in to me. I mean that's just common 23 sense. Right? 24 A. Well, according to -- if -- if this 25 curve was to the left, I would agree with you.

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1 But the curve is to my right. As I approach the
 2 curve to my right-hand side. I can see all the
 3 way down to this way.
 4 Q. The problem is, though, you've got to
 5 turn your head more than 90 degrees to see back
 6 behind you. Don't you?
 7 If you're approaching this -- this
 8 crossing from south to north, to look down those
 9 tracks to the -- to your right, you're going to
 10 have to turn your head more than 90 degrees.
 11 Right?
 12 A. Yes, sir.
 13 Q. Okay.
 14 A. But -- but -- but a train that's not a
 15 little thing. A train is a fairly good size
 16 piece of equipment going down the track.
 17 Q. Now, I understand that. Now, you know
 18 that the -- strike that.
 19 Which of the two tracks, the main
 20 line or the siding, is closest to the Arkansas
 21 River at Ozark?
 22 A. Siding.
 23 Q. Okay. And you know that the Union
 24 Pacific stores, cars and rail equipment in that
 25 siding from time to time. All right?

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1 A. Okay. Yes, sir.
 2 (Deposition Exhibit Number 29 is
 3 marked.)
 4 Q. (By Mr. Tucker) Okay. Okay. I'm going
 5 to write in red, "siding" and "main" on Exhibit
 6 Number 29.
 7 Now, let's say somebody is going
 8 from south to north on Oliver Street from the
 9 river side toward town and there are cars on the
 10 siding.
 11 Now, granted, I'm going to say that
 12 they are separated from the crossing by 300 feet.
 13 A. Okay. Yes, sir.
 14 Q. On both sides of the crossing.
 15 Now, that person who is going from
 16 south to north, as he is approaching the tracks
 17 cannot see a train because of the railcars.
 18 Agreed?
 19 A. Agreed.
 20 Q. Okay. And that can present a very
 21 dangerous situation for a person going from south
 22 to north. Correct?
 23 A. What are your -- you're asking me the
 24 questions. You know, I have no way of -- of
 25 answering the degree of hazard. Okay? And the

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1 reason why there's lots of things, one, the motor
 2 is going. You are going to see at a grade
 3 crossing.
 4 One of the things that -- everybody
 5 that crosses a railroad track can express trains
 6 at any given time on any given hour. The
 7 locomotive, the train is required to sound its
 8 horn approaching the crossing. The sound of the
 9 horn would be somewhat restricted to the railcar
 10 be you would still be -- it would still be
 11 audible to the motorist. Okay?
 12 Q. Now, you don't have expertise in
 13 audiology and the science of sound?
 14 A. No, sir. I do not. I'm just saying
 15 that -- no more than I live a mile and a half
 16 from the -- from my present location where I
 17 live, my residence right now. And I -- every
 18 morning, I can hear the UP sounding the horn for
 19 the crossing. That tells me there's a train
 20 approaching the railroad crossing.
 21 As a motorist, I would be able to
 22 determine that very same thing. You're asking me
 23 about the railcars there. Like I said, it's not
 24 only at this point on the Exhibit Number 29,
 25 you're -- you're depicting that there is railcars

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1 on the siding. Then we have more restriction.
 2 We have the vegetation, the trees,
 3 the railcars that we restricted view of -- of
 4 approaching train to the crossing by the
 5 motorists going, you know, from south to north.
 6 Q. Right. And -- and the railcars being on
 7 the siding would restrict the view of a motorist
 8 going from south to north looking either to the
 9 east or to the west?
 10 A. That's correct.
 11 Q. Okay. And -- and having a site
 12 restriction does increase the risk that the
 13 motorist might get hit by a train on the main
 14 line?
 15 A. Okay. You have the answer.
 16 Q. Okay.
 17 A. That's all over the Continental United
 18 States.
 19 Q. You said in Paragraph 10 that Union
 20 Pacific refuse to see allow Ozark to clean their
 21 tracks up. And clean up -- sorry. Strike that.
 22 You said in Paragraph 10, UP
 23 refuses to allow Ozark to cross the tracks and
 24 clean up land they leased from the U.S. Corps of
 25 Engineers.

Page 162 1 Where did you get that information 2 from? 3 A. Ms. Sandy Key. 4 Q. Did you get it from anywhere else? 5 A. No, sir. 6 Q. Do you know that Union Pacific has told 7 Ozark that they could come over and clean up 8 their land if they'll give us advance warning so 9 that we can have flagmen out there? 10 A. I never saw any documentation, or the 11 Union Pacific Railroad never provided me 12 documentation that that was ever a conversation. 13 Q. Okay. If that -- if that conversation 14 has happened, then this statement in your 15 affidavit would no longer be correct? 16 A. That's correct. 17 Q. Okay. 18 A. My -- my comment there was based on Ms. 19 Sandy Key telling me that they cannot get 20 permission. 21 Q. Now in Paragraph 11, you say that -- let 22 me back up. 23 Are you familiar with the 24 organization called "AASHTO"? 25 A. AH.	Page 164 1 toward negotiating a curve rather than looking 2 for a train. Railroad curvature may inhibit -- 3 inhibit a driver's view down the tracks from both 4 a stopped position at the crossing and on the 5 approach to the crossing." 6 Q. All right. Thank you. You can put that 7 in our exhibit stack. 8 I take it you are not a member of 9 AASHTO. Are you? 10 A. No, sir. 11 Q. Have you ever been? 12 A. No, sir. 13 Q. Do you agree with that AASHTO provision 14 you just read that whenever possible grade 15 crossings should not be located in a curve? 16 A. You know, if I was putting in a 17 crossing, and if I had other choices, you're 18 right. I'd probably put it on a tangent track. 19 But the crossing I made reference to it pretty 20 much -- if you are talking about, I cross that 21 crossing every day. 22 Q. Do you agree with the AASHTO section you 23 just read that a railroad curve inhibits a 24 persons ability to see down the tracks? 25 A. No, sir.
Page 163 1 Q. AA, double A, S-H-T-O. Also called 2 "AASHTO"? 3 A. No, sir. 4 Q. It stands for the American Association 5 of State Highway Transportation Officials. Let 6 me hand you what I'm going to mark as 7 "Exhibit 30" and if you would, turn to the second 8 page, and don't read the whole paragraph, but do 9 you see what I have highlighted there? 10 (Deposition Exhibit Number 30 is 11 marked.) 12 Q. (By Mr. Tucker) It begins with, "To the 13 extent practical." 14 Do you see that? 15 A. Yes, sir. 16 Q. Will you please read just the 17 highlighted portion? 18 A. It says, "To the extent practical, 19 crossing should not be located on either highway 20 or railroad curves." 21 And I want to emphasize extent -- 22 "to extent practical." Okay? 23 "Railroad curves -- railroad 24 curvatures inhibit a driver's view of a crossing 25 ahead, and a driver's attention may be directed	Page 165 1 Q. I think we did agree that there is a 2 major curve just east of where Oliver Street 3 crossing used to be? We were looking at 4 Exhibit 22? 5 A. Well, again, you're making reference to 6 a major curve. I mean, I don't know what the 7 degree of curve is, or what you consider to be 8 major curve. I know there's a curve to the right 9 there. 10 Q. And it's -- it is a sweeping curb. Is 11 that fair? 12 A. There's a curve there. Again, I don't 13 know your definition of "sweeping." And again, I 14 don't mean to be derogatory. 15 Q. That's okay. Do you know what human 16 factor experts say when a human being has to turn 17 their neck beyond 90 degrees to see approaching 18 traffic? 19 A. No, sir. 20 Q. Do you know if that's a good situation 21 for safety? 22 A. I turn my head at every crossing. 23 Q. More than 90 degrees at every crossing? 24 A. I won't sit here and tell you it's 25 90 degrees but I look. I have tried to make a

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1 habit of looking even though they have automatic
2 gates there.
3 Q. Do you know the difference between
4 clearing sight distance and approaching sight
5 distance?
6 A. Clearance.
7 Q. Clearing sight distance and approach
8 sight different -- difference? Do you know what
9 those terms are and the difference between the
10 two?
11 A. I'm not sure I know the difference
12 between the two, but I know like at crossings,
13 at -- what they're talking about, sight distance.
14 Q. When you say "they're talking about,"
15 who is they?
16 A. I don't know who you was making
17 reference to.
18 Q. Looking at Paragraph 11, you say that
19 Union Pacific has numerous rail lines with
20 sweeping curves running parallel to waterways
21 that cross public highway crossings.
22 What locations does Union Pacific
23 have with sweeping curves within 20 to 30 feet of
24 parallel waterway?
25 A. I don't know about 30 feet. But they

