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August 10, 2020

By E-Filing

Allison Davis
Director, Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, D.C. 20423

ENTERED
Office of Proceedings
August 14, 2020
Part of
Public Record

Re: *Lee Roy Haynes—Petition for Declaratory Order*, STB Docket No.
FD 36408

Dear Ms. Davis:

On behalf of the Union Pacific Railroad Company, I write in response to Petitioner Lee Roy Haynes's July 28, 2020 reply. In his reply to our reply, to which UP consented, Haynes presents new claims that were not presented on opening. UP therefore asks the Board to accept this brief letter to ensure a complete and accurate record, as it will not prejudice any party.

1. Haynes seems to misunderstand Union Pacific's position on whether ICCTA preempts his claims related to the crossing's warning signage—as opposed to its design, construction, and maintenance. While he acknowledges that Union Pacific “does not ask the Board to find that [his] inadequate notice and signage claims are preempted,” he asserts that this statement “could be read to mean UP intends to ask the state court to decide this question,” and he says that Union Pacific has argued in the state court that these claims are preempted. Haynes Reply 4 & n.6. To be clear, Union Pacific does not assert—here or in state court—that ICCTA preempts all inadequate-warning claims. In the state court, Union Pacific argued that these claims were preempted to the extent that they were simply repackaged versions of Haynes's design, construction, and maintenance claims. Union Pacific also argued that Texas law did not require, and indeed prohibited,

installing signage.¹ In short, the parties agree that the STB need not offer any ICCTA-preemption declaration about the warning claims.

2. Union Pacific showed that Haynes's claims would unreasonably burden interstate commerce by requiring Union Pacific "to change not only the elevation of the railroad crossing but also redesign the track adjacent to the crossing for a significant distance on both sides." UP Reply 23. Haynes responds that this argument rests on the "false assumption" that "the *only* way to remedy Haynes's complaint about the hump crossing is to lower the track." Haynes Reply 12–13. He asserts that the crossing could be reworked "by simply raising the level of the road as it approaches the crossing," and that "UP did exactly that shortly after this accident, presumably for a relatively low cost." *Id.* at 13; *see id.* at 3, 5 (similar).

This response is inaccurate. The work Haynes describes did not "fix[] the humped crossing" or "raise the level of the road on either side of the crossing to match the level of the track." *Id.* at 3, 5. Jacob Gilsdorf, a general director for the Union Pacific Southern Region's Engineering Department, testified that as part of Union Pacific's normal tie-replacement program for that stretch of track, it rehabilitated the road crossings by replacing wooden cross-planks with concrete cross-planks. *See* Exhibit 1 at 13:8–14:24, 18:11–16, 32:4–16 (Gilsdorf deposition testimony). Once installed, these new concrete cross-planks might be as much as 9 inches *higher* than the private roadway at the point of crossing, an obstacle no vehicle could traverse at speed. *Id.* at 38:18–39:13, 42:11–43:5, 85:13–86:4. As a result, following standard company practice, Union Pacific put down 12 tons of asphalt to smooth the immediate approach from the road to the newly installed concrete cross-planks. *Id.* at 38:18–39:13, 77:14–78:9, 83:6–23, 89:1–19. Twelve tons is the standard amount of asphalt delivered when wooden cross-planks are replaced by concrete cross-planks. Having thoroughly deposed Mr. Gilsdorf, Haynes should know this work was intended to address the installation of the new concrete cross-planks, not to change the slope of the crossing to prevent high-centering. Nor is there any evidence that it had that effect. Haynes's own accident-reconstruction expert, Kelley Adamson, testified that he "found scarring on the pavement" or "gouges" indicating that vehicles were still

¹ Contrary to Haynes's claim (at 15) that Union Pacific "offered no authority to support this claim," Union Pacific cited the Texas Manual on Uniform Traffic Control Devices and Texas Transportation Code § 544.006(a).

hitting the crossing and potentially getting stuck even after Union Pacific finished the tie-replacement project. Exhibit 2 at 53:17–25, 72:6–21. Haynes has simply mischaracterized this work.

More broadly, a railroad cannot unilaterally alter the road around a crossing beyond the right-of-way, whether the crossing is public or private. Indeed, Haynes’s only supposed example of such work shows his error. He says that, after the collision at issue in *Waneck*, “CSX worked with the state and local entities [to] raise[] the level of the road on either side of the tracks.” Haynes Reply 13. But his citation does not support that characterization. The NTSB report describes *the City of Biloxi’s* “process to make emergency repairs to the Main Street grade crossing.”² It does not say that CSX was part of that process. And it says the streets had to be modified for “several hundred yards from the crossing in either direction”—well beyond the right-of-way. But even if Haynes’s description were accurate, it would just confirm that railroads need the assent and cooperation of local authorities or landowners to modify roads outside of the right-of-way—assent and cooperation that those entities have no obligation to provide.

Haynes also overlooks that, in assessing the burden on interstate commerce, the Board considers the effect of allowing similar claims across the entire rail network. Thus, the question is not just whether requiring Union Pacific to modify *this* crossing would burden interstate commerce—although it would, as Union Pacific explained—but whether allowing *all* state tort claims based on crossing design would do so. Haynes does not try to rebut the obvious conclusion that it would. If state law required every railroad to rework every crossing to prevent high-centering by lowering the tracks *or* raising the road, the resulting expense and disruption would burden interstate commerce in a manner that ICCTA prohibits.

3. Haynes says his claims cannot burden interstate commerce because he seeks only “an award of money damages to compensate him for his injuries,” which does not require Union Pacific to “do anything.” Haynes Reply 13. But the Supreme Court has long held that “state regulation can be . . . effectively exerted through an award of damages, and the obligation to pay compensation can be, indeed is designed to be, a potent method of

² NTSB, *Highway Factors Group Chairman’s Factual Report* at 28 (July 20, 2018), <https://dms.nts.gov/public/61000-61499/61376/617041.pdf> (emphasis added).

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governing conduct and controlling policy.” *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (brackets and quotation marks omitted). It is thus well-established that ICCTA can preempt state-law tort claims seeking money damages. *E.g., Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 444 (5th Cir. 2001).

Sincerely,

/s/ *Raymond Atkins*

Raymond A. Atkins, Ph.D.
Partner

cc: Thomas W. Wilcox (by email)
Daniel Saphire (by email)

Oral & Videotaped Deposition of Jacob Michael Gilsdorf

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CAUSE NO. 2015-53909
LEE ROY HAYNES) IN THE DISTRICT COURT OF
Plaintiff,)
)
vs.) HARRIS COUNTY, TEXAS
)
UNION PACIFIC RAILROAD)
COMPANY, RUFUS W.)
RICHMOND, JR., CLYDE D.)
WILLIAM A/K/A CLYDE D.)
WILLIAMS, JR., BURNETT)
FORESTRY LLC, STEVE)
McMICHAEL, WINDY)
McMICHAEL, GAYLA JANSEN,)
JEREMY JANSEN and JARED)
JANSEN)
Defendants.) 189TH JUDICIAL DISTRICT

ORAL VIDEOTAPED DEPOSITION
JACOB MICHAEL GILSDORF
January 20, 2020

ORAL VIDEOTAPED DEPOSITION OF JACOB MICHAEL GILSDORF,
produced as a witness at the instance of the Plaintiff
and duly sworn, was taken in the above-styled and
numbered cause on January 20, 2020, from 1:18 p.m. to
3:34 p.m., before Ofelia C. Stevens, Certified Shorthand
Reporter in and for the State of Texas, reported by
computerized stenotype machine at Union Pacific Railroad
Company, 24125 Old Aldine Westfield Road, Spring, Texas,
pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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Mr. Kelly Hughes - Videographer

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(Time: 1:18 p.m.)
THE VIDEOGRAPHER: Good morning. It's
January 20, 2020. We're on the record at 1:18 p.m.
Please wait for the court reporter to swear in the
witness.
JACOB MICHAEL GILSDORF,
having been first duly sworn, testified as follows:
EXAMINATION
BY MR. BRANN:
Q. Tell us your full name, please.
A. Jacob Michael Gilsdorf.
Q. Mr. Gilsdorf, my name is Scott Brann. I
represent Lee Roy Haynes in a lawsuit that he has filed
against Union Pacific Railroad Company as a result of
injuries received in a crash with one of their trains in
the Dayton, Texas area. Are you familiar with this
incident?
A. I've heard about it.
Q. Okay. What is your current position,
Mr. Gilsdorf, with UP?
A. General director, Southern Region Engineer.
Q. And how long have you been the general director
for the Southern Region Engineer?
A. I think I'm going on two years.
Q. And what did you do for Union Pacific before

1 (Pages 1 to 4)

Oral & Videotaped Deposition of Jacob Michael Gilsdorf

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1 becoming the general director of the Southern Region? 2 A. I was the director of track maintenance. 3 Q. In -- in the Southern Region? 4 A. For the Houston Service Unit in the Southern 5 Region. 6 Q. What does the Houston Service Unit comprise of? 7 A. At that time, it was a territory that went from 8 Eagle Lake down to -- up toward Beaumont. 9 Q. Would that include the area of the track where 10 this crash occurred? 11 A. Yes. 12 Q. And how long were you director of track 13 maintenance? 14 A. In this area, from January 1st of '16 to 15 November of 2018 -- excuse me. Was it '18? I believe 16 it was 2018. 17 Q. After 2018 -- 18 A. I'm sorry, 20 -- 2017. I'm sorry, 2017. 19 November of 2017. 20 Q. And after 2017 -- November 2017, did you become 21 the -- the general director for the Southern Region 22 Engineer? 23 A. That's correct. 24 Q. Okay. And then what -- what were you doing for 25 Union Pacific before being the director of track	1 Q. What were your duties generally as director of 2 track maintenance in the Houston Service Unit? 3 A. Oversaw the -- the specific territory that I 4 was managing, which incorporated, at that time, nine MTM 5 positions, which is manager of track maintenance. So I 6 managed nine of those positions, almost towards the same 7 thing with managing maintenance activities, capital 8 improvement projects, suggestions of capital projects, 9 day-to-day maintenance, and working hand in hand with 10 the FRA. 11 Q. Okay. Now -- so in September of 2013 at the 12 time of the crash that this lawsuit concerns, you were 13 in St. Louis, correct? 14 A. Yes, sir. That's correct. 15 Q. Well, let me find the document I had. In -- 16 sometime in 2015, there was a project in the Dayton, 17 Texas, area where the private crossing that's involved 18 in this lawsuit is, that involved -- what -- what do you 19 call it, pad replacement? 20 A. Crossing rehab -- re -- rehab is what I call 21 it. 22 Q. Okay. 23 A. Crossing renewal. 24 Q. Okay. 25 (Exhibit Number 2 marked)
Page 6	Page 8
1 maintenance? 2 A. I was a director of track maintenance, same job 3 title in a different area, in St. Louis, Missouri. That 4 specific job was from 20 -- April of 2011 to the 5 start -- December 31st of 2015. 6 Q. And how long have you been with UP all 7 together? 8 A. Going on 22 years. 9 (Exhibit Number 1 marked) 10 BY MR. BRANN: 11 Q. What is your educational background, sir? 12 A. So, of course, I got a high school education 13 and currently enrolled full-time in college, University 14 of Phoenix, equivalent of a associate's degree, working 15 on finishing my bachelor's. 16 Q. What -- what are your general duties today as 17 the general director for the Southern Region Engineer? 18 A. I oversee seven diff -- different director of 19 track maintenance positions. So I spend time with the 20 directors and, also, the same thing, I spend some time 21 with the man -- manager of track maintenance. I support 22 the daily roles, responsibilities, oversight of the 23 eastern half of the Southern Region, also including 24 monetary capital budgets, capital spending. Just basic 25 support.	1 BY MR. BRANN: 2 Q. Let me hand you Exhibit 2, sir, and ask if you 3 can identify that. 4 MS. GRAHAM: Have you marked a "1"? Did I 5 miss it? 6 MR. BRANN: Huh? 7 MS. GRAHAM: Have you marked Exhibit 1? 8 Did I miss it? 9 MR. BRANN: I haven't used it yet. 10 MS. GRAHAM: Oh, sorry. Okay. I'm sorry, 11 Jacob. 12 A. So Exhibit 2 is -- your question is do I 13 know -- 14 BY MR. BRANN: 15 Q. What is the exhibit? 16 A. It looks like a report of -- of -- of the 17 previous tie wood program. It's on the Houston Sub 18 between two identified mile posts. 19 Q. And what are those mile posts? 20 A. You have from 352.96 to 363.43 on number one 21 track. You had a sighting between 305.94 and 350.96 22 that are sightings involved in those limits, and then on 23 the main line, 297 to 344.30. 24 Q. 297 to...? 25 A. 344.30.

2 (Pages 5 to 8)

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1 Q. Okay. Can I see the documents? 2 A. (Tendering). 3 Q. Thank you. Did -- this indicates that at the 4 time you were the director of this project. Is that 5 correct? 6 A. At that time I was not. 7 MR. BRANN: Can I approach your witness? 8 MS. GRAHAM: Sure. 9 BY MR. BRANN: 10 Q. I just want to know, because if you look at the 11 document, here (indicating), it says director J.M. 12 Gilsdorf. That's not you? 13 A. That is me. 14 Q. Okay. But you say you were not the director of 15 this? 16 A. In the time frame of 2015, I was not. 17 Q. Who would have been the director of these 18 projects? 19 A. If -- just going by memory, I believe the 20 previous director would have been Alex Fisher. 21 Q. And who is Mr. M.A. Wheeland? 22 A. He is the chief engineer, which his job title 23 is regional vice-president, Southern Region Engineering. 24 Q. And he is still with Union Pacific? 25 A. He is.	1 Q. Did -- what involvement did you have in this 2 2015 crossing rehab out in the Crosby area? 3 A. None. 4 Q. Okay. Do you have any knowledge of it? 5 A. Not prior to this, no, I do not besides knowing 6 that there was a tie gang within those limits on -- 7 based off of profiles letting me know when the tap -- 8 the -- the trap was last tied. But prior to that, I did 9 not. 10 Q. Have you reviewed any documents that would 11 allow you to talk about what occurred during this 12 crossing rehab program? 13 A. Nothing but just project plans based on a tie 14 project within those limits during that time frame was 15 it. 16 Q. Well, maybe I'm confused -- I stay that way a 17 lot -- but I thought counsel for the railroad indicated 18 that you were the person with the most knowledge -- 19 MR. BRANN: And you can correct me. 20 BY MR. BRANN: 21 Q. -- of this program that occurred. 22 MS. GRAHAM: Right. He -- he is that. 23 He's prepared to testify about it. He's reviewed all 24 the documents related to it, and he's prepared to 25 testify today.
Page 10	Page 12
1 Q. Would either of the identified track areas 2 encompass the crossing where this incident occurred? 3 A. What's the mile post of the crossing that we're 4 talking about? 5 Q. Well, do you have -- let me ask you to look at 6 Exhibit 1. That has been produced by Union Pacific in 7 this case. 8 MR. BRANN: I -- can I approach, please? 9 MS. GRAHAM: (Nods head.) 10 BY MR. BRANN: 11 Q. I have been informed through others that the 12 project marked 326.42 -- and this is an issue I want to 13 talk to you about -- involves this very crossing. Now, 14 I don't know if you know that to be the case or if you 15 have any crossing guide map you can look at. 16 A. Okay. Well, I mean, I see it on the project 17 plans and that mile post does fall in the scope of 18 the -- the tie program indicated on Exhibit Number 2. 19 Q. Can you cross-reference a mile post to the -- 20 the Federal crossing number? 21 A. The DOT number? There is a database where I 22 could cross-reference to see if that was the correct 23 crossing. 24 Q. But you can't do it here? 25 A. Not without my computer.	1 BY MR. BRANN: 2 Q. Okay. Can you -- do you have any idea why you 3 are identified on Exhibit 2 as the director of the 4 project? 5 A. The only reason I can think of is maybe when 6 the report was ran, I was the current director at the 7 time. I'm not sure why, to be honest with you. 8 Q. Okay. Did you have any understanding of what 9 this track looked like before this 2015 project? 10 A. No, sir, I was -- did not. 11 (Exhibit Number 3 marked) 12 BY MR. BRANN: 13 Q. I'm going to hand you one at a time certain 14 exhibits. The first one will be Exhibit 3. I just want 15 to know if you can even identify that as the crossing 16 where this crash occurred involving Mr. Lee Roy Haynes. 17 A. So have I seen this crossing? I probably have. 18 Do I remember this crossing where I can identify this in 19 the picture saying that's the location? No, I cannot. 20 (Exhibit Number 4 marked) 21 BY MR. BRANN: 22 Q. Okay. And I take it that would be the same 23 with Exhibit 4? You couldn't identify that as 24 particularly the crossing as it existed on the day of 25 this crash?

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Oral & Videotaped Deposition of Jacob Michael Gilsdorf

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1 A. No. 2 (Exhibit Number 5 marked) 3 BY MR. BRANN: 4 Q. Okay. And Exhibit 5, could you identify that 5 as a photograph of this crossing as it existed on the 6 day of this crash? 7 A. No. 8 Q. Well, tell me, then, just in general. I've got 9 some other stuff I want to talk about, but what is it 10 you're prepared to talk about today concerning this 2015 11 crossing rehab project? 12 A. Just based on what the project plans show, 13 based on the scope of work, any questions you might have 14 in the project plan. 15 Q. Well, what was the project plan, please? 16 MS. GRAHAM: Use the documents that he's 17 marked -- 18 THE WITNESS: Oh. 19 MS. GRAHAM: -- if you can. 20 THE WITNESS: Oh, okay. 21 BY MR. BRANN: 22 Q. Yeah. And if you're going to look at a 23 document, just reference it and say Exhibit -- 24 MS. GRAHAM: No. Jake, you can use these 25 (indicating).	1 BY MR. BRANN: 2 Q. I'm going to hand you Exhibit 7, and I 3 represent to you it's the crossing involved in this 4 collision sometime after the rehab -- the -- the 5 crossing rehabilitation project -- 6 A. Okay. 7 Q. -- actually taken by a Mr. Rubel, who has been 8 hired by the railroad. I just want you to take a look 9 at that for a moment. 10 A. What -- 11 Q. Oh, I'm just trying to see something here for 12 my -- 769. Okay. What familiarity do you have with how 13 that crossing looked after the crossing rehab -- well, 14 the road crossing rehab project in connection with the 15 road gang project? 16 A. I believe the -- the work was done in 2015, and 17 I would have seen it sometime between January-February, 18 of 2016. 19 Q. Okay. 20 A. So it should have looked fairly familiar as to 21 what I see here. 22 Q. Does that seem to you to -- to be a fair 23 picture of what it looked like shortly following this 24 project? 25 A. I would imagine so, but I do not know for
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1 THE WITNESS: Okay. 2 MS. GRAHAM: It's just he's already marked 3 it -- 4 THE WITNESS: Okay. 5 MS. GRAHAM: -- so use that one 6 (indicating). 7 A. So Exhibit Number 1, the project plan is a road 8 crossing rehab within the same limits of the tie gang 9 that specifies what work's to be done at each road 10 crossing. 11 BY MR. BRANN: 12 Q. The road crossing rehab in connection with the 13 tie gang? 14 A. Tie gang project. 15 Q. And what is -- just so the ladies and gentlemen 16 of the jury will know -- a tie gang project? 17 A. So a tie gang project is where you have a gang 18 which consists of anywhere from, say, 40 to -- 40 to 70 19 guys running machines that install new ties throughout 20 limits of a identified project. They take out the old 21 ties, renew with newer ties, and then you have a road 22 crossing rehab that's in conjunction to upgrade or renew 23 the road crossings in conjunction with the project of 24 the ties. 25 (Exhibit Number 7 marked)	1 certain, but depending on when the project -- when this 2 picture was taken. 3 Q. Okay. I'm going to come up here so the camera 4 can see what we're doing. 5 A. Okay. 6 Q. If you'll note that this is the same photograph 7 you were just looking at, which would be our Exhibit 8 7 -- 9 A. 7. 10 Q. -- right? 11 A. Right. 12 Q. Okay. And here is what I want to understand: 13 You said you've got 40 to 70 guys doing railroad tie 14 replacements -- 15 A. Railroad ties replacement, correct. 16 Q. -- and -- and these are these wood ties across 17 here (indicating), correct? 18 A. That's correct. 19 Q. Okay. How -- do you know the area that that 20 encompassed where they were replacing all the ties for 21 this particular line? 22 A. What's your question? 23 Q. Where did it start and where did it end for 24 this segment? 25 A. For that segment of track, I don't know without

4 (Pages 13 to 16)

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1 looking at what ties were marked as bad, where it 2 started and stopped. The whole scope of the project is 3 really the start and stop of the project. 4 Q. Got you. 5 A. Within mile -- mile to mile, it would have been 6 what ties were marked as bad that needed to be replaced, 7 but not all of them get replaced. 8 Q. Okay. That's what I wanted to -- 9 A. Yeah. 10 Q. -- understand. So they're not going and 11 replacing every tie, they're just taking out the ones 12 marked as bad? 13 A. That's correct. 14 Q. And who goes through and marks those as bad 15 ones? 16 A. That would a tie rater that works for 17 centralized engineering. 18 Q. Okay. Cool. And then there is the road 19 crossing part of that project, correct? 20 A. That's correct. 21 Q. Now, I'll get some other pictures and show you 22 in a moment, but this (indicating) part of the road 23 crossing was wood at the time of this crash. Are you 24 familiar with that? 25 A. I am now.	1 UP employees. 2 Q. Okay. When you're re -- when you're putting in 3 new wood ties, what do you have to do? I call this 4 ballast. What do you call the rock out here 5 (indicating)? 6 A. That's ballast. 7 Q. Okay. Who -- who takes care of the ballast, 8 because you're going to mess it up a little probably? 9 A. It'd be called the surfacing gang. 10 Q. And is -- those are UP employees? 11 A. That's correct. 12 Q. Do you have any idea, if we just talk 13 centerline of the track out, what ownership UP has along 14 this line (indicating)? 15 A. I would have to look at an agreement to see 16 what that is. It could vary anywhere from 50 feet, less 17 than, more than. I would have to see the contract to 18 know that. 19 Q. Where they keep their ballast, is that 20 generally Union Pacific property? 21 A. Yes. Generally, yes. 22 Q. Are you somewhat fami -- familiar with this 23 particular area we're talking about? 24 A. I -- I -- I have -- used to be -- had the 25 oversight where I managed -- managed it. I have high
Page 18	Page 20
1 Q. It was wood ties. I don't know if you can see. 2 This is Jeff Beck's photo, Number 594, that he took the 3 day of the crash. I don't know if you can tell -- it -- 4 it's not marked there. 5 A. Oh. 6 Q. I'm just telling you. It will be marked later, 7 but these (indicating) are wood ties, correct? 8 A. Those would be wood crossing planks. 9 Q. Wood crossing planks? 10 A. Yes. 11 Q. And so the wood crossing planks were then 12 replaced by concrete crossing planks? 13 A. That is correct. 14 Q. Okay. And as part of this project, there was 15 obviously some asphalt paving done, correct? 16 A. Correct. 17 Q. Do you know off the top of your head who the 18 contractor was -- well, let me back up a minute and make 19 sure this is clear. When these particular (indicating) 20 railroad ties are being replaced, that is being done by 21 direct UP employees, correct? 22 A. That is correct. 23 Q. Okay. When the crossing pad was replaced, 24 that's a UP employee gang, correct? 25 A. Installing the crossing planks, that would be	1 rolled across it, been across it, you know, but nothing 2 that sticks out to me saying, "Oh, I know this area." 3 Q. Do you know if during this -- now -- now, the 4 crossing we've been talking about and displayed in these 5 photographs, this is a private crossing, we call it, 6 correct? 7 A. That's my understanding, yes. 8 Q. Okay. I -- I understand this project 9 encompassed a number -- going down toward Beaumont -- 10 leaving Houston and going toward Beaumont -- a number of 11 other crossings? 12 A. Yes, that's correct. Many other crossings. 13 Q. I mean, there was the Winfree Street, the Main 14 Street. I think those are both down -- reflected in the 15 document, Exhibit 1, I believe. 16 A. Exhibit Number 1, yep. 17 Q. Yeah. And -- and if we -- I mean, I -- you can 18 probably read this better than I, and the red -- the red 19 piece is here because that apparently is what was 20 identified by another individual testifying on behalf of 21 Union Pacific as the area of this crossing, 326.42. 22 A. That's correct. 23 Q. And, of course, this is done in advance because 24 apparently the plans for it say, "11/17/2014, tie gang 25 will install 10-foot ties in private crossing. Need to

5 (Pages 17 to 20)

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1 get two sets of secondhand six-inch concrete to replace 2 prefab crossing boards," correct? 3 A. Correct. 4 Q. Okay. Then it tells us they -- what -- what's 5 B-O-M IN? 6 A. Bill of material. 7 Q. Thank you. Quantity UM, Product ID. So I know 8 quantity, but what's UM? And just -- 9 MR. BRANN: We're on Page 10 of 18 of 10 Exhibit 1, for the record. 11 BY MR. BRANN: 12 Q. Do you know what UM means? 13 A. Let me -- can I see that one, please. 14 Q. Sure. 15 A. Put this together that are abbreviations. 16 MR. BRANN: Can I borrow this one so -- 17 MS. GRAHAM: Sure. 18 MR. BRANN: Okay. 19 A. I'm not sure what the UM stands for 20 technically, but quality of product, ID description. 21 I'm not sure what the UM abbreviation would be. 22 BY MR. BRANN: 23 Q. Well, what -- tell me what all this means. It 24 says 24 EA, 130 5402. 25 A. Yes. So you'll have 24 each. The 130 5402 is	1 but I do not know because I was not there. So I 2 couldn't see the material being issued, but I would 3 imagine it would be. 4 (Exhibit Number 8 marked) 5 BY MR. BRANN: 6 Q. I'm going to hand you Exhibit 8, and this is 7 yet another document that Union Pacific has produced to 8 us in this case. Take that and tell me if you can 9 identify that document or tell us what it is. 10 A. So this looks like to be a CAS invoice, which 11 pretty much is a invoice from a contractor to the 12 railroad to be paid in lieu of its services. 13 Q. Okay. If you can go through those, can you tie 14 those to this -- I guess mile post number is how UP 15 identifies things, correct? 16 A. Correct. 17 Q. Because there are a number of different 18 contractors -- and I'm -- I'm not saying which ones are 19 related. This is how they gave them to me, because it 20 seems to run the gambit of the mile posts, but we were 21 at 320 -- 326.42 -- 22 A. Uh-huh. 23 Q. -- which seems -- this is 326.74. Do you know 24 where that would be? 25 A. I'm just going to imagine that it's at another
Page 22	Page 24
1 the item number to order that material. It's a timber 2 spike, Torxhead, three-quarters by 13 inch. And that's 3 what you use to drive the crossing planks to secure it 4 to the ties underneath so the crossing doesn't move 5 around. 6 Q. Those are what we call the -- the railroad 7 spikes? 8 A. Yeah, just a longer version of it. 9 Q. Got you. 10 A. And then the 12 ton with the item number of 11 product is asphalt crossing fill. 12 Q. Okay. So you preordered for this crossing 13 12 tons of asphalt? 14 A. That's correct. 15 Q. Do you know the -- did -- did UP lay the 16 asphalt, or was there a asphalt contractor that spread 17 it? 18 A. I do not know who specifically spread the 19 asphalt. That, I do not know. 20 Q. When -- do you know -- and I'm going to give 21 you some documents maybe that will help you. 22 A. Okay. 23 Q. Do you know in this case whether this was new 24 asphalt or refurbished asphalt? 25 A. I -- I would imagine it would be new asphalt,	1 maybe road crossing. 2 Q. Okay. So do you-all -- "you-all" being Union 3 Pacific -- do you have any type of a -- a document that 4 identifies your mile posts with the various crossings? 5 A. Like a reference in -- where our crossings are 6 at? 7 Q. Yes. 8 A. Yes. Yes, we do. 9 Q. I'm on Page 285 of Exhibit 8. It's actually 10 called L.R. Haynes, produced Number 285. Do you see 11 that, the Bates stamp? Do you know if this document -- 12 it says Mile Post 326.8 to 330. Would that encompass 13 this private crossing? You can pull that page out if 14 you want. 15 A. Oh, okay. 16 Q. That's fine. We'll get it back together. 17 A. 326.8 to 330.3. The answer would be no -- 18 Q. Okay. 19 A. -- because this crossing is not within these 20 limits. 21 Q. Got you. I'll tell you what I'm going to do. 22 I'm going to continue on with a couple of other things. 23 I'm going to let my co-counsel try to find one of these. 24 So we'd be looking for one of these invoices that 25 specifically referenced 326.42?

