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Case: Consolidated Rail Corporation, Abandonment Exemption, Hudon
County, New Jersey

Docket Nos AB 167 (Sub No. 1189X)
AB 55 (Sub No. 686X)
AB 290 (Sub No. 306X)



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BEFORE THE SURFACE TRANSPORTATION BOARD

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Consolidated Rail Corporation, : Docket Number
Abandonment Exemption, : AB 167
Hudson County, New Jersey. :

- - - - -X

CSX Transportation, : Docket Number
Discontinuation of Service, : AB 55
Hudson County, New Jersey. :

- - - - -X

Norfolk Southern, : Docket Number
Discontinuation of Service, : AB 290
Hudson County, New Jersey. :

- - - - -X

ORAL ARGUMENT

Washington, D.C.

Monday, October 24, 2016

BEFORE:

HONORABLE JOHN P. DRING
ADMINISTRATIVE LAW JUDGE

REPORTED BY:

SARA A. WICK, RPR, CRR

1 Oral argument on Monday, October 24, 2016,
2 before Honorable John P. Dring, in Washington, D.C.,
3 at the offices of the Federal Energy Regulatory
4 Commission, 888 First Street Northeast, Hearing Room
5 1, at 10:01 a.m., when were present on behalf of the
6 respective parties:

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1 P R O C E E D I N G S

2 PRESIDING JUDGE: Good morning. My name
3 is Administrative Law Judge John Dring. Today, we
4 are here for oral arguments on a motion to sanction
5 and also other sundry motions in Surface
6 Transportation Board Docket Number AB 167, Conrail
7 Abandonment Exemption in Hudson County, New Jersey.

8 I appreciate the filings that the parties
9 have made in this docket so far and Mr. Montange.
10 Today, we are going to address the sanctions motion
11 first and the other motions after that. And I am
12 going to also impose a deadline for discovery. This
13 is coming to an end fairly soon.

14 The way I would like to proceed,
15 Mr. Montange, on your motion is to have you go
16 through each point and then have Mr. Riffin explain
17 why you're wrong, and if I have additional
18 questions, I will ask you.

19 MR. MONTANGE: Surely.

20 PRESIDING JUDGE: Do you understand?

21 MR. RIFFIN: Yes, sir.

22 PRESIDING JUDGE: Why don't you proceed,

1 Mr. Montange.

2 MR. MONTANGE: Your Honor, the motion for
3 sanctions, the only motion for sanctions at least
4 that I'm acquainted with is the motion filed by the
5 LLCs against City, et al. That motion basically
6 asks for no discovery. And the substance of the
7 argument or the gravamen of the argument as
8 reflected in the motion itself is that the discovery
9 is based upon unsubstantiated allegations of
10 conspiracy.

11 PRESIDING JUDGE: Let me cut through
12 something here. I guess I wasn't specific enough
13 with you, Mr. Montange.

14 I don't care about the conspiracy right
15 now. You alleged that following my August order,
16 that Mr. Riffin produced e-mails, and you allege he
17 did not follow my instructions.

18 MR. MONTANGE: Yes.

19 PRESIDING JUDGE: That's what I care
20 about. I care less about what you are attempting to
21 talk about. What I do care about is the integrity
22 of --

1 MR. MONTANGE: Yes, your Honor.

2 PRESIDING JUDGE: -- the judicial function
3 here. If any party was ordered to do something and
4 didn't do it, I don't appreciate that, and that's
5 what the sanctions would be about, not about a
6 conspiracy.

7 MR. MONTANGE: Yes, your Honor. Thank
8 you.

9 I'm sorry that I misunderstood, your
10 Honor. The issue, then, is the motions to compel
11 against Mr. Riffin and Mr. Riffin's objections
12 thereto.

13 To back up just a little bit, in response
14 to the second motion to compel filed by the City,
15 Mr. Riffin showed up at my -- while I was thinking I
16 was going to dinner, unannounced, the evening before
17 a hearing before your Honor which resulted in this
18 motion or your order that compelled him to make
19 discovery. And he offered at that point to make
20 discovery, to actually show me e-mails, to make
21 available his computer. It was unclear there was
22 even a WiFi connection at the restaurant we were at,

1 and I was there to eat, not to look at his computer.

2 The next day, however, he said that he
3 would make available the discovery, and that's what
4 your Honor entered as an order. He said he would
5 make available -- my understanding is that he
6 represents that his records are basically on his
7 e-mail system and that he would make those available
8 to me.

9 He said that he would send copies. That,
10 I thought, was agreement at that time.

11 On the date of the entry of the order,
12 which was August 25th, he did -- according to his
13 e-mail statements to the parties, at least to me,
14 said that he went to a library. Evidently, he
15 doesn't have an e-mail or Internet connection at his
16 own home or where he works.

17 So he went to a library, and he spent
18 approximately two hours at the library forwarding
19 e-mails, and he also prepared a letter to your Honor
20 during that time, which he sent making some
21 arguments. And I got a version of the letter also
22 from him the next day.

1 I think it was the next day. It may have
2 been that evening, August 25th. Anyway, it was
3 during the period of August 25th or 26th.

4 Immediately upon receipt of an e-mail from
5 him saying that he had concluded whatever discovery
6 he was going to make, I raised some questions about
7 whether the discovery response was, in fact,
8 complete, because I have documents from other
9 sources which indicate there should be other things
10 out there.

11 I received a response from him indicating
12 that if I wanted anything more, I should go see
13 Judge Dring. It wasn't what I wanted to hear, but I
14 tire of the chase. So that, in fact, is what we
15 have done.

16 We filed a motion to compel, and in the
17 motion for sanctions I list deficiencies that we
18 perceive in the discovery to date. I would -- when
19 I look at a discovery request, I view it from the
20 point of view of the municipality I primarily
21 represent, and when we are faced with discovery, we
22 make a good-faith response.

1 The LLCs take their discovery from us
2 under an Open Public Records Act that applies in New
3 Jersey, and they have to. I mean, the City has to.
4 Everything they've got gets turned over except for a
5 few attorney-client privileged things.

6 MR. HYMAN: Your Honor, I can't hear very
7 well.

8 PRESIDING JUDGE: Why don't you sit at the
9 table.

10 MR. MONTANGE: Perhaps he should go sit on
11 his own side. This is Mr. Hyman.

12 PRESIDING JUDGE: Let's see if he will be
13 able to hear well enough over here.

14 Continue, please.

15 MR. MONTANGE: And I think under the
16 federal rules, which are generally what we were
17 supposed to comply with in STB, a party is supposed
18 to make a good-faith response. It's not a
19 cat-and-mouse game. The cat-and-mouse game started
20 at the first motion to compel when I got no response
21 at all, filed a motion, and on that day he then
22 responds with objections.

1 Second motion to compel, I file that, and
2 on the night before the hearing, he shows up with
3 his computer at around 8:00 p.m., 9:00 p.m. at night
4 and says here, have a look if the WiFi operates.

5 Well, it took him two hours at the
6 library, he said, to produce 100 e-mails. I suspect
7 I would have been past closing time at the
8 restaurant if the WiFi operated, and that would have
9 been if I weren't eating or trying to get ready to
10 prepare for the hearing the next day. That's not a
11 discovery response, your Honor.

12 When I received, then, the -- and he had
13 been denying that he had any responsive documents to
14 begin with. Then that changed the night before the
15 last hearing, the second motion to compel.

16 Now one of his things is he's given me all
17 of the responsive documents in the two hours, which
18 he said was all the time that he had at the library.
19 The library was closing, and he had to leave. So he
20 was going to stop, that was enough, it was
21 burdensome.

22 The entire tenor of the remarks I'm

1 receiving from him is this is an annoyance for him,
2 he's going to give me whatever he chooses to give me
3 and then leave.

4 We have documents, as I detail in my
5 motion, that indicate there should be more out
6 there. I happen to also have a Yahoo! e-mail system
7 as Mr. Riffin does.

8 PRESIDING JUDGE: Let me interrupt. As
9 you make points, you have the option of allowing
10 Mr. Riffin to refute them or comment.

11 Mr. Riffin, do you have any comments yet?

12 MR. RIFFIN: I think it might be more
13 appropriate to just let him finish.

14 PRESIDING JUDGE: That's fine.

15 MR. RIFFIN: And then I will respond.

16 PRESIDING JUDGE: That would be fine.

17 MR. RIFFIN: That way we're not talking
18 back and forth.

19 PRESIDING JUDGE: All right. I wanted to
20 give you that option.

21 MR. RIFFIN: I appreciate it. I'm
22 listening, and I'm making mental notes. When he

1 finishes, then I will respond appropriately.

2 PRESIDING JUDGE: That's fine.

3 MR. MONTANGE: So the whole tenor of his
4 approach -- and this is what we lay out, too, in our
5 motions for sanctions, is one of cat and mouse. And
6 the cost of pursuing any kind of discovery in those
7 circumstances becomes intolerable.

8 And the burden on the system, the burden
9 on STB and the burden on your Honor, if a good-faith
10 response is not made, then I have to make a motion,
11 and you have to hear the motion. It's frustrating
12 to you, and it's at least as frustrating to me at
13 this point, because I've been in this now for a
14 decade on behalf of the City.

15 I detail in the papers where we find
16 deficiencies. I would only add that I have a Yahoo!
17 mail system myself.

18 He says he's shown me what's on his
19 screen. If there's an original e-mail -- the way my
20 Yahoo! system works, it's conversational.

21 What appears on your screen will be the
22 last e-mail in the sequence. You have to hit

1 another button, you have to click on another line,
2 and then you get the rest, or you get the next
3 e-mail down the chain.

4 Click on another button, you will get the
5 next e-mail down the chain. Click on another
6 button, you will get the next e-mail, and
7 attachments may then be available to you, and those
8 are on the e-mail system.

9 If he just copies me on the chain, which
10 is what he's now represented in his last response,
11 if he just copies me what's on his screen, that
12 doesn't give me the chain. That doesn't mean the
13 chain doesn't exist. I asked for what was on the
14 e-mail system, not what was on his little laptop
15 computer screen at any given time.

