

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

CITY OF OZARK, a municipal corporation	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	CIVIL ACTION NO: 2:14-cv-02196-TLB
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	

**UNION PACIFIC RAILROAD COMPANY'S
MOTION FOR SUMMARY JUDGMENT.**

For its Motion for Summary Judgment, by and through its attorneys, Friday, Eldredge & Clark, LLP, Union Pacific Railroad Company ("Union Pacific") states:

1. The City of Ozark, Arkansas has brought this claim against Union Pacific requesting damages for conversion, that a former crossing be re-installed, that the former crossing be declared a public crossing, and for condemnation.
2. The Complaint should be dismissed for the following reasons: (1) the claims are preempted by federal law; (2) because the City has waited 13 years after the removal of the crossing to file this lawsuit, the City is barred by the doctrine of laches from now bringing these claims; (3) the City's request that Union Pacific remove the crossing constitutes a waiver of any claim by the City; (4) the City is estopped from now requesting that Union Pacific re-install the crossing; and (5) the condemnation action should be dismissed because the City lacks the authority to condemn the property at issue.
3. Union Pacific adopts and incorporates herein its Memorandum of Law in Support of this Motion, which is filed contemporaneously herewith.

4. Union Pacific adopts and incorporates herein the following attached exhibits:

1. McNutt Deposition
2. Huston Affidavit 1
3. Key Deposition
4. McDaniel Deposition
5. Sneath Deposition
6. Canady Deposition
7. Trotter Deposition
8. Milam Deposition
9. K. Smith Deposition
10. Rule 30(b)(6) Notice and Response
11. Rinker Affidavit
12. Brooks Deposition
13. Ruck Deposition
14. Barr Affidavit
15. Chart of Crossing Use Testimony
16. Timmerman Deposition
17. Felkins Affidavit
18. Gilmer Deposition
19. Edgin Deposition
20. Corps Letter
21. Jones Deposition
22. Trail Concept
23. Case of *Arkansas State Highway Comm'n v. UPRR*, Case No. 06-2010 (W.D. Ark. 2007)
24. Case of *Arkansas State Highway Comm'n v. Arkansas Midland Railroad Company*, 6:09-cv-06033 (E.D. Ark. 2009)
25. Huston Affidavit 2
26. Wolf Affidavit
27. Case of *City of Siloam Springs, Ark. v. Kan. City S. Ry. Co.*, 12-5140 (W.D. Ark. Sept. 10, 2012)
28. Case of *City of North Little Rock v. Union Pacific Railroad Company*, 4:10cv01689 (E.D. Ark. April 21, 2011)
29. Kifer Affidavit
30. FRA Report
31. Sneath Letter
32. Anderson Deposition
33. R. Johnson Deposition
34. Mason Deposition
35. Michael Helmert Deposition
36. Alston Deposition
37. Stacy Deposition
38. T. Johnson Deposition
39. D. Johnson Deposition
40. Reeves Deposition
41. Barbara Bearden Deposition

42. Pickartz Deposition
43. J. Bearden Deposition
44. Hill Deposition
45. Maxey Helmert Deposition
46. Allred Deposition
47. Randolph Deposition
48. Bill Bearden Deposition
49. M. Chrisman Deposition
50. D. Whitson Deposition
51. Brown Deposition
52. Wilson Deposition
53. E. Whitson Deposition
54. Turner Deposition
55. R. Chrisman Deposition
56. Joe Powell Deposition
57. P. Smith Deposition
58. Janet Powell Deposition
59. Mann Deposition
60. Watson Deposition
61. G. McClellan Deposition
62. Birchler Deposition
63. Outlaw Deposition
64. R. McClellan Deposition
65. Brockett Deposition
66. Bond Deposition
67. Brooks Deposition
68. M. Post Deposition
69. A. Post Deposition

WHEREFORE, premises considered, Union Pacific Railroad Company respectfully requests that the Complaint be dismissed in full, for its attorneys' fees and costs, and for all other relief to which it is entitled.

Respectfully submitted,

Scott H. Tucker, AR 87176
Joseph P. McKay, AR 99006
Jamie Huffman Jones, AR 2003125
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue
Suite 2000
Little Rock, Arkansas 72201-3522
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Facsimile: 501-244-5340
tucker@fridayfirm.com
jmckay@fridayfirm.com
jjones@fridayfirm.com

*Attorneys for Defendant, Union Pacific
Railroad Company*

By: /s/ Jamie Huffman Jones
Jamie Huffman Jones

CERTIFICATE OF SERVICE

I, Jamie Huffman Jones, hereby certify that the foregoing pleading was filed with the Clerk of Court using the CM/ECF Filing System on this 29th day of April, 2015, and said Clerk shall serve an electronic copy of same upon the following counsel of record:

Christopher D. Brockett
Sayre & Brockett
401 West Commercial Street
Ozark, AR 72949
cbrockett@bslawarkansas.com