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1 MS. GRAHAM: Do you want one that it 2 references or at least -- 3 MR. BRANN: Sure. Can you tell me? 4 MS. GRAHAM: I can. So -- 5 MR. BRANN: 278? 6 MS. GRAHAM: -- this is a broad one, but 7 278. 8 BY MR. BRANN: 9 Q. Well, I saw that, but I was trying to see if 10 there is a specific number. Page 278 of Exhibit 8 11 encompasses for Mile Post 297 to 350, correct? 12 A. 297 to 350, yes, that would be -- 13 Q. And -- and what is the invoice for? It's from 14 Rail 1, LLC. Do you know what services they provide? 15 A. They are an as-needed contractor to perform 16 duties as needed. 17 Q. Okay. That one appears to -- to -- to 18 indicate -- and I don't know if it's correct, that the 19 job was canceled. 20 A. Job canceled to work on Lafayette Crossings. I 21 don't know if that's telling me, like, her job was 22 canceled to move to the project or the job was canceled 23 because they didn't get no track in time. I could 24 assume -- I -- I don't know what they're implying with 25 that --	1 A. So within those limits, I would refer back to 2 your Exhibit 1 to see if there was a scope of work that 3 lined up with their description of the work. 4 Q. Okay. Do you know that is, I think, Tony 5 Winkel Construction, is it not? At the top there on the 6 left? 7 A. Yes, that's correct. 8 Q. Do you know what Tony Winkel generally does for 9 Union Pacific? 10 A. It's the same as Rail 1. It provided as- 11 needed services to the Union Pacific Railroad with the 12 same work scope that I gave on Rail 1. 13 Q. Are you at all familiar with Holland Paving? 14 A. Yes. Yes, I am from previous work experience. 15 Q. And who is Holland Paving? 16 A. They are a contractor that provides paving 17 services at road crossings and any other needs with 18 asphalt-work-type related items we need. 19 Q. How about Kenny Everett Construction? Are you 20 familiar with Kenny Everett Construction? 21 A. I'm not -- I'm not familiar with that. There's 22 maybe other contracting companies that -- has contracts 23 maybe in the past, but I'm not -- I'm not familiar with 24 those guys. 25 Q. Okay. When there is a road crossing
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1 Q. Okay. 2 A. -- comment. 3 Q. What -- what do they generally do for UP as a 4 subcontractor -- 5 A. So -- 6 Q. -- Rail 1? 7 A. So they -- they provide services as far as 8 brush cutting, equipment operation such as backhoe, dump 9 trucks, bigger types of machinery, really anything we 10 need in that aspect of assistance in repairing track or 11 construction projects. 12 Q. Okay. I'm going to pull Page 319. It goes 13 from Mile Post 321.74 to 326.74. Would that encompass 14 our crossing? 15 A. This crossing would be between the limits of 16 the mile posts indicated, yes. 17 Q. Okay. And all -- I can read this, it says, 18 comment, "Installed 80-foot crossing to get signed by 19 Mark Garcia." Do you see that? 20 A. I -- I do. 21 Q. Do you know what -- what they did? 22 A. Not being there, I don't know what they did. 23 I -- I do know that there are numerous amount of 24 crossings between these two mile post limits. 25 Q. Okay.	1 rehabilitation -- is it rehab or rehabilitation? 2 A. I'm sorry? 3 Q. What do you call it, road crossing rehab? 4 A. Rehab. 5 Q. Okay. 6 A. Road crossing rehab. 7 Q. When there's a road crossing rehab in 8 connection with a tie gang project, are there specific, 9 like, detailed plans telling contractors what to do? 10 A. No, there's not. 11 Q. Okay. 12 A. Besides what's written up in project plans, 13 there's not specific contractor plans, no. 14 Q. Are there any -- and -- and for this particular 15 crossing, when -- 16 Q. Do any of the documents we have here tell us, 17 Mr. Gilsdorf, when this was actually done, this private 18 crossing? 19 A. From the documents that I have, I do not see 20 the exact date the renewal took place, no. 21 Q. Okay. Can you describe for us and if -- again, 22 coming back to Rubel 769, which I think is our Exhibit 23 7 -- it's just a bigger version of it -- these are your 24 little spikes we're talking about, right? 25 A. Correct, those are spikes.

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1 Q. So when -- when any one of these given railroad 2 ties is marked for replacement, how is that done? 3 A. It's done a different way, but usually it's a 4 paint dot -- a blue paint dot that indicates that it 5 needs to be replaced -- 6 Q. Okay. 7 A. -- when the gang goes through. 8 Q. See, bad question, good answer. Tell me the -- 9 the process for pulling that one out and putting a new 10 tie in? 11 A. Okay. So generally it's an on-track piece of 12 equipment that will come by. A machine will pull the 13 spikes out of the -- the ties, and it will move to the 14 next ties, then you've got another wave of machine that 15 comes through. And it's called a TKO, and it will 16 remove the tie and then it will grab the new tie that's 17 already been distributed in that location and install 18 the new tie. And then they will move forward, with 19 another production line coming in and putting the plates 20 back underneath, and a spiker behind it spiking the 21 spikes to the new ties. And it's -- it kind of works in 22 an assembly line type of process. 23 Q. It's -- it's all on rail equipment, correct? 24 A. On the tie replacement side, yes. 25 Q. Yeah.	1 area, if you can tell me if it's different, tell me the 2 damage you're doing to your ballast out here 3 (indicating)? 4 A. What you're doing, if you've got, say, six 5 inches of a tie and you're pulling that tie out, it will 6 create a six-inch gap, leaving an empty void. 7 Q. Okay. So it really doesn't tear up multiple 8 feet off of the track? 9 A. No. It's just the straight vertical outlinear 10 motion there when the tie comes out. 11 Q. Okay. I mean, would it -- would tearing -- 12 taking out the ties tear up anything -- ten, 20 foot off 13 of the track itself? 14 MS. GRAHAM: Objection to form. 15 A. Typically not, but it depends where the tie is 16 set. 17 BY MR. BRANN: 18 Q. And -- and what's it mean it depends on the tie 19 set? 20 A. Just where they set the tie out. As soon as 21 the tie is taken out, it's dropped -- 22 Q. Yeah. 23 A. -- and then, of course, they put the new tie 24 in. You have another machine that's behind the spiker, 25 per se, that their job is to pick up the old ties and
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1 A. Most of it's done by on-track equipment. 2 Q. And "by on-track," we mean you have specialty 3 cars that will run down the tracks. Something pulls the 4 ties out -- 5 A. Uh-huh. 6 Q. -- the other one, the TKO, pulls out the wood? 7 A. Yes, will pull up -- pull the tie -- the old 8 tie out. 9 Q. Okay. Then another comes by and puts the new 10 tie in? 11 A. That's correct. 12 Q. Then somebody you said plates. Are -- is -- 13 are these (indicating) the plates? 14 A. Those -- those are the plates, yes. 15 Q. And then another one comes by and drives the 16 spikes? 17 A. Another machine will come by and drive the 18 spikes and/or it can be the same piece of equipment 19 taking out the new tie and install -- or the old tie and 20 installing the new tie, is generally what takes place 21 there. So -- 22 Q. And I've seen some pretty interesting videos. 23 Those are some fancy machines. 24 A. They are. 25 Q. When that is occurring in a project in this	1 put them on a cart and then off-load it to one 2 designated location. 3 Q. Home Depot and sell them to us, right? 4 Okay. When you have a wood crossing such 5 as this crossing where this incident occurred, what's 6 the process of removing the crossing, putting in the 7 concrete pad? 8 A. Okay. So in this particular type, these ties 9 are probably eight, six. 8-foot, 6 inch long. If 10 you're going to put in 10-foot ties, you could -- or 11 concrete planks, you add a 10-foot tie, which is just a 12 little bit, of course, wider tie that allows that 13 concrete to set down firm versus a wood plank crossing 14 that's -- you can do on an eight -- eight foot six tie. 15 So you change the ties within there. Install the 16 concrete planks. That's how that process works. 17 Q. Got you. I'm going back to Exhibit 7. So 18 if -- what you're telling me is if we compare it to 19 Exhibit 3 -- and I know it's hard, but these are the -- 20 the wood crossing planks? 21 A. Correct. 22 Q. And when -- when you get to here, those planks 23 don't run perpendicular to the tracks, do they? They 24 run parallel? 25 A. That's correct.

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1 Q. Okay. So just within this area, these are 2 going to be parallel? 3 A. That's correct. 4 Q. So you lift them out -- 5 A. Uh-huh. 6 Q. -- and then you -- if you're taking out 7 those -- the old wood ties, I know there's wood ties in 8 here (indicating), correct? 9 A. Uh-huh. 10 Q. You're not going to tear up anything on this 11 roadway out here pulling those out, are you? 12 A. No, not out -- way out there, you wouldn't. 13 Q. Okay. Do they add 10-foot ties parallel with 14 the tracks here? 15 A. Yes. When you're changing from wood to 16 concrete, yes. 17 Q. Okay. And so they'd add parallel here and then 18 put the concrete pad in? 19 A. Yes. 20 Q. Okay. To do these pads on both sides of the 21 crossing, what -- what are they going to do to the road? 22 How much -- how far out are they going to tear it up? 23 A. It depends on how they going to install it. If 24 they're doing it with a backhoe, you don't have to take 25 too much of the approach out. You'll take the planks	1 A. That's correct. 2 Q. Okay. And on -- on this particular project, do 3 you know if UP did the paving or one of the contractors 4 did? 5 A. I do not know who did it. It could have been 6 one or the other. 7 Q. Do you have any idea what directions the 8 contractor would have with respect to paving this far 9 off the tracks (indicating)? 10 A. I do not since I was not there. 11 Q. Okay. Is it standard operating procedure for 12 UP when they're doing crossing replacement and a road 13 crossing rehab to pave the majority of the apron? 14 A. There's -- it depends on how much asphalt 15 you're -- you're given within the project, and then you 16 also have State standards on what the approaches need to 17 look like and that differs by state. 18 MR. BRANN: And I will have to object to 19 anything dealing with State. 20 BY MR. BRANN: 21 Q. This is a private crossing. You understand 22 that? 23 A. That in particular is a private crossing, yes. 24 Q. And it's my understanding -- you can correct me 25 if you want, but so far in this case there is not a
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1 out and you can slew the tie sideways, and then put the 2 new ties in. If it's done by backhoe. If it's done by 3 machine, you might have to cut off about two feet to 4 give the machine plenty of room to get it out. 5 Q. Got you. Is there any way that they're going 6 to -- and I will tell you that there's been new 7 pavement. You can see kind of the line here, can't you 8 not? 9 A. Yep. 10 Q. Okay. And then this one goes all the way to a 11 private road where you turn left. They're not going to 12 be affecting any of this roadway, are they? 13 A. You're talking about the tie gang? 14 Q. Yes. 15 A. It's affecting is -- 16 Q. Tearing it up where they'd have to replace it. 17 A. I hope not. 18 Q. Okay. 19 A. Typically not. 20 Q. Typically not. Now, this concrete pad 21 replacement where you take out the wood ties and put in 22 the -- or the wood crossing bars -- 23 A. Planks. 24 Q. -- planks, thank you -- wood planks and put in 25 the concrete, that's, again, done by UP people, right?	1 federal or state or city or county regulation that has 2 any impact on what UP could do at this private crossing? 3 A. That's correct. 4 MS. GRAHAM: Let me just object to the 5 form. 6 MR. BRANN: That's fine. 7 BY MR. BRANN: 8 Q. Basically on a private crossing, it's up to the 9 railroad, and if they're private landowners, the land- 10 owners on how the crossing is built, correct? 11 MS. GRAHAM: Objection to form. 12 MR. HARTMANN: Objection, form. 13 MR. DUSEK: Same objection. 14 MS. GRAHAM: Go ahead, Jake. 15 A. If there is a lease agreement on the lease of 16 the road crossing, there's agreements put in place on 17 how it's to be maintained throughout that agreement, but 18 other than that, if there's no agreement, yes, it's just 19 another private road crossing. 20 BY MR. BRANN: 21 Q. Okay. And if they're -- I will -- I will 22 represent to you that no -- no, we'll start it this way 23 because you and I, I think, know things and I want the 24 jury to understand. On private crossings, it's my 25 understanding that generally Union Pacific will have

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1 crossing maintenance agreements with the landowners that 2 need to access their land through that private crossing. 3 Is that correct? 4 A. That's correct. 5 Q. And that details who is responsible for the 6 maintenance of the road on both sides of the crossing, 7 correct? 8 A. That and the crossing within their approaches. 9 Q. There you go. In this case, there is -- not 10 one private crossing agreement has been produced. 11 Apparently there are none. 12 A. That's my understanding. 13 Q. Okay. So in that situation, Union Pacific's on 14 its own to decide how to maintain the road on both sides 15 of the crossing as it comes off the county roadway and 16 crosses and goes on down, correct (indicating)? 17 MS. GRAHAM: I'm going to object to the 18 form. 19 A. Can you -- can you ask me the question again. 20 I'm sorry. 21 BY MR. BRANN: 22 Q. Sure. Since there is no maintenance agreement 23 in place for the landowners -- and there are three 24 landowners back here, I will tell you (indicating) -- 25 A. Okay.	1 me -- project to use that 12 tons of asphalt -- 2 A. That's correct. 3 Q. -- there at this crossing? They're not going 4 to save it and move it on? 5 A. Correct. 6 Q. And at this particular crossing when this 7 project was done, how Union Pacific decided to spread it 8 and on what side and to what width and length, was their 9 decision, correct? 10 A. Yeah, you want to do the best you can with 11 approaches, yes. So there's not an abrupt change when 12 you've got planks that may be six inches taller than the 13 road height. 14 Q. Apparently didn't grab Number 6 a while back, 15 so I'll -- I'll use 6 now. 16 (Exhibit Number 6 marked) 17 BY MR. BRANN: 18 Q. I'm going to hand you Exhibit 6, sir. I'll 19 represent to you that it is portions of the ENGINEERING 20 TRACK MAINTENANCE FIELD HANDBOOK from Union Pacific, and 21 I'm going to just ask you if you can -- 22 MR. BRANN: I'm sorry, Elizabeth. 23 MS. GRAHAM: You're fine. 24 BY MR. BRANN: 25 Q. -- identify that.
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1 Q. -- who have to access through this particular 2 crossing. No maintenance agreement in place with Union 3 Pacific for the crossing. So Union Pacific generally -- 4 MS. GRAHAM: Object to form. 5 BY MR. BRANN: 6 Q. -- then is on its own to maintain the apron to 7 its crossing as it desires? 8 MS. GRAHAM: I'm going to object to the 9 form. Misstates the law and the testimony. 10 A. When there's no lease with other agreements, 11 yeah, there would -- there's no specific maintenance 12 standard on that crossing. That is correct. 13 BY MR. BRANN: 14 Q. And you aren't aware of any specific 15 maintenance standard for the crossing we're talking 16 about, are you? 17 A. No, I'm not. 18 Q. You were talking about the amount of pavement 19 that would be done on either side of the actual crossing 20 when there's a road crossing rehab in connection with 21 the tie gang, is gen -- going to be generally controlled 22 by how much asphalt's preordered. Is that correct? 23 A. That's correct. 24 Q. And it's the intent of Union Pacific, if they 25 order 12 tons of asphalt for this crossing -- pardon	1 A. Yeah, it looks like a TRACK MAINTENANCE FIELD 2 handbook, which you've got highlighted 6.4, Roadway 3 Signs. 4 Q. Well, there are some additional pages. I want 5 to talk about that. When I'm given a document in 6 discovery, I like to use it the way it's given to me and 7 not just pull pages. So that's why it is the way it is. 8 Because you're right, it starts with 6.4 Road Signs. It 9 goes 6.45, Clearance Warning Signs; 6.5, Roadways. 10 Correct? 11 A. Uh-huh. 12 Q. And the Roadways on 6.5 says, "Follow these 13 requirements for maintaining right-of-way in these 14 situations. Grade crossings, Right-of-way roads," 15 correct? 16 A. Where is that at? 17 Q. I know it's small writing. Right here 18 indicating). 19 A. Yes. 20 Q. And then it says 6.5.1, Grade Crossings, and it 21 says, "Follow these requirements for maintaining 22 right-of-way access at road crossings." Would 6.5.1 be 23 applicable to our crossing where this collision 24 occurred? 25 A. Can I review that?

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1 Q. Yes, sir. 2 A. Thank you. Okay. So as -- as I'm reading from 3 -- I'm not done reading this yet. And -- and -- and 4 your question is: Does this rule refer to the 5 private -- 6 Q. Would it be -- 7 A. -- crossing? 8 Q. Would it be applicable to what you're doing at 9 this private crossing, what UP is doing? 10 A. This -- what this is referring to is the 11 condition of highway travel crossing. I don't believe 12 the private crossing is a highway -- 13 Q. Okay. 14 A. -- besides a dirt road. 15 Q. And where do you say it -- it talks about 16 highway? Okay. "To provide for safe train operations 17 and conditions of the highway travel crossing. Give 18 special attention. Follow these guidelines," correct? 19 A. Yes, sir. 20 Q. Okay. Do you know if there are similar 21 guidelines for maintaining a private crossing that UP 22 has? 23 A. The private crossing guidelines we go by is to 24 insure that we have our signage and that it is up to 25 standard.	1 correct? 2 MS. GRAHAM: Objection to form. 3 Go ahead. 4 A. There's no guidelines on the approach standards 5 on a private with no agreement besides signage. 6 BY MR. BRANN: 7 Q. Are you familiar with Jeffrey Beck? 8 A. Jeffrey Beck? I don't -- that name is -- I 9 can't recall it. 10 Q. Mr. Beck was -- and still is -- employed by 11 Union Pacific Railroad. 12 A. Okay. 13 Q. He was here in this Houston area at the time of 14 this crash and was -- actually, he's a lawyer, but he 15 wasn't working as a lawyer at the time. He was working 16 as an investigator, and he went out and did the 17 investigation and took multiple photographs that we have 18 and made a diagram. So I want to show you the diagram, 19 and it's just marked Beck 7 in his deposition. Have you 20 seen that before? 21 A. I have not seen this diagram, no. 22 Q. Okay. 23 A. The first time I'm seeing this. 24 Q. Okay. And I have to assume Mr. Beck knew what 25 he was doing and made the proper measurements that are
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1 Q. Well, Number 7 on this particular document -- 2 that would be 6.5.1(A), and then it has ten points, 3 correct? 4 A. Ten bullets? 5 Q. Bullet points. 6 A. Yeah. 7 Q. Number 7 says, Maintenance -- "Maintain 8 crossings to a smooth, even grade with no abrupt changes 9 in slope or surface," correct? 10 A. That's what it says on there, correct. 11 Q. Okay. And that's what you just testified to 12 previously, that in spreading the 12 tons of asphalt, 13 that's their goal, is to maintain a smooth, even grade 14 with no abrupt changes in slope or surface, correct? 15 A. It's to have an approach to be able to use it. 16 If you did not, I could tell you they'd have an eight- 17 to nine-inch difference where you'd have the roadway and 18 then a crossing plank that -- 19 Q. Uh-huh. 20 A. -- there's no way any vehicle could get over 21 that, including UP vehicles or farmers or what-have-you. 22 Q. Okay. But in order to maintain that smooth 23 grade crossing, as you said, they still have to go 24 out -- in -- in this case, I will tell you a number of 25 feet -- past the crossing and use the asphalt provided,	1 listed on that diagram. 2 MS. GRAHAM: I'm going to object to the 3 form. I don't think that's a question. 4 MR. BRANN: I'm just telling him. 5 BY MR. BRANN: 6 Q. I don't -- 7 MS. GRAHAM: Yeah. 8 A. Oh, okay. 9 BY MR. BRANN: 10 Q. I don't think anyone -- 11 A. Okay. 12 Q. -- questions his measurements. And -- and -- 13 here, do it this way first. What he has is the -- the 14 16-foot road crossing, right? 15 A. 16-foot. 16 Q. They're normally 16 wide. 17 A. Is this the railroad? This is the private 18 road, right? 19 Q. This is the highway (indicating). 20 A. Okay. 21 Q. Here, let me -- let me help you here. This is 22 the highway (indicating) East Clayton. 23 A. Highway. 24 Q. So we come in, we go across, and then gate to 25 private property --

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1 A. Okay. 2 Q. -- which you'll see later. Okay? 3 A. Okay. 4 Q. So the crossing, we have that the new concrete 5 is 16-foot wide this way (indicating). 6 A. Okay. So wide, not long. Okay. 7 Q. Well, let's make sure. I'm talking from 8 Houston to Beaumont, this way, down the track. 9 A. That's correct. 10 Q. Okay. I don't know how, we'll call it, wide it 11 is here. Do you? 12 A. No. 13 Q. Okay. But Mr. -- you -- you -- and Mr. Beck 14 has indicated the entrance to the front of this private 15 road is 34 foot off the 10-foot centerline. Do you see 16 that? I'll tell you that's what he's testified to. 17 A. Okay. 18 Q. So basically this is approximately 44 feet out 19 from the centerline of the track, correct -- 20 A. Okay. Okay. 21 Q. -- based on his measurements? And if you look 22 at the photos -- I'll show you some additional -- the 23 asphalt they laid comes out and actually turns into that 24 private road. Okay? 25 A. Okay.	1 Q. So when a railroad says it has a right-of-way, 2 it might be referring to ownership versus just an 3 easement right-of-way, correct? 4 MS. GRAHAM: I'm going to object to the 5 form. 6 You can answer. 7 A. It could be, I guess. 8 BY MR. BRANN: 9 Q. Okay. Do you have any understanding at this 10 particular crossing, if Union Pacific owns 50 foot on 11 both sides of the crossing from the centerline out? 12 A. I have not seen a real estate map to tell me if 13 that's correct or not correct, so I do not know. 14 Q. The -- going back to Page 10 of 18 of Exhibit 15 1, I believe it is -- 16 A. Okay. 17 Q. -- we've talked about that particular crossing, 18 326.42. 19 A. Yes, sir. 20 Q. We didn't talk about some of the other stuff up 21 there, and maybe it means something where it says SIM 22 and 80045. I know that number. That's the Federal 23 crossing number, 762784H, but what's the rest of that, 24 RIK, R-I-K, 16.00 TF? 25 A. So R-I-K stands for replace in kind. 16 feet
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1 Q. So that would indicate that the contractor 2 paved out at least 44 foot, correct? 3 A. Okay. 4 Q. You agree with that? 5 A. I mean, if that's what -- the measurement's 6 correct, then, yes (indicating). 7 Q. Okay. And we have to the highway -- pardon 8 me -- to the highway 58 foot, and I can't really tell 9 how far that is, but it looks like it's at least 10 halfway, if not a little more, correct, that was paved? 11 A. Uh-huh. 12 Q. Is that a "yes"? 13 A. That -- that looks to be correct, yes. 14 Q. Okay. I'm -- I'm sorry. It's just when you go 15 "uh-huh." Do you have any understanding -- well, let me 16 do it this way: In talking to a number of other 17 individuals with Union Pacific in this case -- 18 A. Okay. 19 Q. -- I understand the railroad has kind of its 20 own vernacular sometimes. Right-of-way can mean a 21 couple of different things. They -- it can mean 22 ownership. We own the road, we own the dirt, or it 23 might mean we have an easement right-of-way. Are you 24 familiar with that? 25 A. Yes.	1 is the length of the road crossing. 136 pound A is -- 2 is what is the size of the rail within that crossing. 3 PF means prefabbed. NB means no boards road crossing. 4 Q. Okay. Prefab would be what, the concrete 5 slabs? 6 A. So it could be a prefabbed wood plank. So you 7 know if you got -- the wood planks come in certain 8 lengths and sizes and they're -- they're already 9 prefabbed and put together more or less. So it would be 10 an eight-foot piece of plank that went in. That's what 11 we call prefabbed, premade. 12 Q. And I'm getting to learn a lot about railroads. 13 Just -- again, I like the jury to understand. 14 Underneath these concrete pads (indicating) are wood 15 ties, or you call them -- 16 A. Crossties. 17 Q. Crossties. 18 A. It's easier to say wood ties because I -- I 19 understand that. So these -- yes, these are crossties, 20 and then you've got a little different length of 21 crossties -- 22 Q. Uh-huh. 23 A. -- or wood ties underneath this concrete plank, 24 and then it goes back to the normal. 25 Q. The ones under the concrete, are they running

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1 perpendicular or parallel? 2 A. Just like the picture shows, perpendicular. 3 Q. Got you. And then the -- the concrete slabs 4 sit on top of them? 5 A. Sit on top of them, yes. 6 Q. And I don't know if it's -- what's 2881.62 FAC 7 and lab or something? 8 A. So I'm just going to assume that this -- this 9 is the cost of that facility. And L-A-B -- what does 10 the LAB stand for? I -- I can't tell you without -- 11 Q. I understand. 12 A. -- trying to look that up. I can't tell you 13 off the top of my head what that means, what it's 14 abbreviated for. 15 Q. It -- it -- it just seems -- and I don't know. 16 Maybe the \$1637.91 in materials. That -- that seems 17 pretty light to get 12 tons of asphalt, and I'm just 18 trying to understand what it means. 19 A. Yeah. 20 MS. GRAHAM: Objection to form. 21 Go ahead. 22 A. That's -- that's what that's saying. I'm not 23 sure if that's added together or what that cost is, 24 but -- oh, okay. I -- I'll tell you with this. 25 \$2881.62 is what that facility cost is in labor. That's	1 rehab project, they probably paved again the apron 2 because this is a public street, in accordance with the 3 program to make sure it's a smooth, even grade with no 4 abrupt change in slope and surface, correct? 5 A. That's correct. 6 Q. And they did the same thing at Main Street, but 7 there they needed 30 tons because that's even a bigger 8 crossing, correct? 9 A. That's correct. 10 Q. Do you have any idea, sir, prior to this road 11 crossing rehab in connection with the tie gang project, 12 when the previous, say, road crossing rehab had been 13 done at this private crossing where this incident 14 occurred? 15 A. Not off the top of my head, I -- I do not. 16 Q. What would we want to look for to find that 17 out? 18 A. Indication when -- when it was last tied. I 19 would have to go to Omaha to find out when the last 20 road -- road crossing rehab took place. I'd have -- I 21 don't -- that's the only way I could get the 22 information. 23 Q. I want to go back to Exhibit 7 for a moment, 24 Mr. Gilsdorf, and you can look at your picture. We've 25 talked about the asphalt paving that was done on both
Page 50	Page 52
1 what that stands for -- 2 BY MR. BRANN: 3 Q. Okay. Got you. 4 A. -- L-A-B. And then you have your material cost 5 which is a compound on top of that. 6 Q. And would that be for the entire asphalted area 7 we see that was done after the -- the road rehab? 8 A. So labor and material would be a combined cost, 9 everything all in. 10 Q. Okay. But if we go down to the next crossing, 11 326.74, that is the Winfree Street crossing there in -- 12 in -- in Dayton, correct? 13 A. I -- yes, according to the comments, that is 14 Winfree Street. 15 Q. And here they preordered 24 tons of asphalt 16 crossing fill, correct? It's the fourth line down. 17 A. Yes, that's what I see, because it's a bigger 18 road crossing. 19 Q. Okay. 20 A. It's 32 feet versus 16 feet. 21 Q. Have you seen how much was paved on both sides 22 of the actual railroad crossing that -- what I'll call 23 the apron, the approach on both sides at Winfree? 24 A. I have not. 25 Q. You would expect, though, that during that	1 sides (indicating). I call it the roadside or the -- 2 the private landowner side over here (indicating). 3 Going out as far as we do let's just say on the 4 roadside, that wasn't paved because during the project 5 this road was torn up out here in this area, correct? 6 MS. GRAHAM: I'm going to object to the 7 form. 8 A. I do not know if it was or not unless I refer 9 to previous pictures of what it looked like. 10 BY MR. BRANN: 11 Q. Well, what I'm -- what I'm asking is do you 12 have anything you can show us -- pictures, anything -- 13 that would show what took place during this rehab -- 14 the -- the road rehab and the tie gang? 15 A. At this crossing, I do not. 16 Q. Okay. Because I -- you know, we're -- we're 17 out here some 44 foot that's being paved. I think 18 you've told me that would be most unusual to tear up the 19 road that far out, correct? 20 A. That's correct. 21 MS. GRAHAM: Objection to form. 22 BY MR. BRANN: 23 Q. Okay. And that it was paved in the manner it 24 was paved to maintain a smooth crossing? 25 MS. GRAHAM: Objection to form.