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1 have them down the water way. In fact, when I
2 was in California, Missouri Pacific ran right
3 down the Pacific coastline.
4 Q. Is it as close as 20 to 30 feet from the
5 tracks to the coastline?
6 A. I don't know. In some places it could
7 be.
8 Q. But you don't know that?
9 A. No, sir.
10 Q. Okay.
11 A. No, sir. Nor do I -- and I'm -- there
12 are where they -- in fact, right there where the
13 crossing, there is a creek right there, and it's
14 probably within 25 feet of the trackage.
15 Q. As part of your work in this case, did
16 you look at any other small town crossings?
17 A. Other than fives crossings that I -- no,
18 sir. I...
19 Q. What did you determine when you looked
20 at those other five crossings to the east of
21 Ozark, did you make any determinations?
22 A. Yes, sir. I did not see that -- that by
23 reinstalling the Oliver Street crossing, create
24 any more hazards than those you would normally
25 see or face when you crossed those crossings, the

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1 other five crossings.
2 Q. The five crossings to the east of Oliver
3 Street, were they more than a mile to the east of
4 Oliver Street?
5 A. Yeah. Yes, sir.
6 Q. Did they cross a single track or two
7 tracks?
8 A. Seems like at one location, there were
9 two tracks and they call it "the sandy" -- went
10 into a sand, sand pit. Okay?
11 Q. But the other crossing --
12 A. Was all single tracks, I think.
13 Q. Okay. We can't both talk at the same
14 time. Let me just remind you of that.
15 A. Okay.
16 Q. If you were approaching the Oliver
17 Street crossing from the south going north, would
18 you be moving in an uphill direction?
19 From the river side going toward
20 town, if the Oliver Street crossing were in,
21 would you be moving uphill?
22 A. I think you'd be going up.
23 Q. Does that affect the safety of the
24 crossing in any way that you know of? If you
25 don't, that's fine.

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1 A. I don't think the grade approach from
2 the river would create any -- any hazards.
3 Q. And is that something you considered
4 when you were putting your affidavit together?
5 A. Did I consider that?
6 Q. Yes, sir.
7 A. No, sir. I did not.
8 Q. Okay.
9 A. But I did, in one of the crossings that
10 I did with -- that made -- made a site, a site
11 visit, I guess, the railroad probably elevated to
12 maybe six to 10 feet above the surface of the
13 road, which I thought was created some type of
14 a -- of a -- some kind of, you know, certainly
15 added to the hazard at that particular crossing.
16 Q. Have you seen any plans at this location
17 for the Oliver Street crossing which included
18 roadway approach elevations?
19 A. Okay. Ask me that question again.
20 Q. At this location where Ozark wants the
21 Oliver Street crossing reinstalled, have you seen
22 any plans for roadway approach elevations?
23 A. No, sir.
24 Q. Would that affect the risk of the
25 crossing?

Page 170 1 A. Not knowing the elevation of any kind, 2 no, sir, I couldn't comment. 3 Q. Okay. Do you know how much land is 4 scheduled for development south of the tracks? 5 A. I think in one of the pictures that we 6 saw, the areas it made reference to 3.1 acres or 7 something like that. 8 Q. I think it said 1.8 acres. 9 A. Maybe that's it. 10 Q. But do you know if they intend to 11 develop the entire 1.8? 12 A. Ms. Key told me some of the things that 13 they were, you know, wanting to do, going to 14 utilize all of the acreage. I mean -- 15 Q. You don't know? 16 A. I don't know. 17 Q. And you don't know how many people a day 18 would come down and utilize that acreage. Do 19 you? 20 A. No, sir. 21 Q. When you separate a train and then later 22 reconnect it, does the train crew have to perform 23 a brake test there after reconnecting? 24 A. It depends on how long the train is 25 standing.	Page 172 1 brake test on those cars that have been east of 2 the crossing, walk me through what's involved. 3 A. If it formed an initial? One of the 4 things it would have to do was, one, to inspect 5 both sides of the train, they have to check the 6 piston travel, if the piston travel was not 7 between six to nine inches, then it would have to 8 adjust piston travel to between a nominal seven 9 to be nine inches. Okay? 10 Q. I think I know how that's done. The 11 conductor is the one that gets on the ground? 12 A. Correct. 13 Q. He tells the engineer to set the brakes 14 and he's got to walk every car that was -- had 15 been disconnected from the train to look at 16 piston travel. Right? While the brakes were set 17 on -- right? 18 A. Yeah. Correct. 19 Q. On -- on both sides of -- of those cars 20 that had been disconnected? 21 A. You don't have to inspect the piston 22 travel on both sides if you can see the piston 23 travel had -- where the brakes had been set from 24 one side. 25 Q. But -- but if he can't, and he's got to
Page 171 1 Q. Okay. Tell me what the difference is? 2 A. If it's standing there for more than 3 four hours, yes, they would have to perform all 4 the cut of cars that were not connected to the 5 train or subject to a compressed air, and they 6 would be that -- that portion of the train would 7 have to have initial terminal air brake test. 8 Q. I think what you're -- I think I 9 understand what you're telling me. Let's say 10 that a train crew cut the crossing Oliver Street 11 and the engines were to the west like going 12 toward Fort Smith. 13 A. Okay. 14 Q. And there's a cut of cars left on the 15 east side of the crossing. 16 A. Okay. 17 Q. If that train sits there for four hours 18 or more and then recouples, the cars that had 19 been to the east of the crossing would have to 20 have an initial air brake test preformed on it? 21 A. Correct. They have two options, either 22 initial terminal air brake test or intermediate 23 air brake test. And at the next point, an 24 initial terminal air brake test. 25 Q. If they conduct an initial terminal air	Page 173 1 walk around the back of the train and look around 2 those cars on the other side? 3 A. Or he can cross -- cross through the 4 cars. 5 Q. Okay. Can he really cross through the 6 cars? 7 A. Yeah. The -- in your time -- in your 8 General Code of Operator Rules and Safety Rules 9 it gives you the choice to do so. You've got to 10 do so safely, but there's -- they allow for that. 11 Q. Okay. He can't crawl under the car -- 12 A. No. 13 Q. He is supposed to put his foot on the 14 silt stack to go across that? 15 A. Correct. 16 Q. Okay. And then, the conductor also has 17 to tell the engineer on the radio, release the 18 air brakes. Right? 19 A. Correct. 20 Q. And he's got to walk every car to make 21 sure that the air brakes properly released every 22 car that been separated from the engines while 23 they were there for more than four hours? 24 A. Yes. 25 Q. And then he's got to walk back to the