16 If he's saying that he has no longer any
17 e-mails that, that he's removed all e-mails, then my
18 response is that's an abuse, because once we filed
19 our discovery against him in March, we asked for the
20 documents that he had. He was obligated to preserve
21 those documents and make them available and not just
22 throw them out at any given time in the future.

1 And in addition, as I read STB's
2 regulations, they say discovery obligations are
3 continuing. If he continues to get any documents
4 after March, if he continues to get any after July,
5 if he continues to get any after this date, it's a
6 continuing obligation that he make them available.
7 And he can't say well, this is all I have, and I
8 just -- I got rid of everything else, or I
9 expurgated my system.

10 One of his statements is -- and I will go
11 through this in a little bit more detail when I go
12 through his individual objections. But one of his
13 statements is he's deleting any e-mails that he
14 finds are not material to himself or his use at the
15 time. He'll just get rid of them now.

16 Well, if he's doing now and they're
17 documents I've requested, that's a breach of the
18 continuing obligation to make discovery. So what am
19 I to do? Just take this kind of stuff? Or complain
20 to the STB, which is what I have done, that I'm not
21 receiving a legitimate, cooperative discovery
22 response.

1 Now, let me back up and add one more thing
2 before I get into his 15 objections in detail. I've
3 got some notes on those, and we can go through them,
4 which is what I understood you to request.

5 PRESIDING JUDGE: Yes.

6 MR. MONTANGE: The gravamen as I
7 understand it of the objection to discovery by both
8 Mr. Riffin and now the LLCs is that the City,
9 et al. -- or Montange in particular because they try
10 to personalize this to me, because I represent three
11 clients. Believe me, I would rather not be here,
12 but I took the job, and so I am.

13 The gravamen of their complaint against me
14 is that there is some kind of unsubstantiated
15 conspiracy that I'm trying to pursue. What's
16 happened in this 11-year dispute over the Harsimus
17 branch can be boiled down to a nutshell.

18 City, et al., wants to preserve the last
19 remaining transportation corridor going into
20 downtown Jersey City. It's not rocket science that
21 that makes sense from an urban planning point of
22 view. If you take a trip to Jersey City --

1 PRESIDING JUDGE: Mr. Montange, do we need
2 to get into this?

3 MR. MONTANGE: They're contesting --

4 PRESIDING JUDGE: That's later, isn't it?
5 What we are doing right now is seeing if Mr. Riffin
6 complied with my order; is that not correct?

7 MR. MONTANGE: Okay.

8 PRESIDING JUDGE: I'm asking you a
9 question.

10 MR. MONTANGE: One of his objections goes
11 to relevancy, and I like to hit --

12 PRESIDING JUDGE: I don't care about his
13 objections to relevancy.

14 MR. MONTANGE: Okay.

15 PRESIDING JUDGE: If he had an objection
16 to relevancy, he should have brought it to me. This
17 is not a self-help forum.

18 If you've got a problem with an order, you
19 bring it to me. You don't help yourself.

20 MR. MONTANGE: All right. Let me just go
21 through Mr. Riffin's objections and try to get
22 through this. Mr. Riffin's reply to motions for

1 sanctions is where his last set of objections are.

2 PRESIDING JUDGE: Are we looking at his
3 objections or your statements?

4 MR. MONTANGE: This is Jim Riffin's reply
5 to City, et al., motion for sanctions. His first
6 objection is I didn't paginate my motion.

7 PRESIDING JUDGE: I don't care about that.

8 MR. MONTANGE: Okay. I thought your Honor
9 would share that view with me.

10 Second objection, he says there that he
11 was ordered to forward a copy of whatever he retains
12 in his possession, and it's a little confusing, but
13 as I understand this objection, he seems to be
14 intimating that he doesn't have any more in his
15 possession.

16 What I am suggesting to your Honor is if
17 you review our papers, you will see documents that
18 he should have in his possession, unless he's
19 destroyed them. If he did destroy them after March
20 28th when I filed the interrogatory -- the document
21 request, then that would be a breach of the -- his
22 obligation to make discovery.

1 And in addition, there are -- there's this
2 problem of, if you have a Yahoo! e-mail system, you
3 have to hit buttons to get the whole e-mail chain.
4 In many instances, of which I've indicated a few, it
5 appears that he has provided me with one e-mail in a
6 chain, but there must have been more beyond that.

7 PRESIDING JUDGE: Let me just tell you, I
8 do not intend to spend any time whatsoever parsing
9 the meaning of the word "retain."

10 MR. MONTANGE: The third objection, he
11 says that he only has to make available documents to
12 inspect or copy, and he seems to be saying in the
13 third objection that I should go to Cockeysville,
14 Maryland, or accept whatever he gives me when he
15 shows up here and he makes available his computer
16 here.

17 I think discovery is -- your order
18 suggested he had to -- it stated to me that he had
19 to make it available and not ask me to look at his
20 computer here or --

21 PRESIDING JUDGE: This is not some overly
22 complicated formulaic process. We're using words as

1 they're commonly understood, and Mr. Riffin was
2 ordered to produce documents for you, his e-mails.

3 Again, I don't care about these overly
4 convoluted arguments about what words mean. We're
5 beyond that.

6 MR. MONTANGE: Okay. Your Honor, again --

7 PRESIDING JUDGE: I'm just telling you. I
8 know this is not offending you. I'm just telling
9 you how things are right now.

10 MR. MONTANGE: Okay. His fourth
11 objection, he claims that he sent me his
12 screenshots. Again, my statement is --

13 PRESIDING JUDGE: A screenshot is not an
14 e-mail. A screenshot is a screenshot. Is that
15 correct?

16 MR. MONTANGE: He says it's what showed up
17 on his computer monitor, which is what I call --
18 okay.

19 The fifth objection, again, the fifth
20 objection is --

21 PRESIDING JUDGE: You know, I will not
22 accept arguments based on mental reservation. When

1 you take an oath, if you ever have the misfortune of
2 joining the federal service, you take an oath, and
3 part of that oath says that it's taken without
4 mental reservation. That actually means something
5 around here.

6 Do you understand that, Mr. Riffin?

7 MR. RIFFIN: I do.

8 PRESIDING JUDGE: All right. Proceed.

9 MR. MONTANGE: The fifth objection is he
10 says he has -- the document request, when I tender
11 it to a party that is a corporation, such as the
12 LLCs, always indicates that they have to -- or to an
13 individual dealing with a corporation, a corporation
14 is not some disembodied ghost that exists out there
15 that operates through agents and representatives.
16 So documents in its possession will be in possession
17 of its attorneys, its agent, anyone representing it.
18 Anyone purportedly speaking -- a consultant who is
19 working for the LLCs, for example, and communicating
20 with Mr. Riffin would be a representative of --
21 representing that party.

22 Mr. Riffin states in his fifth objection

1 that he's only obligated to provide me with e-mails
2 from Mr. Horgan or Steve or Vicki Hyman, and he
3 doesn't have to provide them from anyone else.
4 That's how I read the fifth objection. And that is
5 not in compliance with what the document request
6 sought, and it is a exclusion of communications that
7 he would have with -- he admits later in his
8 objections that Mr. Hyman has operated through other
9 attorneys and that there are other people working
10 for Mr. Hyman, and he excludes all of them from his
11 e-mail response.

12 So that's a limitation that --

13 PRESIDING JUDGE: That's not what I had
14 contemplated either.

15 MR. MONTANGE: Nor I.

16 The sixth objection, this deals with
17 Mr. Nagel. Mr. Nagel --

18 PRESIDING JUDGE: Yes, I saw that.

19 MR. MONTANGE: He claimed he doesn't know
20 who Mr. Nagel is, he said he heard of an architect.
21 But in the same objection, he says that Mr. Horgan
22 is the LLC's attorney, works for Mr. Hyman, and

1 Mr. Hyman is sometimes upset with Mr. Horgan and
2 consults with other attorneys. He acknowledges one
3 was Mr. Nagel, he says he did send Nagel some
4 material.

5 PRESIDING JUDGE: His memory was refreshed
6 after you provided the documentation.

7 MR. MONTANGE: Well, his memory was
8 refreshed even, it seems, as he go through his
9 objection. At first, he seems to be denying that he
10 knew, and then he seems to remember, and he can't
11 deny it after I provided him with the document.

12 But I don't see how that's an objection.
13 He's stating it as an objection, and it makes no
14 sense to me.

15 The seventh objection, the seventh and, I
16 think, the 11th objection both deal with this Forest
17 City matter. He doesn't wish to make available any
18 documents he has relating to -- or any of his e-mail
19 exchanges that he has dealing with Forest City. And
20 he says that that's irrelevant to this proceeding.

21 PRESIDING JUDGE: I'm looking at page 10,
22 and he says "relating in any fashion to the Harsimus

1 branch."

2 I would think that the development of that
3 Metro Plaza parcel -- that's what you're talking
4 about?

5 MR. MONTANGE: Yes.

6 PRESIDING JUDGE: Is related in some
7 fashion, quite distinct fashion, to the Harsimus
8 branch.

9 MR. MONTANGE: Absolutely, your Honor.

10 PRESIDING JUDGE: Again, Mr. Riffin, it
11 appears to me that you're parsing words very, very
12 carefully and not entirely logically, that you've
13 got your own intellectual construct for operating as
14 you answer questions.

15 Now, that seems to me to be mental
16 reservation. It could be other things. But it's
17 not -- it doesn't seem to me to be appropriate as
18 you make some attempt to comply with my order for
19 discovery.

20 Continue, please.

21 MR. MONTANGE: The eighth objection, in
22 the eighth objection, he says that my document

1 request is limited to all documents that may have
2 been authored by consultants -- copied, received or
3 authored or retained, maintained, by consultants,
4 officers, employees, negotiators, board members,
5 attorneys, otherwise working on behalf of any party,
6 who has filed a pleading in AB 167, the 1189 X. And
7 he says that he's not an attorney, board member,
8 negotiator, employee, officer, or consultant.

9 PRESIDING JUDGE: You think he's not a
10 negotiator?

11 MR. MONTANGE: Oh, I think he's a party.

12 PRESIDING JUDGE: He's filed an intent to
13 file an OFA, and if that's sufficient to give you a
14 property right in federal court in New Jersey, it's
15 probably sufficient to make you at least very
16 significantly involved in this case.