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1 A. It's the material that we used, unless the road 2 was torn up to require more -- 3 BY MR. BRANN: 4 Q. Okay. 5 A. -- maintenance, but I do not know. 6 Q. Is there any way, from the documents, at least, 7 I've given you today, that you could try to determine 8 which contractor did the paving at this project? 9 A. The only thing I would have would be work 10 tickets. 11 Q. Okay. But I don't know if that document I gave 12 you -- I think it was -- yeah, it's this one. Exhibit 13 8, would this have -- you know, tell you, if you knew 14 how to read it? I'm not saying you don't. I don't. 15 A. Yeah, I would have to just look at the mile 16 posts -- 17 Q. Okay. 18 A. -- the mile post limits here based on the 19 billing invoice. Are you asking me to go through every 20 one and see if I can find that? Is that what you'd like 21 me to do or -- 22 Q. Hold up a second. 23 MR. BRANN: Why don't we -- do you mind if 24 we go off the record and let him look real quick? 25 MS. GRAHAM: No, that's fine.	1 just -- those are the ones that I think I identified 2 earlier. 3 A. Okay. 4 MS. GRAHAM: And just for the record, I'm 5 going to object to the form of the question, then we can 6 go off. 7 MR. BRANN: It's not a question yet. 8 MS. GRAHAM: You ask -- you asked him the 9 question, so -- 10 MR. BRANN: Okay. 11 MS. GRAHAM: I don't know if you're going 12 to repeat it or what you're going to do, but -- 13 THE VIDEOGRAPHER: We're off the record at 14 2:31. 15 (Recess from 2:31 p.m. to 2:39 p.m.) 16 THE VIDEOGRAPHER: We're back on the 17 record at 2:39. 18 BY MR. BRANN: 19 Q. Mr. Gilsdorf, during the break, I just asked if 20 you could review Exhibit 8 and see if you could pull 21 documents related to this particular crossing. Were you 22 able to do that? 23 A. I think the question was can I find documents 24 that pertained to this crossing with -- that identify 25 which contractor, if it was a contractor, that did the
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1 MR. BRANN: Okay. 2 MS. GRAHAM: What are you actually having 3 him look for, though? 4 MR. BRANN: I want -- 5 MS. GRAHAM: Are you looking for the 6 specific mile post? 7 BY MR. BRANN: 8 Q. For this mile post, can you tell me the 9 contractor who likely would have spread the asphalt? 10 And I'm -- I'm going to put this back, because I pulled 11 these out because they seemed -- it was 331, I think, to 12 3 -- I forget the last number there. No, on -- on the 13 bottom. 14 A. Yeah, on -- on the bottom of this? 15 Q. No, these were -- these were pulled out. So 16 this is 328 to 339. I may be wrong, sir, but they all 17 seem to encompass potentially 324. 18 A. Okay. 19 Q. -- the one that we're dealing with. 20 A. Okay. 21 Q. So we can just take a short break and you can 22 look. 23 A. You want me to look through these, then, more 24 specifically? 25 Q. Well, you can look through all of them. I	1 work. 2 Q. Correct. 3 A. Is that correct? 4 Q. Yes. 5 A. Okay. I've identified 11 documents where the 6 mile posts has a range, and there was 11 documents out 7 of Exhibit 8 that I found the range between the mile 8 posts of where they would have fell in place. I 9 reviewed each of the 11, and I don't see any contractor 10 bill that refers to anything with paving at that 11 crossing at all through my -- me scanning these 11 12 documents. 13 Q. Okay. Would that indicate to you, sir, then, 14 in your positions with UP that it was probably Union 15 Pacific employees that -- that did the paving? 16 A. I don't know. I don't know if this is all the 17 bills related to the project or not. I mean, I -- 18 Q. I -- I can't represent that to you one way or 19 the other. That's what was I was given. 20 A. I do not know unless I had all contract bills 21 in my possession -- 22 Q. Okay. 23 A. -- to answer that honestly. 24 Q. Is there -- when -- when you're doing this road 25 rehab type project with a -- with the tie gang project,

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1 is there in general a -- a thickness, I guess, that you 2 would want to use on this asphalt? I mean, is it two 3 inches, three inches, four inches when you're going to 4 put it out or just use as necessary? 5 A. Are you referring to a public or a private or 6 private only? 7 Q. Well, tell me the difference. 8 A. Just the maintenance standard between the two. 9 There's obviously a difference between private railroad 10 crossings -- 11 Q. Okay. 12 A. -- and public railroad crossings. 13 Q. Correct. 14 A. I would have to look to refer to what those 15 standards are within Union Pacific standards of approach 16 in the depth and also State standards. So, like I said, 17 those vary state to state. Without having access to go 18 look it up, I don't know -- 19 Q. Okay. 20 A. -- on -- on a public. 21 MR. BRANN: Well, I'll object to the 22 nonresponsive portions of that. 23 BY MR. BRANN: 24 Q. So I guess what I'm asking is on Exhibit 7, I 25 think this still is (indicating). When this paving is	1 A. No, there's no standard to take before or after 2 images, if that's your question. 3 Q. Based on, you know, your knowledge and work in 4 this area for Union Pacific, how long would this project 5 normally take? 6 A. Are you talking about the road crossing rehab 7 portion or the entire tie gang project? 8 Q. Oh, no. Just this area, this crossing. 9 A. Oh, okay. Let's just say in general a tie gang 10 goes through one day. Possibly day two the crossing 11 gang is there installing the ties and the -- the -- 12 well, the ties. They surface through it, put the planks 13 in. At longest maybe three. Paving, it might -- might 14 be the same day or maybe a day or two behind. It 15 depends, so -- 16 Q. In this project, if you know, who would have 17 made the decision to order the 12 tons of asphalt? 18 A. That would be the person that wrote the project 19 plans. 20 Q. Is that person identified on that exhibit? 21 A. The initials are identified. 22 Q. And what are the initials? 23 A. Looking at Mile Post 326.42 -- 326.42 right 24 there, the comments were put in by the initials of DT. 25 Q. Do you have any idea who that is?
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1 done either by UP or a private contractor, do they 2 generally say, we're going to do this to a -- use -- use 3 four-inch thickness, six-inch thickness, or just do what 4 they can to make it the smoothest crossing they can? 5 A. At a -- at a private, no, there's -- there's no 6 standards or specs to indicate how deep or long we go. 7 You know, we -- obviously there is asphalt in the 8 project and we're going to make a transition up to those 9 crossings with the materials provided. 10 Q. If -- and if you have in place some of these 11 private maintenance agreements we discussed earlier, is 12 there generally a -- a standard of what the private 13 landowners can do as compared to what UP does? I mean, 14 how does that work? 15 A. It's an agreement between two parties, which 16 just like any agreements, they can vary agreement to 17 agreement. 18 Q. During this particular project in 2015 at this 19 private crossing, do you know if Union Pacific in any 20 way, either before or during the project, communicated 21 with the -- the three private landowners? 22 A. I do not know that at all, no. 23 Q. Is -- when -- when UP's doing a road crossing 24 rehab and tie gang project like this one, is it standard 25 to document by photographs or video what is done?	1 A. Best guess would be Dustin Traylor. 2 Q. Dustin...? 3 A. Traylor. 4 Q. T-r-a -- 5 A. -- y-l-o-r. 6 Q. Thank you. And why would -- why would DT order 7 12 tons of asphalt? Is that -- you know is that a 8 standard or what? 9 A. You know, it's been a long time since I wrote 10 projects for the EI, but from what I can remember, that 11 could be a default number based on the size of the 12 crossing. And if there was more need for more asphalt, 13 you could always increase that, if needed, but 14 standardized tonnage per the length of the crossing. 15 Q. For the size of this crossing? 16 A. Yeah. 17 Q. When -- particularly dealing with a private 18 crossing such as this one, Mr. Gilsdorf, the -- in the 19 planning process, are those deciding on what is going to 20 happen ever advised of any issues they've had at the 21 crossing? 22 MS. GRAHAM: I'm sorry, can you read that 23 back? 24 A. Can you repeat your question? 25 BY MR. BRANN:

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Page 61	1 Q. Sure. 2 MS. GRAHAM: She can read it, unless you 3 want to rephrase it? 4 MR. BRANN: It's -- it's easy. I'll 5 rephrase it. 6 BY MR. BRANN: 7 Q. What I'm trying to understand is kind of during 8 the planning process before the project begins, are 9 those involved in the decision making on what's going to 10 happen advised of any prior incidents or problems that 11 have occurred at the crossing? 12 A. No. 13 Q. So they -- if there had been a semitrailer 14 that -- like Lee Roy Haynes in 2013, that bottomed out 15 and got stuck on the crossing, they wouldn't be advised 16 of that? 17 A. No, they wouldn't. No. 18 Q. And -- and, if you know, why is that? 19 A. So our projects' capital allocations are really 20 allocated based off of big length of project, age of 21 ties, amount of slotters (phonetic) within, say, 50, 22 60 miles where when you're talking about a specific 23 location, that's a maintenance need, not a capital 24 allocation need, per se. 25 (Exhibit Number 10 marked)	Page 63	1 obligation to make sure these signs are there and 2 posted, correct? 3 A. Correct. 4 Q. And since you have a crossing -- I guess every 5 crossing has two sides to it, right? 6 A. Yes. 7 Q. So there's one -- one of these emergency signs 8 on both sides? 9 A. I know there's one for sure. I -- I would have 10 to refer or refresh myself on that standard. It could 11 be on both sides, but -- 12 Q. Okay. I'm not sure we've used this photograph. 13 Let me -- yeah, we did. 14 So I think my blowup here is Exhibit 3. 15 It looks like the same, correct? 16 A. Correct. 17 Q. Okay. Now, this sign is the private railroad 18 sign put up by UP, correct? 19 A. Correct. 20 Q. And their standards say you have to have a stop 21 sign and then the private road sign? 22 A. That's correct. 23 Q. Okay. And there's three inches in between. 24 I'll tell you the standard. 25 A. Okay.
Page 62	1 BY MR. BRANN: 2 Q. Okay. Exhibit 10, assume with me, is another 3 photograph taken of this crossing after this repaving 4 project, and we see what is called the standard Union 5 Pacific private crossing post -- private crossing sign, 6 correct? 7 A. Correct. 8 (Exhibit Number 11 marked) 9 BY MR. BRANN: 10 Q. Okay. And I've got Exhibit 11, because it's 11 hard to see. I understand that the proper way of doing 12 it is the stop sign and private railroad sign face the 13 roadway. The emergency sign faces the -- the private 14 roadway, correct? 15 A. Correct. 16 Q. Bad question, but the stop sign and private 17 railroad sign face the public roadway, and then the -- 18 the emergency sign faces the actual road that you're 19 driving up on, the private road? 20 A. That's right, yes. 21 Q. Okay. And Exhibit 11 is just the -- what they 22 call the Union Pacific emergency number sign? 23 A. That's correct. 24 Q. Okay. And I think you mentioned earlier 25 something to the effect that it's Union Pacific's	Page 64	1 Q. Okay. There's no UP rule, regulation, or 2 guideline that would stop UP from putting any other sign 3 underneath this private railroad crossing sign, is 4 there? 5 MS. GRAHAM: I'm going to object to the 6 form. 7 A. I'm sorry, your question is to add more to 8 those -- 9 BY MR. BRANN: 10 Q. There's no -- nothing in UP's regulations that 11 would prevent it from hanging any other sign underneath 12 here? 13 MS. GRAHAM: Same objection. 14 A. I guess not. 15 MR. BRANN: What's your objection? 16 MS. GRAHAM: My objection is that you're 17 asking him, A, about something that I don't believe he's 18 here to testify about today. B, I think you're asking 19 him a question that misstates the rules and the 20 regulations. You know that Union Pacific has a very 21 specific sign setup for private crossings, and you're 22 insinuating that we should have done more with that, and 23 I don't believe that's appropriate. 24 MR. BRANN: Okay. 25 A. I can say that doesn't mean our standards. Let

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1 me say that. 2 BY MR. BRANN: 3 Q. Okay. But UP creates its own standards, 4 correct, for private crossings? 5 A. That and they work with the Federal Government 6 to ensure compliance -- 7 Q. Okay. 8 A. -- all the way around. 9 MR. BRANN: Object to the nonresponsive. 10 BY MR. BRANN: 11 Q. This -- this U -- this sign we're talking about 12 is on the UP right-of-way or property they own, correct? 13 A. I would imagine so, yes. It's right off the 14 railroad track. 15 Q. And UP owns that sign? 16 A. That is correct. 17 Q. UP owns the stop sign that was put up and they 18 own that private railroad crossing and no trespassing 19 sign, correct? 20 A. They -- we are responsible for that sign per 21 standards, correct. 22 Q. But, again, there's nothing in the UP standards 23 that it has written for itself that would prevent it 24 from putting any other sign on that post, is there? 25 MS. GRAHAM: My objection is the same as	1 about the signs or anything else. So if you would like 2 to ask him more questions about that project -- 3 MR. BRANN: Okay. 4 MS. GRAHAM: -- go for -- go ahead. 5 BY MR. BRANN: 6 Q. When whomever is spreading the asphalt that was 7 preordered for this project, I take it they want to 8 spread it in such a manner as to avoid creating what 9 might be called low clearance crossing. Is that 10 correct? 11 A. Low clearance crossing? 12 Q. Okay. 13 A. Can you define what a low clearance crossing 14 is? I'm thinking in my mind a bridge low clearance, and 15 that's what -- can you define low clearance or what 16 that -- what -- what that means? I -- I guess I don't 17 know what you're asking me. 18 Q. Okay. When you're driving down the road, you 19 can see a sign that has a lowboy tractor-trailer on it. 20 Do you know what that sign means? 21 MS. GRAHAM: Okay. Scott, again, I'm not 22 going to let him answer questions about the signage. If 23 you want to talk to him about the tie project, please go 24 ahead. 25 MR. BRANN: Well, I -- he -- he doesn't
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1 it was previously. It's now been asked and answered, so 2 I will let him respond one more time and then I'm going 3 to ask you to move on. 4 A. So we're -- we're asked to be -- to -- to go by 5 our standards and not create substandards with Union 6 Pacific. So it's -- it is not a part of our UP 7 standards to do that. So -- 8 BY MR. BRANN: 9 Q. Okay. And I appreciate that answer, but UP 10 could create a standard that says, "If we know we have a 11 low clearance private crossing, we should post"? 12 There's nothing that stops that, is there? 13 MS. GRAHAM: No. Okay. I'm going to 14 object, and I'm going to instruct him not to answer. 15 He is here to testify today about the 2015 16 tie project. I've given you a little leeway and asked 17 -- let you ask some questions beyond that and 18 particularly about the signs that you're going into 19 right now, but that's not what he's here to testify 20 about today. 21 MR. BRANN: Well, there was nothing that 22 limited it on the notice. 23 MS. GRAHAM: You specifically asked for a 24 witness who could testify about the 2015 tie project. 25 That is what Jake is being presented for today, not	1 understand, so I have to explain it. I have a right to 2 do that. 3 MS. GRAHAM: Yes, but now you're ask -- 4 back to asking him questions about the sign. 5 MR. BRANN: Well, he has to understand the 6 sign to under -- be able to answer the question. 7 MS. GRAHAM: Well, if the -- 8 MR. BRANN: That was -- 9 MS. GRAHAM: -- question is about the 10 sign, I'm not going to let him answer it. 11 MR. BRANN: It's not about the sign. I 12 just asked him if he knows what it means. 13 BY MR. BRANN: 14 Q. You're not familiar with the terminology of a 15 low clearance crossing. Is that correct? 16 A. No, not -- not off the top of my head, I'm not. 17 I'm thinking of a bridge, low clearance that -- if you 18 could show me -- 19 Q. Here you go (tendering). 20 A. -- I can answer it. 21 Q. My -- my co-counsel is smarter than I am. He's 22 pulled up on Google the sign with a railroad crossing 23 and like a equipment hauler. Do you see that? 24 A. Yeah, I've seen, I guess, signs that have 25 looked like that before within my type, but --

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1 Q. And you can actually get it where it has "low 2 clearance crossing" underneath it. Do you see that? 3 A. Okay. I -- I do see that. 4 Q. Okay. My question is: First, do you know what 5 that means? 6 A. By the picture, it means you could high -- 7 Q. High centered? 8 A. High centered. 9 Q. Okay. So we were using different terminology. 10 A. There you go. 11 Q. So when the contractor or the UP gang is 12 spreading the asphalt that was ordered for this project, 13 they want to avoid creating a high centered crossing? 14 MS. GRAHAM: I'm going to object to the 15 form. 16 BY MR. BRANN: 17 Q. Is that correct? Is that the nature of how 18 they spread it? 19 MS. GRAHAM: I'm going -- 20 A. On a private, we -- we spread it to give an -- 21 a approach -- 22 BY MR. BRANN: 23 Q. Okay. 24 A. -- on -- on a -- on a private crossing like 25 this.	1 to pull it because of a track geometry reason only. 2 Other than that, there would be no point in doing that. 3 Q. At a private crossing such as this, will UP 4 maintain its easement right-of-way? 5 MS. GRAHAM: Objection to form. 6 A. We will maintain our vegetation right-of-way 7 just like we would throughout the entire railroad 8 outside of public crossings no different than any other 9 piece of track if they're not outside of public 10 crossings. 11 BY MR. BRANN: 12 Q. Going back to Exhibit 7, I -- I asked you a 13 question about UP either owns or obviously has a 14 right-of-way to put their ballast in along the tracks, 15 correct? 16 A. Correct. 17 Q. And they maintain this area where the ballast 18 is? 19 A. We maintain the ballast shoulder. 20 Q. Okay. When you get to the road, their 21 ownership or easement at -- at a private crossing like 22 this doesn't change and jump over that road, does it? 23 MS. GRAHAM: I'm going to object to the 24 form of the question. I'm also going to instruct that 25 you're getting beyond the 2015 tie project again. So,
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1 Q. Okay. I'm going to -- you -- you -- you -- 2 A. Public. 3 Q. -- you spread to provide an approach? 4 A. Yes, an approach on a private crossing. 5 Q. For this project or a similar-type project at a 6 private crossing when a road rehab project is going on, 7 does UP ever consult with the landowners to ask the 8 purpose or uses of the roadway? 9 MS. GRAHAM: Objection to form. 10 A. When there's no agreement in place, there's 11 nobody to contact. 12 BY MR. BRANN: 13 Q. You have specifically, Mr. Gilsdorf, called 14 this a road crossing rehab in connection with the tie 15 gang project, correct? 16 A. That's the term of the project is road crossing 17 rehab, yes. 18 Q. Okay. Will UP go out and do road crossing 19 rehab at a private crossing when they're not doing 20 either a tie gang project or replacing the wood pad with 21 a concrete pad? 22 A. No, we would maintain track surface. If there 23 was a problem -- 24 Q. Uh-huh. 25 A. -- with track structure or surface where we had	1 again, I've given you some leeway here, but I'm going to 2 ask you to -- 3 BY MR. BRANN: 4 Q. I'll rephrase it. I'll get right into it for 5 you. 6 A. Okay. 7 Q. During the tie project in 2015, as you 8 described, when you pull the wood ties out, you're going 9 to affect the ballast somewhat, correct? 10 A. Correct. 11 Q. And you're going to have to re-lay and re- 12 spread the ballast, right? 13 A. Correct. 14 Q. And that's one of those really neat machines 15 that has an arm that goes along and spreads it right 16 back out, right? 17 A. That's correct. 18 MS. GRAHAM: I dropped a clip. That's 19 okay. 20 BY MR. BRANN: 21 Q. And when UP gets to the private roadway, 22 they're going to maintain that not with the ballast, but 23 for the same distance out because that's their 24 right-of-way or their ownership, correct? 25 MS. GRAHAM: I'm going to object to the

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1 form of the question. 2 A. The crossing planks are on the edge of the 3 ties. 4 BY MR. BRANN: 5 Q. Uh-huh. 6 A. So that same piece of machinery that goes 7 through here also maintains through that area because 8 that's the same length of the -- the ties. 9 Q. Okay. 10 A. So nothing really changes there. 11 Q. But assuming that -- and I don't know -- I've 12 heard a lot about we maintain the actual crossing and 13 two-foot out. 14 A. Uh-huh. 15 Q. And so let's assume these are two-foot, the 16 concrete -- 17 A. Uh-huh. 18 Q. -- pads on each side. 19 A. Right. 20 Q. Again, if this 2015 project, UP, or one of 21 their contractors, they were told what to do or were 22 responsible for spreading the asphalt, correct? 23 A. Yes. 24 Q. And UP wants to do that because building the 25 apron helps protect its track from any -- like, if	1 years, correct? 2 A. Yes, that's correct. 3 Q. And you walked us through a few of your more 4 recent positions, but can you give just a brief summary 5 of the jobs that you've held for Union Pacific? 6 A. Just a brief -- brief recap. I started with 7 the railroad right out of high school where -- started 8 as a track laborer, worked around the agreement in the 9 craft doing the work. I've been a part -- a part of 10 section gangs, switch gangs, crossing gangs, been on tie 11 gangs, rail gangs. I've been a ARASA supervisor where 12 I've led the super -- you know, supervised the 13 installation of switches, assisted MTMs, ran CAT gangs, 14 surfacing gangs in Nebraska. 15 I took my first manager of track 16 maintenance job in Denver, Colorado, where I oversaw the 17 day-to-day maintenance of railroad infrastructure, the 18 people, and then from there I went and did the same job 19 in Rawlins, Wyoming. I did that for a while. And after 20 that, I went to a manager of track proj -- excuse me -- 21 manager of track projects, and that's what exactly -- 22 writing project plans. I did that job for two years 23 prior to being a director in St. Louis. Director in 24 St. Louis for five years, came to Houston. I was a 25 director here and then promoted to a general director.
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1 you -- you said, you had a big dropoff here -- 2 A. Uh-huh. 3 Q. -- correct? 4 A. Correct. 5 Q. Do you know if Dustin Traylor is still with UP? 6 A. He is. 7 Q. Where is he located? 8 A. He is out of San Antonio, Texas. 9 Q. I believe that's all I have right at this 10 moment, sir. Thank you. 11 MS. GRAHAM: Do either of you have 12 questions? 13 MR. DUSEK: I don't have any questions. 14 MR. HARTMANN: No questions either. 15 MS. GRAHAM: Okay. Jake, I have a few 16 questions for you. Do you want to take a break or are 17 you doing okay? 18 THE WITNESS: I'm good. 19 MS. GRAHAM: Okay. 20 (Time: 3:05 p.m.) 21 EXAMINATION 22 BY MS. GRAHAM: 23 Q. Let's back up for a bit. 24 A. Okay. 25 Q. You said you've been with Union Pacific for 22	1 Q. Have you worked on tie projects before? 2 A. I have. 3 Q. Okay. In what capacity? 4 A. I've been on the gangs, put ties in the track 5 and through crossings, also worked on crossing gangs 6 where I did the actual rehab as a foreman. 7 Q. So you're familiar with the work that's done as 8 a part of the tie project, correct? 9 A. Yes, I am. 10 Q. Are you also familiar with why Union Pacific 11 does tie projects? 12 A. Yes, I am. 13 Q. And then you mentioned that you've also 14 written project plans like the ones that we see here in 15 Exhibit 1, correct? 16 A. That's correct. 17 Q. I don't think you've explained to the ladies 18 and gentlemen of the jury yet what a tie project really 19 is. Can you explain that? 20 A. So a tie project is -- there's lifespans on 21 wood in the track, and it allows us to run certain 22 speeds under Federal-regulated speeds on a class of 23 track. So, of course, the track that's not in 24 compliance or down to track two, three, and four could 25 be 20 miles an hour, 25. The more stronger track

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1 infrastructure you got, you can run faster speed, 40, 2 50, 60, including 70 mile an hour. Why do we do the tie 3 projects, because of the degradation of the ties. Tie 4 span only lasts so many years, and there's tie lives 5 by -- you know, for an example, it might be eight years. 6 Every year -- eight -- eight years, we need to go in and 7 replace -- put a tie program in there where we replace 8 maybe a third of the ties. Some ties can be a thousand 9 miles out of a 3200-mile tie network, and we have to 10 keep that circulating so that way -- it creates a tie 11 cycle, per se. 12 Q. Okay. 13 A. So -- 14 Q. Are tie projects part of Union Pacific's normal 15 and standard maintenance? 16 A. It's -- it's part of what we do to rehab and -- 17 and allocate capital into the railroad to continue to 18 keep the infrastructure strong. 19 Q. Okay. Referring you to Exhibit 1. Exhibit 1 20 is a project for the road crossing rehab, correct? 21 A. That is correct. 22 Q. And is the road crossing rehab, did that go 23 hand in hand with the tie project? 24 A. Yes, it did. 25 Q. Is that normal?	1 Q. And when was this -- the plan put together? 2 A. The plan was written -- it was probably written 3 before a copy from Project 863.86. The -- the first 4 date that I see is June 30th of 2014. 5 Q. Is it standard to be writing these project 6 plans a year, maybe more, in advance of the project? 7 A. Yes, it is. 8 Q. Why is that? 9 A. A couple of reasons. You have -- it -- it 10 impacts the network when you're looking at -- at this 11 point in time seven-hour curfews. So you have to 12 strategically plan where the work happens so you can 13 reroute different train traffic. There's different 14 times of the season where you can have the work and when 15 you can't depending on customer demand. There is a -- 16 an allocation of -- of -- allocation of budget dollars 17 that plays a part. There's also a demand to forecast 18 how many ties are needed to the tie manufacturing 19 plants. So a lot -- lot goes into that. 20 Q. Just for clarification: Can you explain what 21 you mean by curfew? 22 A. Curfew is pretty much where we stop all trains, 23 so we're going to bring in a -- a big gang. They take 24 the track from, let's just say, noon 'til 7:00 p.m. at 25 night. No trains can run within that stretch of track
Page 78	Page 80
1 A. Yes, it is. 2 Q. Okay. Why is that? 3 A. As -- as you upgrade the ties between the 4 crossings, you also want to upgrade the ties within your 5 crossings as you go down the line no different than when 6 you come to bridges. You want to allo -- or you want to 7 -- there -- there's another program to put panels in 8 bridges that's outside the normal scope of a tie gang 9 project. So -- 10 Q. Okay. So Exhibit 1 is our -- is the project 11 plan for the road crossing rehab project over what mile 12 posts and on what subdivision? 13 A. This is the Lafayette subdivision. It 14 stretches from Mile Post 297 to Mile Post 351. 15 Q. And we've established that the crossing at 16 issue in this case was at Mile Post 326.42, right? 17 A. That is correct. 18 Q. And so that's encompassed within that mile post 19 range, right? 20 A. That is correct. 21 Q. What's the project year on the -- on the 22 project? 23 A. I'm sorry? 24 Q. What is the project year for the project? 25 A. 2015.	1 because of all the work that's going on. So when that 2 happens, no train traffic runs or there's going to be a 3 route -- a reroute planned to go around if it's a high 4 profile train. Otherwise, they just stop. 5 Q. Okay. Taking a look at the specific 6 crossing -- so on Page 10, we have Post 326.42, Crossing 7 Number 762784H. Under the comments, it says: Need to 8 get two sets of secondhand six -- that says inch, but I 9 -- is it inch? 10 A. It is inch. 11 Q. Okay. -- "six-inch concrete to replace prefab 12 crossing boards." Do you see that? 13 A. I do. 14 Q. What does it mean by secondhand? 15 A. So secondhand is -- so when you're doing 16 renewal, I'll come to a crossing that has current 17 concrete in it. I will put new concrete in that, let's 18 say, public road crossing. Those ones that I take out 19 are still pretty good shape. So instead of buying 20 brand-new wood rehabs, we just cascade those good 21 secondhand concrete boards to that private road 22 crossing. The six-inch means that's the width of the 23 rail base. So that tells you how high the planks need 24 to be. There's a difference of rail heighth between 25 six-inch and five-and-a-half inch.