Page 174 1 head end of the train and -- and get on the lead 2 engine so they can proceed down the tracks? 3 A. He has a choice whether he wants to 4 walk, or he can instruct his engineer to back the 5 train up. 6 Q. All right. Now, let's say that as we 7 have been -- let's say that the train occupies 8 the siding and extends over Oliver Street and the 9 engineer and the conductor separate the train. 10 If it's less than four hours by the time they 11 reconnect to the train, what type of inspections 12 have to take place? 13 A. Well, they have to do a set and release 14 or a -- and think part is a continuity check. 15 They do this with the telemetry, if they have a 16 heading unit and a rear end unit and this heading 17 unit talk to the rear end unit, the engineer can 18 determine when their brake pressure has been 19 restored at the end of the train. That is 20 signaled -- signaled to the head in unit. And he 21 can -- that eliminates a man having to walk to 22 the back of the train wanting to get a set and 23 release or a -- to determine that the air had 24 been restored at the end of the train. 25 Q. Doesn't the conductor still have to look	Page 176 1 for four hours, or versus if it was just two 2 hours? 3 A. The FRA had -- had determined that 4 during that four-hour period, that the portion of 5 the train that was not conducted to an air source 6 cannot remain charged, therefore, requires the 7 initial terminal air brake test. 8 Q. And there's a terminal air brake test 9 and that's where the conductor has got to walk 10 all of the cars that had not -- that had gotten 11 separated from the air source, which means from 12 the engines? 13 A. That's correct. 14 Q. Okay. If the train is separated for two 15 hours, what's the difference between the 16 inspection required then and the inspection 17 required for more than four hours? 18 A. Okay. The inspection that's required 19 for less than four hours means they've got to do 20 a set and release and a continuity check. That 21 means they've got to know -- the engineer has to 22 know that air, one, has been restored to the end 23 of the train and that the brakes apply and 24 release at the rear of the train. 25 This -- if the FRA has granted
Page 175 1 at the cars that had been detached from the train 2 to make sure they properly set and release? 3 A. No. We're -- I know we're just talking 4 about if the crossing there and they had to 5 separate. Now, let's say the crossing wasn't 6 there and they left the car and they was picking 7 up cars and they're doing -- separated the train 8 for any particular reason. Those are types of 9 air brake tests and inspection where -- would be 10 required whether there is a crossing there or 11 not. 12 Q. Yeah. But there's no need to separate 13 the train when there's not a crossing there. 14 A. Well, I mean, if -- we're talking about 15 if they had to -- if they had separate the train 16 but there's -- you know, there are lots of -- I 17 mean, like I said, those 17 cars when they went 18 in there and picked them up, they would have to 19 do an intermediate train air brake test that 20 would require that conductor to get on the 21 ground. 22 Q. Slow down. Slow down. 23 A. Get on the ground and walk the train. 24 Q. What I'm getting at is, what's the 25 difference between if the train were separated	Page 177 1 permission and -- and it has been in use for 2 years, the use of a telemetry device or they call 3 it an "EOT device" where once its connected and 4 the engineer can determine that the brake pipe is 5 being charged at the end of the train or -- and 6 that and it's -- we've got to assume if the brake 7 pipe pressure is being charged, then the brakes 8 is released. Okay? And when they depletes the 9 air the brakes applies. 10 Q. Does the conductor have to walk any of 11 the car that has been separated from the air 12 source? 13 A. No, sir. 14 Q. He has to be on the ground to make the 15 connection between the cars that have been cut 16 off and the cars that have been pulled forward? 17 A. That's correct. 18 Q. Okay. And then he also has to go 19 between the cars and join the two air hoses 20 together, the glad hands? 21 A. No, sir. 22 Q. Okay. Now, let me make sure I 23 understand this. 24 A. Oh, let me -- go ahead. 25 Q. Let me ask that question again. Let's

Page 178 1 say the train crew at Oliver Street separates the 2 train and clears the 300 feet on both sides. And 3 then the conductor is on the ground when they are 4 going to reconnect the train. And he's got to 5 give the engineer the car count, tell him how 6 close he is to the -- to the cars that are going 7 to be reconnected, over the radio. Right? 8 A. Yes, sir. 9 Q. Okay. And then once they make the 10 joint, the two couplers come together, the 11 conductor has to go in between the cars and lace 12 the air hoses by putting the two glad hands 13 together? 14 A. Okay. 15 Q. Correct? 16 A. That's correct. I understood you in 17 your first question that he had to go on to the 18 other side of the car. But that was my 19 misunderstanding. 20 Yes. Exactly. He will have to go 21 in and, in fact, the Union Pacific Railroad has 22 specific instructions on how to lace the air 23 hose. 24 Q. Okay. 25 A. He also has to -- before the engineer --	Page 180 1 separation and connection. And, again, it is a 2 lot of, you know, depends on the width of the 3 crossing, how -- 4 Q. Length of the train? 5 A. The lengths of the train and how 6 efficient the employees want to be. And -- but 7 from one to -- from one to, you know, 10 minutes 8 at the most that I know of, again. It's not -- 9 it's not -- it's not an unusual or unreasonable 10 length of time. 11 Q. I'm talking about the time from the 12 moment the train is first separated until the 13 train comes back together. That could be a long 14 period of time or a short period of time. 15 Correct? 16 It's however long the dispatcher 17 wants to keep them in the siding? 18 A. Yes, sir. 19 Q. Okay. And -- and once the separation is 20 made for the crossing, and you've got 300 feet on 21 both sides, the conductor has got to walk to the 22 head locomotive to get back in, if they are going 23 to be there for any length of time? 24 A. That's -- that's his choice. If he 25 wants to walk he can, or he can instructs his
Page 179 1 excuse -- before the conductor steps in there 2 between, he's got to communicate with the 3 engineer called "red zone." 4 Q. Correct. 5 A. Once the engineer receives communication 6 from the engineer that he's got his brakes set, 7 the brakes set and the reverse are centered, then 8 he can step in between and release the air hose. 9 Q. Depending on -- strike that. 10 Let's say a train is in the siding 11 and has to be separated. Because the Oliver 12 Street crossing is back in. Okay? And then the 13 train is going to be reconnected. 14 Did you do any type of analysis or 15 statistics on how long it would take on average, 16 to reconnect the train and do whatever 17 inspections that were required by the FRA before 18 they were able to pull out? 19 A. To answer your question, no, sir. I did 20 not have the -- I guess the trains, or the 21 situation there did not allow me any kind of a 22 coupling because I never witnessed a separation 23 there. 24 However, from, again, 34 years on 25 the railroad, I witnessed many a grade crossing	Page 181 1 engineer to back his train up. 2 Q. He cannot instruct his engineer to back 3 his train up because they've just been -- they 4 just separated the train by 600 feet to 5 accommodate the crossing. So what's once that 6 happens -- 7 A. I'm sorry. 8 Q. Okay. Let me ask the question again. 9 A. Okay. 10 Q. Once the train crew has separated the 11 train to account for 300 feet on both sides of 12 the crossing, the conductor has got to walk from 13 that point back to the lead locomotive? 14 A. That's correct. 15 Q. Okay. And however long it takes him to 16 do that depends on the length of the train? 17 A. Not necessarily the length of the train. 18 The amount of cars that's on the other side of 19 the crossing. 20 Q. Okay. 21 A. Could be 30 cars, 10 cars, one car. 22 Q. All right. 23 A. If I was a smart conductor, I would make 24 it minimal. 25 Q. And however long it takes him to walk

Page 182 1 back up to the lead locomotive is also affected 2 by conditions such as whether or not it's 3 sunshiny or raining or snow? And that has an 4 effect? 5 A. Yes, sir. 6 Q. Whether it's daytime or nighttime? 7 A. Correct. 8 Q. Because at nighttime, the conductor has 9 got to carry a lantern with him? 10 A. Yes, sir. 11 Q. Okay. 12 A. Depends on the employee. 13 Q. Right. And then, to reconnect the train 14 in this situation where you've got 300 feet on 15 both sides of the crossing, the conductors are 16 going to have to get down out of the engine, walk 17 back down to the -- the car that's going to be 18 connected in to. Right? Correct? 19 A. Yes, sir. 20 Q. And then he is going to have to radio to 21 the engineer to start shoving backwards to make 22 the connection. And then once that connection is 23 made the engineer or, sorry, the conductor is 24 going to have to lace the air hoses, turn the 25 angle cocks, and then either his engineer is	Page 184 1 A. No, sir, I do not know. 2 Q. So I take it you didn't analyze what 3 sight distances are needed for a tractor-trailer. 4 Would you? 5 A. No, sir. You asked me that question 6 once before, did I make any -- any kind of 7 assessments or analysis or surveys. And I -- and 8 I told you, no, then, and, no, sir, I did not. 9 Q. Okay. Do you know if this boat dock 10 goes in, if fuel trucks are going to be crossing 11 the Oliver Street crossing? 12 A. No, sir. 13 Q. So you wouldn't have taken that into 14 account in your assessment of the crossing. 15 Would you? 16 A. No, sir. 17 Q. Oh, and one other thing I need to ask 18 you about separating the trains at the Oliver 19 Street crossing, the conductor would have to 20 climb up the cars that are left on the other side 21 of the crossing and set at least some handbrakes. 22 Correct? 23 A. Well, the regulation makes reference to 24 a sufficient number of handbrakes. 25 Q. Okay. So set a handbrake, a conductor
Page 183 1 going to have to keep shoving backwards so that 2 the conductor can get on the engine or the 3 conductor is going to have to walk up to the 4 engine? 5 A. Correct. 6 Q. Okay. Did you analyze the risk that if 7 a train pulled in to the Ozark siding and before 8 the train crew could walk back and separate the 9 train, people might try to call -- crawl under 10 the train or over the train to get to one side of 11 the tracks or the other? 12 A. No. 13 Q. All right. But you've seen people crawl 14 under or through trains before? 15 A. Yes, sir. 16 Q. And that's very dangerous situation. 17 Isn't it? 18 A. Yes, sir. 19 Q. That carries with it a high risk of 20 injury or death for those people who are crawling 21 under a train? 22 A. Correct. 23 Q. Do you know if trucks are going to be 24 allowed to use the Oliver Street crossing if it 25 goes back in?	Page 185 1 has got to climb up the side of the car and get 2 over to where the handbrake is a turn the 3 handbrake. Right? 4 A. Correct. 5 Q. And the -- the regulation says -- we're 6 talking about the cut of cars no longer connected 7 to the train? 8 A. Correct. 9 Q. He -- he's got to set what in his mind, 10 are a sufficient number of handbrakes for those 11 cars not to roll off? 12 A. Correct. 13 Q. And do you know what the grade is at 14 this location in Ozark going back to the east. 15 Is it ascending or descending? 16 A. Going -- which direction? 17 Q. Going back to the east, from the 18 Ozark -- from where the Oliver Street crossing 19 used to be, east -- 20 A. Going back -- going back west or east? 21 Q. East. Back toward Little Rock. 22 A. No. I do not know the -- the elevation. 23 No. 24 Q. So you wouldn't know how many handbrakes 25 a conductor would have to set if he left cars