/s/ Jamie Huffman Jones
Jamie Huffman Jones

**FRIDAY | ELDREDGE
& CLARK** LLP

Jamie Huffman Jones | Attorney
Direct: (501) 370-1430
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400 West Capitol Avenue
Suite 2000
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January 23, 2015

Christopher D. Brockett
Sayre & Brockett
401 W. Commercial Street
Ozark, AR 72949

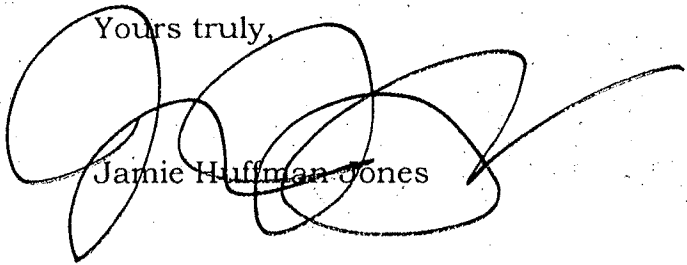
Re: Notice of Rule 30(b)(6) Deposition and Subpoena Duces Tecum

Dear Mr. Brockett:

Attached is the Notice of Rule 30(b)(6) Deposition and Subpoena Duces Tecum. There are 13 categories noticed. Because I assume you will have multiple deponents for these categories, I have noticed it for two days (February 26-27) beginning at 9:00 am. If I am wrong or there is an issue, please just let me know:

Yours truly,

Jamie Huffman Jones



JHJ:akt

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

CITY OF OZARK, a municipal corporation)

Plaintiff,)

vs.)

UNION PACIFIC RAILROAD COMPANY,)
ARKANSAS STATE HIGHWAY)
COMMISSION, as Governing Body of the)
ARKANSAS STATE HIGHWAY AND)
TRANSPORTATION DEPARTMENT,)

CIVIL ACTION NO: 2:14-cv-02196-TLB

Defendants.

NOTICE OF 30(B)(6) DEPOSITION AND SUBPOENA DUCES TECUM

TO: Christopher D. Brockett
Sayre & Brockett
401 West Commercial Street
Ozark, AR 72949
cbrockett@bslawarkansas.com

NOTICE IS HEREBY GIVEN that Union Pacific Railroad Company will conduct the video taped deposition of a corporate designee of the City of Ozark, pursuant to Rule 30(b) (6) of the Federal Rules of Civil Procedure before a duly certified court reporter. The deposition will commence at 9:00 A.M. on February 26-27, 2015 at the office of Sayre & Brockett, Attorneys at Law, West Commercial Street, Ozark, Arkansas 72949. The corporate designee of the City of Ozark shall be prepared to give testimony as the corporate representative and be the person most knowledgeable on the following subjects:

1. The design, location, specifications, current status, and planned usage of the walking trail and/or floating dock, which is the subject matter of this lawsuit;

2. The details and current existence of the letter read by former Mayor Timmerman as described by Mayor McNutt at the council meeting reflected in the attached Exhibit 1;
3. The details of the meeting described by Mayor McNutt at the council meeting reflected in the transcript attached as Exhibit 1 hereto whereby former Mayor Timmerman read a letter from Union Pacific regarding the crossing at issue;
4. The construction (or pouring) of the concrete/asphalt curb cut at the location that the City now requests that a crossing be installed;
5. The construction (or pouring) of the concrete curb and asphalt for the street that parallels the tracks at or near the previous location of Oliver Street;
6. The identification of previous location of Oliver Street and the history of its use;
7. The placement of an "Oliver Street" street sign within the last two years at the location that the City now requests that a crossing be installed;
8. The placement and/or existence of the original street sign at the location that the City now requests that a crossing be installed;
9. Any funds expended by the City for the purpose of maintaining "Oliver Street" since 1975;
10. The existence of any recorded plat purporting to dedicate "Oliver Street" for a public use;
11. The existence of an ordinance accepting a recording plat dedicating "Oliver Street" for a public use;
12. The existence of any recorded easement or other instrument giving the City the right to cross Union Pacific's right of way at the requested crossing; and
13. The details of how this lawsuit has been funded by the City, including from what fund Attorney Brockett has been paid.

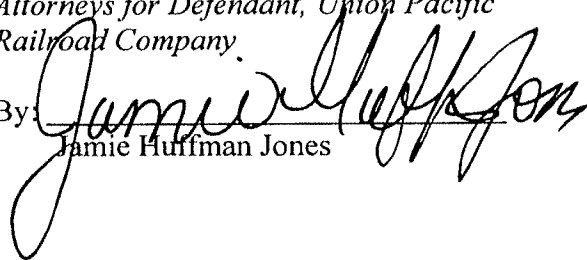
The Deponent is required to bring to the deposition the items referenced in Exhibit A attached hereto.