20 (Pages 77 to 80)

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1 Q. Okay. Looking at Exhibit Number 1, does this 2 cover all of the crossings that were a part of this 3 project? 4 A. Yes, it does. 5 Q. And are there both public and private 6 crossings? 7 A. Yes, there is. 8 Q. Okay. And we know that the crossing we're 9 talking about here is a private crossing, but are there 10 other private crossings covered by this project as well? 11 A. Yes, there is. 12 Q. Okay. So referring you to Page 3 of that 13 exhibit, I think it's the first crossing that's referred 14 to on there. That's a private crossing, correct? 15 A. That is correct. 16 Q. Okay. And are the plans the same for this 17 private crossing as they are -- they are for our private 18 crossing? 19 MR. BRANN: Objection to form. 20 A. (Witness reading.) Yes. Yes. 21 BY MS. GRAHAM: 22 Q. Let me ask it this way: What are the plans for 23 this private crossing? 24 A. Tie gang will install 10-foot ties to the -- 25 the crossing. The crossing gang is to get a second --	1 gang would do that, or if a crossing was done 2 previously, there would be no need to renew a crossing 3 that was maybe already done through some maintenance 4 activity where it doesn't show any wear like others 5 might. 6 Q. So for any crossing that was renewed as a part 7 of this project -- any private crossing that was renewed 8 as a part of this project, there's 12 tons of con -- or 9 asphalt that was ordered, correct? 10 A. If it wasn't skipped depending -- yeah, it -- 11 it -- it automatically generated 12 tons of asphalt. 12 Q. Okay. And I think you told us earlier that the 13 materials are -- the materials are supplied for the 14 crossing, and then when the crew, whether it be a 15 contractor or Union Pacific employees, goes out there to 16 use the materials, they use all of it? 17 A. Yes. 18 Q. Okay. So if they have 12 tons of asphalt, 19 they're going to spread 12 tons of asphalt, correct? 20 A. That's correct. 21 Q. Regardless of how far that goes on the actual 22 private roadway, correct? 23 A. That's -- that's correct. 24 Q. Okay. I just want to clarify. I'm not sure 25 that this came across clearly. So referring you to
Page 82	Page 84
1 secondhand road crossing planks installed -- that's 2 concrete -- installed in this crossing. They will use 3 24 timber spike screw heads and 12 tons of asphalt at 4 305.20. 5 Q. Is that the same as the plan that we have for 6 the crossing at 326.42? 7 A. Yes, it is. 8 Q. Okay. Are there any private crossings that are 9 included in this plan that have a different plan? 10 A. So what's your question again? I'm sorry. 11 Q. I'm just wondering if the plan for all of the 12 private crossings that were included in this project 13 plan is the same. The same concrete panels, same 14 12 tons of concrete. 15 Let me ask it this way, actually: Does it 16 appear that 12 tons of concrete is what was ordered for 17 all the private crossings included in this plan? 18 A. Yes, those that did not have a skip on the 19 crossing. 20 Q. And why would there be a skip on the crossing? 21 A. And it goes both. I -- I just saw one on a 22 public. So if the crossing has, say, really good 23 crossing planks and it does not need to be replaced on 24 the planks and -- and all that needs to happen is maybe 25 the tie -- the -- the board's just pulled out, the tie	1 Exhibit Number 7. Railroad ties are laid perpendicular 2 to the track, correct? 3 A. Yes. 4 Q. And there -- there was just a little confusion 5 in this earlier. When you get to the crossing, are 6 those same ties going to be under the panels? 7 A. They are wood ties perpendicular, but they are 8 10-foot ties. 9 Q. So they're longer? 10 A. The length is a little longer, yes. 11 Q. They're longer, but they're -- they're laying 12 the same way? 13 A. That's correct. 14 Q. Okay. Earlier in the deposition you were 15 referring to boards that would be parallel to the -- to 16 the rail. 17 A. Yep. 18 Q. Is that different than the ties? 19 A. Yes, it is. Those are called crossing planks. 20 Q. So when the gang went through here to do the 21 crossing rehab project, they would have removed the 22 boards, which are the crossing planks that run parallel 23 to the rail, correct? 24 A. Yes. 25 Q. Then they would have removed the 10-foot ties

21 (Pages 81 to 84)

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1 that are underneath the rail running perpendicular, 2 correct? 3 A. They -- they would have removed probably eight 4 six-foot ties and installed 10-foot ties -- 5 Q. Okay. 6 A. -- because they went from wood to concrete. 7 Q. All right. So they're actually installing 8 longer ties than were there previously? 9 A. That's correct. 10 Q. And then they would have put the concrete 11 boards down, correct? 12 A. Yes, that's correct. 13 Q. You talked a few times about when Union Pacific 14 is spreading this asphalt, there doesn't want to be a 15 drop or something, correct? 16 A. Correct. 17 Q. What's the drop that you're referring to? 18 A. So the drop is off the edge of the crossing 19 plank to the roadway. So in this picture, for example, 20 there's a transition from the plank to the roadway. 21 When you're rehabbing and things come up or the road 22 gets chewed out, you could have a gap from the roadway 23 to the crossing plank, and that's what we're eliminating 24 is none of that. 25 Q. So that's where that six inches comes into play	1 profile. We meet FRA standards on track surface. 2 Q. Okay. If there's no agreement, does Union 3 Pacific maintain the road? 4 A. They do not. 5 MR. BRANN: Objection, form. 6 BY MS. GRAHAM: 7 Q. Does Union Pacific maintain roads at private 8 crossings? 9 A. They do not. 10 Q. You weren't in this territory in 2015, correct? 11 A. I was not. 12 Q. Okay. And so you had no involvement in the 13 accident that forms the basis of this lawsuit, right? 14 A. That's correct. 15 Q. You understand there was a crossing accident, 16 correct? 17 A. Yes. 18 Q. Was that crossing accident in any way related 19 to the 2015 tie project that you testified about here 20 today? 21 A. No, ma'am. 22 MR. BRANN: Object to form. 23 BY MS. GRAHAM: 24 Q. Are tie projects related to crossing accidents? 25 MR. BRANN: Object to form.
Page 86	Page 88
1 that you were talking about earlier? 2 A. That's correct. That's the distance, if -- if 3 you didn't have a road there, how high the crossing 4 plank is. 5 Q. Okay. You were asked some questions in the 6 deposition about Union Pacific's maintenance of private 7 crossing roads, and you talked about Union Pacific 8 maintaining the crossing surface. Do you remember those 9 questions? 10 A. Yes. 11 Q. Okay. What is the crossing surface? 12 A. The crossing surface is the track geometry. 13 Just imagine yourself on the track, and you're -- want 14 to keep the track level and/or a uniform curvature. 15 Track -- track -- that's what track surface is. It's 16 the surface that's actually on the track itself. Not 17 the roadways, not the roads next to it, but the track 18 itself. 19 Q. And what does Union Pacific maintain at private 20 crossings? 21 A. The signage with no agreements. It's just to 22 ensure that we have the signage on both sides and it's 23 properly displayed. 24 Q. How about the track surface, though? 25 A. And the track surface as well, yes. There's no	1 A. No, ma'am. 2 BY MS. GRAHAM: 3 Q. Okay. Thanks, Jake. 4 MS. GRAHAM: Nothing further. 5 (Time: 3:21 p.m.) 6 BY MS. GRAHAM: 7 Q. I've got just a few more. You want to keep 8 going? 9 A. Yes, sir. 10 Q. Okay. Union Pacific has stated many times in 11 this litigation that it maintains the crossing surface 12 and two feet on each side of the rail. You understand 13 what that means, correct? 14 A. Uh-huh. 15 Q. Is that a "yes"? 16 A. Yes. Sorry. 17 Q. Thank you. In going back to Exhibit 7, what 18 that would be is the crossing surface -- 19 A. Uh-huh, yes, sir. 20 Q. -- the rails themselves, or the tracks as we 21 call them -- 22 A. That's correct. 23 Q. -- the crossing surface inside, and the two 24 feet on the outside, correct? 25 A. Correct.

22 (Pages 85 to 88)

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1 Q. But it's very standard procedure when they're 2 doing these road rehabs to pave as much as they can to 3 get a smooth surface or grade up to and across the 4 tracks, right? 5 A. We utilize all available material for the 6 project. 7 Q. Okay. And they did that up and down this 8 project as -- as is set out in Exhibit 1? 9 A. (Witness nods head up and down.) 10 Q. They paved a lot of private crossings, didn't 11 they? 12 A. I would imagine so, yes. 13 Q. Yeah. As -- so for every private crossing 14 that's identified on Exhibit 1, except a skip -- and 15 we're going to get there -- 16 A. Yeah. 17 Q. -- they went out and did very similar paving to 18 the roadway, correct? 19 A. Correct. 20 Q. Okay. Now, Ms. Graham asked you if Union 21 Pacific maintains roads at private crossings, and you 22 said they do not. Do you recall that? 23 A. That's correct. 24 Q. There's nothing, again, at this private 25 crossing that prohibits Union Pacific from maintaining	1 described should encompass either a roadway that Union 2 Pacific owns or that it has an easement right-of-way on? 3 MS. GRAHAM: Objection to form. 4 A. We inspect the track, track surface, signage, 5 and safe passage for trains. 6 BY MS. GRAHAM: 7 Q. If UP actually owns the roadway, there's 8 nothing that prevents them from maintaining it, is 9 there? 10 MS. GRAHAM: Objection to form. And it's 11 been asked and answered. One more time. 12 A. Please ask the question again. 13 BY MS. GRAHAM: 14 Q. Sure. 15 A. Sorry. 16 Q. If UP actually owns the actual roadway, 50 foot 17 on each side of the centerline of this crossing, there 18 is nothing but their own procedures that prevents them 19 from maintaining it, correct? 20 MS. GRAHAM: Same objection. 21 A. We have standards that standardize our 22 maintenance between crossings such as public and 23 private. So they differ. 24 BY MS. GRAHAM: 25 Q. But those are UP's choices as to how to
Page 90	Page 92
1 the roadway just as it -- it did in the -- as 2 demonstrated in Exhibit 7 during the road crossing 3 rehab, is there? 4 MS. GRAHAM: I'm going to object to the 5 form of the question. 6 You can answer if you can. 7 A. We -- like, again, the standard practice on 8 these projects is to use the available material and not 9 leave it behind. 10 BY MR. BRANN: 11 Q. Okay. Well, U -- UP has weekly, yearly -- and 12 yearly inspection projects for crossings, doesn't it? 13 A. Can you say that one more time? 14 Q. Are you familiar with the inspection processes 15 that Union Pacific has for its crossings? 16 A. I know the standards and we -- we -- we do 17 perform track inspections that encompass right-of-way 18 facilities, yes. 19 Q. Okay. And the right-of-way facility could be 20 the roadway that UP either owns and/or has an easement 21 right-of-way, correct? 22 MS. GRAHAM: Objection to form. 23 A. Say your question one more time. 24 BY MS. GRAHAM: 25 Q. Okay. The inspection process you just	1 maintain their easements or owned right-of-ways, 2 correct? 3 MS. GRAHAM: Objection to form. 4 A. I'm not sure what the FRA has to play [sic]. 5 Obviously the Federal government has a say in it as 6 well. So it's an agreed upon -- 7 MR. BRANN: I'll object to the 8 nonresponsive portion. 9 BY MS. GRAHAM: 10 Q. Let me tell you that at this crossing there is 11 no FRA applicable to this private road. There is no 12 state or federal regulation app -- applicable to this 13 private road. So if UP owns 50 foot of right-of-way on 14 each side of the centerline of the track, nothing but 15 their own policies and procedures prevented them from 16 maintaining that roadway, correct? 17 MS. GRAHAM: I'm going to object to the 18 form. It's been asked and answered. I'll let him 19 ask -- answer it one more time and then I'll ask -- 20 MR. BRANN: I -- 21 MS. GRAHAM: -- you to move on. 22 MR. BRANN: I haven't gotten an answer 23 yet. 24 A. And there's nothing that says we have to 25 maintain it any differently than we would 30 or 40 feet

23 (Pages 89 to 92)

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1 up the track. So -- 2 BY MS. GRAHAM: 3 Q. Okay. So the answer to my question is, yes, 4 you are correct. There is nothing that prohibits us 5 from maintaining it. We just don't. 6 MS. GRAHAM: No. 7 BY MS. GRAHAM: 8 Q. That's what you just told me, correct? 9 MS. GRAHAM: Objection to form. 10 Don't answer that, Jake. 11 He's answered your question. 12 MR. BRANN: No, he -- 13 MS. GRAHAM: Yes -- 14 MR. BRANN: -- didn't. 15 MS. GRAHAM: -- he has. He has. 16 MR. BRANN: Can you read back the answer, 17 please? 18 (The record was read as requested.) 19 BY MR. BRANN: 20 Q. So the answer is, yes, to my question, you are 21 correct; however, there's nothing that says we have to 22 do that -- 23 MS. GRAHAM: Objection -- 24 BY MR. BRANN: 25 Q. -- correct?	1 MR. BRANN: Well, I know. So I'm going to 2 try this one more time. 3 BY MR. BRANN: 4 Q. When I said if U -- Union Pacific owns 50 foot 5 of right-of-way on each side of the centerline of this 6 particular crossing, there is nothing that prevent -- 7 prevents it from maintaining it except its own policies 8 and procedures, correct? 9 MS. GRAHAM: And I will object again that 10 it's been asked and answered. And he can answer it the 11 same way he's answered it. 12 Go ahead. One more time, Jake. 13 A. I said there's nothing that would have us 14 maintain this anything any different than 40 or 50 feet 15 up the track as -- as -- as we sit here. 16 BY MR. BRANN: 17 Q. So they could maintain it if they chose to, 18 they just don't? 19 MS. GRAHAM: Objection -- 20 BY MR. BRANN: 21 Q. I think that's what you're saying, correct? 22 MS. GRAHAM: No. Objection to form. 23 He's answered this question on a number of 24 occasions. 25 BY MR. BRANN:
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1 MS. GRAHAM: Objection -- 2 BY MR. BRANN: 3 Q. That's what I'm trying to say. 4 MS. GRAHAM: Objection to the form of the 5 question. Just because you don't like his answer does 6 not mean he has to answer it your way. 7 MR. BRANN: Believe it or not, I -- 8 MS. GRAHAM: He has answered your 9 question. 10 MR. BRANN: Learn to make legal objections 11 in Texas, not in Chicago. And -- 12 MS. GRAHAM: Counsel -- 13 MR. BRANN: -- I like his -- I like his 14 answer. I'm just trying to clarify it. 15 MS. GRAHAM: Counsel, I would ask you to 16 not be argumentative and be a little bit more respectful 17 just as I have treated you here today. 18 MR. BRANN: I'm just trying to clarify 19 that answer. That's all. I'm not trying to get him to 20 change it. I like the answer, I'll tell you that. 21 MS. GRAHAM: Oh, good. 22 BY MR. BRANN: 23 Q. So -- 24 MS. GRAHAM: I don't think there's a 25 question pending.	1 Q. I will -- am I correct in my last statement? 2 MS. GRAHAM: One more time, Jake. 3 A. So can you ask -- can -- 4 BY MR. BRANN: 5 Q. Sure. 6 A. And I hate to ask this, but could you ask me 7 your question one more time? 8 Q. Sure. If UP owns a 50-foot right-of-way on 9 each side of the centerline of the track at this 10 particular private crossing, there is no policy or 11 procedure that prevents it from maintaining it except 12 its own choice, correct? 13 MS. GRAHAM: Objection to form. 14 A. We have to follow our standards. So, I mean -- 15 BY MR. BRANN: 16 Q. It's their standards that they follow that 17 prevent them? 18 A. We -- we -- 19 MS. GRAHAM: Objection to form. 20 BY MR. BRANN: 21 Q. Is that correct? 22 A. We follow Union Pacific standards. 23 Q. Okay. That's all I have, sir. Thank you. 24 A. Okay. 25 (Time: 3:30 p.m.)

24 (Pages 93 to 96)

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Page 97	1 EXAMINATION 2 BY MS. GRAHAM: 3 Q. I just have two questions for you, Jake. 4 A. Okay. 5 Q. You were just asked some questions indicating 6 that there were no Federal or FRA or any standards that 7 would have applied at this crossing. Is that correct? 8 A. That's correct. 9 Q. For the Union Pacific track? 10 A. Correct. 11 Q. Are there -- 12 MR. BRANN: Object to the form. 13 BY MR. BRANN: 14 Q. Are there FRA regulations that apply to Union 15 Pacific's track through this crossing? 16 A. Yes. And -- 17 MR. BRANN: Objection, form. 18 A. -- that's the track surface through that road 19 crossing. 20 BY MS. GRAHAM: 21 Q. Okay. 22 A. And to obtain and make sure we have the signage 23 up as -- as -- as a standard of Union Pacific and as a 24 policy of the Federal government. 25 Q. So --	Page 99	1 MS. GRAHAM: Yes. But you said simply 2 there's no regulations or FRA or anything that applies 3 at this crossing, which is an incorrect statement. 4 So -- 5 MR. BRANN: Applies to the road bed. 6 MS. GRAHAM: You did not say road bed. 7 You said crossing. So I'm clarifying the incorrect 8 statement that you made on the road. So you can object, 9 but he's going to answer the questions. 10 MR. BRANN: That's fine. I'll clarify my 11 question. 12 MS. GRAHAM: Great. 13 BY MS. GRAHAM: 14 Q. Go ahead, Jake. 15 A. Again, track surface and also signage. 16 Q. Okay. That picture you've got right in front 17 of you that's Exhibit 7, the testimony has been that 18 that is what the crossing looked like after this tie 19 project went through, right? 20 A. Correct. 21 Q. Okay. Does that look like what you would 22 expect to see after a tie project has gone through with 23 a road crossing rehab project? 24 A. Yes, and they did a good job. 25 Q. Thanks.
Page 98	1 MR. BRANN: Object to the nonresponsive 2 portion of the answers. 3 BY MS. GRAHAM: 4 Q. So the statement that there's no Federal or FRA 5 or any kind of regulations that would apply at this 6 crossing is incorrect, because Union Pacific's track 7 runs through here, correct? 8 A. That's correct. 9 MR. BRANN: Object to form. 10 BY MS. GRAHAM: 11 Q. Okay. What kind of FRA regulations would apply 12 to Union Pacific's track through this crossing? 13 MR. BRANN: Object to form. 14 A. Track geometry. 15 MR. BRANN: And he is not being presented, 16 as you said, as an expert on such, so you can let him 17 go, but I need -- 18 MS. GRAHAM: Counsel, you're the one who 19 asked the incorrect question. I'm just -- 20 MR. BRANN: No. 21 MS. GRAHAM: -- trying to make sure that 22 the record is clear since you misstated it. 23 MR. BRANN: That's -- that was not my 24 question, Counsel. Mine dealt with the private roadway, 25 not the crossing bed.	Page 100	1 (Time: 3:32 p.m.) 2 FURTHER EXAMINATION 3 BY MR. BRANN: 4 Q. Mr. Gilsdorf, I don't like to ask what might be 5 misleading questions. I thought my question was clear. 6 If we go back to Exhibit 7 -- oops, wrong board -- 7 Exhibit 7, and I want to start two foot off the tracks 8 and go toward the private landowners and two foot off 9 the track -- so we're not talking about the concrete 10 pad, the road -- there is nothing that UP owns this -- 11 within this roadway, 50 foot of right-of-way on both 12 sides, that would prevent it from maintaining the 13 roadway -- not the track surface, but the roadway, 14 leading up to it -- except its own policies and 15 procedures, correct? 16 MS. GRAHAM: Objection to the form. It's 17 been asked and answered. 18 A. That's like asking why-- why would we maintain 19 anything any different that has no standards. I mean -- 20 BY MR. BRANN: 21 Q. But, no, I'm just asking. Do you know of any 22 Union Pacific policy or procedure that says, "Don't 23 maintain our 50-foot right-of-way that we own"? 24 MS. GRAHAM: Objection to form. 25 A. We manage -- manage our bench lines. There's

25 (Pages 97 to 100)

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Page 101	Page 103
1 a -- there's a lot of things we manage within any area	1 I, JACOB MICHAEL GILSDORF, have read the foregoing
2 that we have on Union Pacific.	2 deposition and hereby affix my signature that same is
3 BY MR. BRANN:	3 true and correct, except as noted above.
4 Q. Okay. I understand that. I'm just talking	4
5 about the private roadway here, this 16 foot, give or	5
6 take, is what it seems to be based on measurements made	6 JACOB MICHAEL GILSDORF
7 by Mr. Beck. As it comes off two foot off the track on	7
8 each side, if you, Union Pacific -- assume with me --	8 THE STATE OF _____
9 has said they have a 50-foot right-of-way --	9 COUNTY OF _____
10 A. Uh-huh.	10
11 Q. -- there's nothing that prevents them from	11 Before me, _____, on this day
12 maintaining that 50-foot right-of-way but choice,	12 personally appeared JACOB MICHAEL GILSDORF, known to me
13 correct?	13 or proved to me on the oath of _____ or
14 MS. GRAHAM: Objection to form.	14 through _____ (description of
15 A. There's nothing that says that we have to.	15 identity card or other document) to be the person whose
16 MR. BRANN: I have nothing else.	16 name is subscribed to the foregoing instrument and
17 MS. GRAHAM: Nothing further.	17 acknowledged to me that he/she executed the same for the
18 MR. HARTMANN: We don't have any.	18 purpose and consideration therein expressed.
19 MR. DUSEK: No questions.	19 Given under my hand and seal of office on this _____
20 THE VIDEOGRAPHER: We're off the record at	20 day of _____, _____. 21
21 3:34.	22
22 (Deposition concluded at 3:34 p.m.)	23 NOTARY PUBLIC IN AND FOR
23	24 THE STATE OF _____
24	25 My Commission Expires: _____
25	
Page 102	Page 104
1 CHANGES AND SIGNATURE	1 CAUSE NO. 2015-53909
2 PAGE LINE CHANGE REASON	2 LEE ROY HAYNES) IN THE DISTRICT COURT OF
3 _____	3 Plaintiff,)
4 _____	4 vs.) HARRIS COUNTY, TEXAS
5 _____	5)
6 _____	6 UNION PACIFIC RAILROAD)
7 _____	7 COMPANY, RUFUS W.)
8 _____	8 RICHMOND, JR., CLYDE D.)
9 _____	9 WILLIAM A/K/A CLYDE D.)
10 _____	10 WILLIAMS, JR., BURNETT)
11 _____	11 FORESTRY LLC, STEVE)
12 _____	12 McMICHAEL, WINDY)
13 _____	13 McMICHAEL, GAYLA JANSEN,)
14 _____	14 JEREMY JANSEN and JARED)
15 _____	15 JANSEN)
16 _____	16 Defendants.) 189TH JUDICIAL DISTRICT
17 _____	17
18 _____	18
19 _____	19
20 _____	20
21 _____	21
22 _____	22
23 _____	23
24 _____	24
25 _____	25
	REPORTER'S CERTIFICATE ORAL VIDEOTAPED DEPOSITION OF JACOB MICHAEL GILSDORF January 20, 2020 I, Ofelia C. Stevens, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following: That the witness, JACOB MICHAEL GILSDORF, was duly sworn and that the transcript of the deposition is a true record of the testimony given by the witness; That the deposition transcript was duly submitted on _____ to the witness or to the attorney for the witness for examination, signature, and return to me

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1 by _____. 2 That pursuant to information given to the deposition 3 officer at the time said testimony was taken, the 4 following includes all parties of record and the amount 5 of time used by each party at the time of the 6 deposition: 7 Mr. Scott Brann (1h50m) 8 Attorney for Plaintiff 9 Ms. Elizabeth Graham (0h18m) 10 Attorney for the Defendants Union Pacific 11 Railroad Company, Rufus W. Richmond, Jr. and 12 Clyde D. William a/k/a clyde D. Williams, Jr. 13 Mr. Paul-Michael Dusek (0h0m) 14 Attorney for Defendants Steven McMichael and 15 Windy McMichael 16 Mr. Kelly Hartmann (0h0m) 17 Attorney for Defendant Burnett Forestry, LLC 18 That a copy of this certificate was served on all 19 parties shown herein on _____ and filed 20 with the Clerk. 21 I further certify that I am neither counsel for, 22 related to, nor employed by any of the parties in the 23 action in which this proceeding was taken, and further 24 that I am not financially or otherwise interested in the 25 outcome of this action. Further certification requirements pursuant to Rule 203 of the Texas Code of Civil Procedure will be complied with after they have occurred.	1 FURTHER CERTIFICATION UNDER TRCP RULE 203 2 3 The original deposition was/was not returned to the 4 deposition officer on _____. 5 If returned, the attached Changes and Signature 6 page(s) contain(s) any changes and the reasons therefor. 7 If returned, the original deposition was delivered 8 to Mr. Scott Brann, Custodial Attorney. 9 \$ _____ is the deposition officer's charges to the 10 Plaintiff for preparing the original deposition and any 11 copies of exhibits; 12 The deposition was delivered in accordance with Rule 13 203.3, and a copy of this certificate, served on all 14 parties shown herein, was filed with the Clerk. 15 Certified to by me on this _____ day of 16 _____, _____. 17 18 19 20 21 _____ 22 Ofelia C. Stevens, CSR 23 Texas CSR 5224 24 Expiration: 10/31/2021 25 Direct Discovery Firm No. 707 1302 Waugh Drive, Suite 244 Houston, Texas 77019 713-857-0951
Page 106 1 Certified to by me on this _____ day of 2 _____, _____. 3 4 5 6 7 8 9 _____ 10 Ofelia C. Stevens, CSR 11 Texas CSR 5224 12 Expiration: 10/31/2021 13 Direct Discovery 14 Firm No. 707 15 1302 Waugh Drive, Suite 244 16 Houston, Texas 77019 17 713-857-0951 18 19 20 21 22 23 24 25	

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Transcript of the Testimony of **Kelley Adamson**

Date: July 17, 2018

Volume: I

Case: Lee Roy Haynes v. Union Pacific, et al.

EXHIBIT 2

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[Page 1]

CAUSE NO. 2015-53909
LEE ROY HAYNES) IN THE DISTRICT COURT
)
VS.)
)
UNION PACIFIC RAILROAD)
COMPANY, RUFUS W. RICHMOND,)
JR., CLYDE D. WILLIAM A/K/A) HARRIS COUNTY, T E X A S
CLYDE D. WILLIAMS, JR.,)
BURNETT FORESTRY LLC, STEVE)
MCMICHAEL, WINDY MCMICHAEL,)
GAYLA JANSEN, JEREMY JANSEN)
AND JARED JANSEN) 189TH JUDICIAL DISTRICT

ORAL DEPOSITION OF KELLEY ADAMSON
July 17, 2018

Oral deposition of KELLEY ADAMSON was taken on July 17, 2018, in the offices of Brann Sullivan Trial Lawyers, 602 Sawyer Street, Suite 700, Houston, Texas, from 1:09 p.m. to 3:32 p.m., before Dickie Zimmer, Certified Shorthand Reporter, pursuant to Notice and the Texas Rules of Civil Procedure and under the following agreement of counsel for the respective parties that:

The deposition may be signed by the witness before any Notary Public or officer authorized to administer oaths.