Page 186 1 east of the Oliver Street crossing? 2 A. Well, the -- the amount of elevation 3 or -- on the track does not have anything to do 4 with determining sufficient handbrakes. 5 Q. It would depend on the number of cars 6 that were left to the east of the Oliver Street 7 crossing? 8 A. Well, in the Union Pacific air brake 9 train handling procedures, there's a procedure 10 how train crews are required to -- or the 11 engineer and conductor are required to take to 12 determine sufficient handbrakes. 13 Q. Fair to say that the number of 14 handbrakes would require to be set increases with 15 the more cars you have separated from your train? 16 A. And -- and like I say, and the degree of 17 elevation, yes, sir. 18 Q. Okay. You agree with that? 19 A. Yes, sir. 20 Q. In other words, you -- if you lead 20 21 cars to the east of Oliver Street, you might need 22 only to set two or three handbrakes, but if you 23 left 80 cars east of Oliver Street, a sufficient 24 number of handbrakes would be more than that 25 number?	Page 188 1 Accidents do occur but the railroad industry is 2 the safest mode of transportation for hauling 3 bulk freight." 4 Did I read that correctly? 5 A. Yes, sir. 6 Q. All right. A couple of questions. Do 7 you know about the grade crossing accident that 8 happened in Baltimore a few years ago where a CSX 9 train hit a dump truck and ended up derailling and 10 several cars of haz-mat exploded and burned? 11 A. No, sir. 12 Q. Are you aware that putting a train in to 13 sudden emergency braking for a potential crossing 14 accident could cause adverse dynamic in-train 15 forces that could derail a train? 16 A. Yes, sir. One of the new technology 17 that come out to have -- the engineer has the 18 ability to initiate an emergency brake 19 application from the rear of the train that -- 20 that decreases that possibility. 21 Q. Can we agree on this, that if an 22 engineer applies a train's emergency brake on 23 straight track which is also called "tangent 24 track," there is a possibility for derailling that 25 train?
Page 187 1 A. Correct. 2 Q. Okay. All right. Did you perform any 3 analysis if the Oliver Street crossing goes back 4 in of what vandalism there might be there at the 5 crossing? 6 A. When I was talking with Ms. Key, she 7 indicated that there was never any history of 8 vandalism there at that place. 9 Q. But did you, yourself, outside of that 10 perform any analysis of potential vandalism 11 there? 12 A. No, sir. 13 Q. Okay. I'm looking at Paragraph 16 of 14 your affidavit and you state -- you call him 15 "Mr. Hudson" but his name is Huston. Okay? 16 A. Yes, sir. 17 Q. I'll leave it that way. It says, 18 "Although Mr. Huston argues that the reinstalling 19 of the Oliver Street crossing would create a 20 hazard regarding potential spill of hazardous 21 waste, many trains have railcars carrying the 22 regulated materials over UP rail lines every day. 23 Especially into and out of the Gulf Coast areas 24 of Texas and Louisiana. These trains reach their 25 destinations each day without incident.	Page 189 1 A. Yes, sir. 2 Q. And can we agree on this: If that same 3 engineer on that same train applies the emergency 4 brakes in a curve, the chances of derailling that 5 train increase over straight track? 6 A. Okay. You're asking me a hypothetical 7 question. Correct? 8 Q. Yeah. 9 A. Okay. Yes. That's a possibility. 10 Q. Well, not only is it a possibility, but 11 your chances of derailling in an emergency braking 12 go up in a curve as opposed to straight track? 13 A. I mean, again, and I would say yes, but 14 again, there's a lot more variables other than 15 the curve or -- or the degree of curve. 16 Q. Okay. All things being equal, same 17 train, same engineer, same everything, if you put 18 the emergency brakes on in a curve your chances 19 of derailling go up as opposed to if you put the 20 emergency brakes on, on a straight track? 21 A. That's correct. 22 Q. Okay. And when I say, "in-train," I 23 mean in-train. 24 Mr. Soliz, have you done any 25 simulation analysis of the possible in-train

Page 190 1 forces due to emergency braking if the brakes had 2 to be put on at Oliver Street? 3 A. No, sir. 4 Q. Do you know how to preform an analysis 5 of in-train forces? 6 A. I personally don't, but I've been 7 involved in the calculation of -- of in-train 8 forces both action and slack action. 9 Q. So if you don't know how to perform an 10 analysis of in-train forces that could lead to 11 derailment from emergency braking, you can't give 12 us an assessment of what the risk would be at 13 this location if an engineer had to put the 14 emergency brakes on to try to avoid a grade 15 crossing accident, or an accident with a 16 pedestrian. Fair? 17 A. How -- you're asking me, do -- have I 18 ever been -- performed a risk analysis? Is that 19 what you're -- 20 Q. No, sir. I'm saying -- let's me -- you 21 said you haven't performed an analysis of the 22 potential in-train forces during emergency 23 braking. 24 A. Okay. And I'm not too sure where you're 25 going with the word or the -- you know...	Page 192 1 to try to avoid an accident with a vehicle or 2 pedestrian, you couldn't tell me how much more 3 likely it would be that that train would derail 4 or not as opposed to being on straight track. 5 Could you? 6 A. No, sir. 7 Q. In other words, you -- you can't 8 quantify the risk at the Oliver Street crossing 9 if an engineer had to -- 10 A. No, sir. 11 Q. -- apply the -- 12 A. No, sir. I'm not sure it can be done. 13 Q. You will -- you will agree that train 14 crews, if they see a vehicle or a pedestrian at a 15 crossing and it looks like it has the potential 16 for an accident that they should apply the 17 emergency brakes in an effort to avoid the 18 accident? 19 A. Ask me that question again. 20 Q. If a train crew sees a person or vehicle 21 at a crossing and there may be an accident with 22 that person or vehicle, the train crew should 23 apply the emergency brakes to try to avoid that 24 accident? 25 A. If he -- I mean, in their operating
Page 191 1 Q. Okay. You told me you don't know how to 2 perform an analysis of the forces, dynamic forces 3 that build up within a train once the emergency 4 brakes are applied. 5 A. Okay. 6 Q. You don't know how to do that? 7 A. No, sir. 8 Q. Okay. So you -- you can't -- so you 9 didn't do that for Oliver Street? 10 A. No, sir. 11 Q. Okay. And you wouldn't be able to tell 12 us what those dynamic in-train forces would be if 13 an engineer had to apply the emergency brakes to 14 try to avoid an accident on Oliver Street? 15 A. Those type of analysis are made by -- I 16 mean, engineers that were certainly specializing 17 in that. I don't -- I'm not specializing in 18 making those type of analysis. I do have a lot 19 of experience and that was part of my 20 investigation when I went out there to make -- at 21 a derailment site, whether there was a curve 22 there, speed, track conditions, you know, a lot 23 of things that goes in to determining. 24 Q. If an engineer had to apply the train's 25 emergency brakes at -- at Oliver Street crossing	Page 193 1 rules, they have lists of lots of things that 2 they're required to do. When they see 3 pedestrians on the -- on the right-of-way, 4 they're required to sound the horn for warning. 5 If it -- if the engineer knows that 6 the -- that the accident -- an imminent accident, 7 yes, he is required to do everything possible, 8 all the braking effort as possible to avoid the 9 accident. 10 Q. Okay. And -- and do you know how close 11 the track is to the river east of the Oliver 12 Street crossing? 13 A. No, sir. 14 Q. Will you agree with me that if the 15 Oliver Street crossing goes back in and an 16 engineer had to apply the train's emergency 17 brakes to avoid an accident, there's a risk that 18 that train is going to derail? 19 A. There is a risk that the train might 20 derail? 21 Q. Yes, sir. 22 A. Yes, sir. I would agree with you. 23 Q. Okay. Let me hand you what I am going 24 to mark as Exhibit Number -- are we on 31? Yes. 25 A. Yes. Try to put these in order.