17 MR. MONTANGE: It makes you a party in
18 spades, your Honor. So that objection is a
19 nonstarter.

20 PRESIDING JUDGE: I agree with that.

21 MR. MONTANGE: Now, the ninth objection
22 isn't so much to my discovery as it is to an

1 objection that I made to his, quote, status report
2 that he sent to you, and the status report which he
3 sent to you -- this was a part of this e-mail letter
4 that he did on the same day he made discovery.

5 PRESIDING JUDGE: Yeah.

6 MR. MONTANGE: And he didn't serve it on
7 the parties. He's under two orders from the STB to
8 serve his pleadings on parties. I view that as
9 making substantive argument.

10 He never served it. He just sent it out.

11 He's sent e-mail copies, I think, to the
12 people in the OFA proceeding. That's the limit of
13 the service.

14 There are probably 15 or 16 more parties.
15 He's been ordered twice.

16 PRESIDING JUDGE: I agree with that, and
17 parenthetically, I've got a problem -- well, maybe
18 some others have operated within the letter of the
19 regulations. STB, my law clerk did some research.
20 At FERC, our ex parte communication regulations are
21 different than those at the Board, and I think the
22 Board allows a little bit of latitude there.

1 But suffice to say that, perhaps, some of
2 the communications I've received that weren't filed
3 with the Board were well-intended. They were meant
4 to inform me as to positions of the parties'
5 arguments.

6 Frankly, I found them to be intellectually
7 insulting, suggests that I'm not following the
8 docket, that I have not read enough materials. I
9 have read everything that's been filed in these
10 documents.

11 And I don't -- for your future reference,
12 not that we're going to have much more to do with
13 one another, but I don't appreciate it.

14 Continue, please.

15 MR. MONTANGE: If I've been a party to any
16 of that, I apologize.

17 PRESIDING JUDGE: I didn't mention any
18 names.

19 MR. MONTANGE: The 10th objection, your
20 Honor, is he says -- he complained that I said that
21 he terminated discovery, which I read his e-mail to
22 do. But he said there were no more relevant e-mails

1 to send.

2 If he, in fact, had no more -- I believe
3 that he has more relevant e-mails to send. From
4 everything he said, he's failed to make available
5 documents relating to his litigation dealing with
6 the Metro plaza project.

7 PRESIDING JUDGE: It seems like he just
8 got tired.

9 MR. MONTANGE: Yes, he just got tired.
10 That's the implication I got.

11 PRESIDING JUDGE: That's what I got out of
12 it. Oh, bother.

13 MR. MONTANGE: Yes. What was very
14 irritating is at the same time he didn't want to
15 spend more than two hours checking his own files,
16 and he was busily filing -- he's filed, I think, two
17 amended complaints against Forest City in the
18 interval.

19 PRESIDING JUDGE: It seems like this is
20 Mr. Riffin prioritizing his time, as most good
21 businesspeople do, and he waited because obligation
22 to respond to this discovery, perhaps with not

1 enough gravamen as he might have. He made a
2 business decision to spend two hours on this and
3 more time on doing other things.

4 We all make these decisions. Sometimes we
5 make mistakes doing it.

6 MR. MONTANGE: Your Honor, I concur in all
7 your statements. I feel that it was more than a
8 mistake. I think it was intentional and his way of
9 doing business.

10 PRESIDING JUDGE: Even if it's not, you
11 know, it shows poor judgment.

12 MR. MONTANGE: And Mr. Riffin, one would
13 have to say he's had quite a bit of experience in
14 STB proceedings, and one would think that he should
15 know his way around the block.

16 PRESIDING JUDGE: He seems to be a
17 sophisticated litigator.

18 MR. MONTANGE: Yes, in many, many, many
19 proceedings.

20 The 11th objection, he says that I've
21 imputed ill motive to him because several of his
22 e-mails appear to be in response to an undisclosed

1 e-mail. He says that he telephones people sometimes
2 asking for information and that then he gets an
3 e-mail response from Mr. or Mrs. Hyman back.

4 And that may be the case, your Honor, but
5 it appears to us that some of these e-mails are a
6 part of a conversational chain and that he, in fact,
7 has simply omitted the earlier e-mails in the chain.

8 In any event, that doesn't account for all
9 of the problems. Maybe one or two.

10 The 12th objection, he complains about a
11 lack of -- he says I complain -- this is, again --
12 the 12th objection is another one about Forest City.
13 He think we already discussed that.

14 He denies -- he acknowledges that he went
15 to the office of -- when I use the term Forest City,
16 Forest City, G&S, there's a conglomeration. It's a
17 bunch of developers who have grouped together.

18 I call them Forest City only because
19 that's the first name on his complaint. G&S is
20 actually doing a lot of -- apparently doing a lot of
21 the legwork or at least is the one that Mr. Hyman
22 has been in contact with on this, according to the

1 affidavits filed.

2 And he is saying that he went to the
3 office of Mr. Wasser to hand a courtesy copy of
4 Riffin's complaint. He's trying to disavow any kind
5 of agreement, but I think then that goes to the
6 affidavit saying that he acknowledged an agreement
7 with Mr. Hyman at the meeting with Mr. Wasser.

8 And that being the case -- it's not really
9 a legitimate objection anyway, but what I'm saying
10 is, he appears to be hiding the ball in his
11 addressing it by insinuating there's no agreement
12 when he states that there is an agreement to Mr.
13 Wasser.

14 It's like the 13th chime of a clock. When
15 I see things like this from either of my
16 counterparties which seem to me to be contrary to
17 what I'm hearing in the field where they say one
18 thing to the STB, they say another thing to Jersey
19 City and they say another thing to the Forest City
20 people, I never know who is on first.

21 It's the 13th chime. It calls into
22 question everything they've said; it calls into

1 question everything they say in the future. You
2 just don't know what the true facts are.

3 I'm willing to impute -- or I'm willing to
4 credit Mr. Wasser. He has no bone to pick in this
5 proceeding. He didn't want to participate.

6 But because he saw issues with this, he
7 supplied an affidavit, a verified statement, stating
8 that he has been told there's an agreement. And
9 this was evidently in the presence of the two
10 gentlemen -- not Mr. Horgan, but the two gentlemen
11 on each side of him, Mr. Hyman --

12 MR. RIFFIN: I'm going to object at this
13 time. Any statement Mr. Wasser may have made,
14 because Mr. Wasser is not here, I'm going to object.

15 They're not relevant. They're not
16 material. And in addition, they're hearsay.

17 Mr. Wasser had an opportunity to be here.
18 If he wanted to put testimony on from Mr. Wasser, he
19 should have asked Mr. Wasser to show up, is what I
20 would be objecting to, your Honor.

21 MR. MONTANGE: Your Honor, the easiest way
22 for me to respond to that is the LLCs objected to

1 anyone providing testimony here at this hearing.
2 We're trying to do that. We supplied Mr. Wasser's
3 statement as a legitimate response to the motion for
4 sanctions filed against me, my clients, and it's a
5 part of the record.

6 PRESIDING JUDGE: I will let it stand.
7 That's fine.

8 MR. MONTANGE: Okay. Now, the 13th
9 objection, this really isn't to the discovery so
10 much as he objects to my calling his OFA, his intent
11 to file an OFA, an abuse of the OFA process.

12 PRESIDING JUDGE: That's outside the scope
13 of my order.

14 MR. MONTANGE: Okay. It goes into
15 defense. We have another view, of course.

16 PRESIDING JUDGE: I don't care. It's
17 outside the scope.

18 MR. MONTANGE: The 14th objection, he
19 objects to my inspection his e-mail account a second
20 time, and this is making me dizzy. First, I show up
21 at the last hearing, and he shows up at my
22 restaurant unannounced at 8:00 p.m. or 9:00 p.m. at

1 night offering to let me inspect, which was
2 impossible. We didn't even know if there would be a
3 WiFi connection there.

4 And then the next day, he says he will
5 make them available, which is then embodied in an
6 order. And then he says he's not going to do any
7 more.

8 And then again now he says -- what I said
9 in my motion for sanctions against him is I --
10 basically at this point, it's the 13th chime of the
11 clock. I do not feel that one can get a reliable
12 response out of him, and someone needs to inspect
13 his e-mail system and see what's going on in there,
14 because I don't think that he --

15 PRESIDING JUDGE: Is this a part of his
16 failure to respond to my order?

17 MR. MONTANGE: No. It's really his
18 response to a remedy that I sought.

19 PRESIDING JUDGE: That's fine. I don't
20 want to hear it.

21 MR. MONTANGE: All right. And the 15th
22 objection is he -- again, it's an objection against

1 one of the remedies that I seek, and that is
2 attorney's fees.

3 And as I understand the objection, he's
4 says he's objecting to the position of the
5 apostrophe in attorney's fees. There's only one
6 attorney --

7 PRESIDING JUDGE: Fine. I don't care
8 about that.

9 MR. MONTANGE: Then the final one he's
10 called miscellaneous. He's got just a ticktack,
11 ticktack of different objections to me.

12 I don't know if this is where he complains
13 I threw a tantrum or something. I've not thrown any
14 tantrums. I've tried to be as succinct as I
15 possibly could.

16 PRESIDING JUDGE: Is there anything
17 relevant in these miscellaneous? I don't care how
18 vigorously you or anyone else advocates your
19 positions. I really don't.

20 MR. MONTANGE: There's nothing in here
21 that is a legitimate objection to the discovery
22 requests that I've made. To the extent he makes a

1 substantive point, we reserve on that.

2 PRESIDING JUDGE: If Mr. Riffin wants to
3 raise these miscellaneous items, I can review them
4 in seriatim.

5 MR. MONTANGE: Your Honor, I think that
6 that concludes my response to his objections. We
7 just thought there were none with any merit.

8 I would note if Mr. Riffin is excluded
9 from the OFA part of the proceeding, if he's barred
10 from issuing an OFA, then it will dramatically
11 curtail the need for my discovery against the LLCs,
12 because documents relating to their agreement with
13 Mr. Riffin will presumably be irrelevant because he
14 will be out of the proceeding, and their agreement
15 will be moot. That will address many of the issues
16 I have with them.