[Page 3]

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[Page 5] 1 KELLEY ADAMSON, 2 having been duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. LASSWELL: 5 Q. Okay. Sir, state your name, please. 6 A. Kelley Adamson. 7 Q. And, Mr. Adamson, what's the name of your 8 company? 9 A. A&M Forensics and Engineering. 10 Q. And what does A&M Forensics and Engineering do? 11 A. Primarily, traffic accident reconstruction. 12 Q. Okay. And is it, primarily, for litigation 13 purposes? 14 A. Yes, I would say so. Obviously, I guess from a 15 standpoint, we are employed sometimes separate from 16 litigation. But I would say, you know, most of our 17 stuff is probably going to be associated with litigation 18 or potential litigation. 19 Q. And what's your position with A&M Forensics and 20 Engineering? 21 A. I'm the president. 22 Q. Okay. And what do your duties involve? 23 A. Now, pretty broad range; but still, primarily, 24 I'm the senior reconstructionist is my main duty. 25 Q. Okay. And are there particular types of	[Page 7] 1 their own documents that they adopt from AASHTO to apply 2 to what they need. And so, that or maintenance 3 standards, construction standards; so, that's what I do. 4 Q. For her benefit, why don't you explain what 5 AASHTO is? 6 A. Oh, the American Association of State Highway 7 Transportation Officials. 8 Q. And it's an acronym, correct? 9 A. Yes. 10 Q. AASHTO? 11 A. That's correct. 12 Q. I apologize. I didn't introduce myself. My name 13 is Bryan Lasswell. 14 A. Yes. 15 Q. And with a law firm called McLeod -- or named 16 McLeod Alexander Powel & Apffel. 17 Do you know if you've ever been retained by my 18 firm? 19 A. It sounds familiar, but I don't know why. I'm 20 not real sure. I'm not sure if it was a case that I 21 could have been working for you or on other side of you. 22 I can't remember the details. 23 Q. Okay. What percentage of your cases do you work 24 for the plaintiff's side? 25 A. Oh, I was recently asked that question with
[Page 6] 1 accidents -- I'm assuming it's accident reconstruction; 2 is that correct? 3 A. Correct. We specialize strictly in, you know, 4 automobile type, which would encompass commercial 5 vehicles, motorcycles, bicycles, pedestrians. That's 6 what I, primarily, focus on. I do, also, some civil 7 engineering work; and I do expert witness with regard to 8 highway design, construction and maintenance. And I've 9 done that both for the State of Louisiana and Texas. 10 And, well, actually, Missouri, Michigan, also; but it's 11 been a while since I worked for those two states. 12 Q. Okay. So, if you're going to put a percentage of 13 the amount of work that you do, or your company, either 14 way that you want to answer it, or both, how many of it 15 involves actual litigation? 16 A. Most of it. I would probably put it over 90 17 percent is going to be accident reconstruction dealing 18 with, you know, the reconstruction of accidents. It 19 does encompass -- for example, when I worked for the 20 states, I'll be doing both. I'll be doing the analysis 21 of roadway design, construction and maintenance type of 22 issues; but, also, tying that in with reconstruction. 23 So, sometimes I'm asked to look at design plans 24 of a roadway, do they meet AASHTO's specifications or 25 the states -- actually, a lot of times, the states have	[Page 8] 1 regard to my deposition and trial testimony. That would 2 be 25 percent. 3 Q. Okay. 4 A. According to that. 5 Now, I do a lot more work with regard to the 6 cases beyond just trial or deposition testimony. So, I 7 would pretty much say it's probably about a 60-40 split. 8 In the sense of 60 percent defense and 40 percent 9 plaintiff. 10 Q. All right. Have you ever been retained by or 11 hired by either a railroad or someone defending a 12 railroad in one of these cases? 13 A. Yes, I have. 14 Q. Okay. When was that? 15 A. The last case I can specifically remember I was 16 employed by the Cook Yancey firm in Shreveport, 17 Louisiana. I worked for Mr. Rick Sterritt. And it was 18 involving a railroad crossing accident up in the 19 Shreveport, Louisiana area. 20 Q. What kind of -- can you give us just a broad 21 brush -- 22 A. Yeah, it was a car got struck on a crossing. 23 Q. Private crossing, public crossing? 24 A. Public. 25 Q. Signalized?

[2] (Pages 5 to 8)

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[Page 9]

1 A. I don't think it wasn't signalized -- I think it
 2 was not signalized, if I remember correctly.
 3 Q. Okay. And did you provide testimony in that
 4 case?
 5 A. No, I don't think it ever made it that far.
 6 Q. Did you write a report?
 7 A. That, I'm not real sure.
 8 Q. You told me the name Cook Yancey; and then, you
 9 mentioned the name of the lawyer, and I didn't catch it.
 10 A. Rick Sterritt.
 11 Q. How long ago was this?
 12 A. Oh, quite a while.
 13 And then, there was another firm I worked for in
 14 Lafayette; and that was another crossing accident, and I
 15 was working for them, also. I cannot remember the name
 16 of that firm.
 17 Q. Do you know what railroads were involved?
 18 A. I want to say it was UP --
 19 Q. Okay.
 20 A. -- but it's been a while. But it dealt with a
 21 crossing that was over in Broussard, and it was a pickup
 22 truck that crossed the tracks. And they did take my
 23 deposition in that case, I remember that. And then, I
 24 ended up working for the State. So, I think the
 25 plaintiff settled out with the Railroad.

[Page 10]

1 We found that the pickup truck had a lot of
 2 tinting on it; and, also, he had a boom box in it. I
 3 remember that part of it. And then, they were suing the
 4 State. So, I ended up working for the State, too, in
 5 that case.
 6 Q. And who was the attorney representing the State?
 7 A. Will Grubbs.
 8 Q. Does the firm Davidson Meaux sound familiar to
 9 you?
 10 A. Yes.
 11 Q. Would that have been the firm that hired you,
 12 originally, for the Railroad?
 13 A. I think so.
 14 Q. Okay. Any other occasions when you've been hired
 15 to work on behalf of a railroad?
 16 A. I want to say there was another case; but I don't
 17 remember the details of it, because it's been a long
 18 time.
 19 Q. Okay. Now, similar question. Have you worked on
 20 cases that have a fact situation similar to this one in
 21 the past, where a lowboy trailer or something similar
 22 got hung up on a crossing?
 23 A. Yes.
 24 Q. On how many occasions?
 25 A. I can think of three.

[Page 11]

1 Q. Okay. Can you tell us about those, please?
 2 A. One was a case down in South Texas where a lowboy
 3 truck trailer was stuck. I think it was called Davis.
 4 Then, there was another one that I worked on that was in
 5 West Texas. Let's see, that was just west of Odessa.
 6 And then, I worked on one in New Mexico -- no, no, no,
 7 there's another one. In fact, I want to say there's
 8 more than that; but --
 9 Oh, yeah, I worked for the one that's just
 10 outside of Corpus Christi. I was on the defense,
 11 because the train company was suing the trucking
 12 company; and that was another one. I want to say
 13 there's another one. Where was that one?
 14 That's all I can think of for right now. I know
 15 there's more.
 16 Q. Okay.
 17 MR. BRANN: Just -- when we first started
 18 talking, and maybe I'm wrong, did you work on -- there
 19 was one in Louisiana where the bus got hung up.
 20 A. Oh, no, no, that's -- that's the one in
 21 litigation. That's the Mer Rouge, Louisiana, that's the
 22 other one.
 23 Q. (By Mr. Lasswell) Okay.
 24 A. That is another -- that's correct. Yes, that's
 25 the one.

[Page 12]

1 Q. Okay. I'm familiar with the Davis versus UP
 2 case, I believe --
 3 A. Uh-huh.
 4 Q. -- that was in Federal Court down in Brownsville,
 5 I believe, or something?
 6 A. Correct.
 7 Q. Okay. Now, I was thinking that that was -- and
 8 then, you mentioned a case in Corpus Christi where the
 9 railroad company was suing a trucking company.
 10 A. I believe so, yes.
 11 Q. And you think that's a distinct and different
 12 case from --
 13 A. No, this was a tractor-trailer that was crossing
 14 the tracks. And I want to say it was a low clearance
 15 issue; but I can't remember, specifically. But I know
 16 the Mer Rouge, Louisiana one is another one that it was
 17 a lowboy got stuck on that one, too. And I want to say
 18 there was -- the one in New Mexico I know for sure was a
 19 lowboy.
 20 Q. Do you know what jurisdiction in New Mexico?
 21 A. No.
 22 Q. State Court, Federal Court?
 23 A. I think it was going to be Federal Court --
 24 Q. Did you --
 25 A. -- but they settled it.

[3] (Pages 9 to 12)

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[Page 13]	[Page 15]
1 Q. Okay. Did you -- were you deposed, or did you 2 write a report? 3 A. No, they settled it before I was deposed. 4 Q. Okay. Do you remember the Railroad involved in 5 the Corpus Christi case? 6 A. No. 7 Q. But it had to be Kansas City Southern, BNSF or 8 Union Pacific? 9 A. That's a good question. I can't remember. It's 10 been long enough that I can't remember the specifics of 11 it. 12 Q. Are we talking more than ten years ago, five 13 years ago? 14 A. Who was I working for then? I want to say I was 15 working for the Book Firm at that time. Was that Book, 16 or was that the other firm down in Corpus, or Becca 17 Kieschnick's firm. Maybe it was for Becca Kieschnick. 18 You know what, it's been long enough I can't 19 remember. I would -- I would place that probably, 20 maybe, ten years ago, yeah, or less -- eight to ten 21 years ago, in that range. 22 Q. Okay. The one in West Texas, is it still 23 ongoing, or -- 24 A. No, they settled. 25 Q. Were you deposed in that case?	1 the attorney. And I want to say about a month or so 2 later, he called me and says, "We're done." 3 Q. Okay. Did he tell you why he was done? 4 A. Well, they settled it. That's all I know. 5 Q. Okay. 6 A. My understanding it was amicable. I think -- I 7 think it was another one of those cases where everybody 8 was suing each other. 9 Q. Okay. Have you ever worked for Mr. Brann before? 10 A. No, I haven't. 11 Q. Okay. 12 All right. Now, what particular expertise is it 13 that you have that makes you appro po or suitable for 14 this case? 15 A. I guess it would be the civil engineering side of 16 this case. Basically, I started off in, I guess, the 17 construction industry back when I was 14. I learned the 18 construction industry; but, ultimately, worked for a 19 construction company in which we built roadways and 20 other road type work. I learned how to build roadways; 21 and, actually, we did maintenance on roadways, too. 22 But, also, I worked for an engineer in that company in 23 which we did design of roadways. 24 Ultimately, also, worked for a design company in 25 Dallas in which we designed buildings and bridges,
[Page 14]	[Page 16]
1 A. No, they settled it before I got deposed. 2 Q. All right. Now, the Mer Rouge case I'm somewhat 3 familiar with. That's a public crossing, correct? 4 A. Correct. 5 Q. The crossing involved at the Davis -- the Davis 6 versus Union Pacific case, that was a public crossing? 7 A. Yes, sir. 8 Q. What about this one in Corpus Christi, was that a 9 public crossing or a private crossing? 10 A. Public. 11 Q. And the one in New Mexico, was it a public or a 12 private crossing? 13 A. Public. 14 Q. And the one in West Texas, public crossing or 15 private crossing? 16 A. Oh, that was -- that was a private crossing. 17 Q. Okay. 18 A. I remember that one. 19 Q. And you say that that one has been resolved, as 20 well, right? 21 A. That's my understanding. 22 Q. Okay. And no depo, no report? 23 A. That would be correct. Basically, we went and 24 did an engineering study of the profile of the track, 25 reported it to the engineer -- reported the findings to	1 roadway bridges, which basically is nothing more than an 2 elevated road. And so, by virtue of that, plus, from 3 the standpoint of the reconstruction side, I guess, 4 I have always been involved in the 3D aspects of 5 accident reconstruction. So, what I want to do is I 6 want to know what the topography of the roadway is. And 7 then, we do simulation work, for example, using that to 8 that detail. 9 And so, a lot of times we're trying to get the 10 topography of the roadway and see how that comes into 11 play. And it comes into play in many different ways, 12 such as visibility and things; but it can, also, have an 13 effect on vehicle performance. So, that kind of 14 tailored into this aspect of a roadway crossing a 15 railroad track, and looking at and studying the 16 profiles. And then, comparing that against different 17 standards that are out there. 18 Q. Okay. So, you've worn your civil engineering hat 19 in this case. What about your accident 20 reconstructionist hat? 21 A. I guess you could say to some extent, except for 22 we know that the tractor-trailer was stopped. We know 23 that the train was traveling, approximately, 46, 45 -- I 24 think 45 or 44 at the time of the impact -- or, 25 actually, let me correct that. That's when he threw on

[4] (Pages 13 to 16)

[Page 17]

[Page 19]

1 the brakes. And so, we know those kinds things. And
2 so, those are not questions, I guess. We -- we know
3 that that's part of this accident, and those have
4 already been pretty well determined. Now, it's just a
5 question of why did he get stuck and how did that come
6 about.

7 Q. Okay. I'm going to get to your opinions very
8 shortly, but would you consider yourself to be an expert
9 in railroad operations?

10 MR. BRANN: Form.

11 A. I guess -- to some degree, I guess. It would be
12 more of the aspects of the crossing issues, from what I
13 have read and studied. It would -- I guess it would
14 depend.

15 Q. (By Mr. Lasswell) Okay. Have you ever been
16 accepted as an expert in, let's say, railroad operating
17 practices? And by that I mean the operations of the
18 trains on the tracks themselves.

19 A. No, and I've never offered opinions with regard
20 to that. No.

21 Q. Okay. Have you ever -- do you consider yourself
22 to be an expert in railroad construction practices or
23 protocols?

24 A. The railroad in and of itself, no.

25 Q. Okay. What about railroad maintenance practices

1 A. -- which would be really just looking for -- like
2 I said, looking for dangers and hazards, such as damage
3 to the road or the track. I've just read those
4 practices, and that's it. And then, I've only
5 concentrated just strictly to the crossing issues.

6 Q. Okay. Have you ever been tested in Federal
7 Railroad Administration regulations or rules that apply
8 to inspections of railroad crossings?

9 A. No.

10 Q. Have you ever been certified to perform an
11 inspection of a railroad crossing?

12 A. No.

13 Q. You've read the rules?

14 A. Yes.

15 Q. That's, essentially, it?

16 A. Correct.

17 Q. Okay. All right.

18 All right. You've brought your file here with
19 you today; is that correct?

20 A. Correct.

21 Q. Just describe for me what you have, if you don't
22 mind.

23 A. I have a main binder which encompasses, I guess,
24 a copy of the correspondence; and I have a copy of the
25 accident report in the second tab. The following tab

[Page 18]

[Page 20]

1 or protocols?

2 A. Again, no. The only thing I'm really familiar
3 with is that the railroad does have personnel that
4 inspects crossings from that standpoint. That would be
5 the only -- the only aspect that I would be considering
6 is that, from that standpoint, there are individuals
7 with regard to the railroad that go out and look at
8 crossings and look for hazards and dangers.

9 Q. And do you consider yourself to be an expert so
10 as you could perform that type of inspection?

11 A. I've read those standards, yes.

12 Q. Okay. But do you feel like that you're qualified
13 to perform that type of inspection?

14 A. Well, if I follow those standards, yes.

15 Q. Okay. Have you ever -- have you ever been
16 accepted by any courts or a judge as an expert in
17 railroad inspection practices?

18 A. No --

19 Q. Okay.

20 A. -- not that I know of.

21 Q. Can you tell me about your background or training
22 in railroad inspection practices?

23 A. Oh, none. I'm only going to be dealing with just
24 the crossing aspect --

25 Q. Okay.

1 would, basically, encompass material that I've received
2 of, I guess, various legal documents. I do know that
3 there is the train speed information, the recording.
4 So, there's a lot of other information in there with
5 regard to, I believe, some medical issues.

6 The next tab would be, effectively, my
7 reconstruction section, which encompasses this part.
8 The next is going to be information on the vehicles.
9 The -- I have another binder, and I apologize for not
10 bringing it; but it's the binder that I have for, like,
11 AASHTO, MUTCD, that kind of stuff; but I think that's
12 pretty standard information.

13 I have another section in which encompasses some
14 additional legal documents that I've received. And
15 then, I broke out the photograph section of that binder
16 into a different one, because it got pretty -- it began
17 to get pretty thick. And then, I have another binder
18 that has the depositions in.

19 Q. Okay. When we take a break, I may thumb through
20 that, if you don't mind.

21 A. Sure.

22 Q. What is your -- what is your fee schedule?

23 A. This will be the fee schedule right here.

24 Q. Okay. We'll mark this as Exhibit No. 1.

25 (Exhibit 1 marked)

[5] (Pages 17 to 20)

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[Page 21] 1 Q. (By Mr. Lasswell) So, you get \$325 an hour for 2 all services? 3 A. Yes, sir. 4 Q. Okay. The same charge for depositions as court 5 testimony? 6 A. That's right. 7 Q. All right. And then, you have varying rates for 8 other people on staff? 9 A. Yes, sir. 10 Q. Who all has worked on this case. 11 A. Well, Sam Estrada is the draftsman. He assisted 12 me with regard to the drawings. I want to say Deborah 13 Krebs did some reading of the depositions. I think 14 that's it. 15 Q. Okay. And do you have bills with you? 16 A. Yes. 17 Q. Okay. May I look at those? 18 A. Sure. 19 Q. Is this current through preparation for the 20 deposition? 21 A. Yes, sir. 22 Q. Okay. And so, as of -- the date of this invoice 23 is October 23rd, 2017 -- you had billed \$4,667.69? 24 A. Yes, sir. 25 Q. Okay. Did you go out to the scene?	[Page 23] 1 correct? 2 A. Well, but there's a problem, sir. If you're 3 going to restrict me from crossing a public crossing, 4 then, how do you -- how are you going to apply that to 5 any other pedestrian? Are you, then, going to be 6 restricting just me? I think that's -- that would be 7 prejudice against me. 8 Q. Is it your understanding that this is a public or 9 a private crossing? 10 A. It is a private. 11 Q. Okay. So, you did not secure permission from any 12 of the landowners to be out there? 13 A. No, sir. 14 Q. And you didn't get permission from the Railroad 15 to be out there? 16 A. No, sir. 17 (Exhibit 2 marked) 18 Q. (By Mr. Lasswell) Okay. Exhibit 2 is your bill, 19 correct? 20 A. That's correct. 21 Q. All right. 22 Okay. Well, tell us what you did out there. 23 A. Again, like I said, I took photographs and did a 24 3D laser scan of the area; and then, did drone aerial 25 photographs.
[Page 22] 1 A. Yes, I did. 2 Q. On September 29th, 2017? 3 A. Yes, sir. 4 Q. Okay. And what did you do out there then? 5 A. Photographed, performed a 3D laser scan of the 6 area. Also, did drone photographs. 7 Q. Okay. I take it, that you did not get Railroad 8 permission to be on the right-of-way; is that correct? 9 A. That would be correct. 10 Q. Okay. Did you get permission from anyone to be 11 out there to do that? 12 A. No, sir. 13 Q. Okay. Is this -- 14 Has anyone else ever questioned you about the 15 importance of obtaining Railroad permission before going 16 out to Railroad property to do these types of things? 17 A. They have talked to me about that; but in that 18 sense I don't agree with that, because Railroad -- in 19 the other situation that that was questioned that was a 20 public crossing. And in that public crossing, I was 21 only on the roadway portion; and I did exactly the same 22 thing in this case -- 23 Q. But you were -- 24 A. -- as if -- 25 Q. -- you were warned not to do that; is that	[Page 24] 1 Q. And what was the purpose of doing that? 2 A. To obtain the information that I needed to be 3 able to perform my analysis. 4 Q. And what analysis did you perform? 5 A. Basically, the 3D laser scan can then be brought 6 into a computer program to generate a topographic map of 7 the scene. 8 Q. And have you done that? 9 A. Yes. 10 Q. And where is that work product? 11 A. That would be in my reconstruction tab. 12 Q. Okay. 13 All right. I don't believe you've -- have you 14 provided that to Mr. Brann? 15 A. I don't believe so. 16 Q. Okay. 17 A. I mean, I've talked to him about it, what my -- 18 what the information was; so, yes. 19 Q. Okay. Well, we may want to depose you, again, 20 after we've had the opportunity to see that. 21 A. Oh, okay. 22 Q. I guess you would understand that. 23 A. Yes. 24 Q. Okay. 25 MR. BRANN: No such agreement.

[6] (Pages 21 to 24)

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[Page 27]

1 Q. (By Mr. Lasswell) Okay. Well, why don't you
2 walk us through what you've done, what programs you've
3 used, those types of things?

4 A. Okay. With regard to the analysis part, again, I
5 use the device called a FARO 3D scanner. They are quite
6 common in the industry, now, today. They are actually
7 much more accurate. They actually gather millions more
8 points than what we used to at a very finite detailed
9 and accuracy of an object or terrain, for example. We,
10 actually, use them for cases in which we're studying
11 roadway geometry to see if the roadway has, I guess,
12 ruts, potholes. And then, we can go in there and
13 actually map that. And then, basically, then, look at
14 the potential of water containment within the ruts and
15 potholes, see how much depth that can -- how that can
16 occur and so on. So, it's a very accurate instrument.

17 Effectively, in this case, it's -- it's set up to
18 shoot points at this particular location. From that, I
19 can bring it back into a standard program called
20 AutoCAD. AutoCAD is used in the industry to, basically,
21 draw things up. It can be used in a 3D sense, also; and
22 that's what I have done. You can bring it into AutoCAD
23 to then develop a topographic map of the area that I'm
24 concentrating on; and then, be able to generate a
25 profile, a profile view of the roadway section.

1 continuation to show that he could perform that. Yes,
2 the trailer would go off on the inside edge, for
3 example, probably run into the grass area and such; but
4 he could do it, let's put it that way.

5 From there, I developed, then, the profile views;
6 and I've actually done this in the sense of the top one
7 here is going to be the profile view of the roadway
8 section. And then, I've compared that against the
9 AASHTO and AREMA specifications of effectively a three-
10 inch drop in 30 feet from the plank, and compared that
11 to what it is, actually. Which this shows that the
12 roadway is actually 2.2 feet below that requirement on
13 the side that is away from the roadway. On the railway
14 side, it's actually 1.86 feet below there. So, this
15 profile is considerably nowhere close to the profile
16 that is recommended by AASHTO and AREMA.

17 And so, then from there, I then modeled the truck
18 and trailer looking at various different positionings;
19 and, basically, performed an analysis. I think this is
20 the last one right here. Which I go through and,
21 basically, determine that the clearance for the bottom
22 of the trailer would have to be 1.57 feet in this case,
23 which means that even 8, 9, 10, 11, 12 inch clearance is
24 going to get stuck on this track. In fact, you,
25 basically, have to get up to 19 inches to clear this

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1 And then, from there, by virtue of then knowing
2 information about the truck and the trailer, its
3 dimensions, sizes and such, then, I'm able to develop
4 the profile of the road. And then, model the truck such
5 that then I can then use that to study the motion of the
6 truck over the track and see, for example, what are the
7 approaches, the grades and such.

8 So, for example, this one right here is an
9 overhead view of the track and the roadway; and, also,
10 the crossing. It, also, shows the one driveway that
11 goes down; and then, the other part of the driveway that
12 goes this way.

13 I've, also, in this case used a program called
14 AutoTURN to model the turning ability of the tractor-
15 trailer to make it over this track. It does go off the
16 edges a little bit, as I've demonstrated. And it does
17 depend on how the truck driver manages his turn, but he
18 can make it over. I'm showing that he can make it over
19 the track and, effectively, stay on the roadway or just
20 barely get off the edges, for example, on his approach;
21 and when he comes off over on this other side. So, I
22 did study that.

23 Although, because he was struck, I don't know
24 exactly how he was going finish his turn out and what he
25 was going to do. So, I just went ahead and modeled a

1 track.

2 Now, I'll put a caveat with that, because that
3 actually is based upon the tractor-trailer going,
4 effectively, perpendicular across the track, or the path
5 in which I'm showing for the center line of the roadway.
6 The issue here is that when the trailer actually tracks,
7 it is not directly behind the tractor in this case; and
8 so, it will off-track. And we know in this case that
9 the edges of the crossing drop down a little bit on each
10 side, and what that's going to do is it's going to lower
11 the wheels just a little bit more. So, technically, you
12 would probably need over 20 inches of clearance to be
13 able to actually clear this crossing with this
14 particular tractor-trailer.

15 And that's what's interesting is that, according
16 to Mr. Haynes, he said he'd set it at, I believe, 18
17 inches. Well, that, also, would probably be correct
18 because of where he got stuck. Because I did an
19 analysis -- this particular one right here, if he were
20 to have --

21 Q. Why don't you identify which one you're pointing
22 to?

23 A. Okay. This would be the drawing that shows the
24 profile views, and it's the second profile from the top.
25 This profile right here shows that, if he were eight or

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[Page 29] 1 nine inches, effectively, he's going to get stuck with a 2 leading edge of the trailer. That's where it's going to 3 get hung up. And so, that's not what we see with regard 4 to the video segment by the train, nor the physical 5 evidence of where the impact occurred on the trailer. 6 So, it's much more consistent that he actually 7 was struck with it more high centered in the middle of 8 the trailer, which then would indicate that he had made 9 it further. So, that would support the issue that the 10 trailer was set at a higher level. 11 Q. Okay. And is this the culmination of your work 12 product? 13 A. Yes. 14 Q. Are you going to do any computer animations, or 15 anything like that? 16 A. I haven't been asked to yet, but could. 17 Q. Okay. Can we mark these? 18 A. Sure. Here's a copy of the -- 19 Q. Okay. 20 A. -- of this one. I don't -- oh, and here is a -- 21 this is an aerial drone image. And then, this is the 22 colorized version of the earlier version of this, but it 23 doesn't have any of the analysis on it. So, if you 24 wanted, I can pull it out; but this has all my analysis 25 and --	[Page 31] 1 Q. All right. What were the inputs? What -- how 2 long was the trailer? 3 A. Well, it's 49 feet; but there is a stinger on it, 4 which adds, roughly, about -- I think it's a little less 5 than five feet to it. And then, let's see, I've -- I 6 guess, I have the dimensions of the trailer right here 7 at the top here. There's specific dimensions. 8 Q. Go ahead and read them into the record, please. 9 A. Okay. Basically, 49 feet; but it's got, 10 effectively -- like I said, the stinger on it is five 11 feet. 12 Q. So, the trailer is 54 feet in length? 13 A. That would be correct. 14 Q. Okay. And then, what are the dimensions of the 15 tractor? 16 A. It's a 13-foot wheelbase. 17 Q. So, from the front bumper top -- well, just tell 18 me this -- 19 A. No, axle to the center of the drive axles in the 20 back is 13 feet. 21 Q. All right. But my question is: How long is it 22 from the front bumper of this -- of the rig to the tail 23 end of the trailer? 24 A. Oh, I don't have that specific measurement 25 dimensioned.
[Page 30] 1 Q. All right. Let's start with this one. 2 A. Okay. 3 Q. Okay? I'm going to mark this as Exhibit No. 3. 4 MR. LASSWELL: Where do you want me to put 5 this? 6 THE COURT REPORTER: Down in the corner is 7 just fine. 8 (Exhibit 3 marked) 9 Q. (By Mr. Lasswell) What's this yellow stuff down 10 here? 11 A. Oh, it's --- I'm sorry. It's just from printing. 12 MR. BOWERSOX: Does anybody mind if he marks 13 it on the back? 14 A. You can mark it on the front. You can mark it 15 right there. That yellow is nothing. I'm sorry. It 16 just came from the copier -- 17 MR. BOWERSOX: That's fine. I'm just trying 18 to help you. 19 A. -- or the printer it just had some remnants. 20 Q. (By Mr. Lasswell) Okay. What is Exhibit No. 3? 21 A. This is the overhead view of the highway, the 22 railroad crossing, and the road. And then, I've done 23 a -- used a program called AutoTURN to simulate the 24 turning ability of this particular tractor-trailer to 25 make this crossing.	[Page 32] 1 I've got 69.7 feet. 2 Q. What -- you said the program is called AutoTURN 3 analysis? 4 A. AutoTURN. 5 Q. AutoTURN? 6 A. Yeah, basically, it's just a program that 7 actually works inside of AutoCAD. It's a company that, 8 basically, designed a package for design of different 9 types of facilities, such as, you can have a business 10 park, you can have a Wal-Mart center, or something like 11 that, where you're going to have different types of 12 tractor-trailers, for example, that will come into and 13 maneuver. With this program, you can enter in 14 properties of a tractor-trailer into it. And then, you 15 can actually go through steering maneuvers of your 16 layout. And then, effectively, you can check and see if 17 a tractor-trailer can make and conduct the turns that 18 you're trying to design, say, a parking lot for, or some 19 type of a facility. 20 Now, it can, also, be used for buses. It can be 21 used for cars. See, there's a wide range of different 22 types of vehicles. And you can actually enter into the 23 information into AutoTURN, specifically, for the 24 particular vehicle that you're dealing with. And that 25 information -- for example, the geometric sizes. And

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1 that's what I've done in this case is determine the
2 geometric size of the tractor and the trailer, inputted
3 that information into AutoTURN; and then, actually, go
4 through and model the turning.