Page 194 1 Q. Okay. 2 (Deposition Exhibit Number 31 is 3 marked.) 4 (Phone sounds.) 5 Q. (By Mr. Tucker) I hand you 31. 6 (Phone sounds.) 7 MR. TUCKER: Let's go off the 8 record. 9 THE VIDEOGRAPHER: Off the record. 10 (Recess taken.) 11 THE VIDEOGRAPHER: This is Tape 4 12 of the deposition. We're back on the record at 13 1:37. 14 Q. (By Mr. Tucker) Mr. Soliz, you've got 15 Exhibit 31 in front of you? 16 A. Yes, sir. 17 Q. And that's a letter from C.L. Coley, who 18 in August 25th, 2005, when the letter was written 19 was Mayor of Ozark, written to a Joe Craig to the 20 Corps of Engineers. Do you see that? 21 A. Yes, sir. 22 Q. And in that letter, he is talking 23 about the City of Ozark has the shoreline along 24 the Arkansas River leased from the Core of 25 Engineers. Do you see that?	Page 196 1 marked.) 2 Q. (By Mr. Tucker) All right. Let me hand 3 you what I have marked as "Exhibit Number 32" to 4 your deposition. 5 Do you see it's dated up at the 6 top, June 30, 2011? 7 A. Yes, sir. 8 Q. And second page says it comes from Mayor 9 Carol Sneath, S-n-e-a-t-h. Do you see that? 10 A. Yes, sir. 11 Q. And it's written to a Mr. Charlie 12 Felkins with the Union Pacific Railroad. Do you 13 see that? 14 A. Yes, sir. 15 Q. And the subject matter says, "City of 16 Ozark Arkansas, Railroad Crossing Request." Do 17 you see that? 18 Right under Mr. Felkins' address? 19 A. Yes. 20 Q. Okay. Go to Page 2 with me if you 21 would. And I'm going to read the first couple of 22 sentences, if you'll read along with me. It 23 says, "The riverfront area is the centerpiece of 24 our tourism development future and we are 25 seriously concerned about the possibility of a
Page 195 1 A. Yes, sir. 2 Q. And he says, "As you are aware, Main 3 Street Ozark has extensive plans for riverfront 4 and development, the City, in conjunction with 5 Main Street Ozark would like to an annex the 6 southern shore of the Arkansas River to 7 accommodate these plans as well as future growth 8 of the City." 9 Do you see that? 10 A. Yes, sir. 11 Q. And then, the first bullet point says 12 quote, "Due to safety concerns posed by the Union 13 Pacific Railroad tracks on the north shore of the 14 river, the southern shore is a more suitable 15 location for the marina," end quote. 16 Do you see that? 17 A. Yes, sir. 18 Q. Have you met Mr. Coley, who was the 19 mayor at the time? 20 A. No, sir. 21 Q. Do you know what safety concerns he was 22 talking about that are opposed by the Union 23 Pacific Railroad tracks? 24 A. No, sir. 25 (Deposition Exhibit Number 32 is	Page 197 1 derailment in the downtown vicinity due to the 2 present excessive speed of the trains. If there 3 were to be such an accident in this busy 4 riverfront location, we could lose our entire 5 historic district, not to mention the potential 6 loss of life." 7 Do you see that? 8 A. Yes, sir. 9 Q. Do you agree with Ms. Sneath? That if 10 there were a derailment in downtown Ozark that 11 they can lose their entire historic district not 12 to mention the potential loss of life? 13 A. Yes, sir. 14 Q. Okay. 15 (Deposition Exhibit Number 33 is 16 marked.) 17 Q. (By Mr. Tucker) And then let me ask you 18 to look at what I've marked as "Exhibit 33" to 19 your deposition? 20 A. Yeah. Yeah. That was dated June 30th, 21 2011. 22 Q. Yes, sir. 23 A. And at that time, the crossing was not 24 there and she still -- and she still makes 25 comments that she was concerned about train

Page 198 1 speed. Okay. 2 Q. And -- and as you know I think or tell 3 me if you know being with the former FRA, a 4 railroad decides how fast it wants to operate on 5 any given section of tracks? 6 A. No, sir. 7 Q. Well, let me explain it, and I think 8 you'll agree with me. A railroad decides how 9 fast it wants to run trains on a section of 10 tracks and then to do that, it has to maintain 11 those tracks according to certain standards set 12 by the Federal Railroad Administration? 13 A. Correct. 14 Q. In other words, if you want to -- if a 15 railroad wants to run its trains up to 40 miles 16 an hour, it has to maintain those tracks to FRA 17 Class III standards. 18 A. I think so. 19 Q. If a railroad wants to run up to 60 20 miles an hour, it has to maintain its tracks up 21 to FRA Class IV standards? 22 A. Correct. 23 Q. Which are more stringent than Class III 24 standards? 25 A. Correct.	Page 200 1 Are you aware of that? 2 A. Yes, sir. The it's not -- not pre -- 3 the FRA, it's -- it's a -- regulations that are 4 started with the Interstate Commerce Commission 5 that says that you cannot impede railroad 6 traffic. It doesn't say you had to stop it. It 7 didn't say you had to put slow orders there, or 8 restricted speed. It says you wouldn't impede 9 it, it means you wouldn't stop train movement 10 through that. 11 Q. You may not know this. And it's okay if 12 you don't, I'm just -- but as long as a railroad 13 maintains it's Class IV standards, it can run 60 14 miles an hour? 15 A. Correct. 16 Q. Through a town, a city, anything, as 17 long as it maintains traffic according to FRA 18 regulations, it can -- 19 A. Or the traffic will allow that speed, 20 yes, sir. Okay. Just like coming in there, my 21 old timetable shows that -- that in that track, 22 the maximum track, the train speed was 60 miles 23 an hour, but coming around that curve into the 24 City of Ozark, it was restricted to 45 miles an 25 hour and the UP does that all up and down their
Page 199 1 Q. So railroads decide what speed they want 2 to operate and then the FRA says, "Fine, but you 3 have to main your -- maintain your tracks 4 according to these standards that we've set." 5 A. Correct. 6 Q. Okay. And to the best of your 7 knowledge, cities, townships, municipalities, 8 they don't tell the railroad how fast they can 9 run trains? 10 A. No. They sometimes do, they pass city 11 ordinance down there restricting train speeds. 12 Q. And those city ordinances are invalid. 13 Aren't they? 14 A. I don't know. They adhere to them. 15 Q. Who does? 16 A. The train restriction there in Dayton. 17 There is lots of train restrictions 18 there in the City of Houston. 19 Q. Let me ask you this: Do you know what 20 "federal preemption" means? 21 A. Yes, sir. 22 Q. Okay. When a town tries to tell a 23 railroad how fast it's going to go run its trains 24 through that town, that municipal ordinance is 25 preempted by FRA regulations.	Page 201 1 tracks. 2 Q. I understand. That's -- that's an 3 internal speed limitation UP puts on itself? 4 A. That's correct. 5 Q. Okay. 6 A. And they do that because of -- of the 7 hazards of operating around the curve, or the 8 hazard that might present itself through the 9 city. 10 Q. You don't know why they do that for 11 sure? Do you? Because you -- 12 A. I mean, well, yeah. Why would they put 13 it there for? 14 Q. Well, have you talked to anybody at 15 Union Pacific to know why they put a 16 45-mile-an-hour internal speed? 17 A. I imagine that curve was, probably. 18 Q. Okay. Let's look at Exhibit Number -- 19 what is it 33? This is a -- it's titled, 20 "Arkansas Documentary," and says "narrator 21 female/male." 22 I am going to represent to you that 23 the female who was interviewed was Sandy Key. 24 Okay? 25 A. Okay.