17 If he remains in the proceeding, and
18 because it's unclear -- because we just don't think
19 he's making available the documents, then I have to
20 ask the LLCs for the same kinds of things that we
21 have requested of him.

22 PRESIDING JUDGE: I understand. Thank

1 you.

2 Mr. Riffin, you have the floor.

3 MR. RIFFIN: Thank you, your Honor. I
4 start off with the discovery rules and what I'm
5 required to do. It's my understanding, having read
6 them, my obligation is to make them available for
7 inspection.

8 And some cases I have read have indicated
9 that the place of inspection is where the files are
10 kept. I realize that Mr. Montange's office is a
11 long ways away from where I keep my records.

12 Prior to this last meeting, I made an
13 effort to go to Mr. Montange, as he indicated. I
14 appeared at a restaurant and waited for him to show
15 up. It's not his restaurant. I actually was there
16 first.

17 I offered Mr. Montange an opportunity to
18 look at my e-mails. I brought my computer with me.
19 I got a WiFi code, accessed my e-mail account, put
20 it in front of him, and said you've asked to inspect
21 my e-mails, here they are, help yourself.

22 We reached an agreement. The agreement

1 was I was to forward to him whatever e-mails were
2 remaining in my e-mail account that involved
3 communications, electronic communications, between
4 me, Mr. Steve Hyman, and Ms. Vicki Hyman and the
5 LLCs. The LLCs, because they're legal entities, I
6 take that to mean any e-mails between me and
7 Mr. Horgan.

8 At the restaurant, he indicated to me what
9 he wanted me to do. He said "what I want you to do
10 is you type in the name, Hyman, into the search box.
11 Whatever comes up, send me a copy of whatever you
12 see." And that is precisely what I did.

13 I did not start this process saying I'm
14 going to give myself two hours to do it. I started
15 the process to complete the task. At the
16 restaurant, he indicated to me "this shouldn't take
17 you very long, you just do a couple clicks, and you
18 send a batch."

19 I'm not too computer-literate. I'm too
20 old to do that. I just didn't learn it.

21 I don't do social media. I rarely do
22 e-mails.

1 I don't like them. I don't trust them. I
2 just don't do it.

3 So I'm not very conversant at it. But
4 that doesn't mean I'm not willing to learn how to do
5 it, so long as someone helps me a little bit.

6 I appeared in your court, and I agreed I
7 would send him whatever is in my e-mail account,
8 whatever remains is the words that were used, and
9 that's the words that appear in your order.
10 Whatever is there, I'm going to send it to him, and
11 I'm not going to be fussy about is it relevant.

12 He's just spent a few minutes talking
13 about Metro Plaza. In discovery, we begin with how
14 does the party who is trying to do discovery define
15 the terms that he's using.

16 In this particular case, Mr. Montange has
17 defined the term "Harsimus branch." And he defines
18 that term as being between control point Waldo and
19 the west side of Marin Boulevard.

20 That's his definition. I didn't pick it.

21 In my definition, the Harsimus branch is
22 from CP Waldo all the way to the very end, and

1 that's considerably beyond the west side of Marin
2 Boulevard. The west side of Marin Boulevard is
3 milepost point 88. According to Conrail, the line
4 ends at milepost 136.

5 I don't make the definitions. I respond
6 to what you define.

7 You define the Harsimus branch to the west
8 side of Marin. You have asked me for any documents
9 between three particular persons for that portion of
10 that line.

11 I construed it much broader than that, as
12 it turns out. I literally gave Mr. Montange a copy
13 of every e-mail that I've either sent or received
14 from Steve Hyman, Vicki Hyman, Mr. Horgan, that's
15 still in my e-mail account, whether it related to
16 the Harsimus as he defined it, whether it related to
17 the Harsimus in its entirety, whether it was totally
18 unrelated. I just sent him everything.

19 MR. MONTANGE: Your Honor, I hate to
20 interrupt, but might I just read what I defined
21 the "Harsimus branch" to be?

22 PRESIDING JUDGE: All right.

1 MR. MONTANGE: I said Harsimus branch
2 shall mean any portion of the line of railroad
3 between CP Waldo and Marin Boulevard in Jersey City
4 transferred to line code 1420, which line of
5 railroad is the subject of abandonment proceeding
6 bearing STB Docket AB 167 and 1189 X.

7 And my position is we asked for anything
8 relating to any portion of that line.

9 PRESIDING JUDGE: Thank you.

10 Mr. Riffin?

11 MR. RIFFIN: To continue, I did not limit
12 what e-mails I sent to him. I literally gave him
13 every one I had.

14 I put Mr. Hyman's name in. He actually
15 comes up twice because he has two different e-mail
16 accounts.

17 I picked the first one, and I literally --
18 first of all, I had to learn you can't send a batch.
19 I can't just say send them all.

20 No, you have to click on each and every
21 one of them, and you actually have to open it. You
22 have to be looking at it.

1 And it took me a little while to figure
2 that out. It took 30 minutes for me to figure out
3 how do you do this. But I took the time.

4 And then I proceeded to click on each and
5 every e-mail that came up on my computer system, on
6 my e-mail account. And I forward a copy to
7 Mr. Montange, to Mr. Horgan, to Robert Jenkins.

8 I think I sent to John Broder. He's the
9 attorney for Conrail also.

10 And I sent a copy to Mr. Strohmeier. So I
11 sent a copy to everyone who is actively
12 participating in this proceeding before you.

13 After I did all of the e-mails that were
14 for one of Mr. Hyman's account, I did the e-mails
15 that were in his second account. It didn't matter
16 if they were coming to me or going back. Whatever
17 came up, I forwarded it.

18 I did the same thing for Ms. Hyman. I did
19 the same thing for Dan Horgan.

20 It took me a little over two hours to do
21 that, and I noted when I came in, I noted when I
22 left, and I just made the observation this wasn't

1 quick and easy, this was actually time-consuming.

2 It wasn't what I was expecting.

3 I'm not complaining. I'm just letting you
4 know this took a lot longer than what I was led to
5 believe it would take me.

6 However, I sent you everything I had, and
7 then I counted them. I counted everything that was
8 on my screen. I count 103, and I send a e-mail, and
9 I say you should have received 103, because that's
10 what I sent, and if you didn't get 103, let me know.
11 We will figure out which one didn't show up at your
12 place.

13 Not all e-mails actually show up, I've
14 learned. So I've done what it is he's requested.

15 In your order, you indicated that the
16 parties need to make an attempt to resolve whatever
17 disputes we might have before we show up. On the
18 desk that's in front of you is a copy of an e-mail
19 that I sent to Mr. Montange a week or so ago, and
20 the e-mail says to Mr. Montange "if you would like,
21 I will show you my computer again a second time. I
22 will let you look at my e-mail account so that you

1 can verify that every e-mail that's sitting on here,
2 you've got it."

3 I offered to let him look at it yesterday.
4 He arrived yesterday.

5 I offered to let him look at it this
6 morning before this hearing. Mr. Montange has
7 declined all offers to look at my computer.

8 And one of the pleadings that I filed in
9 this court, I said if we're going to have a sanction
10 hearing, I would at least like to have the
11 opportunity to bring my computer, which I have done,
12 open it up, and let your Honor look at my e-mail
13 account. You can verify.

14 PRESIDING JUDGE: I can verify what's on
15 it now. I couldn't verify what was in there in
16 August or in March or any other time.

17 Thank you, but no thank you.

18 MR. RIFFIN: The decision was, and the
19 agreement was, whatever was in my e-mail account I
20 would send to you if it was there. I did not make
21 an agreement to send him e-mails that were long
22 since deleted. I delete e-mails.

1 However, since that August 24 hearing, I
2 have not deleted any e-mails between me, Mr. Hyman,
3 and Ms. Hyman. I actually have had no e-mails with
4 Ms. Hyman.

5 Horgan sends me copies of pleadings that
6 he filed. The discovery request says pleadings that
7 are filed is not included in what I need to send him
8 a copy of.

9 I offered several weeks ago, "Mr.
10 Montange, Mr. Hyman has sent me some e-mails" in the
11 last -- "since our last hearing in August." They
12 have absolutely nothing to do with the Harsimus.

13 One e-mail was about the political picture
14 in Jersey City. It had to do with major -- Fulop.
15 According to the article, he's no longer going to be
16 running for governor of New Jersey.

17 PRESIDING JUDGE: Mr. Riffin, I don't
18 care. Please continue. Try to stay on point.

19 MR. RIFFIN: So I offer Mr. Montange -- I
20 ask Mr. Montange, "Mr. Hyman has sent me some
21 e-mails. They don't relate to the Harsimus in any
22 shape or form, but if I would like a copy, I will

1 send you a copy."

2 And he replied I don't want them.

3 MR. MONTANGE: Your Honor, I object. I
4 did not reply that. I said "I don't play games,"
5 Mr. Riffin.

6 PRESIDING JUDGE: That's fine. Thank you.

7 MR. RIFFIN: I agree. He didn't say I
8 don't want them. He said "I don't play games."

9 But that doesn't answer my question. Do
10 you want them or not? If you want them, here they
11 are. I will let you look at them.

12 PRESIDING JUDGE: All right.

13 MR. RIFFIN: As I just said, I am aware
14 that discovery requires me to continue to give him
15 e-mails if they are ongoing, which is why I asked
16 the question. Mr. Hyman has sent me some e-mails --

17 PRESIDING JUDGE: I'm not even concerned
18 about the ongoing at this point. If you can justify
19 your having turned over the e-mails I ordered as of
20 August, I would be quite satisfied with that, but I
21 don't see you doing that.

22 Now you're arguing about since August. I

1 don't care about since August, Mr. Riffin. I care
2 about the e-mails I ordered you to turn over to
3 Mr. Montange.