5 Q. What version of the program is it?

6 A. Oh, I don't know right now. It's -- I mean,
7 we're -- we're on a subscription; so, it would be the
8 latest version.

9 Q. Who makes it?

10 A. Oh, gosh. It's a company out of -- are they out
11 of Finland? They have a weird name. I can't remember
12 it. It's -- I'll see if I can try to get that for you.
13 If you'd like for me to, I can call my office and get
14 that.

15 Q. In a minute.

16 A. Sure.

17 Q. Okay. What variables do you have to enter into
18 this program?

19 A. Oh, it's, basically, the geometric size of the
20 vehicle. And the only other information that you would
21 put in is the max steer turn angle of the steering
22 and --

23 Q. And where do you get that information?

24 A. That's documented. It's 34 degrees for the Mack.

25 Q. Okay. And where is that documented?

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1 A. Well, actually, I measured it several times; but
2 you can usually find it in publications.

3 Q. Such as?

4 A. The Diesel Truck Index has it, which -- let's
5 see, I think there's more -- there's other ones, too;
6 but -- I don't see it listed on here. It will give the
7 turning diameter, and you can calculate it from the
8 turning diameter; but it doesn't have it on this
9 particular one. I remember getting the information on
10 this, though.

11 Q. Okay. Well, if it comes to you in a minute --

12 A. Okay.

13 Q. All right. So, is that it, the one we marked?

14 A. Oh, this one?

15 Q. Yeah.

16 Okay. And then, how did you input the
17 measurements, in terms of the length from the roadway to
18 the crossing?

19 A. Oh, those are all measurements from the scans,
20 from the FARO scan.

21 Q. Okay.

22 A. Also, combined with the drone.

23 What we actually do is -- now, what we can do is
24 bring in this image and overlay it on top of this; and
25 draw the road in, also, or anything. So, it's an easy

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1 process to, basically, take the image, superimpose it on
2 top of it.

3 (Exhibit 4 marked)

4 Q. (By Mr. Lasswell) Now, on Exhibit No. 4, again,
5 this yellow marking doesn't have any meaning?

6 A. No, it doesn't. It does not.

7 Q. Okay. What is Exhibit No. 4?

8 A. That's the profile diagrams in which I used to
9 perform my analysis of the crossing.

10 Q. Okay. How do you go about doing that?

11 A. Taking the elevations of those points and,
12 basically, drawing a profile. That's what we do in
13 civil engineering is, if we're interested in a hill,
14 then, we'll take the elevations from the profile or the
15 plan view of it; and then, we can draw a profile.
16 That's what we've done here.

17 Q. Okay. And what program did you use to do that?

18 A. AutoCAD.

19 Q. Same question: Do you know what -- what version
20 or what maker?

21 A. Again, we're on subscription. I'm quite sure
22 it's the latest one.

23 Q. Is this the same weird company from Finland?

24 A. No, it's Autodesk.

25 Q. Autodesk?

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1 A. Yeah, is the company that makes AutoCAD. They,
2 also, have other products that -- but AutoCAD is what we
3 use.

4 Q. And is there a particular name for that program?

5 A. No, it's AutoCAD.

6 Q. Okay.

7 A. It's a -- it's a drafting tool. This is just a
8 printout of that. That's all.

9 Q. All right. Have you actually examined the truck
10 or trailer that was involved in this accident?

11 A. No. No, I tried to; but if I remember correctly,
12 Mr. Brann was telling me that it was -- they sold the
13 truck, or something to that. And then, the trailer was
14 trashed. I don't know. If -- if somebody knows where
15 it's at, I would be, you know, happy to go take a look
16 at it.

17 Q. Okay. I'm shifting gears back to Exhibit 2,
18 which is your bill.

19 Okay?

20 A. Sure.

21 Q. This reflects a telephone conference on
22 August 8th, 2017. I assume that was with Mr. Brann, or
23 someone on his behalf?

24 A. That would be with Mr. Brann, yes.

25 Q. Is that the first time you were contacted in this

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[Page 37] 1 case? 2 A. Yes. 3 Q. Okay. What is it that you recall discussing with 4 Mr. Brann at that time? 5 A. He told me about the accident, was going to send 6 me the police accident report; and that was the 7 substance of the communication. 8 Q. What did he ask you to do? 9 A. To take a look at the accident; and, I think, it 10 was, specifically, to look at the profile of the 11 railroad crossing. 12 Q. Okay. I don't see any -- you've got a lot of 13 materials here, including what I would call discovery 14 responses, depositions, things like that -- 15 A. Yes, sir. 16 Q. -- photographs. I don't see any time on your 17 bill for review of any of those materials. 18 A. It would probably all fall in with regard to 19 engineering and reconstruction. If I'm doing review of 20 the materials, then, it's just going to be engineering 21 and reconstruction. 22 Q. Okay. And you've made one visit to the accident 23 location? 24 A. Specifically, for this case, yes. 25 Q. Okay. Have you been out there on other	[Page 39] 1 A. Probably because I was working on another case 2 somewhere in that area; and so, I divided the time. 3 Q. What is the entry for "Drafting"? It says 4 "Drafting I" and "Drafting II." 5 A. Yeah, that's Sam Estrada. He would be -- for 6 example, when I come back, he will take the FARO data; 7 and then, bring it into the AutoCAD and begin to draw 8 the drawing up from using that data. 9 Q. Okay. And so, have you only had one conference 10 with Mr. Brann? 11 A. No, I want to say there was another one -- 12 Q. Okay. 13 A. -- but it was -- I think it's been since the 14 bill; and I probably -- I probably didn't actually have 15 enough time that I accumulated what I feel comfortable 16 with sending him a bill. 17 Q. Okay. So, the initial telephone call was about 18 15 minutes? 19 A. Yes, sir. 20 Q. Okay. And I may have just asked you this, and I 21 apologize, it just went completely out of my memory 22 bank; but what did he ask you to do? 23 A. To effectively perform the analysis of the 24 profile. 25 Q. Okay. And that was it?
[Page 38] 1 occasions? 2 A. I've driven by there. I was actually -- I worked 3 another accident that was not very far from there, I 4 want to say about a month ago. 5 Q. What kind of accident? 6 A. It was a vehicle/vehicle accident. 7 Q. Okay. So, you spent, approximately, six hours 8 out there on September the 29th, 2017? 9 A. No, two hours. "Scene inspection, FARO Scans and 10 survey," two hours. 11 Q. Okay. You've got -- so, you billed \$500 for 12 using the equipment; is that what you is? 13 A. That's correct. 14 Q. Okay. And what is "Scene Survey Equipment"? 15 A. That would be, in this case, the FARO. 16 Q. Well, you have -- 17 Okay. You have an entry for "FARO Scan 18 Equipment," you have an entry for "Scene Survey 19 Equipment." 20 A. Oh, okay. That would be correct. What I did 21 was, also, shot a survey on this one using the survey 22 instrument in this particular case, too; so, I doubled 23 it up. 24 Q. Okay. You have "travel time (split)," what does 25 that mean?	[Page 40] 1 A. Yes, sir. 2 Q. Okay. He didn't ask you to make, like, a root 3 cause determination, or anything like that? 4 A. He hadn't said that word, no, sir. 5 MR. BRANN: I'm not even sure what that is. 6 Q. (By Mr. Lasswell) He didn't ask you to get to 7 the bottom of this of why it happened, or anything like 8 that? 9 A. Sir, I'm only an engineer; and I present what I 10 can do here. 11 Q. Okay. He didn't ask you to look into his 12 client's conduct? 13 A. No. 14 Q. Okay. 15 All right. And you may have already done this, 16 but just tell me the things that you have done since 17 you've been involved in this case. 18 A. I went to the accident scene. As described, I 19 performed the actions of the inspections, measurements. 20 And then, from there, basically, performed the analysis 21 by virtue of taking those measurements, applying them as 22 I've described. And then, performing an analysis of the 23 tractor-trailer to be able to cross this particular 24 profile. And then, I've, I guess, printed out some 25 drawings and demonstrative evidence to demonstrate that.

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1 Q. I guess we'll go ahead attach this. You've got 2 other copies of this, correct? 3 A. Oh, yes, I can make -- 4 Q. You can make some? 5 A. I can make some at any time, yes. 6 Q. All right. 7 (Exhibit 5 marked) 8 Q. (By Mr. Lasswell) We've marked Exhibit No. 5. 9 Why don't you tell us what Exhibit No. 5 is? 10 A. This is actually -- when you do drone aerial 11 photos, they are usually closer in and smaller. We can 12 actually take another program that combines all of those 13 aerial photographs from a photogrammetric standpoint. 14 And then, by virtue of knowing control points, then we 15 can then scale it correctly to where, now, the roadway 16 is drawn to scale, or anything in there is to the proper 17 scale. 18 And then, we can use that in several different 19 ways; but, primarily, what I just did in this case was 20 to use this information to draw, I guess, the extension 21 of -- let's see the other exhibit. For example, the 22 FARO and the survey, I'm primarily concentrated on this 23 area right in here. But the drone image then I can 24 actually extend the roadway, the railroad, these other 25 roads out further; and have them to a correct scale.	1 feet and above, so far, nobody has said anything about 2 us being required to obtain information -- or permission 3 to do that. 4 Q. So, the answer is, "No," you did not do that? 5 A. No, I did not. 6 Q. Okay. 7 A. My understanding is it's not required. 8 Q. Okay. Have you interviewed the Plaintiff? 9 A. No. 10 Q. You didn't think that was necessary? 11 A. Not at this time. 12 Q. Okay. Are you still doing okay? 13 A. Yes. 14 Q. All right. You haven't prepared a report; is 15 that correct? 16 A. That's correct. 17 Q. All right. Why don't you go ahead and tell us 18 what your opinions are? 19 A. I think I've already said them. Basically, the 20 profile analysis would indicate that the profile of the 21 track is nowhere close to the AASHTO or AREMA guides. 22 That based upon the location of where -- 23 Q. Hang on. 24 A. Okay. 25 Q. I don't want to interrupt your stream of thought,
[Page 42]	[Page 44]
1 Q. Okay. How high did you take photos -- from what 2 elevation did you use the drone to take photographs? 3 A. Oh, multiple. We, typically, do -- or I, 4 typically, do 100 and 150 feet. 5 Q. And -- 6 A. And so, what you do is you take a pass over your 7 area. I use a program called DroneDeploy. DroneDeploy 8 actually you set an area, and it actually guides the 9 drone around shooting photographs. And then, you come 10 back and set a different altitude. And then, that 11 way -- and then, in the process of the program, it then 12 will tie those things together by virtue of the 13 different altitudes, it makes corrections to the 14 photogrammetry of the images to get them in the correct 15 orientation. 16 Q. So, the drone would have necessarily flown over 17 the railroad tracks? 18 A. Yeah, I'm quite sure it traveled over the 19 railroad tracks. 20 Q. And over the private property of the other 21 Defendants? 22 A. Correct. 23 Q. Did you contact the Federal Railroad 24 Administration to seek permission to do this? 25 A. Sir, we don't need to do that, because a hundred	1 but just let me try to keep up here. 2 A. Okay. 3 Q. All right. So, is that -- the first thing I 4 wrote down -- 5 A. Right. 6 Q. -- profile of track is nowhere close to AASHTO 7 and AREMA -- 8 A. That's correct. 9 Q. -- standards? 10 A. Right. 11 Q. Okay. Is that -- that's fair? 12 A. Yes. 13 Q. Okay. Anything else? 14 A. Next, is that based upon where the truck and 15 trailer was stuck, I believe that what Mr. Haynes is 16 saying is correct in the sense that he did raise up the 17 trailer to 18 inches, because that would be about the 18 right height for him to get stuck with the middle of the 19 trailer. 20 Now, one other thing is is that I believe I 21 noticed that Mr. Ruble in this case has come up with 22 that the max height that the trailer can be raised was 23 to, I think, 23 3/4 inches. I agree with that; but 24 what's interesting about that, as I was talking about 25 before, one of my other opinions is, if the trailer is

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1 off-tracking, which it will do in this case, then,
 2 you're going to be in a lower position.
 3 Now, what's interesting about that is is that
 4 there is the potential of this particular roadway
 5 section, the profile section, is that even if he were to
 6 set it at 23 3/4, that he could get hung up. Because I
 7 notice that Mr. Ruble does a -- some sort of a profile,
 8 but I didn't see the data that he referred to how he
 9 came to that conclusion; but he -- it appears that he
 10 does take measurements off of this same surface as I do.
 11 And I guess the point being is is that the
 12 Railroad had come in and put down asphalt on this
 13 particular surface after the accident, and that was
 14 apparently added. So, he and I should have the same
 15 profile; but I don't know that until I actually see his
 16 data that he -- how he accomplished that. But that's
 17 what's interesting is is that, if you take the trailer,
 18 and then actually have it offset, off-track as we call
 19 it, then, the tires actually are traveling through a
 20 lower elevation off to the side. Well, that's what you,
 21 also, need to consider whenever you're designing a
 22 facility, is you have to account for the fact that a
 23 tractor-trailer has to negotiate even turns; and that
 24 would include elevation aspects.
 25 Q. What facility was this designed for?

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1 A. I don't think it was ever designed.
 2 Q. Okay. All right. Anything else? Any other
 3 opinions?
 4 A. I believe that's about it.
 5 Q. Okay. Mr. Brann had disclosed some other
 6 opinions that you were going to provide --
 7 A. Okay.
 8 Q. -- including -- and I'm just going to kind of
 9 just broad brush it here -- including that Mr. Haynes
 10 had complied with all his statutory obligations?
 11 A. I would say that from a driver's standpoint, from
 12 my experience dealing with commercial drivers, it would
 13 be very difficult for him to understand that this is a
 14 problem crossing. Particularly, on the approach that
 15 he's coming from. Because the approach, actually,
 16 what's interesting is it shows, basically, a four
 17 percent slope for part of it and a ten percent slope.
 18 So, that slope looks relatively good. The problem is,
 19 on the other side of the track it drops down,
 20 specifically, right off the bat, effectively, a 14
 21 percent slope.
 22 So, what you have here is is that a driver would
 23 see the approach and look somewhat normal; but then,
 24 once he gets on the other side, it drops off. And so,
 25 from a -- from that standpoint, I can see that it would

1 be very difficult for a driver to understand the problem
 2 with regard to this crossing. And I don't see any
 3 requirement for him to get out and survey the crossing,
 4 and then to now measure and then perform the analysis
 5 that I've done; so, I would agree with that. And so,
 6 from that standpoint, that's -- I would agree.
 7 Q. I think my question is a little bit simpler than
 8 that.
 9 A. Okay.
 10 Q. Are you going to testify that Mr. Haynes complied
 11 with all of his at statutory requirements?
 12 A. I believe so, yes --
 13 Q. Okay.
 14 A. -- from that standpoint.
 15 Q. No qualifications. Did he comply with his
 16 statutory duties, or not?
 17 MR. BRANN: Object to the form. It's
 18 argumentative. It's been asked and answered.
 19 A. Yes.
 20 Q. (By Mr. Lasswell) Did he comply with his duties
 21 and responsibilities under the Federal Motor Carrier
 22 Act?
 23 A. Yes.
 24 Q. Okay. All right. We'll get into that in a few
 25 minutes.

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1 A. Okay.
 2 Q. Mr. Brann, also, said that you were going to
 3 testify that Mr. Haynes acted reasonably in attempting
 4 to get off of his truck -- or get his truck off the
 5 tracks before calling the number posted on the emergency
 6 number sign.
 7 A. Well, I found that's what happening in these
 8 other cases. That will -- that will be a question to
 9 the jury as to whether or not that's appropriate; but
 10 that's what I -- my experience is is that these drivers
 11 do this.
 12 Q. All right. I don't want your experience. Is it
 13 going to be your opinion that his actions were
 14 reasonable in not immediately calling the emergency
 15 number sign -- the number on the emergency number sign?
 16 A. I will base that upon, again, what I find with
 17 regard to other accidents in which this has happened
 18 that's what the drivers do.
 19 Q. So, was it reasonable for him not to do so, or
 20 not?
 21 A. Yes, based upon, again, my experience with other
 22 drivers doing exactly this.
 23 Q. Okay. All right. Then, we'll get into some of
 24 that here in a few minutes.
 25 All right. Now, I guess -- you've mentioned in

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1 Opinion No. 1 that the profile of the track is nowhere 2 close to AASHTO and AREMA standards, correct? 3 A. That's correct. 4 Q. Okay. So, what is AASHTO? 5 A. The American Association of State Highway 6 Transportation Officials. 7 Q. Okay. So, is this a highway? 8 A. No. 9 Q. Okay. So, why is it that -- 10 Is it your opinion that AASHTO applies to this 11 private crossing? 12 A. Well, it -- if it were ever designed, it should 13 be. The problem is it never was designed and built to 14 any kind of a specification. 15 Q. And -- 16 A. As far as this crossing is concerned, I'm just 17 only offering the opinion that it doesn't meet those 18 standards. Subsequently, if it doesn't and it's 19 dangerous, then, there should have been a warning. 20 Q. Okay. We'll get to that in a second. 21 A. Right. 22 Q. Okay. But my question was: Are you going to 23 testify that AASHTO applies to private roadways and 24 private crossings? 25 A. If anybody ever designs something with regard to	1 A. Oh, I have no earthly idea. 2 Q. And so, when were AASHTO guidelines first 3 created? 4 A. Oh, back in the early 1900s, or -- yeah, early 5 1900s. 6 Q. Okay. Now, you mentioned that Texas has -- did 7 you say adopted AASHTO standards? 8 A. To -- yes, they have their standards. There are 9 some changes that they have modified to, yes. 10 Q. For new construction, correct? 11 A. Correct. 12 Q. All right. And can you point or can you cite us 13 any statutes or administrative codes or findings from 14 the Department of Transportation of Texas that say that 15 these standards apply to private railroad crossings? 16 A. No, it's within AASHTO it addresses the issues 17 that a -- even a private roadway can -- those guidelines 18 can be used for that private roadway. So, from the 19 standpoint of -- a private individual can build a road 20 to anything they want, that is true; and I will agree 21 with you. But the problem is is that, if they don't 22 follow some standards, then, they may be missing things, 23 such as this case; and, therefore, creating a hazard. 24 Q. Okay. Is this a private road open to public 25 travel?
[Page 50]	[Page 52]
1 a crossing, then, they need to be following some type of 2 standards, even though it may be even a private road, 3 then, that should apply. Because, again, if you're 4 going to have traffic crossing over a roadway, any kind 5 of a roadway, then, it needs to follow guidelines. 6 Obviously, in this case, it never was designed to any 7 kind of a specification. 8 Q. So, are you saying that AASHTO applies to this 9 private crossing? 10 A. It should have, if somebody were to design it, 11 yes; but the issue is is that nobody has ever designed 12 it, to my knowledge. 13 Q. Okay. When did AASHTO standards or guidelines -- 14 I mean, they are guidelines, correct, they are 15 not standards? 16 A. Well, the states can adopt them as their 17 standards. That's kind of a catch phrase there is that 18 Texas and Louisiana, specifically, have either adopted 19 their standards pretty well and complete, or made some 20 changes that they want to in and of themselves. 21 Q. And the fact is is that AASHTO doesn't apply, 22 except for new construction, correct? 23 A. On design, that is correct. 24 Q. Okay. When was this -- when was this private 25 crossing put in?	1 A. Well, to a certain extent, yes, sir, because you 2 have landowners on the other side. And I would assume 3 that those landowners use it; so -- 4 Q. For their private use? 5 A. Correct. How about guests? 6 Q. I'm going to ask the question, again. Is this a 7 private roadway open for public travel? 8 A. That would be my interpretation, yes, sir. 9 Q. You think that the public, in general, is using 10 that crossing on a regular or routine basis? 11 A. That would be evident by the traffic, yes. 12 Q. So, who's using this crossing, other than the 13 people who use it for access to their property? 14 A. Guests. 15 Q. Okay. 16 A. You have to consider that, not only the people 17 themselves, the owners; but they may very well have 18 guests that could be coming out there. I don't know, 19 specifically, if they do; but I guess that question will 20 be asked. 21 Q. Do you think that that's an intellectually honest 22 description of a private road? 23 MR. BRANN: Objection, form. 24 A. Well, from the standpoint of having landowners on 25 the other side, it is obvious that I think the

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1 landowners of themselves -- and there's multiple -- they 2 have access. 3 Q. (By Mr. Lasswell) So, should -- 4 A. But, also, we do know, for example I believe in 5 the testimony, that this crossing has been used by the 6 landowners using other equipment. So, the only question 7 I would have is is do the landowners allow individuals, 8 i.e. guests, to come to their places. I would assume 9 so, but -- 10 Q. So, you're going to stand up and tell the Judge 11 and jury that this is a public roadway -- or that this 12 is a private roadway open for public traffic? 13 A. From that standpoint, yes. I believe that the 14 landowners use it, that means that they are using it. 15 Q. Okay. Can we agree that it's not a thoroughfare? 16 A. I would agree. 17 Q. Okay. Is the general design of the crossing, is 18 it suitable for the use and the needs of the landowners? 19 A. No, sir. 20 Q. It's not? 21 A. No, sir, because there's actually marks in the 22 asphalt right now in which somebody has scraped across 23 there. So, somebody has driven over there since the 24 accident creating the gouges, which means that they came 25 pretty close to getting stuck.	1 of the agencies. 2 Q. And you believe that's a correct statement of the 3 MUTCD? 4 A. I believe so. 5 Q. What are the agencies? 6 A. Well, in this case, it would be the -- well, that 7 would be a problem in this case, because this is a 8 private -- 9 Q. No, no, I'm asking you about MUTCD. 10 A. Oh, MUTCD. Again, it's the joint responsibility 11 of the agencies that control the intersection. 12 Q. And that does not include the railroad, correct? 13 A. Well -- okay. That will be an argument for 14 the -- for y'all to make. I'm just only stating what 15 MUTCD says. 16 Q. And that's what I'm trying to get to. Is it your 17 testimony that the MUTCD places a joint responsibility 18 on the railroad and the road authorities at a public 19 crossing in determining the warnings? 20 A. It doesn't say the railroad. It says joint 21 responsibility of the people in control of the 22 intersection. 23 Q. In fact, it specifically deletes railroads, 24 correct? 25 A. It doesn't mention railroads, but it says an
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1 Q. What's the purpose of this crossing? 2 A. It's for the private landowners. 3 Q. To give them access to the property? 4 A. Correct. 5 Q. Okay. It's not for the use of the general 6 public? 7 A. Correct, but therein lies the question is, if 8 they are allowing guests to come, also, or other 9 individuals, then, I would say that that would be the 10 general -- that they are guests. 11 Q. Okay. Who has the duty to evaluate the types of 12 warnings needed on a public railroad crossing? 13 A. And that would be the state or whatever 14 governmental agency has control over the roadway. 15 Q. Okay. And what are the railroad's 16 responsibilities with regard to warnings at a public? 17 A. It's a joint responsibility. 18 Q. What's the basis of that statement? 19 A. MUTCD. 20 Q. MUTCD? 21 A. Yes. 22 Q. Okay. What version of MUTCD are you citing? 23 A. I don't have it with me right now. I'm sorry, I 24 meant to bring that part of it, but it's in the MUTCD 25 where it says that crossings are a joint responsibility	1 agency. I don't -- 2 Q. Okay. 3 A. I don't know about the legal aspects of that 4 argument. Y'all will have to make that. 5 Q. Do you think that's an intellectually honest 6 explanation of what the duties and responsibilities of 7 the different agencies are under the MUTCD? 8 MR. BRANN: Objection to form. 9 A. I'm not -- I'm not following your argument, sir. 10 Sorry. Say it again. 11 Q. (By Mr. Lasswell) Okay. What are you doing 12 here? Are you trying to give accurate information, or 13 are you trying to be an advocate for Mr. Brann? 14 A. No, no, no. I'm just -- 15 MR. BRANN: Stop. 16 Objection, form. Argumentative. 17 Don't even answer that. 18 Q. (By Mr. Lasswell) And I don't mean it 19 disrespectfully, but it's a fair question. 20 MR. BRANN: It's very disrespectful. 21 MR. LASSWELL: Okay. Thanks, Scott. 22 Q. (By Mr. Lasswell) It's a fair question. What do 23 you think? 24 A. Well, I'm only telling you what MUTCD says. 25 Okay? And from a standpoint of and in being an

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1 engineer, with regard to the control of a roadway
2 segment, is that there are duties and responsibilities
3 by all parties that have control over it. And from the
4 standpoint the railroad is aware of humped crossing
5 problems, they have programs that have, you know, dealt
6 with this. This is something that the railroad knows
7 about.

8 From my perspective is that, if you have a
9 private crossing, then, you don't have a governmental
10 agency that is in charge. Then, in that case, who's in
11 charge of this crossing. And if the crossing doesn't
12 meet the requirements that would prevent a vehicle from
13 getting stuck that could be following, for example, the
14 guidelines of the nine inches of clearance, then, if
15 they get stuck, then, there's not a warning. The only
16 way to do that in this case would be either the
17 landowners or the railroad.

18 And if the railroad has knowledge of a humped
19 crossing and knows that there is going to be a problem,
20 then, they have the ability to bring that to the State
21 and the State could, in fact, install the signs.

22 MR. LASSWELL: Objection, nonresponsive.

23 Q. (By Mr. Lasswell) Okay. Here is my question --

24 A. You asked me about being intellectually honest,
25 and I just gave you an answer.

1 A. Well, I know what that is; but, there again, that
2 is the question, because the issue is is that -- I'll
3 just put it this way. It's common knowledge that the
4 Railroad comes in and makes changes to a railroad track,
5 and therefore changes the topography; but then, puts the
6 onus back onto the governmental agency to come in and
7 fix it.

8 Q. Okay.

9 MR. LASSWELL: Objection, nonresponsive.

10 Q. (By Mr. Lasswell) What is the Railroad's
11 responsibility with regard to maintenance at a public
12 crossing?

13 A. Effectively -- according to what y'all say, it
14 is, effectively, two feet outside the track.

15 Q. When you say "y'all" --

16 A. I'm saying the Railroad.

17 Q. Isn't that, also, what the State of Texas says?

18 A. Well, I would agree, except for y'all, obviously,
19 put asphalt out way beyond that.

20 Q. So, does the State of Texas require the Railroads
21 to maintain crossings from end of tie to end of tie, or
22 not?