Page 202 1 Q. Now, turn to the second page if you 2 would with me where it says highlighted, under 3 the first female entry, she says, if you will 4 follow along, "The issue of safety is a big one 5 for us because trains are going faster. They're 6 allowed to go up to 79 miles an hour. I think 7 they are saying they were going 60 miles an hour 8 but with Ozark being located in this little 9 valley, I think that we've got a great risk for 10 derailment. 11 Do you see that? 12 A. Yes, sir. 13 Q. Okay. Do you agree with Ms. Key that in 14 this area of Ozark for trains, there is a great 15 risk for derailment? 16 A. If trains were traveling 79 miles an 17 hour, yes, sir, there would be. 18 Q. Okay. Now, look down there toward the 19 bottom that I've got highlighted. It says, "We 20 have a railroad bridge which is a risk factor. 21 We have a spur, which is a risk factor and we 22 have a curve. So trains moving fast around 23 curves is a huge risk factor and we have three 24 risk factors in a row. So we're concerned about 25 derailment. We feel the trains are going too	Page 204 1 are, he won't have to apply the emergency brakes? 2 A. He may have to have an undesired brake 3 application there. 4 Q. I said, "He won't have to apply the 5 emergency brakes"? 6 A. No. No. 7 Q. Correct? 8 A. No. I mean I don't know. I mean, why 9 if there is a cow there, why is there an 10 obstruction there. 11 Q. Let me rephrase the question. I think 12 we can agree on this. 13 A. But are you saying if -- because of the 14 crossing not being there, yes, sir. But will the 15 engineer never make an emergency brake if the 16 crossing wasn't there? I can't say. 17 Q. I know. I think we can agree on this 18 in principle, though. 19 The way the area is now through 20 Ozark, an engineer might have to apply the 21 train's emergency brakes if there were 22 trespassers going over the tracks? 23 A. That's correct. 24 Q. But if the Oliver Street crossing goes 25 in and there are vehicles and pedestrians going
Page 203 1 fast and being in a valley, it would take forever 2 for any type of chemical spill in the air to 3 dissipate." 4 Do you see that? 5 A. Yes, sir. 6 Q. Do you agree if there were a chemical 7 spill in Ozark because of the valley that it 8 would take a long time for that to dissipate, or 9 is that something you wouldn't agree to? 10 A. That's according to the product, you 11 know. But if it were like emollient, probably 12 would so. 13 Q. Okay. If the Oliver Street crossing 14 goes back in, there is going to be at least an 15 increased risk that an engineer is going to have 16 to apply the train's emergency brakes because of 17 a car or a pedestrian going across the crossing, 18 even if the cross is not there? 19 A. No more so than any other crossing. 20 Q. But crossings increase the risk that the 21 engineer is going to have to apply the emergency 22 brakes? 23 A. If there is a crossing there, he may 24 have, may have to do so, yes, sir. 25 Q. If there's no crossing there, chances	Page 205 1 over the tracks, that increases the possibility 2 that the engineer's going to have to apply the 3 emergency brakes than if there is no crossing at 4 all? 5 A. I can't, you know, if that hypothetical 6 question you just asked me, yes, he probably 7 would. 8 Q. Okay. Let's see. Let's look at 9 Paragraph 18 of your affidavit. That's on Pages 10 5 and 6. And it says "I stay knowledgeable of 11 railroad accidents, injuries and fatalities 12 occurring in the industry." 13 It says, "Currently, I know of no 14 train accidents UP has experienced in Region 5 15 that involve the release of regulated material in 16 to a waterway." 17 Do you see that? 18 A. Yes, sir. 19 Q. When you say, "regulated material" are 20 you talking about hazardous materials? 21 A. That's correct. 22 Q. Okay. Let me ask you if you are aware 23 of a Union Pacific derailment in Eunice, 24 Louisiana back in the early 2000s. 25 A. No. I don't.

Page 206 1 Q. But you were -- 2 A. I mean if there was a derailment there, 3 I would have knowledge but do I currently have -- 4 know any -- no, sir I don't. 5 Q. And you didn't leave the FRA until 2008? 6 A. Right. 7 Q. So you don't know if that derailment 8 in -- in Eunice, Louisiana released hazardous 9 material into a waterway? 10 A. No, sir. 11 Q. Are you aware of a Union Pacific 12 derailment in Plaquemine, Louisiana a few years 13 ago? 14 A. No, sir. 15 Q. So you wouldn't know if that involved a 16 release of haz-mat into a waterway? 17 A. No, sir. 18 Q. Are you aware of a UP derailment in San 19 Antonio, Texas back in the 1990s? 20 A. Yes, sir. 21 Q. Did that involve release of haz-mat into 22 a waterway? 23 A. Correct. 24 Q. What was that waterway? 25 A. The waterway? It was a river, and I'm	Page 208 1 are something my railroads do carry haz-mat, but 2 they don't border waterways. 3 Q. But the UP tracks that go through Ozark 4 do border a waterway, the Arkansas River? 5 A. Yes, sir. 6 Q. Do you know how many haz-mat cars 7 operate on Ozark on average per day? 8 A. No, sir, I do not. I think Mr. Huston 9 listed the type of commodities that are passed 10 through Ozark. He also stated that anywhere from 11 10 to 20 trains go through there a day. Now, 12 whether all of the trains that pass through Ozark 13 carry hazardous materials, I don't know. 14 Q. Do you know approximately how many 15 trains carry haz-mat materials through Ozark on a 16 daily basis? 17 A. No, sir. 18 Q. So you didn't take that into account in 19 any kind of risk assessment at the Oliver Street 20 crossing? 21 A. No, sir. There were no haz-mats in 22 those 17 cars. 23 Q. That were sitting on the siding? 24 A. Yes, sir. 25 Q. Do you know that railroads are carrying
Page 207 1 thinking it was -- I can't remember the name of 2 it. Yes, it was a river. 3 Q. Do you recall what chemicals were 4 released into that waterway? 5 A. No, I do not -- I think it was sulfur. 6 Sulfur nitrate but I'm not sure of that. 7 Q. Okay. Do you recall if it caused severe 8 environmental contamination in that waterway? 9 A. Well, I don't know the degree but yes, 10 it did create a considerable -- 11 Q. Contamination? 12 A. -- contamination. 13 Q. In the waterway? 14 A. Yes, sir. 15 Q. Are you aware of a Union Pacific 16 derailment in Lawtell, Louisiana a few years ago 17 that involved release of haz-mat into a waterway? 18 A. No, sir. You know, I say that. I said 19 that, "I know of." Okay? That was what I 20 predicated my comment on, on what I know. 21 A lot of the things that I try to 22 keep up with is -- it's like anything that 23 involved switching operations that may involve or 24 I can pass on to my short-line railroads. 25 Certainly the release of the hazardous materials	Page 209 1 more crude oil every year? 2 A. Yes, sir. 3 Q. And do you expect that trend to 4 continue? 5 A. Kind of went down some, didn't it? Over 6 the past few months but yes, sir, it will be. 7 Q. Okay. If a crude oil tank car derailed 8 in to an emergency brake application at the 9 Oliver Street crossing, do you agree that the 10 chance of it going to the river is relatively 11 high? 12 A. I don't know that I could answer yea or 13 nay about that. Talk about train speeds, what 14 kind of obstructions. I mean, there are a lot of 15 things that could be factored into making a 16 decision. 17 Q. How long is the average tank car? 18 A. Sixty feet. 19 Q. And if there are places where the Union 20 Pacific mainline tracks are within 20 to 30 feet 21 of the Arkansas River, if a haz-mat car such as a 22 crude oil car derailed because of an emergency 23 brake application, that car could get punctured 24 and go into the Arkansas River? 25 A. Again, that's a hypothetical question.