4 So please stay on cue there and address
5 that issue for me.

6 MR. RIFFIN: Your Honor, you ordered me to
7 send to him a copy of every e-mail --

8 PRESIDING JUDGE: I know it's a
9 continuing -- look, you've got more problems than
10 that.

11 MR. RIFFIN: I sent your Honor a status
12 report, and in that status report, I said, I have
13 sent to Mr. Montange and the other parties -- I have
14 forwarded a copy of each and every e-mail that is
15 remaining in my e-mail account as of August 24.
16 Actually, it was August 25th, because that was the
17 day I was doing it.

18 That's all there are. Now Mr. Montange
19 says -- he's accustomed, evidently, to looking at
20 multiple e-mails going back and forth, what he calls
21 a chain.

22 I don't e-mail. I don't have chains.

1 In one particular case, he says Ms. Hyman
2 sent you an e-mail with Nancy Bider's, telephone
3 number. I don't see an e-mail from me to her saying
4 would you, please, send me Nancy Bider's telephone
5 number.

6 That's because I didn't send her an
7 e-mail. I called her on the phone and asked "do you
8 happen to know what Nancy Bider's phone number is?"

9 She said "I will look it up and call you
10 back." She didn't call me back; she just e-mailed
11 it to me.

12 I don't do what normal people do today
13 with e-mails. I don't do e-mails.

14 For me, it's very difficult to do, because
15 I don't have e-mail access at my house. If I want
16 to use the Internet, I have to go to a library, or I
17 have to go to McDonald's get on WiFi. That's very
18 inconvenient, and I personally just don't like
19 e-mails.

20 PRESIDING JUDGE: Mr. Riffin --

21 MR. RIFFIN: So I just don't do it.

22 PRESIDING JUDGE: Mr. Riffin.

1 MR. RIFFIN: Yes.

2 PRESIDING JUDGE: I'm looking at
3 Mr. Montange's motion here on page 6,
4 "Deficiencies." Let's just go through these, shall
5 we?

6 MR. RIFFIN: Yes.

7 PRESIDING JUDGE: "Number 1, Riffin
8 appears to have deleted all identification of the
9 recipients of the e-mails, example in Exhibit D,
10 other than himself or text and attachments. So he
11 has not furnished such e-mails in their totality."
12 Please address that.

13 MR. RIFFIN: It took me a little while to
14 figure out -- I'm not quite sure if I actually
15 understand what he's trying to say. What I did, I
16 took the e-mail --

17 PRESIDING JUDGE: Let's look at D. Let's
18 look at Exhibit D.

19 He says that's an example of the problem.
20 So let's just take a look at it.

21 MR. RIFFIN: If you told me what page
22 you're looking at, I will look at it. Did you

1 number your pages?

2 PRESIDING JUDGE: No.

3 MR. RIFFIN: Give me some hint of what
4 you're looking at.

5 PRESIDING JUDGE: Exhibit D.

6 MR. RIFFIN: Exhibit E.

7 PRESIDING JUDGE: Delta.

8 MR. HORGAN: Your Honor, I will show him
9 my copy so we can move on.

10 PRESIDING JUDGE: Thank you.

11 MR. RIFFIN: As an example, he gives --
12 I'm looking at an e-mail that says Thursday, August
13 25, at 2:11 p.m. And it says that on "February
14 18th, Steve Hyman wrote," and there's no indication
15 that he wrote anything. It turns out he didn't.

16 PRESIDING JUDGE: Oh, so it was just a
17 mistake? It's not an omission of text; it's just a
18 mistake? If you send an e-mail with nothing in it,
19 I trust that most --

20 MR. RIFFIN: Sometimes it does that. I
21 can ask Mr. Hyman.

22 PRESIDING JUDGE: Continue.

1 MR. RIFFIN: Let me tell you what I did,
2 your Honor. I took each and every copy of e-mail
3 that Mr. Montange placed in his sanction document.

4 I went to the library. I called up my
5 e-mail.

6 I looked at my screen, and I compared what
7 I see on my screen with what's on his piece of
8 paper. And I want to see, is there anything on my
9 screen that is not on his piece of paper.

10 It turns out they're exactly identical.
11 What you received is what I have. It's all I have.

12 I haven't touched it. I sent you what I
13 have, and I verified, by having a photocopy of what
14 he received, that what Yahoo! sent to him is
15 precisely what is sitting in front of me.

16 So I verified each and every one. You
17 have an exact copy of precisely the same thing that
18 I have.

19 I can't do more than that, because there
20 isn't any more. It just isn't there.

21 PRESIDING JUDGE: All right. So --

22 MR. RIFFIN: Which is why I've offered

1 multiple times to Mr. Montange, look at my computer,
2 look at my e-mail account, verify it for yourself.
3 I have given you everything there is. There just
4 isn't any more. Now, you may find it hard to
5 believe that there isn't any more, but I'm sorry,
6 it's not there.

7 If Ms. Hyman sends me an e-mail with a
8 phone and you're wondering why did she do that, and
9 you're looking for an e-mail from me to her, I
10 didn't ask her the question with an e-mail. I
11 called her on the telephone.

12 I use telephones. I don't use e-mails.

13 Quite frequently, Mr. Hyman just sends me
14 stuff. He thinks it's interesting.

15 Most of the time, it is. Not necessarily
16 relevant to this proceeding or the 1189 proceeding.

17 It is interesting. He just sends it.

18 Sometimes people send him things and he
19 just forwards it on to me, no comment. It's just
20 there. It sometimes takes me a few minutes to
21 figure out why did you send me this, because there's
22 no message with it.

1 PRESIDING JUDGE: Hold on a second. We
2 don't need to flog that one anymore.

3 Let me ask you something. You stated on
4 the record that you spent two hours retrieving
5 e-mails, and you decided that that was enough and
6 that if Mr. Montange --

7 MR. RIFFIN: I didn't decide --

8 PRESIDING JUDGE: -- wanted more, he would
9 have to go to me to get that? You said that?

10 MR. RIFFIN: Your Honor, I didn't decide
11 it was enough. I was at the bottom of the list.
12 There weren't any more.

13 PRESIDING JUDGE: Then why would you say
14 "if you want more, you will have to go to Judge
15 Dring"?

16 MR. RIFFIN: Mr. Montange has asked that I
17 provide him with e-mails between me and the agent of
18 the LLCs. I don't have a clue who the agents might
19 be. I know that Mr. Horgan --

20 PRESIDING JUDGE: That's not responsive to
21 my question. That's not responsive to my question.
22 I asked you, why would you tell

1 Mr. Montange if he wanted more, he would have to
2 come to me with an order?

3 MR. RIFFIN: Because he wasn't satisfied
4 with what I gave him. He said "you only have 103?
5 You should have more than that."

6 Well, I'm sorry, I don't.

7 He said "I have copies of e-mails" from me
8 to somebody else, or somebody else to me, I don't
9 know which way it went, but he said I have a copies
10 of e-mails with my name and somebody else's name on
11 it.

12 PRESIDING JUDGE: You seem otherwise
13 articulate. What on earth could have possessed you
14 to say "if you want more, you have to go to Judge
15 Dring"?

16 MR. RIFFIN: He indicated he has copies of
17 e-mails, I think they're from me to somebody else or
18 somebody else to me, I don't remember which one it
19 was, but he said "I have copies of e-mails with your
20 name on it. You didn't send me a copy of this
21 particular e-mail."

22 And my response is "I don't have it." The

1 e-mail was sent a long time ago. It wasn't
2 relevant. I didn't have any reason to keep it.

3 PRESIDING JUDGE: All right. If you don't
4 want to answer my question, let's move on.

5 Go ahead. What's your next point?

6 MR. RIFFIN: So Mr. Montange is asking for
7 e-mails between me and parties other than Mr. Hyman,
8 Ms. Hyman, Mr. Horgan. If he wants e-mails from
9 someone other than those three people -- and those
10 are the only three people that I agreed to provide
11 him e-mails from -- then someone needs to tell me
12 I'm required to give them to him, and that would be
13 you. So far, you haven't said I need to give him
14 e-mails from parties more than the three I just
15 mentioned.

16 He wants e-mails between me and, he calls
17 them, agents of the LLCs.

18 MR. MONTANGE: Or reps.

19 MR. RIFFIN: He mentions some guy named
20 Bruce Nagel. When he first mentioned it, I didn't
21 have a clue who Bruce Nagel was.

22 I put Bruce Nagel in my e-mail search

1 thing. Nothing came up.

2 It said "no Bruce Nagel found. Try the
3 Internet."

4 So I typed in Bruce Nagel in the Internet,
5 who's Bruce Nagel, and it comes up with some
6 architect. I vaguely remember Mr. Hyman told me --
7 I had a conversation with Mr. Hyman's architect a
8 long time ago, and maybe that's what his name was.
9 I didn't remember.

10 As it turns out, someplace along this
11 line, I think I actually saw a copy of an e-mail
12 that I sent to a Bruce Nagel, and once I saw the
13 e-mail, then I said oh, that's who Bruce Nagel is.
14 Bruce Nagel, as it turns out -- some time ago,
15 Mr. Hyman was looking for other lawyers to represent
16 him. He wasn't pleased with the progress in the
17 1189 proceeding.

18 And what he would tend to do was he would
19 tend to either call me, we would talk, he would
20 think of some lawyer that he knows, and he would say
21 well, let me call this lawyer, and he would call
22 them, put him on the phone, and we would have a

1 three-way conversation. And he would ask me, "tell
2 whoever this lawyer is what this case is about."

3 And so I would tell the lawyer what the
4 case was about from my perspective. Then I would
5 never hear from the lawyer again ever.

6 In the case of Bruce Nagel, Mr. Hyman, we
7 had a three-way conversation with Bruce Nagel,
8 Mr. Hyman, and me. It lasted for probably a good 30
9 minutes.

10 Bruce Nagel said "send me something in
11 writing." So I typed up something, and I sent it to
12 him, and I never heard from him again.

13 After a number of months, I deleted it. I
14 think this was in 2015. It was long before
15 Mr. Montange is starting to ask for e-mails.

16 I totally forgot, who is Bruce Nagel. I
17 only talked to the man once. And if you don't
18 communicate back with me, I'm not going to remember
19 who you are.

20 And I presume the reason they don't
21 communicate back with me is because I'm not their
22 client. I'm not trying to hire them.