23 A. That is my understanding of what the requirement
24 is.

25 Q. Okay.

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1 Q. Okay. Here's the question --

2 A. Okay.

3 Q. -- who has the duty to evaluate warnings needed
4 on a public crossing?

5 A. On a public crossing, that would be the State or
6 the City or the County, whoever is in control of the
7 road.

8 Q. Okay.

9 A. And, again, I'll say whoever has control of the
10 road.

11 Q. Okay. Who has the duty to install warning signs
12 at a public crossing?

13 A. That would be the State.

14 Q. Okay. Who makes the determination as to the
15 types of warnings needed at a public crossing?

16 A. That would be the State.

17 Q. Okay. Or the County or the City?

18 A. Correct.

19 Q. But it's not the Railroad?

20 A. Correct.

21 Q. Okay.

22 A. But the Railroad can very well go and discuss
23 those issues with those governmental bodies.

24 Q. What is the Railroad's responsibility with regard
25 to maintenance at a public crossing?

1 MR. BRANN: I'll object to the form, because
2 it doesn't specify public or private crossing. Well, a
3 big difference.

4 Q. (By Mr. Lasswell) Okay. What are the standards
5 for maintenance of a private crossing?

6 A. Technically, there are none. But whoever
7 designed it or whoever maintains it should follow the
8 guidelines that are out there.

9 Q. Okay. And those guidelines are AASHTO and AREMA?

10 A. Correct.

11 Q. Anything else?

12 A. That's all I can think of right now.

13 Q. Okay. So, it's your position -- and, obviously,
14 Mr. Brann's -- that because this is not a public
15 crossing, that the Railroad assumes responsibility for
16 everything; signage, warnings, the roadway, the
17 approaches, everything?

18 A. Well, that --

19 MR. BRANN: Object to the form.

20 A. -- that will be for the jury to make up their
21 mind. I'm just presenting the information with regard
22 to what I found on this crossing, that it is a dangerous
23 crossing, No. 1, that the driver was not warned.

24 Q. (By Mr. Lasswell) Okay. What methodologies have
25 you used to conclude that it's the Railroad or the

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1 landowners' responsibility or anyone's responsibility to 2 set up additional warnings there? 3 A. Well, the methodology would be real simple. As 4 an engineer, if I see a problem with regard to, example, 5 this crossing, then, it needs to be warned. If it can't 6 be fixed, it needs -- there needs to be a warning. 7 Q. Okay. What kind of warning needs to be made? 8 A. Well, in this particular case, there needs to be 9 a low clearance. The 10-A sign that's specified in 10 MUTCD about the -- basically, showing the lowboy getting 11 stuck on the track. 12 Q. Okay. And where would that warning be placed? 13 A. Well, you're going to need to place it on the 14 roadway portion in advance. So, you'll need two signs. 15 You need to have one sign that would be, I guess, closer 16 to the town, and the other side for the other traffic. 17 So, you would be effectively giving advanced warning to 18 the tractor-trailer driver from either direction that 19 this crossing, you know, has a low clearance. 20 Q. And that would need to be on the highway in 21 advance of the crossing? 22 A. Correct. 23 Q. On the highway right-of-way? 24 A. Correct -- well, that's what's interesting is is 25 that y'all -- that supposedly --	1 A. No. 2 Q. -- to put out advance warning signs? 3 A. No, because this is a private crossing. 4 Q. Okay. Well, but who places -- who has the 5 exclusive authority to place warning signs next to 6 highways? 7 A. That would be the governmental agency of that 8 roadway. 9 Q. And yet, that's where you said that the highway 10 signs need to be. 11 A. That's the reason why I'm saying is that, if the 12 Railroad knows about the dangerous aspect of this 13 crossing, they can go and discuss this with the State; 14 and then, the State can install those signs. They can 15 make recommendations to the State, as in this case, for 16 the roadway that the roadway can make to the Highway 17 Department to be -- to have these advanced warnings 18 placed. 19 MR. LASSWELL: Objection, nonresponsive. 20 Q. (By Mr. Lasswell) Under the MUTCD, doesn't the 21 State retain exclusive control over the types of 22 warnings that go in the right-of-way? 23 A. In its right-of-ways, yes. 24 Q. Okay. And they make the decisions as to the 25 types of warnings that go there?
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1 Okay. I'll just point this out. This is real 2 interesting. The -- from the edge of the road to the 3 center line of the track is 63.56 feet. The right-of- 4 way is 50 feet of the railroad. So, that leaves 13 5 feet -- 13 1/2 feet. Basically, typically, a lot of 6 highway signs are put right in that zone. Because you 7 don't want them right adjacent to a railway section 8 because they can easily be hit, but they can be put 9 right in that particular location. 10 I'm just pointing that out is is, in a technical 11 sense, you could put it right there on right-of-way. 12 Q. Okay. 13 MR. LASSWELL: Objection, nonresponsive. 14 Q. (By Mr. Lasswell) The question is: These 15 advanced warning signs need to be placed next to the 16 right-of-way -- or next to the highway in the highway 17 right-of-way in advance of the crossing? 18 A. Yes, sir. 19 Q. Okay. And is that permissible? 20 A. Well, yes, sir, they are put out there. 21 Q. Who puts them there? 22 A. That would be the governmental agency over the 23 road. 24 Q. Okay. So, you believe it was the State's 25 responsibility, since this was a State highway --	1 A. But that doesn't prevent somebody from going and 2 making suggestions. 3 Q. Okay. Who should make suggestions? 4 A. Well, in this case, the Railroad, I believe. 5 Q. And what should they -- and what suggestions 6 should they have made? 7 A. That advance warning of a low clearance issue be 8 placed. 9 Q. And what was their notice? What types of 10 conditions did they have that low clearance warning 11 signs needed to be placed? 12 A. There was a previous hang-up there -- 13 Q. Okay. 14 A. -- in 2010. 15 Q. How many? One? 16 A. There was the one, yes. 17 Q. And what happened there? 18 A. A vehicle was stuck on the tracks. 19 Q. How do you know that? 20 A. A vehicle or a trailer. That's what it says. 21 Q. Show me. 22 MR. BRANN: Do you want to take a break so 23 he can find it? 24 MR. LASSWELL: Sure. 25 (Recess from 2:24 p.m. to 2:40 p.m.)

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1 (Exhibit 6 marked) 2 Q. (By Mr. Lasswell) All right. We've taken a 3 break, and I'm going to try and reconstruct where we 4 are. I guess I was asking you what -- in so many words, 5 what notice did the Railroad have that low profile 6 vehicles or low clearance vehicles were using this 7 private roadway, private crossing out near Dayton, 8 Texas. 9 Do you recall the question? 10 A. Yes. 11 Q. Okay. And you responded that another vehicle had 12 gotten stuck on the crossing, correct? 13 A. Correct. 14 Q. And I asked you to show me a reference where 15 another vehicle had been stuck on the crossing. 16 A. Yes, and that would be the 2010. It would be 17 July the 1st, 2010. It does say "reported a semi truck 18 hauling a house was stalled on the track." And the 19 issue is is whether he was stalled with the truck, that 20 is unclear. I will agree with that. 21 Q. But what the language says is "stalled on the 22 track," correct? 23 A. Correct. 24 Q. All right. So, we've had a prior incident when a 25 vehicle was stalled on the track, correct?	1 or the other. 2 Q. So, this would be the first? You believe that 3 this -- 4 A. No, I don't know one way or the other, sir. I 5 just stated that there could be, I just don't know of 6 any right now. 7 Q. And you -- 8 A. I haven't taken that observation to make that 9 determination. 10 Q. Okay. But you've driven down this highway many 11 times, correct? You said you'd driven to another 12 accident location in this area. 13 A. Correct. 14 Q. You've driven down hundreds of miles of highways 15 that parallel railroad tracks, correct? 16 A. Correct, but I don't know if those are public 17 crossings or private crossings. In fact, if you go over 18 to 39, the section along Highway 39, you see these signs 19 routinely. I will have to double-check and see if any 20 of those are private; but I'm almost thinking they are, 21 because there are some crossings there that are gravel 22 that go to private property on the other side. 23 Q. But how -- 24 A. Now, I'll just have to double-check. You're 25 asking me if I recall some. The only issue is is
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1 A. Correct. 2 Q. All right. So, what other incidents do you know 3 of of any lowboys or 18-wheelers or any other vehicle 4 being stalled or high-centered at this particular 5 private crossing prior to September 13th of 2013? 6 A. None. Not -- 7 Q. So -- 8 A. Not that I have been provided with. 9 Q. So, what notice did the Railroad have that a 10 lowboy trailer was going to be coming out there this 11 day? 12 A. None. 13 Q. Okay. So, is it your testimony that every 14 private crossing in the State of Texas should be 15 designed so that every lowboy trailer can drive across 16 it? 17 A. Yes, or, if not, then, they need to be warned. 18 Q. Okay. Can you -- 19 By the way, this high clearance sign that you say 20 should be placed along the highway in advance of the 21 private crossing, correct? 22 A. Correct. 23 Q. Are you aware of any private crossing in Texas 24 that has such a high clearance sign? 25 A. Not that I can think of, but I'm not sure one way	1 whether or not those crossings that there are private, 2 or not. I just don't recall off the top of my head. 3 Q. Okay. So, again, getting back to the question. 4 Can you identify any private crossing in the State of 5 Texas that has a high clearance sign? 6 A. At this -- 7 Q. I mean, a low clearance warning sign. 8 A. There are low clearance -- I will say that I have 9 seen low clearance crossing signs at a crossing on 10 Highway 39 in which the roadway is a gravel road 11 crossing the railroad track going to private landowners' 12 property on the other side. Yes, that's on 39. 13 Q. Where is that? 14 A. That's on 39. Basically, from Madison -- you can 15 go from Madisonville -- it's on the west side of 16 Madisonville, go 39 North. 39 goes all the way up to 17 Jewett, and it goes beyond that. 18 Q. Okay. So, somewhere on Highway 39 north of 19 Madisonville, Texas, you believe that there are low -- 20 or, I'm sorry. 21 A. There are bunch of low clearance signs all along 22 that route. Now, the only -- as I said, the only 23 question is are they private crossings, or not. I do 24 not know. I do know that on those crossings that are 25 across there, that they are gravel crossings going to

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1 private landowners on the other side. And I don't
 2 believe that -- that that is a -- a routine road that's
 3 used, such as a State route, is my -- from just off of
 4 memory of driving down through there. Now, that comes
 5 to mind. Now, there could be more. I don't know.
 6 Q. Okay. All right. So, if there are these warning
 7 signs at a private crossing along Highway 39 north of
 8 Madisonville, Texas, who put them there?
 9 A. The State.
 10 Q. The State put up those signs?
 11 A. Yes.
 12 Q. Okay. How do you know that?
 13 A. They are the ones who put them up.
 14 Q. Next to the highways, right?
 15 A. Correct.
 16 Q. And they have exclusive decisions as to which
 17 signs go up next to the highways?
 18 A. Well, not exactly. And I'll point to a section
 19 of MUTCD that, basically, says, (Reading), The use of
 20 standard devices, systems, practices of highway rail
 21 grade crossings in the guidance portion of the
 22 appropriate traffic control systems to be used at a
 23 highway rail grade crossing should be determined by an
 24 engineer study involving both the highway agency and the
 25 railroad company.

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1 Q. What version is that?
 2 A. This will be the 2009 edition.
 3 Q. Is that the current version?
 4 A. No, sir.
 5 Q. And, in fact, that's been taken out of the
 6 current version, correct?
 7 A. Oh, it really has been, huh? I don't know that.
 8 I would have to double-check that.
 9 Q. You wouldn't want to put false information out
 10 before the jury, would you?
 11 A. Well, sir, there's information here that says
 12 that they did; and at one point in time the Railroad
 13 company was.
 14 Q. And that's not the current version, is it?
 15 A. I don't --
 16 Q. And --
 17 A. I would have to go -- I would have to go check
 18 the current version to see.
 19 Q. And the Railroad no longer has that
 20 responsibility, do they?
 21 A. Wow, they don't. Okay. Sure.
 22 Q. You're the expert. You should know this.
 23 A. Well, that's interesting to me that they are no
 24 longer now, you know, have a duty --
 25 Q. Involved in that?

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1 A. Right. That's interesting to me.
 2 Q. Okay. Do you have a duty to tell the truth?
 3 A. Yes.
 4 Q. All right. And you're not just being an advocate
 5 for Mr. Brann or his client?
 6 A. No, we get back into the same situation, which is
 7 that, if somebody goes in there and effectively makes
 8 changes to a roadway --
 9 Q. That's not my question.
 10 A. I understand.
 11 MR. BRANN: Let him answer. You can object
 12 later. Quit cutting him off.
 13 Q. (By Mr. Lasswell) Go ahead.
 14 A. Again, this roadway was not appropriate; and,
 15 therefore, it should have been warned.
 16 MR. LASSWELL: Objection, nonresponsive.
 17 A. The Highway Department or the other agencies are
 18 not involved in this crossing. It's a private crossing.
 19 MR. LASSWELL: Objection, nonresponsive.
 20 Q. (By Mr. Lasswell) Is it your responsibility or
 21 duty to provide truthful testimony, or to act as an
 22 advocate on behalf of Mr. Brann and his client?
 23 MR. BRANN: Object to the form.
 24 A. I'm here to provide truthful testimony with
 25 regard to a licensed professional engineer in the State

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1 of Texas.
 2 Q. (By Mr. Lasswell) Okay.
 3 A. And in so doing, my ethics is that, if I see a
 4 dangerous situation, then, I need to address it. I am
 5 looking at a dangerous situation right here.
 6 Q. Is that crossing dangerous to the people who use
 7 it on a daily basis?
 8 A. It can be, yes, sir, because, again, for example,
 9 we know that there is gouges in the crossing that exists
 10 right now. They very well could have been operating
 11 other vehicles across this, and they could have almost
 12 have gotten stuck or they may very well have gotten
 13 stuck and been able to get the equipment or trailer or
 14 whatever off of it before there was an incident.
 15 Q. So, do you have any knowledge of the types of
 16 vehicles that use this crossing on a daily basis?
 17 A. No, sir, alls I can comment on is I found
 18 scarring on the pavement.
 19 Q. And are you aware of any complaints by the people
 20 who use this crossing on a daily basis?
 21 A. No, sir.
 22 Q. Okay. How many 18-wheelers have crossed this
 23 crossing?
 24 A. I do not know.
 25 Q. How many lowboys have crossed this crossing?

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1 A. I do not know.
 2 Q. All right. We've already been through AASHTO.
 3 You mentioned AREMA. Is AREMA applicable to all
 4 crossings?
 5 A. Again, it's the standard that's out there, or a
 6 manual that's out there that people can use --
 7 engineers -- that can use in the design and construction
 8 of a crossing.
 9 Q. In fact, they are called guidelines, correct?
 10 A. Correct.
 11 Q. Not standards?
 12 A. Correct. Again, if you adopt them, then, they
 13 become standards.
 14 Q. And they apply to new construction only?
 15 A. That's correct.
 16 Q. And in the forward of AREMA they specifically
 17 state that existing crossings are not to be considered
 18 dangerous just because they don't comply with those
 19 guidelines?
 20 A. That is correct.
 21 Q. And the same language is in AASHTO, correct?
 22 A. Exactly, yeah.
 23 Q. They say that existing crossings and roadways
 24 don't have to comply with AASHTO's standards, don't
 25 they?

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1 A. That is correct.
 2 Q. All right. And, in fact, they are not standards
 3 or guidelines, correct?
 4 A. Correct, unless they are adopted.
 5 Q. And by their saying self-limiting language, they
 6 are describing themselves as guidelines, correct?
 7 A. That's correct.
 8 Q. All right. Now, does this crossing require any
 9 other types of warnings?
 10 A. That's all that I can think of at this point.
 11 You need to place advance warning for the low clearance.
 12 Q. All right.
 13 MR. BRANN: I guess, do you mean other than
 14 what was already there, in addition? We have the stop
 15 sign cross-bucks on it.
 16 THE WITNESS: Yeah.
 17 MR. BRANN: Object to the form.
 18 Q. (By Mr. Lasswell) What percentage of crossings,
 19 either public or private in the State of Texas, do you
 20 think comply with current AASHTO guidelines?
 21 A. I don't know.
 22 Q. Do you think it would be greater than 50 percent,
 23 or less than 50 percent?
 24 A. I don't know.
 25 Q. Okay. What percentage of private crossings in

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1 Texas do you think comply with current AASHTO
 2 guidelines?
 3 A. I don't know.
 4 Q. Do you think it would be a pretty high number or
 5 a pretty low number?
 6 A. Again, I don't know. I am unaware of any kind of
 7 a study to make that determination of either one of
 8 those crossing types.
 9 Q. And I guess I think I know the answer to this,
 10 but is it your position that AASHTO applies to private
 11 roadways not open to public use?
 12 A. It can be used. I've already stated that, that
 13 it is a manual that even private individuals who want to
 14 build a facility, for example, they can use AASHTO as
 15 their methodology. An engineer who wants to design a
 16 facility, let's say on the other side of a railroad
 17 track, where would they go to to find the material or,
 18 that is, the design methodologies which would be
 19 applied. Well, AASHTO is that manual.
 20 Q. So, these little dirt ruts that the different
 21 families have used over here, do you think that those
 22 were designed according to some type of engineering
 23 standard, or do you think they're just --
 24 A. We've already discussed that, sir, it's never
 25 been designed. I will agree with that.

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1 Q. Okay. And what facility is across this crossing?
 2 A. They are private pieces of property.
 3 Q. Okay. Is there any --
 4 A. But what I'm -- when you were asking me about
 5 that, about the uses of the manual?
 6 Q. No, I'm asking about the use of this crossing.
 7 A. I'm just talking about, in general, when we're
 8 talking about the purpose of even a private crossing, if
 9 I were an engineer on a project designing something on
 10 the other side of a railroad track, and that wasn't even
 11 a private crossing, I would still go to AASHTO and say
 12 this is the methodology that I'm going to apply.
 13 Q. Okay. If my directions are correct -- I'm
 14 looking at Exhibit No. 5 -- I believe that north is
 15 down, generally, and south is up. Okay?
 16 A. Hang on.
 17 Q. I think this roadway, generally, runs east/west.
 18 A. No.
 19 Q. How am I wrong?
 20 A. That's a compass right there. The road at this
 21 location is pretty much north and south --
 22 Q. Okay.
 23 A. -- at this location.
 24 Q. So, let's don't go about it that way. Let's talk
 25 about the properties accessed by use of this crossing.

[19] (Pages 73 to 76)

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1 A. Okay. 2 Q. What facilities are over there? 3 A. Again, private land. 4 Q. Okay. So, if a private landowner wants access to 5 his property, what type of crossing does he need 6 designed for him? 7 A. It all depends on what he wants to have over 8 there. 9 Q. What if -- 10 A. I mean, he may very well decide to put in a 11 chicken facility that we -- that happens out in the 12 country quite a bit. Therefore, if you design -- if you 13 now install that, you have to have access for tractor- 14 trailers to be able to get in and out of there. 15 Q. So, you're talking about a changed use over 16 there, correct? 17 A. Correct. 18 Q. It's suitable for the current use? 19 A. Correct. 20 Q. Okay. With the current warnings? 21 A. I'm not following you there, sir. What -- 22 Q. Sure. 23 You're talking about the design of this crossing 24 and the private roadway that these people use to get to 25 their property. The warnings there are sufficient,	1 people that are unfamiliar. In fact, that's the 2 guidance within MUTCD. The whole purpose is of 3 standardization of signage is for somebody who is 4 unfamiliar. I'm quite sure if Mr. Haynes would have 5 been familiar with the crossing, he probably wouldn't 6 have made it -- made the attempt. 7 Q. So, in a typical accident reconstruction 8 situation, wouldn't an objective accident 9 reconstructionist evaluate driver conduct? 10 A. Yes. 11 Q. But you haven't done that in this case? 12 A. Well, I have to a certain extent, in the sense of 13 addressing issues that Mr. Brann asked me to address, 14 which is him effectively doing what he decided. 15 Q. Well, did Mr. Brann ask you to evaluate whether 16 or not his client complied with the law? 17 A. And as best I've been able to tell, he has -- 18 Q. Okay. 19 A. -- because I address the issue of the nine 20 inches. 21 Q. Did Mr. Haynes do anything wrong? 22 A. Not that I can think of. 23 Q. Okay. And you're an expert in accident 24 reconstruction? 25 A. Correct.
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1 aren't they? 2 A. It all depends on what kind of equipment is going 3 across there. If they are familiar with the crossing 4 them and of themselves, then, they would know that they 5 can't make it across there. That's the reason why, for 6 example -- 7 Q. Who can't make it across? 8 A. Mr. Jenkins was -- I believe it's Mr. Jenkins is 9 the one who says that they, typically, stop on the other 10 side of the track at the -- on the roadside and drive 11 the equipment across. 12 Q. Okay. That was Mr. Jansen? 13 A. Yeah, Mr. Jansen. 14 Q. Okay. But did Mr. Jansen say that the crossing 15 was suitable for his use? 16 A. I don't know. 17 Q. Okay. Has anybody said that the crossing was 18 unsuitable for their use? 19 A. I -- I don't know that, sir. 20 Q. Has anyone said that the existing warnings are 21 unsuitable for the current purpose? 22 A. Not to my knowledge, but that -- you don't -- 23 Q. That's the same thing as you, right? 24 A. -- but you don't put warnings for people that 25 already know about the systems. You put warnings for	1 Q. And you've held yourself out as an expert in the 2 duties and obligations of a commercial truck driver? 3 A. Yes. 4 Q. And you can't conclude that Mr. Haynes did 5 anything wrong? 6 A. No, based upon my analysis. 7 Q. Okay. Did Mr. Haynes have any duty or 8 responsibility to check out his route in advance? 9 A. Yes. 10 Q. Okay. Did he do that? 11 A. As far as him driving, yes. They don't have a 12 duty and obligation to go and pre-drive the roadway, no. 13 Q. Did he have the duty and obligation to ascertain, 14 before he attempted to drive over that crossing, that he 15 could safely clear and cross that crossing? 16 A. No. 17 Q. Okay. 18 A. That's not in the regulations. 19 Q. It's not? 20 A. No. 21 Q. Okay. What regulations are you referring to? 22 A. I don't -- you'll have to pull those out for me, 23 sir, specifically. 24 Q. Okay. Did Mr. Haynes have the duty and 25 obligation to wear a seat belt at all times he was

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1 trying to operate the truck?
 2 A. Yes, his -- if he -- when he's driving, yes.
 3 Q. No, when he's operating, when he's behind the
 4 wheel operating the truck, is he supposed to?
 5 A. Well, "operating" defined as what? Because
 6 sometimes you can't have your seat belt on.
 7 Q. Okay. Tell me if Mr. Haynes complied with this:
 8 (Reading), No driver of a commercial vehicle shall drive
 9 onto a highway rail grade crossing without having
 10 sufficient space to drive completely through the
 11 crossing without stopping.
 12 Did he comply with that, or not?
 13 MR. BRANN: Object to the form.
 14 A. I believe he did, because if it weren't for the
 15 fact that --
 16 Q. (By Mr. Lasswell) He got stuck, didn't he?
 17 A. He got stuck --
 18 MR. BRANN: Hey --
 19 Q. (By Mr. Lasswell) Okay.
 20 MR. BRANN: -- I object to, again --
 21 Q. (By Mr. Lasswell) Is stuck the same as --
 22 MR. BRANN: Mr. Lasswell, you're better than
 23 this. Quit interrupting and laughing.
 24 A. No.
 25 Q. (By Mr. Lasswell) Stuck is not the same --

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1 Okay. Did he determine if he could drive across
 2 the crossing with sufficient space to completely go
 3 through without stopping?
 4 A. That was his interpretation, yes.
 5 Q. But did he actually do that?
 6 A. He can do that visually. Drivers are not
 7 required to stop at every single crossing and to get out
 8 and measure it and do the analysis that you are
 9 suggesting that they do, because they don't have the
 10 ability. They don't know, or do they have a FARO
 11 scanner. That's what you're requiring the drivers to
 12 do. I don't think that's -- well, I've never seen one
 13 done.
 14 Q. Did Mr. Haynes have the obligation to use common
 15 sense as he came up to this crossing?
 16 A. Yes.
 17 MR. BRANN: Object to the form.
 18 Q. (By Mr. Lasswell) Did he have the duty and
 19 responsibility to make sure that he could get across it
 20 safely with his vehicle so he didn't endanger the train
 21 crew?
 22 MR. BRANN: Object to the form.
 23 A. To his best abilities, yes, sir.
 24 Q. (By Mr. Lasswell) Okay.
 25 A. And, therefore, you get back to the same thing.

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1 He is not a licensed professional civil engineer. And
 2 so, therefore, that's the reason why you have to warn
 3 people of this situation.
 4 Q. Did Mr. Haynes comply with Transportation Code
 5 Section 545.427, (Reading), An operator may not drive on
 6 or cross a railroad grade crossing unless the vehicle
 7 being operated has sufficient undercarriage clearance?
 8 A. Which is the nine inches. And the answer to the
 9 question is is "yes."
 10 Q. I'll let you read it. Can you point out where it
 11 says nine inches?
 12 A. Well, that's where y'all referred to. The issue
 13 here is is that for him to abide by this, then, it needs
 14 to be appropriately designed and constructed.
 15 Q. Mr. Adamson, I'm reading the statute there. Does
 16 it say that, if he's got nine inches, he can just drive
 17 anywhere he wants to?
 18 A. That's, basically, what the statute says with
 19 regard to the nine inches.
 20 Q. Is that what that section says that, if you've
 21 got nine inches of clearance, you can just drive over
 22 any railroad crossing you want to?
 23 MR. BRANN: Object to the form.
 24 A. No, sir, it does not.
 25 Q. (By Mr. Lasswell) It says make sure you have

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1 sufficient undercarriage clearance, doesn't it?
 2 A. Correct.
 3 Q. He didn't do that, did he?
 4 A. Well, yes, he did.
 5 Q. Oh, okay.
 6 A. Because he measured it --
 7 Q. If he did it --
 8 A. -- he measured it to be 18 inches. His
 9 understanding is is that he should be able to make
 10 his -- he can now traverse roadways. Again, what you're
 11 requiring is by that law, if you want to state exactly,
 12 is that the driver is now going to have to get out of
 13 his tractor-trailer. He's going to have to now survey
 14 the crossing. He's now going to have to go get an
 15 AutoCAD program; and, now, he's going to have to go
 16 generate a profile. And, now, he's going to have to go
 17 and do detailed measurements of his tractor and trailer
 18 so that he can now evaluate that he can actually cross
 19 this crossing.
 20 Q. Okay.
 21 A. I don't think --
 22 Q. And you think that's what it takes to comply with
 23 Texas Transportation Code Section 545.427, which
 24 requires that an operator may not drive or cross a
 25 railroad grade crossing unless the vehicle being

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[Page 85] 1 operated has sufficient undercarriage clearance? 2 MR. BRANN: Object to the form. 3 A. Yes, sir. 4 Q. (By Mr. Lasswell) You think that that's what 5 every driver should do is carry surveying equipment with 6 them? 7 A. No, that's what you're stating they should do. 8 Q. I haven't said that. You said that. 9 A. No, but if you're going to comply with that law, 10 then, if somebody uses common sense and they can't make 11 that determination that it's clear, then, oh, by the 12 way, we don't need MUTCD. 13 Q. What was Mr. Haynes' responsibility, as he drove 14 this lowboy trailer? Can he tell that the railroad 15 tracks are higher than the roadway that he came from? 16 A. Yes, I would assume that he can; but the problem 17 is is that there's a drop-off on the other side. 18 Q. And shouldn't he make the determination before he 19 attempts to drive across that crossing as to whether 20 there's a drop-off on the other side? 21 A. How can he -- well, he can; but he's doing it by 22 visual means, and he has determined by his own common 23 sense that he can make it. 24 Q. How high was he sitting up in the air in the 25 driver's seat?	[Page 87] 1 Q. (By Mr. Lasswell) Where does it say to the best 2 of his abilities? 3 A. Again, we have to use common sense, I think you 4 said earlier. 5 Q. Okay. Now, when he got stuck on the track, he 6 was stopped on the track, correct? 7 A. He was stuck on this track. 8 Q. Isn't that at a stop? 9 MR. BRANN: Object to the form. 10 A. He's stopped, but he's stopped because he's 11 stuck. 12 Q. (By Mr. Lasswell) And that's prohibited, isn't 13 it, by Section 545.302? 14 MR. BRANN: Object to the form. 15 A. I don't see that being the same, sir. 16 Q. (By Mr. Lasswell) Okay. 17 A. Stopped would imply that he had the choice. 18 Being stuck was not his choice. 19 Q. Did he have the duty to confirm that his trailer 20 was appropriate for the trip? 21 A. Yes. 22 Q. And did he do so? 23 A. Yes. 24 Q. Then, why did he get stuck? 25 A. Because somebody didn't warn him about the humped
[Page 86] 1 A. Approximately, 7 1/2 -- his eye height is going 2 to be about 7 1/2 feet. 3 Q. So, could he see over there to see that there was 4 a drop-off on the other side, if he had stopped at the 5 stop sign? 6 MR. BRANN: Object to the form. 7 A. He could see that there's a grade over there, but 8 he doesn't know how to make that determination that that 9 is now going to cause him to be stuck on the track. 10 Q. (By Mr. Lasswell) He's supposed to stop at the 11 stop sign, correct? 12 A. Yes. 13 Q. Can't he get out and take a few steps and look 14 over and say, "Hey, that's a tight turn over there, and 15 that's a pretty good drop-off"? 16 A. Sir, he could get -- he could do that. But maybe 17 he did that from his tractor, and says, "Oh, no, I can 18 make that." 19 Q. He was wrong, wasn't he? 20 A. Now, we know that. 21 Q. Okay. So, you know, this Transportation Code 22 Section 545.427, it places the duty on the operator, 23 correct, that's Mr. Haynes? 24 MR. BRANN: Form. 25 A. Correct, to the best of his abilities.	[Page 88] 1 crossing. 2 Q. Okay. What methodology and what training and 3 background do you have to make these statements? Aren't 4 you just being an advocate? 5 A. No, no, I'm an engineer. See, you don't 6 understand, as an engineer, we have to look at things, 7 we have to design things, we have standards that 8 engineers have to follow. 9 Q. And what standard -- 10 A. That's the reason why we have AASHTO. That's the 11 reason why we have AREMA. That's the reason why we have 12 MUTCD. And MUTCD is a very good example of a manual 13 that is out there to assist people in warning them of 14 hazards. 15 Q. Tell me this -- 16 A. Sure. 17 Q. -- what duties does Mr. Haynes have as the driver 18 of a commercial vehicle? 19 MR. BRANN: Object to form. It's been asked 20 and answered multiple times. 21 A. He has his duties that are spelled out with 22 regard to, in this case, I believe it would be the 23 Texas -- the Texas Motor Carrier safety regulations that 24 he follows; but in and of that, there has to be a common 25 sense side of that, too.