Page 210 1 There is a lot of things that have been 2 engineered in our latest technology as far as the 3 railroad industry. One of them is called 4 "double-shelf couplers." Every haz-mat car is 5 required to have double-shelf couplers. And it 6 almost -- I want to say, again, it's almost 7 impossible to have a train separation. 8 Can there be a train separation? 9 Yes. But I've seen where they have had 10 derailments. I've seen where the trestle has 11 been burnt out from underneath the train and 12 those trains stay coupled together and on the 13 train. And there was no train separation because 14 of the double-shelf couplers. 15 Q. Double what? 16 A. Double-shelf couplers. 17 Q. Shelf? 18 A. Yes. 19 Q. S-h-c-l-f? 20 A. Uh-huh. 21 Q. Okay. 22 A. Let me -- there is a -- as a result of 23 various accidents, the -- the tank car 24 manufacturers are required to put thick head 25 shields on those cars to prevent punctures and/or	Page 212 1 here? 2 A. He reviews it, yes, sir. 3 Q. Did he make any changes or revisions or 4 suggest any? 5 A. He made some -- what do you call it? 6 Grammatical errors, stuff like that. 7 Q. In Paragraph Number 19, you say, "One 8 such practice is installing a pipeline that runs 9 underneath and across the street just before the 10 crossing that permits train crews to keep the air 11 brakes system connected when separating a train 12 at a crossing." Correct? 13 A. Yes, sir. 14 Q. Can you show me -- I know we had a -- 15 A. Yes, sir. I saw the pictures. It's in 16 here. It's in that -- my affidavit. I think you 17 handed that to me. 18 Q. I think I've got -- I did. Let's -- 19 let's mark a bigger picture. 20 A. This is it right here. 21 Q. Yes, sir. Let me see that one more 22 time. Okay. I've -- I've got bigger pictures of 23 the ones that were in your affidavit, and I will 24 mark those as "Exhibit 35" and "36." 25 (Deposition Exhibit Numbers 35 and
Page 211 1 release of hazardous materials. I mean, there is 2 a -- 3 Q. Let me put it to you this way: If -- if 4 a UP train derailed some haz-mat cars going 5 through Ozark because the engineer had to apply 6 the emergency brakes and if those cars went into 7 the Arkansas River, that could cause severe 8 environmental contamination. Right? 9 A. If there was -- if there was haz-mat 10 released, yes. 11 Q. Okay. In Paragraph 19 of your 12 affidavit, you talk about -- you say "To meet 13 challenges posed by grade crossings to train 14 operations." 15 What -- what are you talking about 16 when you say "Challenges posed by crossings to 17 train operations"? 18 A. Traffic volume like operating through a 19 metropolitan area or double main track, or maybe 20 there is an interlocking with another railroad, 21 there is a lot of challenges out there that 22 railroads -- that slows down or -- or affects 23 train traffic or train speed. 24 Q. Did -- did you receive any assistance 25 from Mr. Brockett in offering your affidavit	Page 213 1 36 are marked.) 2 Q. (By Mr. Tucker) And you see that those 3 are just blow-ups of the pictures that you had in 4 your affidavit. 5 A. Yes, sir. 6 Q. That's 35. Let me hand you 36, 7 Mr. Soliz. 8 A. Okay. 9 Q. Is that where you're talking about there 10 to keep air on the -- the cars that have been 11 separated from the train? 12 A. Yes, sir. That makes the train line -- 13 continue the train line. 14 Q. Okay. And -- and I see that in both 15 pictures 35 and 36, there's, it looks like a blue 16 metal box and got an air hose running from it? 17 A. Yes, sir. 18 Q. What do you call that blue metal box? 19 A. I don't know. Other than a cabinet that 20 they use to house their hose, I guess. I mean, I 21 didn't go inside of it. I just -- I know what it 22 is for. I mean, there is -- the UP has various 23 places where they use hose, air -- air hose there 24 at the train line so they can keep it charged. 25 This was something I thought was kind of unique.

Page 214 1 And -- 2 Q. And where was it that you took these 3 photographs? 4 A. It was just northwest of Hearne, Texas. 5 Q. And how much does it cost to install one 6 of these air compressors alongside the tracks? 7 A. I don't know if it's an air compressor. 8 I don't think it's an air compressor. They're 9 using the compressed air from the locomotives. 10 All they're doing is just -- it's a hose that 11 they use to -- to connect the one from -- from 12 each end of the cars that were separated at the 13 crossing. There is no -- I don't -- well, I say 14 that. I don't think that there is a compressor 15 there. They are using a compressed air from your 16 locomotives. 17 Q. And they're doing that for what purpose? 18 A. To eliminate the need to make an initial 19 terminal air brake test on those portions that 20 are not connected to compressed area. 21 Q. The area in Ozark doesn't have this blue 22 box alongside the tracks. Does it? 23 A. No, sir. 24 Q. How much would it cost for Union Pacific 25 to put one in. Do you know?	Page 216 1 and again, I -- you're going to ask me if I made 2 any statements or did I see any documents. 3 No, I don't but I know that the UP 4 Railroad has for the most part, all of their 5 EOTs. It's probably contributing to emergency 6 brake application to the rear of the train. 7 Q. And I think we covered this earlier, but 8 you agree any time a train goes into emergency 9 braking, the potential for unwanted severe slack 10 action is present? 11 A. That's correct. 12 Q. And you agree that slack action can 13 cause derailments? 14 A. Yes, sir. 15 Q. And we already talked about when slack 16 action forces act on a train in a curve, the 17 probability of a derailment increases? 18 A. Correct. 19 Q. Have you done any analysis of 20 improvement in emergency stopping distance with 21 rear-end telemetry? 22 A. No, sir. 23 Q. How much air brake inspection and 24 testing time improvement can be realized by using 25 rear-end telemetry? Have you done any analysis
Page 215 1 A. Well, I mean, minimal. I mean, I have 2 no earthly idea. I mean, a hose, a box, the time 3 you put the box, the concrete. I mean, but to 4 the Union Pacific Railroad, it's a minimal 5 expense. 6 Q. Maybe minimal to them but you don't know 7 how much it would cost? 8 A. No, sir. I don't. I -- understand 9 Union Pacific Railroad is a huge railroad with 10 lots of resources. And I mean, yes, it's -- 11 there's some cost to putting this up. 12 Q. Okay. In -- let's see, the Paragraph 20 13 of your affidavit, you say that, "Rear 14 telemetrics helps to reduce train derailments 15 caused by slack action"? 16 A. Yes, sir. 17 Q. We're talking about an EOT device? 18 A. Yes, sir. 19 Q. Did you perform any analysis that 20 supports that statement? 21 A. No, sir. Other than the industry that I 22 have knowledge to that they have -- a lot your 23 EOT, some of your old EOT devices did not have 24 the capability of the making an emergency brake 25 application from the rear of the train, but --	Page 217 1 of that? 2 A. I don't know that I understood what the 3 question. 4 Q. How much testing time and air brake 5 inspection time can be shortened by using 6 rear-end telemetry? 7 A. A significant amount of time. You know, 8 again. 9 Q. Have you done any study? 10 A. Analysis? 11 Q. Yes, sir. 12 A. No, sir. 13 Q. Okay. Have you ever seen a failure of a 14 rear-end telemetric system? 15 A. Yes, sir. 16 Q. Do you know how often that occurs? 17 A. No, sir. 18 Q. Can curvature and waterways affect the 19 transmission of the telemetric signal? 20 A. Various locations, yes. But I don't 21 think there is a problem there at Ozark. 22 Q. If there is a failure of the rear-end 23 telemetric system in even one percent of the 24 trains, can that materially affect train 25 operations?

Page 218 1 A. In one percent of the trains? And you 2 asked me how -- the degree of impact on train 3 operations. 4 Q. Can it materially affect train 5 operations? 6 A. Yes. Yes, sir. 7 Q. Paragraph 22 of your affidavit, you talk 8 about 49 CFR, Section 213.9, which is classes of 9 track and I think we already covered that, that a 10 Class IV track -- train can go up to 60 miles an 11 hour. 12 A. Correct. 13 Q. When -- and I'm -- I'm looking at 14 Paragraph 23, and we've covered most of that. 15 When a crewman gives -- who is on the ground 16 gives a car count to his engineer, isn't he given 17 that car count in 50 foot lengths rather than 70 18 foot lengths? 19 In other words, when the engineer 20 is shoving backwards and the conductor says, "six 21 cars," doesn't he mean you've got 300 feet until 22 you get to the joint? 23 A. You know, it's been my experience that 24 the engineer does not necessarily think 50 feet 25 per car. It's -- it's, I think in my opinion, he	Page 220 1 Q. Well, what I'm saying is, do you have 2 any opinions that you know of as we sit here 3 today, that are not expressed in your report that 4 we have? 5 A. My -- my feeling why? I mean, my 6 opinion? 7 Q. Professional opinions. They are 8 contained in your affidavit. Right? 9 A. No, sir. No, sir. Pretty much that's 10 what I... 11 Q. Well, what I want to do if make sure I'm 12 not surprised later on down the road. I am 13 asking your professional opinions you have 14 reached in this case of Ozark versus Union 15 Pacific, they are contained in your affidavit 16 we've been going over? 17 A. That's correct. 18 Q. Okay. I was looking at a letter that 19 you wrote to Sandy Key September 29, 2013. The 20 last sentence states, "I do not think UP can 21 justify removing the crossing in court." 22 I take it that's just a comment 23 that you made. That's not a professional opinion 24 you have reached? 25 A. I'm not an attorney.
Page 219 1 is more thinking about what he's -- what kind of 2 car he's got handling. Okay? 3 And not only you're talking about a 4 shove in the car count. There's a -- and there's 5 a regulation under 218 Subpart C regarding shove 6 movements. And there are several things that the 7 conductor has got to do in order -- before he 8 starts to shove. One of them is you have got to 9 give, you know, distance, direction, car count 10 and how he is going to protect his shove 11 movement. 12 That -- it's called "job rigging" 13 and that's got to happen before you ever start 14 the shove movement. 15 But it's -- it's understood that, 16 you know, and in -- in the industry, there's a 17 lot of things where they make reference to 50 18 foot like in the safety rules. They make 19 reference to a 50 foot separation or 100 foot and 20 they make reference to a 50 foot cars. I'm sorry 21 if I go too fast. 22 Q. Your affidavit we've been going over, 23 this contains all your opinions in the case. 24 Right? 25 A. Pretty much so.	Page 221 1 Q. Okay. You told me earlier in the 2 deposition, Mr. Soliz, that you were able to get 3 all of the information you wanted to be able to 4 reach the conclusions that you have in this case? 5 A. Did I get all of the information? 6 Q. Right. That you wanted, or you felt 7 like you needed. 8 A. No, sir. I wish I had more. I wished I 9 had a current UP timetable to look over. 10 I wish I had a track profile of 11 that track right there at Ozark, which I was not 12 able to get. 13 Q. Well, I'll mark as "Exhibit Number 37" 14 to your deposition what I believe to be the 15 current Union Pacific timetable. It's time Table 16 Number 5. At the bottom, it says, "Have -- has 17 an effective date of July 9, 2012." 18 Do you see that? 19 (Deposition Exhibit Number 37 is 20 marked.) 21 A. Yes, sir. 22 Q. (By Mr. Tucker) Okay. I believe that is 23 the current timetable. Do you know otherwise? 24 A. No, sir, I do not. 25 Q. I don't have a track profile with me.