1 Mr. Hyman is thinking about hiring them.
2 He did that with a considerable number of lawyers
3 and other professionals.

4 So have I had conversations with many
5 people because of Mr. Hyman? Yes. Most of the
6 conversations were on a telephone.

7 Did I occasionally send these individuals
8 an e-mail with an outline of what this 1189 case is
9 about? Yes.

10 Did I keep the e-mail? No, because after
11 three or four months I don't have a reason to keep
12 it.

13 I'm not like most people. Some people
14 have got 20-, 30,000 e-mails in their e-mail
15 account.

16 I don't think I have a thousand. I make a
17 point of not having them.

18 I don't want them. I don't believe in
19 collecting them.

20 I told you at the very beginning, I don't
21 like the Internet. I don't trust it. So I don't
22 like leaving stuff out there in the Internet.

1 Now, the agreement was, and your order
2 was, I am to provide him with all the e-mails
3 between me, Steve Hyman, Vicki Hyman, Dan Horgan. I
4 read your order three or four times to make sure I,
5 in fact, read it correctly. Remaining in my
6 account. I sent him every one in my account.

7 After finishing that task, I then noted
8 what time it was, and I thought that took two hours.
9 It actually took a little over a minute for each and
10 every one of them, and I thought that was a lot more
11 time than I thought.

12 But I still did it. It was easier,
13 quicker, more efficient just to send it to him than
14 it was to argue with him before you and have you
15 rule yes, you have to send him this, no, you don't
16 have to send him that. That's an argument you're
17 going to hear shortly between these two gentlemen.

18 I took the less difficult path. If you
19 want it, here it is.

20 I don't have an objection to you seeing
21 whatever you want to see. I'm not trying to hold
22 anything back from you, which is why I brought my

1 computer with me today, which is why I have
2 continually offered to Mr. Montange, "if you want to
3 see my e-mails, here's my computer, I'll open it up,
4 I'll put it on my e-mail account, do what you want,
5 you know how to do it, I don't. You can look at it
6 to your heart's content."

7 And he doesn't want to verify that that's
8 all there is, because he keeps thinking there ought
9 to be more. Well, there just isn't. I don't do
10 things like people today in this electronic age do.

11 I just -- I don't. I'm sorry.

12 PRESIDING JUDGE: We've now heard that
13 argument --

14 MR. RIFFIN: Half a dozen times.

15 PRESIDING JUDGE: I was only going to say
16 three or fewer times. Do you have anything else to
17 provide in your defense?

18 MR. RIFFIN: Mr. Montange is looking for
19 chains, as he calls it. I understand what a chain
20 is because on that desk for your Honor's benefit, if
21 your Honor wants it, is a set of e-mails between
22 Mr. Montange and Mr. Horgan, and there's probably

1 half a dozen of them there, and I presume that's
2 what he means by "chain." Okay.

3 At least I know what a chain is now. I
4 don't do that, or rarely do that.

5 I've offered Mr. Montange the opportunity
6 to inspect. Under the discovery rules, that is my
7 duty. I have to offer you the opportunity to
8 inspect whatever it is you would like to see that's
9 relevant.

10 PRESIDING JUDGE: Your duty is to comply
11 with my order.

12 MR. RIFFIN: Now let's talk about Metro
13 Plaza.

14 PRESIDING JUDGE: Let me explain something
15 to you. This might help you in the future.

16 If you think that a judge gives you an
17 order that is incorrect, all you have to do is seek
18 interlocutory appeal. That's the way to do it.

19 MR. RIFFIN: I didn't think your order was
20 incorrect.

21 PRESIDING JUDGE: Well, you've cited the
22 discovery rules, what you had to do, and suggested

1 that what I ordered you to do was beyond the
2 discovery rules.

3 All I'm saying is if you think that's
4 true, take interlocutory appeal.

5 MR. RIFFIN: I don't. While what you
6 ordered is beyond -- but you only ordered it because
7 I agreed to it. If I agree to do more than what I'm
8 obligated to do --

9 PRESIDING JUDGE: All right. Let's --

10 MR. RIFFIN: I agreed to providing it.

11 PRESIDING JUDGE: All right. That's the
12 extent of my trying to help. Please continue.

13 MR. RIFFIN: He makes mention of a Greg
14 Wasser visit. In his mind, there's no distinction
15 between Forest City and Greg Wasser, who is G&S
16 Investors.

17 In my mind, there's a very big
18 distinction. Totally different entities.

19 Their offices are in different parts of
20 New York. One is in Brooklyn. One is in Manhattan.

21 If you say "I have a report that you went
22 to the offices of Forest City," I've never been to

1 Forest City's offices. I know where they're at, but
2 I've never been there.

3 I've been to the front of the building,
4 but they wouldn't let me go to the office. I
5 couldn't get past security. All of this is past
6 August 24th, by the way, your Honor.

7 Your Honor's order and my agreement was I
8 would provide him with everything that I had left
9 before August 24th. I did that. I've offered
10 Mr. Montange multiple opportunities to verify that,
11 and he chooses not to verify it.

12 All he does is wants to speculate that I
13 probably didn't because he's expecting more. Well,
14 I don't know what you're expecting.

15 All I can do is give you what I have, and
16 I gave him everything that I had, and I didn't
17 time-limit it. I didn't look at my watch and say
18 oh, I've been here two hours, I'm going to quit.

19 No, I quit when I was at the very last
20 one. There weren't any more. That's an appropriate
21 time to quit.

22 Your Honor has indicated you don't have a

1 high interest in what has happened post-August 25,
2 but Mr. Montange has spent some time talking about
3 post-August 25. Would your Honor want to hear some
4 more about Forest City and Metro Plaza?

5 PRESIDING JUDGE: If you think that will
6 help your case, by all means. Don't just talk to me
7 about things that aren't relevant to what we are
8 trying to accomplish here today.

9 MR. RIFFIN: It is my understanding that
10 the litigation between me, Forest City, G&S
11 Investors, has absolutely nothing to do with the
12 proceeding that we are here for, which is 1189.
13 That is a totally separate proceeding. The only
14 party in that proceeding that is also a party in
15 this proceeding happens to be me.

16 I indicated to Mr. Montange when we met at
17 that restaurant, I am following in the steps of
18 Mr. Montange. I am imitating him.

19 Mr. Montange asked the STB to determine
20 what's the proper classification for the track
21 segments that were on the embankment. They're lines
22 of railroad.

1 And after a considerable amount of
2 litigation that went on for six years or so -- it
3 was a long time -- it was ultimately determined
4 they're lines of railroad. Unfortunately,
5 Mr. Montange limited his query to the track segment
6 between CP Waldo and Marin Boulevard. Part of the
7 reason for that, I would assume, is because that's
8 the only segment that Jersey City has a desire to
9 acquire with the OFA process.

10 My notice of intent to file an offer of
11 financial assistance extends to the west side of the
12 light-rail line. That's another 1,500 feet. That
13 is on the east side of what's called Metro Plaza.

14 It has not been determined that the track
15 segments that go across there are, in fact, lines of
16 railroad. Conrail, in their abandonment exemption,
17 indicate "it's been determined it is a line of
18 railroad to Marin Boulevard; it has not been
19 determined if it's a line of railroad beyond there,
20 east of there, to where it looks like this line used
21 to end at milepost 1.36. However," Conrail
22 says, "out of an abundance of caution, we are

1 seeking abandonment authority for the rest of it if
2 we need to."

3 And the ultimate question is, is it a line
4 of railroad. If it's a line of railroad, they need
5 abandonment authority.

6 If it's not, they don't need authority.
7 They can do whatever they want with it.

8 Because I have an interest in another
9 1,500 feet of this track segment, I need to
10 determine is that a line of railroad. If it's a
11 line of railroad, then I have a right to make an
12 attempt to acquire it with the OFA process.

13 If it's not a line of railroad, I don't
14 have that right. You can only use the OFA process
15 to acquire a line of railroad.

16 The U.S. Supreme Court, U.S. v. Idaho, the
17 Fifth Circuit, New Orleans Terminal Company, the
18 Seventh Circuit, Illinois Commerce Commission, have
19 all ruled the most appropriate place to determine
20 the classification for a class segment is in a
21 court. Based on those rulings, I went to a court,
22 the appropriate court, the U.S. District Court in

1 Newark, which sits five, seven miles from where the
2 track segment is.

3 PRESIDING JUDGE: I read your pleadings.

4 MR. RIFFIN: I am asking that court to
5 make a determination, the track segments that went
6 across Metro Plaza, are they lines of railroad.

7 PRESIDING JUDGE: Remind me again when
8 we're discussing this when we're trying to determine
9 whether you followed my --

10 MR. RIFFIN: Because Mr. Montange seems to
11 think that any communications between me and Metro
12 Plaza, any documents that has anything to do with
13 this complaint in Jersey City are relevant to this
14 proceeding, and he wants a copy of them.

15 PRESIDING JUDGE: I understand. Your
16 point is well-taken.

17 MR. RIFFIN: And I am arguing --

18 PRESIDING JUDGE: Your point is
19 well-taken. Thank you very much. Why don't we talk
20 about something else.

21 MR. RIFFIN: We get back to, did I violate
22 your order. I don't think I did. I tried very hard

1 to comply with it.

2 In fact, another aspect of that order was
3 I was required to provide Mr. Montange with the
4 bankruptcy docket numbers for my three bankruptcy
5 cases. As it turns out, on the 25th, I didn't have
6 the numbers at the time that I completed sending the
7 e-mails. But your order said I had until close of
8 business on the 26th.

9 So I found the docket numbers, and on the
10 26th, I sent Mr. Montange and everybody else an
11 additional e-mail, and I said by the way, here's the
12 three docket numbers for my three bankruptcy
13 proceedings, and your status in the status report
14 letter that I sent to your Honor, I typed it up on
15 the 25th. Not knowing that I wasn't going to be
16 able to complete all of my tasks.

17 PRESIDING JUDGE: I don't think that's at
18 issue here. That's not at issue here.

19 MR. RIFFIN: Actually, Mr. Montange made
20 it a big issue. He said "I want an exact copy of
21 what" I sent to your Honor.