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1 Q. (By Mr. Lasswell) So, if you say, "Hey, I was
2 using my common sense, I intended to comply; but, hey,
3 my truck got stuck," you can get out of that?
4 A. That happens.
5 Q. No, no. Is that compliance with the law?
6 A. Well, if he --
7 MR. BRANN: Object to form. He's not here
8 as a legal expert.
9 Q. (By Mr. Lasswell) Go ahead and answer.
10 A. If he is driving up and using his own experience
11 with regard to his evaluation of this crossing, and
12 there is no requirement that I have seen with regard to
13 the commercial motor vehicle regulations that it
14 requires him to get out and measure this crossing, then,
15 he has to use what he has available, which is his own
16 abilities to recognize this situation. And if he --
17 Q. Did he have --
18 A. I'm trying to finish answering your question,
19 sir.
20 Q. Go ahead.
21 A. And if he makes that determination and if he gets
22 stuck, then, this simply is the failure to warn.
23 Q. Did he have the ability to get out of his truck,
24 walk across and assess the crossing?
25 A. He has that ability; but -- but assessing the

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1 crossing, I -- no, I don't think so.
2 Q. Okay. Now, did he have the responsibility, once
3 he became stuck on the track, to contact the Railroad by
4 calling the emergency number?
5 A. There is that part of it, yes. There is --
6 Q. He should have done that immediately, right?
7 A. He has that option, yes, sir.
8 Q. It's not an option, it's what he should have done
9 immediately, correct?
10 MR. BRANN: Object to the form.
11 A. Yes, sir, that is available for him to be able to
12 do that.
13 Q. (By Mr. Lasswell) Did you testify in the Davis
14 versus UP case that the driver should have contacted
15 that number immediately when he got caught -- when he
16 got caught up?
17 A. Yes.
18 Q. So, why shouldn't Mr. Haynes do the same thing?
19 A. Well, he didn't. He should have, but he didn't.
20 MR. BRANN: Actually, that's not what he
21 testified to in the case. He testified it was up to the
22 driver to best utilize his time; and if thought he could
23 get off the track, to get off the track to prevent any
24 damage to anyone. That's what he testified to in that
25 case.

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1 MR. LASSWELL: We'll see. We'll see.
2 Q. (By Mr. Lasswell) Okay. Now, what would have
3 happened if he called that number immediately?
4 A. I don't know.
5 Q. You didn't read Mr. Jarrett's deposition?
6 A. I'm sorry. Whose?
7 Q. Mr. Jarrett's deposition.
8 A. Well, if he would have called them immediately,
9 it goes to a dispatch is my understanding; and,
10 therefore, that has to be related. It all depends on
11 how much time he is actually there. Now, we do
12 understand that Mr. Haynes has given an estimate of the
13 amount of time. But we know that so far it takes,
14 roughly, three minutes or more to even get in touch with
15 the train. So, therefore, if this was a matter of three
16 minutes, then, calling and contacting and doing that
17 wouldn't have made any difference.
18 Q. Is that the most significant thing that you can
19 remember out of Mr. Jarrett's deposition?
20 A. No.
21 Q. What is?
22 A. Well, I don't remember, specifically, at this
23 point in time everything that was said, no.
24 Q. Okay. Do you recall that the first thing that a
25 person is told, when they call that number, is to get

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1 away from the crossing and get away from their vehicle?
2 A. Yes, sir.
3 Q. Okay. If Mr. Haynes had complied -- if he had
4 done that, if he had done what he supposed to, called
5 the number, gotten those instructions, he wouldn't have
6 been injured, would he?
7 MR. BRANN: Object to the form.
8 A. I don't know, sir. Probably not, if he would
9 have followed those specific instructions, I would agree
10 with you, sir.
11 Q. (By Mr. Lasswell) Did you read the deposition of
12 Paul Rathgeber?
13 A. No.
14 Q. Okay.
15 MR. BRANN: I've been remiss in getting him
16 some stuff.
17 Q. (By Mr. Lasswell) You looked over some of the
18 work that Mr. Ruble has done, correct?
19 A. I received some diagrams and some photographs,
20 but that's all.
21 Q. And any criticism of Mr. Ruble's diagrams or
22 analysis?
23 A. Well, I questioned how he did his diagrams; and
24 the reason why I'm saying that is is that the only thing
25 I picked up so far is a four foot level. I don't see a

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1 survey, I don't see a scan. So, I don't know his
 2 accuracy with regard to the topography of the crossing.
 3 It doesn't appear to agree with mine.
 4 Q. What doesn't agree?
 5 A. The topography or the profile.
 6 Q. Based on your -- you called it a turn analysis,
 7 correct?
 8 A. Yes.
 9 Q. Could Mr. Haynes have made the turn onto that
 10 road without knocking over the warning sign on the
 11 opposite side?
 12 A. You know, I didn't evaluate that yet. No, I do
 13 not know. There again -- no, I don't know that.
 14 Q. Do you agree that truck drivers must follow the
 15 law and take responsibility for doing so?
 16 MR. BRANN: Object to form.
 17 Don't answer the question. It's too broad
 18 and open.
 19 Q. (By Mr. Lasswell) You've got to answer.
 20 MR. BRANN: No, you don't.
 21 MR. LASSWELL: Come on, Scott.
 22 Q. (By Mr. Lasswell) Can you answer the question?
 23 MR. BRANN: Get the Court to instruct him to
 24 answer that. He's not going to. It's too broad and
 25 wide open. It can be abused. Don't answer it.

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1 Q. (By Mr. Lasswell) Are you not going to answer?
 2 We're going to come back.
 3 A. Sir, I don't know what to do. Y'all argue.
 4 That's up to y'all two.
 5 MR. BRANN: Object to the form of the
 6 question. It's improper.
 7 Q. (By Mr. Lasswell) Are you going to answer, or
 8 not?
 9 A. I'm sorry, that's between y'all two.
 10 Q. So, you're not going to answer the question?
 11 A. I guess so, sir.
 12 MR. LASSWELL: Does anybody else want to
 13 question for a little bit?
 14 MR. McKENDREE: I've got just a couple.
 15 MR. BOWERSOX: I've got a few.
 16 MR. BRANN: This is Jay McKendree. He's a
 17 really nice guy. He represents one of the landowners.
 18 The --
 19 MR. McKENDREE: The Jansens.
 20 MR. BRANN: -- Jansens.
 21 (3:12 p.m.)
 22 EXAMINATION
 23 BY MR. McKENDREE:
 24 Q. When you went out and did your survey, the
 25 roadway or the condition of the railroad crossing was

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1 not the same as it was on the day of the accident; is
 2 that correct?
 3 A. Yes, sir.
 4 Q. And so, the profile that you came up with is what
 5 it currently looks like, not what it looked like the day
 6 it happened?
 7 A. That would be correct.
 8 Q. So, how do your drawings and the -- if you do a
 9 computer animation, how do they help the jury understand
 10 what happened on the day of the accident?
 11 A. Well, we -- alls I can comment is is, more likely
 12 than not, the approach has been -- the slopes have been
 13 lessened, by virtue of adding the asphalt. And they,
 14 typically, try to blend it out such that it actually
 15 makes the approach less severe. So, therefore, more
 16 likely than not, the approach was more severe, that is,
 17 the slopes were even greater at the time at which the
 18 accident occurs. Because usually, if you're going to,
 19 then, subsequently keep the same grade, then, what
 20 you'll want to do is, then, subsequently dig out the
 21 existing surface to now fill back in your asphalt.
 22 For example, if you're going to put in two inches
 23 of asphalt on a gravel roadway; and if you're going to
 24 try to keep the same elevations or the same slopes,
 25 those kinds of things, then, what you're going to do is

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1 you going to remove the material that you plan on then
 2 subsequently adding back.
 3 In this case, I don't believe the Railroad or the
 4 contractor who did the work, whoever it may have been,
 5 did that at all. I think, basically, what they did was
 6 is by virtue of changing from the wooden ties to the
 7 concrete planks that are now there, typically, what that
 8 does is that it then widens the section out for the two
 9 foot section outside the rails. And what it does is it
 10 actually creates a higher point further out. So, then,
 11 now, you've got to blend in your asphalt up to that
 12 point, which is now steeper. Because the points on the
 13 planks are steel rimmed; and, therefore, they are hard;
 14 and so, you can't round them off. So, what they do is
 15 is they bring in the asphalt to blend it in. And so,
 16 they just lay it up on top.
 17 Q. So, if the slopes were more severe at the time of
 18 the accident, wouldn't it have been easier for
 19 Mr. Haynes to see that the slopes were more severe?
 20 A. Yes, sir.
 21 MR. McKENDREE: Pass the witness.
 22 (3:15 p.m.)
 23 EXAMINATION
 24 BY MR. BOWERSOX:
 25 Q. You mentioned the term "guest" in relation to the

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1 landowners. Define what you mean by "guest."
 2 A. Well, I mean, it's obvious anybody has guests to
 3 their houses, to their farms through whatever. So, you
 4 could be dealing with anybody that the person knows,
 5 relatives, anybody who is going to drive there. I would
 6 assume that that would be a common situation with regard
 7 to three landowners that have land there, that there
 8 would be guests.

9 Q. Okay. And by guests, you mean someone that's
 10 invited?

11 A. Correct.

12 Q. Or gave a standing invitation to, such as family?

13 A. Correct.

14 Q. You talked a little bit about Motor Carrier
 15 Safety Regulations today.

16 A. Correct.

17 Q. As far as Texas Motor Carrier Safety Regulations,
 18 where did you get your training into those?

19 A. That would be through two different classes that
 20 I've taken.

21 Q. Okay.

22 A. One of those would be a commercial vehicle
 23 investigation accident reconstruction class. We dealt
 24 with Federal Motor Carrier Safety Regulations in that
 25 we're taught about those. Also, a J. J. Keller class.

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1 Q. Okay. The first one you mentioned, where was
 2 that done?

3 A. Texas A&M.

4 Q. Who taught it?

5 A. Rusty Hite -- no, excuse me, Dave Stopper.

6 Q. David Stopper out of Virginia?

7 A. Yes.

8 Q. When did you take David's class?

9 A. '98.

10 Q. And the other one was a J. J. Keller class?

11 A. That's correct.

12 Q. When was that?

13 A. I'd have to go back. It's on my list, on my CV.
 14 It's been a few years.

15 Q. You mentioned -- and if I misunderstood this, you
 16 know, correct me -- but you said an engineer has a duty
 17 to address dangerous situations?

18 A. Yes, sir.

19 Q. What do you mean by that?

20 A. Well, we, also, have a duty to protect the
 21 public. Okay? And that really stems from the fact
 22 that, okay, if we design something and construct
 23 something, then, it has to follow, for example,
 24 standards or some type of codes. A lot of times, for
 25 example, when we build buildings, we use building codes.

1 The building codes give us guidance as far as how to do
 2 things. You'll have codes, though, for different
 3 regions of the country. Okay? And so, therefore, when
 4 you're going to go build something, you'll go access a
 5 code or a standard, something in which, then, we'll say
 6 this is going to be your loadings, this is going to be
 7 your roadway design. So, there's different things which
 8 we access as engineers to make sure that we design a
 9 roadway in accordance with those specifications so that
 10 they are safe.

11 Q. And so, you're talking about when we're building
 12 something?

13 A. Correct, but that, also, can address the issue
 14 with regard to me finding out a problem and addressing
 15 the issue. And, therefore, by virtue of me seeing
 16 something that's dangerous, then, bringing that forward
 17 and saying, "This is dangerous, something needs to be
 18 done, it needs to be warned."

19 Q. So, if you were driving around in your personal
 20 time, and you found an intersection that you felt was
 21 dangerously designed, you believe you have an obligation
 22 as an engineer to call whoever it may be, City, County,
 23 State, Federal government and say, "Hey, I don't know
 24 who designed this; but this is dangerous"?

25 A. Yes, sir, if that were -- I can tell you that a

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1 lot of times it's real hard to simply drive around and
 2 do what you're talking about. What happens is is, for
 3 example, as I stated before, I work for the State of
 4 Texas and the State of Louisiana quite a bit in roadway
 5 issues. And what we do is we go out there and do the
 6 survey work or the measurements, for example, to then go
 7 back in and look at how is it with regard to its current
 8 condition to see, first of all, we're comparing
 9 maintenance standards. Okay? But we also go back in
 10 and look at the construction and the design to see if
 11 they did follow the standards.

12 And, yes, I've actually been involved in cases in
 13 which I have found that they didn't follow -- that the
 14 construction didn't meet either the documents; and so,
 15 therefore, we found a discrepancy. Usually designs are
 16 pretty good, and I think there's only one instance that
 17 I can think of in which I had a disagreement on design;
 18 but the rest are, typically, that the construction
 19 doesn't follow design.

20 Q. Maybe I'm not understanding what you meant, then.
 21 Because I took it as that, if you saw something
 22 dangerous, you had an obligation to report it.

23 A. Yes.

24 Q. Okay. In this instance, have you reported to
 25 anyone, other than in this room, that you believe that

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1 the crossing that we're talking about is a dangerous 2 crossing and needs to have warning signs? 3 A. Not yet, no, sir. 4 Q. Who would you call and tell? 5 A. Well, that would be -- I guess you would have to 6 contact the Railroad. 7 Q. Okay. And if you wanted warning signs, as you 8 told this gentleman earlier, you'd have to put them on 9 the road? 10 A. Correct. 11 Q. In other words, you would have to notify the 12 State, as well? 13 A. Correct. But the State in this case is not 14 responsible for the crossing, because it is private. 15 So, from that standpoint, it would be the crossing 16 person -- the people that are responsible for the 17 crossing. 18 Q. And who did you find to be responsible for the 19 crossing? 20 A. Well, typically, in these situations, the 21 landowner doesn't have, again, the knowledge, background 22 and experience with regard to engineering principles. 23 So, they don't know that this is a dangerous crossing. 24 There is another party here that does have the talent 25 and abilities, and that would be the Railroad.	1 A. No, sir. 2 Q. Okay. Did you look and see if anyone had a 3 right-of-way to the property? 4 A. No, sir. 5 Q. Okay. You were talking earlier about 50 feet. 6 A. Either side, yes -- 7 Q. Either side. 8 A. -- of the center line. 9 Q. Is that Railroad property? 10 A. That's my understanding. 11 Q. Okay. And did the truck getting stuck in there, 12 did that occur within the 50 feet on either side? 13 A. Yes, sir. 14 Q. Thank you. 15 MR. BOWERSOX: Pass the witness. 16 (3:22 p.m.) 17 EXAMINATION 18 BY MR. McKENDREE: 19 Q. Do you have any criticisms of the Jansens? 20 A. No, sir. 21 MR. McKENDREE: Pass the witness. 22 (3:22 p.m.) 23 EXAMINATION 24 BY MS. JORDAN: 25 Q. Do you have any criticisms of the other
[Page 102]	[Page 104]
1 Q. Let's talk about my client, Ms. McMichael. Did 2 you read her depo? 3 A. Yes. 4 Q. Okay. She uses it to drive -- when she lived 5 there, she would drive across the crossing, go to her 6 driveway, go to her house. 7 A. Correct. 8 Q. Is that the kind of person that's going to have 9 any knowledge of whether or not that crossing did not 10 meet the standards you've listed? 11 A. No, sir. 12 Q. Would you criticize her for not knowing that? 13 A. Not unless she has a civil engineering degree -- 14 Q. I'll tell you she doesn't. 15 A. -- and I don't believe she does. 16 Q. Do you have any criticism of Ms. McMichael, as 17 far as what happened in this accident? 18 A. Not that I can think of. 19 Q. The crossing itself, did you determine who owned 20 it? 21 A. No, sir. I think that's an argument -- I believe 22 that's a legal argument for y'all. I don't get into 23 that. 24 Q. I was wondering if you went and looked at the 25 deed records.	1 landowner, Burnett Forestry? 2 MR. BRANN: Maybe you wait until we depose 3 them. 4 A. Not at this time. 5 (3:22 p.m.) 6 EXAMINATION 7 BY MR. LASSWELL: 8 Q. Which part of the trailer got stuck on the 9 crossing? 10 A. It appears to be the midpoint. Approximately, 11 the midpoint. We'd have to go off of what it shows in 12 the video, which there's a snapshot of that; and it 13 shows it to be approximately in the midpoint of the 14 trailer. 15 (Exhibit 7 marked) 16 Q. (By Mr. Lasswell) I'll show you what's been 17 marked as Exhibit No. 7. What's Exhibit No. 7? 18 A. That would be a frame capture from the video of 19 the train and the trailer across the tracks. 20 Q. Okay. So, where does it appear to be? 21 A. It's about midpoint. 22 Q. Okay. And can you tell how high the clearance 23 point is for the trailer at that point? How high it's 24 been raised? 25 MR. BRANN: Object to the form.

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[Page 105] 1 A. It's touching the ground. 2 Q. (By Mr. Lasswell) Okay. But can you tell 3 whether it's been raised from anything but below a 4 minimal setting? 5 A. No, sir, I can't say that, because I can't see 6 this area over there. 7 Q. Okay. 8 All right. Let's go through -- 9 MR. BRANN: I'm going to object to the form 10 of the last question, too. 11 MR. LASSWELL: What's your objection? 12 MR. BRANN: It's misleading. I don't know 13 what you mean by minimal setting you said he can tell. 14 Q. (By Mr. Lasswell) What's on these disks? 15 A. Okay. This is the photographs that I took. 16 These are going to be the photographs I took at scene 17 level. This is the FARO scan data. Okay? Understand 18 that this data -- you can bring it into the FARO scene 19 software program; and then, process it to be -- bring it 20 into AutoCAD. Okay? So, basically, this is the data. 21 If somebody else wants to read that information -- and 22 there are other programs that can read the information, 23 too -- to, then, generate the topography, that's on 24 here. So, that data is on there. This is the CD that 25 has the aerials. Okay?	[Page 107] 1 Q. (By Mr. Lasswell) Okay. Real quick, we're back 2 on the record. We've marked another exhibit as No. 8. 3 What is that? 4 A. This is a trial and deposition testimony list. 5 Q. Okay. 6 All right. So, what I'd like to do is mark as 7 Exhibit No. 9 -- do you have these numbered, these 8 notebooks? 9 A. No, sir. 10 Q. Okay. 11 A. They are labeled. This is my main binder, 12 depositions, photographs. 13 Q. All right. We'll just -- we'll do Exhibit 9 will 14 be the main binder, including the disks, please. 15 Exhibit No. 10 will be the depositions. Exhibit No. 11 16 will be the photographs. 17 THE COURT REPORTER: What about the thumb 18 drive? 19 Q. (By Mr. Lasswell) Did you print out the thumb 20 drive? 21 A. Yes, that's all in there. 22 MR. LASSWELL: No, that's all right. 23 Okay. I'm done. 24 (Exhibits 9 through 11 marked) 25 (Time: 3:31 p.m.)
[Page 106] 1 Q. What's that? 2 A. I think this is just an e-mail from Scott about 3 trying to set up a deposition that I received from him. 4 Q. Who went out to the site with you? 5 A. Nobody. 6 Q. You went by yourself? 7 A. Yes. 8 Q. Did you tell Mr. Brann you were going out there? 9 A. Yes. 10 Q. Before? Beforehand? 11 A. Yes. 12 Q. Okay. What else have you got? 13 A. I think this is just the Notice. After that is 14 going to be correspondence. 15 Q. What's on that drive? 16 A. I believe this will be a flash drive containing 17 pleadings, discovery, crash report, photographs. 18 Q. Let me glance through your correspondence real 19 quick. 20 A. Sure. 21 Q. Do you want to take a break? 22 A. No, I'll just -- well, yes, that would be fine. 23 Q. Okay. I'm not going to take very long. 24 (Recess from 3:25 p.m. to 3:30 p.m.) 25 (Exhibit 8 marked)	[Page 108] 1 CHANGES AND SIGNATURE 2 WITNESS NAME: KELLEY ADAMSON 3 DATE OF DEPOSITION: JULY 17, 2018 4 PAGE LINE CHANGE REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____

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[Page 109] 1 I, KELLEY ADAMSON, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above. 4 5 _____ 6 KELLEY ADAMSON 7 8 9 10 THE STATE OF _____) 11 COUNTY OF _____) 12 13 Before me, _____, on this day 14 personally appeared KELLEY ADAMSON, known to me or 15 proved to me under oath of _____ or 16 through _____ (description of identity 17 card or other document) to be the person whose name is 18 subscribed to the foregoing instrument and acknowledged 19 to me that they executed the same for the purposes and 20 consideration therein expressed. 21 22 Given under my hand and seal of office this 23 _____ day of _____, _____. 24 25 _____ NOTARY PUBLIC IN AND FOR THE STATE OF _____	[Page 111] 1 That the amount of time used by each party 2 at the deposition is as follows: 3 Mr. Lasswell -- 1 hour, 50 minutes 4 Mr. McKendree -- 4 minutes 5 Mr. Bowersox -- 7 minutes 6 Ms. Jordan -- 1 minute 7 8 That pursuant to information given to the 9 deposition officer at the time said testimony was taken, 10 the following includes counsel for all parties of 11 record: 12 13 FOR THE PLAINTIFF: 14 Brann Sullivan Trial Lawyers 15 602 Sawyer Street, Suite 700 16 Houston, Texas 77007 17 Phone: 713.278.7425 18 Fax: 713.510.1883 19 Email: scott@bstrial.com 20 By: Scott R. Brann 21 Ronald E. Braswell 22 Attorney-at-Law 23 4544 Post Oak Place, Suite 350 24 Houston, Texas 77027 25 26 FOR THE DEFENDANTS, UNION PACIFIC RAILROAD 27 COMPANY, RUFUS W. RICHMOND, JR. AND CLYDE D. 28 WILLIAM A/K/A CLYDE D. WILLIAMS, JR.: 29 McLeod, Alexander, Powel & Apffel, P.C. 30 802 Rosenberg - P.O. Box 629 31 Galveston, Texas 77553 32 Phone: 409.763.2481 33 Fax: 409.762.1155 34 Email: brlsswell@mapalaw.com 35 By: Bryan R. Lasswell TB# 00784450
[Page 110] 1 CAUSE NO. 2015-53909 2 LEE ROY HAYNES) IN THE DISTRICT COURT 3) 4 VS.) 5) 6 UNION PACIFIC RAILROAD) 7 COMPANY, RUFUS W. RICHMOND,) 8 JR., CLYDE D. WILLIAM A/K/A) HARRIS COUNTY, T E X A S 9 CLYDE D. WILLIAMS, JR.,) 10 BURNETT FORESTRY LLC, STEVE) 11 McMICHAEL, WINDY McMICHAEL,) 12 GAYLA JANSEN, JEREMY JANSEN) 13 AND JARED JANSEN) 189TH JUDICIAL DISTRICT 14 15 REPORTER'S CERTIFICATION 16 DEPOSITION OF KELLEY ADAMSON 17 July 17, 2018 18 19 I, Dickie Zimmer, Certified Shorthand 20 Reporter in and for the State of Texas, hereby certify 21 to the following: 22 That the witness, KELLEY ADAMSON, was duly 23 sworn by the officer and that the transcript of the oral 24 deposition is a true record of the testimony given by 25 the witness; 26 That the deposition transcript was submitted 27 on _____ to the witness or to the attorney for 28 the witness for examination, signature and return to me 29 by _____.	[Page 112] 1 FOR THE DEFENDANT, BURNETT FORESTRY LLC: 2 Galloway, Johnson, Tompkins, Burr & Smith 3 1301 McKinney Street, Suite 1400 4 Houston, Texas 77010 5 Phone: 713.599.0700 6 Fax: 713.599.0777 7 Email: mjordan@gallowaylawfirm.com 8 By: McKenzie Jordan 9 10 FOR THE DEFENDANTS, STEVE McMICHAEL AND 11 WINDY McMICHAEL: 12 Hope & Causey, P.C. 13 815 West Davis, Suite 300 14 Conroe, Texas 77301 15 Phone: 936.441.4673 16 Fax: 936.441.4674 17 Email: hcdocket@hope-causey.com 18 By: W. Timothy Bowersox 19 20 FOR THE DEFENDANTS, GAYLA JANSEN, JEREMY 21 JANSEN AND JARED JANSEN: 22 Fanaff & Baldwin 23 P.O. Box 258829 24 Oklahoma City, Oklahoma 73125 25 Phone: 281.496.3140 26 Email: jay.mckendree@farmersinsurance.com 27 By: Jay A. McKendree 28 29 I further certify that I am neither counsel 30 for, related to, nor employed by any of the parties or 31 attorneys in the action in which this proceeding was 32 taken, and further that I am not financially or 33 otherwise interested in the outcome of the action. 34 Further certification requirements pursuant 35 to Rule 203 TRCP will be certified after they have 36 occurred.

[Page 113]

Certified to by me this 26th day of July,
2018.





Dickie Zimmer, Texas CSR
Expiration Date: December 31, 2019
Firm Registration No. 150
O'Neal*Probst*Wells
P.O. Box 60769
Houston, Texas 77205
713.521.1314

[Page 114]

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned
to the deposition officer on _____;

If returned, the attached Changes and
Signature page contains any changes and the reasons
therefor;

If returned, the original deposition was
delivered to Bryan R. Lasswell, for the Defendant, Union
Pacific Railroad Company, Custodial Attorney,
TB# 00784450;

That \$ _____ is the deposition
officer's charges to the Defendant, Union Pacific
Railroad Company, for preparing the original deposition
transcript and any copies of exhibits;

That the deposition was delivered in
accordance with Rule 203.3, and that a copy of this
certificate was served on all parties shown herein on
and filed with the Clerk.

Certified to by me this _____ day of
_____, _____.

Dickie Zimmer, Texas CSR 1954
Expiration Date: December 31, 2019
Firm Registration No. 150
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P.O. Box 60769
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