Page 222 1 Are there any other documents other 2 than a track profile that you wish you had in 3 this case that you know of as we sit here? 4 A. No, sir. Other than the track profile 5 so I would have a better knowledge of the one, 6 the degree of the curve and, two, the grade 7 there. 8 Q. As we sit here today, do you expect to 9 review any more documents that you know of? 10 A. I hope not. 11 Q. Okay. As we sit here today, do you plan 12 to do anything else in relation with this lawsuit 13 that you know of? 14 A. No, sir. I'm going to invoice 15 Mr. Brockett and probably if we go to court, then 16 I'll be -- required to give, you know, expert 17 testimony at the court. 18 Q. Anything else you can think of that you 19 might do with respect to this case? 20 A. I'll probably consult with Mr. Brockett. 21 Q. Other than that, do you have anything 22 that you think that you might do? 23 A. No, sir. 24 Q. Okay. Let's go off the record. 25 THE VIDEOGRAPHER: We're going off	Page 224 1 Q. It could stop some train meets there? 2 A. Yes. 3 Q. Okay. And -- and if putting the 4 crossing back in stops some train meets there, 5 that can have an negative impact on railroad 6 operations. Correct? 7 A. Correct. 8 Q. Okay. And putting a crossing back in 9 there reduces the amount of the storage capacity 10 of the site by 600 feet. 11 A. Yes, sir. 12 Q. And that can have a negative impact on a 13 railroad operations, reduced storage capacity? 14 A. Any time you reduce storage capacity 15 anyway, I mean, yes, it has an impact on -- on 16 operations of the railroad, yes, sir. 17 Q. Okay. And that would be true whether or 18 not the railroad was storing cars on the siding 19 or Maintenance of Way equipment on the siding, 20 taking away that 600 feet of storage capacity can 21 have a negative impact on operations. Correct? 22 A. Yes, sir. 23 Q. Let's see, Mr. Soliz, have you 24 understood the questions that I've asked you here 25 today?
Page 223 1 the record at 2:09. We are off the record. 2 (Recess taken.) 3 THE VIDEOGRAPHER: We are back on 4 the record at 2:16. 5 Q. (By Mr. Tucker) Mr. Soliz, if the 6 ability to have train meets at Ozark was taken 7 away and Union Pacific could not conduct train 8 meets at Ozark, that could negatively impact 9 railroad operations. Couldn't it? 10 A. (No audible response.) 11 Q. If that happened. 12 A. Okay. 13 Q. If -- if you take away the ability to 14 have train meets in Ozark, that could have a 15 negative impact on train operations? 16 A. Putting a crossing back in at -- where 17 it was located, will not necessarily mean you 18 can't have train meets there. 19 Q. I understand. That wasn't my question, 20 though. If -- 21 A. You said -- you asked me: Would it stop 22 it? And no, it wouldn't. I mean, you're asking 23 me a question. No. 24 Q. It would -- 25 A. If the train is such, then, yeah.	Page 225 1 A. Yes, sir. 2 Q. Have I given you a fair opportunity to 3 answer those questions? 4 A. Yes, sir. 5 Q. Is there anything that you would like to 6 add at this point, before I stop the deposition? 7 A. No, sir. 8 Q. All right. Thank you. I pass the 9 witness. 10 MR. TUCKER: Mr. Brockett, can you 11 hear us? 12 MR. BROCKETT: No questions. And I 13 believe he'll want to read and sign. 14 Q. (By Mr. Tucker) Do you want to read your 15 deposition and sign it? That's what Mr. Brockett 16 is saying. 17 A. Yes. 18 Q. Okay. That's fine. I thank you for 19 your time, sir. 20 A. All right. 21 THE VIDEOGRAPHER: Going off the 22 record at 2:18. We are off the record. 23 (Deposition concluded at 2:18 p.m.) 24 25

57 (Pages 222 - 225)

Page 226

1 CHANGES AND SIGNATURE
 2 TO THE VIDEOTAPED ORAL DEPOSITION OF
 3 GEORGE B. SOLIZ
 4 February 5, 2015

5 Page	Line	Change	Reason
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Page 227

1 I, GEORGE B. SOLIZ, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

4 _____
 5 (Signature of witness)

6 STATE OF _____
 7 COUNTY OF _____

8 Before me, _____, on this day
 9 personally appeared GEORGE B. SOLIZ, known to me
 10 (proved to me under oath or through
 11 _____) (description of identity card
 12 or other document) to be the person whose name is
 13 subscribed to the foregoing instrument and
 14 acknowledged to me that she executed the same for the
 15 purposes and consideration therein expressed.

16 (Seal) Given under my hand and seal of office
 17 this _____ day of _____, 2015.

18 _____
 19
 20
 21
 22 Notary Public in and for
 23 the State of _____.

24
 25

Page 228

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF ARKANSAS
 3 FORT SMITH DIVISION
 4 CITY OF OZARK, a municipal)
 5 corporation)
 6)
 7 Plaintiff,)
 8)
 9 vs.) Civil Action No.
 10) 2:14-cv-02196-TLB
 11 UNION PACIFIC RAILROAD COMPANY,)
 12 ARKANSAS STATE HIGHWAY)
 13 COMMISSION, as the Governing)
 14 Body of the ARKANSAS STATE)
 15 HIGHWAY AND TRANSPORTATION)
 16 DEPARTMENT)
 17 Defendants.)

18
 19 REPORTER'S CERTIFICATION
 20 VIDEOTAPED ORAL DEPOSITION OF
 21 GEORGE B. SOLIZ
 22 February 5, 2015

23
 24 I, Suzanne Kelly, Certified Shorthand Reporter in
 25 and for the State of Texas hereby certify to the
 following:

That the witness, GEORGE B. SOLIZ, was duly sworn
 by the officer and that the transcript of the
 videotaped oral deposition is a true record of the
 testimony given by the witness;

That the deposition transcript was submitted on
 the 19th day of February, 2015, to the witness for
 examination, signature and return to Suzanne Kelly by
 the 24th day of March, 2015;

That the amount of time used by each party at the
 deposition is as follows:
 Mr. Tucker: Four hours and eight minutes used;
 That pursuant to the information given to the
 deposition officer at the time said testimony was
 taken, the following includes counsel for all parties
 of record:

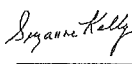
Page 229

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 13 e-mail: tucker@fridayfirm.com

14
 15 I further certify that I am neither counsel for,
 16 related to, nor employed by any of the parties or
 17 attorneys in the action in which this proceeding was
 18 taken, and further that I am not financially or
 19 otherwise interested in the outcome of the action.

20
 21 Certified to by me this 19th day of February,
 22 2015.

23
 24 
 25 Suzanne Kelly, CSR, RDR, CRR
 Certification No. 1260
 Expiration Date: 12-31-16
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