22 I said all you have to do is take your

1 copy, line out the 25 and write in 26. You will
2 have an exact copy.

3 PRESIDING JUDGE: Mr. Montange, did
4 Mr. Riffin send you the bankruptcy numbers?

5 MR. MONTANGE: We acknowledge he sent us
6 the bankruptcy numbers.

7 PRESIDING JUDGE: Let's not talk about the
8 bankruptcies anymore.

9 MR. RIFFIN: Okay. Mr. Montange alleges
10 to this court, speculates to this court that there's
11 more.

12 I'm sorry. I gave you everything I have.

13 I'm offering you the opportunity to verify
14 what it is I have. He chooses not to take advantage
15 of that.

16 I don't see where there's anything that I
17 might even remotely possibly do more than what I've
18 already done. I can't do any more. I can't think
19 of anything more.

20 If he wants communications, documents
21 between me and parties other than the Hymans and
22 Mr. Horgan, I would like your Honor to

1 say "Mr. Riffin, you need to provide Mr. Montange
2 with documents between individuals, entities other
3 than those three," because as far as I can tell,
4 those are the only three that are relevant to this
5 proceeding. But if your Honor says I have to
6 provide Mr. Montange with documents from the LLCs'
7 agents, my question is, how do I find out who their
8 agents are? I could ask Mr. Horgan, but I don't
9 think Mr. Horgan has to tell me.

10 And if he doesn't tell me, how do I comply
11 with your Honor's order that I have to provide him
12 with communications between me and their agents if I
13 don't know who their agents are and if nobody
14 verifies they're the LLCs' agents? When I spoke
15 with Bruce Nagel, was he an agent of the LLCs? I
16 don't think so.

17 I don't know, but I don't get that
18 impression. It's my impression that Mr. Hyman
19 called Mr. Nagel on the telephone, did not retain
20 him as lawyer.

21 He just talked to him as a friend. He
22 knows him.

1 It's not my impression that Mr. Hyman has
2 ever hired Mr. Nagel. If the LLCs haven't hired
3 Mr. Nagel, he's not their agent.

4 But how am I to know that? I'm not privy
5 to this information. And that's where I have
6 problems.

7 What Mr. Montange is asking for, I'm not
8 privy to. It's not my information, and I can't
9 compel Mr. Horgan to provide it to me.

10 Your Honor probably could, but I can't do
11 it. I can ask nicely, but that's all I can do.

12 And Mr. Horgan has indicated it's none of
13 my business, and I'm inclined to agree with him.
14 It's not my business.

15 I can provide Mr. Montange with
16 communications between people that I communicate
17 with. If I control it, I can give it to you, so
18 long as I still have it.

19 I'm making a point of not deleting any
20 e-mails between these parties and me just in case he
21 wants to see them. Which is why I asked him, "do
22 you want them? I will give them to you. But if you

1 don't want them, I'm not going to take the time to
2 send you something you've indicated you have no
3 interest in looking at, particularly when it looks
4 like it doesn't relate to this proceeding."

5 The politics in Jersey City doesn't have
6 anything to do with this proceeding, I don't
7 think, "but if you want it, I will send it to you."
8 I'm not trying to hide or withhold anything.

9 I believe in full disclosure. That's just
10 what I believe in.

11 I give people things that people tell me
12 you shouldn't have gave them that. I do it anyway.
13 I don't try to hide anything.

14 And I especially make it a point of
15 complying with judge's orders, and I made a
16 particular point of complying with yours, because
17 you made it very clear, you don't comply with your
18 orders, there are going to be consequences, and they
19 won't be pleasant. So I'm very cognizant of what
20 your Honor said.

21 That's why I read your Honor's order
22 multiple times, to make sure that I was in full

1 compliance. That's why I took it to heart.

2 Your Honor said make an effort to resolve
3 your differences before you show up today. I did,
4 but I can't force Mr. Montange to do something he
5 doesn't choose to do.

6 I can offer. That's all I can do.

7 Thank you, your Honor.

8 PRESIDING JUDGE: Thank you.

9 Mr. Montange?

10 MR. MONTANGE: I will be very brief, I
11 hope, your Honor, because I would like to catch a
12 plane.

13 In response to my first set of document
14 requests, Mr. Riffin -- the document requests were
15 March 28. In response to a motion when I finally
16 filed my first motion to compel, then he responded
17 with objections. In his objections, he asserts that
18 he reads and then discards e-mails immediately.

19 When we filed our second motion to compel,
20 then he suddenly discovered that he had over 100
21 e-mails. Again, this is the 13th chime of the clock
22 problem.

1 On my second motion to compel, I attached
2 a verified statement from Eric Strohmeier, CNJ
3 railroad. Mr. Strohmeier says he's familiar with
4 Mr. Riffin's habits and that Mr. Riffin stores stuff
5 on his computer basically.

6 So we had that going on. The e-mail from
7 Mr. Strohmeier, he said he had seen Mr. Riffin's
8 e-mail account shortly before his July 1st, 2016,
9 July 1st, 2016, verified statement, and it had
10 e-mails on it.

11 If there were e-mails on that that were
12 not revealed to me and they're no longer in
13 existence, then that's a destruction of evidence
14 that's germane to the proceeding, highly germane to
15 the proceeding. He was under an obligation after
16 March 28 not to destroy anything. Mr. Strohmeier
17 said he had stuff on there, and he obviously did,
18 because he downloaded --

19 MR. RIFFIN: Your Honor, I'm going to
20 object. Mr. Strohmeier is in the room. If we want
21 testimony from Mr. Strohmeier, put him on the stand.
22 I want to cross-examine him.

1 MR. MONTANGE: Your Honor, if I might
2 continue. In Mr. Riffin's e-mail exchange with me
3 on August 25th when he said he was done, I stated
4 that the agreement that he had was to supply
5 information -- all e-mails between himself and the
6 LLCs.

7 That's what your Honor's order says, LLCs.
8 It doesn't say Mr. and Mrs. Hyman and Mr. Horgan and
9 you.

10 It says the LLCs. The definition of LLCs
11 includes any of their reps or agents, anyone that's
12 working for them.

13 When I received this information, I said
14 what about these other guys, like Nagel, and he
15 responded that "are you now asking for Nagel and the
16 surveying folks? The library shuts down its
17 computers in a few minutes, so I cannot research
18 those entities tonight. If lucky, they may let me
19 do it tomorrow." But then he later says if I want
20 any more I have to see you.

21 It seems to me he's acknowledging on
22 August 25th that there were at least those other

1 reps out there. And I have evidence that -- even
2 though he said in his objections that he discards --

3 MR. RIFFIN: Once again, your Honor, I'm
4 going to object. If he has evidence, present it.

5 MR. MONTANGE: The evidence is in your own
6 typography. You said in your objections you
7 discarded stuff immediately upon receipt. You
8 proved that that's false by supplying 103 e-mails,
9 by your count, to us that are responsive --

10 MR. RIFFIN: And I have testified --

11 PRESIDING JUDGE: All right, all right,
12 all right. That's enough out of both of you. I am
13 going to adopt Mr. Montange's arguments that he
14 filed in the motion to impose sanctions and his oral
15 arguments today.

16 In addition to relying on the written
17 evidence in this case and Mr. Montange's testimony,
18 there is a line of cases out of the Fourth
19 Circuit -- the other circuits have not, to my
20 knowledge, addressed the issues. But that line of
21 cases has to do with demeanor credibility
22 assessments made by U.S. administrative law judges.

1 Under that line of cases, I am making the
2 determination that, Mr. Riffin, I do not find you to
3 be a credible witness. I find that you appear to
4 have mental reservations and are not -- not
5 constrained, apparently not sufficiently
6 constrained, in telling the truth all the time. I
7 don't appreciate the way you've deported yourself,
8 and your deportment suggests that Mr. Montange is
9 correct and that you are not correct in what you
10 have testified to.

11 As a remedy, I am going to strike your --
12 all of your pleadings from the dockets that are
13 before us today in the Harsimus branch proceeding.
14 I am going to prohibit you from participating
15 further, from introducing in evidence any other
16 documentation, documents or evidence in these
17 dockets. I'm dismissing you from the proceedings,
18 and I'm awarding Mr. Montange the attorney's fees
19 that he requested in his motion.

20 MR. RIFFIN: Your Honor?

21 PRESIDING JUDGE: Yes.

22 MR. RIFFIN: I would like an accounting of

1 what his attorney's fees are. He makes it very
2 clear that when he computed that he was computing it
3 and including within that a considerable number of
4 hours that he spent dealing with the LLCs. And I
5 would ask you to clarify, when you say you're
6 dismissing me from this proceeding, are we talking
7 about this discovery proceeding or from 1189?

8 PRESIDING JUDGE: 1189. I'm dismissing
9 you from the entire proceeding and striking all of
10 your pleadings, which includes your intent to file
11 an OFA. They're all stricken from the docket.

12 Now, you can appeal this to the full
13 Board, and after that, you can appeal it to the
14 circuit. You can appeal it as far up as you want,
15 but that's my ruling today.

16 Mr. Montange, as to your fees?

17 MR. MONTANGE: As to my fees, your Honor,
18 I tried to exclude anything dealing with the LLCs.
19 They were all devoted to the discovery against
20 Mr. Riffin. That was my primary -- the only reason
21 I ultimately filed anything against the LLCs was
22 because it became obvious that Mr. Riffin was not

1 being candid. But the --

2 MR. RIFFIN: Your Honor?

3 PRESIDING JUDGE: Yes.

4 MR. RIFFIN: I would argue that he was at
5 this proceeding the last time not just because of
6 me. He was here also because of the LLCs.

7 I shouldn't be chargeable for his travel
8 expenses to come to that hearing. Anything that
9 doesn't relate directly to me, I should not be
10 chargeable for.

11 And I would ask your Honor to order
12 Mr. Montange to provide the Court and me with a
13 complete accounting as to what expenses were
14 directly related to me and what expenses -- and
15 exclude any expenses that have no direct relation
16 exclusively to me. If he had incurred an expense
17 and it has anything to do with the LLCs, I shouldn't
18 be responsible for those expenses.

19 PRESIDING JUDGE: That's reasonable.

20 MR. MONTANGE: Your Honor, if I am to
21 provide an accounting, then I would like to include
22 all expenses up to and through today.

1 PRESIDING JUDGE: Yes.

2 MR. MONTANGE: And I suspect that
3 Mr. Riffin will end up further -- with a further
4 charge beyond what's in the current amount that's
5 lying before him.

6 PRESIDING JUDGE: Let's provide that
7 accounting.

8 MR. MONTANGE: I will do so.

9 PRESIDING JUDGE: Enter it into the
10 record.

11 MR. MONTANGE: I will do so, your Honor.

12 PRESIDING JUDGE: And then I will issue an
13 order after I see it in the record.

14 MR. MONTANGE: Fine, your Honor.

15 PRESIDING JUDGE: Just don't include the
16 LLCs.

17 MR. MONTANGE: Nothing with the LLCs.

18 PRESIDING JUDGE: Costs excluded -- your
19 travel.

20 Mr. Riffin?

21 MR. RIFFIN: That's what I want.

22 PRESIDING JUDGE: Mr. Riffin, thank you

1 for your participation today. I am issuing an order
2 concurrent with the order that I stated I'm issuing
3 on Mr. Riffin's participation, or lack thereof in
4 the future, an order ending discovery in this case.
5 Further discovery requests will be served no later
6 than December 15th, and replies will be no later
7 than December 30th of this year.

8 Now, as to Mr. Horgan's motion against
9 you, do you have anything else that you need from
10 the LLCs?

11 MR. MONTANGE: Your Honor, once Mr. -- as
12 I said at the very inception, once Mr. Riffin is
13 out -- if he's out of the proceeding, then that
14 moots much of the discovery against them.

15 PRESIDING JUDGE: How about all of the
16 discovery against them?

17 MR. MONTANGE: The only remaining question
18 we have is who is the agent, who is the management
19 of the LLCs. We do have evidence now that
20 Mr. Hyman --

21 PRESIDING JUDGE: Can we clear that up
22 without much ado? It doesn't sound like it would be

1 too difficult.

2 MR. HORGAN: Yes, your Honor, we can clear
3 that up. All right?

4 PRESIDING JUDGE: Yes.

5 MR. HORGAN: There's several points.
6 First, I'm the attorney of record in 1189.

7 PRESIDING JUDGE: Yes.

8 MR. HORGAN: And I have been that for some
9 time.

10 PRESIDING JUDGE: Yes.

11 MR. HORGAN: I continue in that capacity.
12 The LLCs, these eight limited liability companies,
13 are New Jersey LLCs owned by Victoria Hyman, who is
14 present in the room. At the time these proceedings
15 began, you know, 10, 11 years ago, Mr. Hyman, who is
16 sitting -- the gentleman here on my right, was
17 managing those affairs. He is no longer doing that.

18 PRESIDING JUDGE: All right.

19 MR. HORGAN: And he does not speak for the
20 LLCs in these matters.

21 PRESIDING JUDGE: All right.

22 MR. HORGAN: We have disclaimed any

1 involvement with Mr. Riffin. We have said we're
2 against dual OFAs, and we have been entirely
3 consistent throughout.

4 If I might, your Honor, to clear this up,
5 because I think this is helpful, direct your
6 attention back to the May 22nd, 2015, decision in
7 this matter where the City of Jersey City and those
8 parties asked for similar kinds of information from
9 both the LLCs and from Conrail, and the Board said
10 no, you don't need to go beyond that. But I have
11 told Mr. Montange --

12 PRESIDING JUDGE: Would you stop that.

13 MR. MONTANGE: Sorry, your Honor.

14 MR. HORGAN: There's no question about it.
15 And I have told that to Mr. Montange in discovery,
16 as a matter of fact. We do have that. It's one of
17 the few things we did respond to, because we thought
18 we could resolve some of the problem.

19 That's the way it is. That's the way it
20 will continue to be.

21 PRESIDING JUDGE: Thank you.

22 Mr. Montange, what do you have to say to

1 that?

2 MR. MONTANGE: Your Honor, the disturbing
3 thing for us, the City, et al., in dealing with the
4 LLCs is a denial on the one hand that there's any
5 agreement between them and Mr. Riffin, but then
6 evidence of an agreement between them and Mr. Riffin
7 in which we're told that Mr. Hyman is -- appears to
8 be operating on behalf of the LLCs as their agent
9 and rep.

10 Mr. Horgan says, I guess, as I understand
11 it now, that he is not rep or agent of the LLCs?

12 MR. HORGAN: That is absolutely correct.

13 PRESIDING JUDGE: That's what he said.

14 MR. MONTANGE: Okay. So Mr. Hyman's
15 involvement now on the record is no longer on behalf
16 of the LLCs, and he does not represent them in
17 conversations with others, he's not a representative
18 of them in conversations of others, and that's a
19 condition which will not change unless you,
20 Mr. Horgan, advise the City, et al., otherwise in
21 writing? Will you agree to that?

22 PRESIDING JUDGE: It sounds fair.

1 MR. HORGAN: I will be happy to do that.

2 PRESIDING JUDGE: All right.

3 MR. HORGAN: My concern here, quite
4 frankly, is that the whole exercise with
5 Mr. Riffin's suit, which I assume now goes away,
6 too, by the way --

7 PRESIDING JUDGE: It does. Well, that's
8 not up to me, but it wouldn't appear that he has a
9 property right with no OFA.

10 MR. HORGAN: That's why I said I assume,
11 and I didn't mean to imply otherwise.

12 But my only concern here is that if
13 Mr. Hyman, who has been involved in this for 15
14 years, wants to talk to somebody about it, that's
15 not a representation. I'm making that clear. We're
16 all making that clear. The business of the LLCs --

17 PRESIDING JUDGE: He's a property owner,
18 isn't it?

19 MR. HORGAN: No.

20 PRESIDING JUDGE: He has no property
21 right, no property interest?

22 MR. HORGAN: Victoria Hyman is in the room

1 and is the sole member of the LLCs.

2 PRESIDING JUDGE: All right.

3 MR. HORGAN: That's my client. She's been
4 my client since 2009.

5 PRESIDING JUDGE: Okay.

6 MR. HORGAN: If there's a problem, I will
7 advise Mr. Montange. I would like the reciprocal
8 courtesy of getting a call, an inquiry to me if they
9 think there's a problem so I can deal with it.

10 PRESIDING JUDGE: I think that's
11 reasonable.

12 MR. MONTANGE: Your Honor, if we find that
13 Mr. Hyman is making representations to anyone within
14 the City government, the embankment coalition,
15 Rails-to-Trails, or any other party, we will notify
16 Mr. Horgan so he can disavow that, hopefully in
17 writing, on behalf of the LLC.

18 PRESIDING JUDGE: That sounds fine.

19 MR. HORGAN: We're done.

20 MR. HYMAN: Your Honor, I don't mean to be
21 an interloper, but would you --

22 PRESIDING JUDGE: Yes, please.

1 MR. HYMAN: I told Mr. Horgan I wouldn't
2 take part in this, and part of the reason I am here
3 instead of being a member of the LLCs is that I have
4 a serious medical problem.

5 PRESIDING JUDGE: Yes, sir.

6 MR. HYMAN: I have to deal with it in
7 certain ways, and I don't know if your Honor knows
8 about it.

9 PRESIDING JUDGE: That's fine, sir. What
10 can I do for you?

11 MR. HYMAN: This is a minutia of what
12 Mr. Montange has done for the last 12, 15 years.
13 Mr. Montange and the City of Jersey City and the
14 embankment coalition, they are suffering from
15 buyer's remorse.

16 PRESIDING JUDGE: Sir, I read the entire
17 record. I know very well what the history of this
18 proceeding is.

19 MR. HYMAN: Okay.

20 PRESIDING JUDGE: Today, we are here for
21 pronounced reasons, and that was to deal with
22 Mr. Riffin's problems and then to deal with

1 Mr. Horgan's problems, which we have done to my
2 satisfaction.

3 Is there something I'm missing here?

4 MR. HYMAN: No. I'm satisfied with what
5 you're doing. I'm just trying to -- as long as
6 there's time here, I'm saving a lot of judicial
7 problems.

8 PRESIDING JUDGE: How?

9 MR. HYMAN: By giving you a timeline.

10 PRESIDING JUDGE: I don't need the
11 timeline, sir. As of December 30th, I will be out
12 of this case.

13 I've been charged with handling discovery
14 disputes on behalf -- by the Board on behalf of the
15 Board. And I believe I have now finished with that
16 unless someone has discovery that they file by
17 December 15th. After December 30th, if you have
18 anything else that you need to say on the record,
19 you say it to the Board.

20 MR. HYMAN: Okay.

21 PRESIDING JUDGE: This is back in the
22 Board's hands.

1 MR. HYMAN: Today, I can't say anything
2 anymore.

3 PRESIDING JUDGE: Sir, we're addressing
4 specific discovery issues today. This is not the
5 forum for addressing broader issues.

6 MR. HYMAN: Okay. I'm sorry.

7 PRESIDING JUDGE: Listen, you don't have
8 to be sorry. I'm just trying to explain it to you,
9 that I understand what your concerns are, and I
10 understand the history of the case. It's just that
11 my charge is very limited here, and that is to
12 handle discovery disputes for the Board, which I
13 have done here today.

14 MR. HYMAN: And you did a good job. Thank
15 you.

16 PRESIDING JUDGE: Thank you. Thank you,
17 sir, for your attendance and your participation. I
18 appreciate that.

19 MR. HYMAN: Thank you. I was just here to
20 help my wife through.

21 PRESIDING JUDGE: I understand. Thank
22 you, and good luck to you.

1 MR. HYMAN: Thank you. You, too.

2 PRESIDING JUDGE: Anything else? I hope
3 not to see any of you again. We are off the record.

4 (Whereupon, at 11:40 a.m., the oral
5 argument was concluded.)

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA WICK, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the

District of Columbia

Commission Expires: NOVEMBER 14, 2017

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