Respectfully submitted,

Scott H. Tucker, AR 87176
Joseph P. McKay, AR 99006
Jamie Huffman Jones, AR 2003125
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*Attorneys for Defendant, Union Pacific
Railroad Company.*

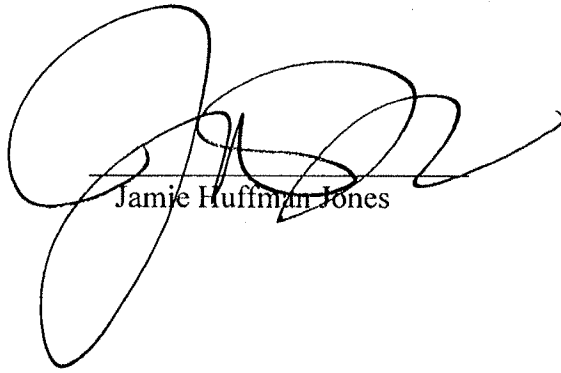
By:


Jamie Huffman Jones

CERTIFICATE OF SERVICE

I, Jamie Huffman Jones, hereby certify that a true and correct copy of the foregoing was served U.S. Mail, postage prepaid, upon the following counsel of record on the 23rd day of January, 2015 and emailed to the same.

Christopher D. Brockett
Sayre & Brockett
401 West Commercial Street
Ozark, AR 72949
cbrockett@bslawarkansas.com



Jamie Huffman Jones

Exhibit A

Any and all documents reflecting items 1-13 of the noticed categories for the Rule 30(b)(6) deposition.

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

CITY OF OZARK, a municipal corporation	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	CIVIL ACTION NO: 2014-CV-02196-TLB
ARKANSAS STATE HIGHWAY	)	
COMMISSION, as Governing Body of the	)	
ARKANSAS STATE HIGHWAY AND	)	
TRANSPORTATION DEPARTMENT,	)	
	)	
Defendants.	)	

CITY OF OZARK'S RULE 30(B)(6) DISCLOSURES

For its Rule 30(B)(6) disclosures, the Plaintiff, City of Ozark, states as follows:

1. The design, location, specifications, current status, and planned usage of the walking trail and/or floating dock, which is the subject matter of this lawsuit:

- a) Sandy Key;
- b) Terry Burrell, AIA, 614 Center St., Little Rock, Arkansas 72201, (501) 376-3676;
- c) Darriell Mathis, 6400 Riley Park Drive, Fort Smith, Arkansas (479) 434-3357;
- d) William ("Bill") E. Ruck, PE, PS, CFM, 4701 Northshore Drive, North Little Rock, Arkansas 72118 (501) 376-3633;
- e) Thomas L. Jones, R.S., Marine Sanitation Program/CVA Grant Swim Beach Program, 4815 W. Markham, Little Rock, Arkansas 72205 (501) 661-2171.

2. The details and current existence of the letter read by former Mayor Timmerman as described by Mayor McNutt at the council meeting reflected in the attached Exhibit 1:

- a) Todd Timmerman;
- b) Mayor T.R. McNutt;
- c) Carol Sneath;
- d) Tom Edgin;
- e) Jesse Mason;
- f) John Milam; and
- g) Rex Anderson.

3. The details of the meeting described by Mayor McNutt at the council meeting reflected in the transcript attached as Exhibit 1 hereto whereby former Mayor Timmerman read a letter from Union Pacific regarding the crossing at issue:

- a) Todd Timmerman;
- b) Mayor T.R. McNutt;
- c) Carol Sneath;
- d) Tom Edgin;
- e) Jesse Mason;
- f) John Milam; and
- g) Rex Anderson.

4. The construction (or pouring) of the concrete/asphalt curb cut at the location that the City now request that a crossing be installed:

Not applicable. The city has no records that allocate concrete/asphalt curb cut at specific locations. Square Wisdom was the City of Ozark, road superintendent beginning in 1958 through 1998 and he is now deceased.

5. The construction (or pouring) of the concrete curb and asphalt for the street that parallels the tracks at or near the previous location of Oliver Street:

Not applicable. The city has no records that allocate concrete/asphalt curb cut at specific locations. Square Wisdom was the City of Ozark, road superintendent beginning in 1958 through 1998 and he is now deceased.

6. The identification of previous location of Oliver Street and the history of its use:

- a) Sandy Key;
- b) Royce Gattis;

7. The placement of an "Oliver Street" street sign within the last two years at the location that the City now requests that a crossing be installed:

- a) Carol Sneath.

8. The placement and/or existence of the original street sign at the location that the City now requests that a crossing be installed:

a) N/A to the knowledge of the City representatives, Oliver St./Lane did not have a street sign, it was just commonly known to the residents.

9. Any funds expended by the City for the purpose of maintaining “Oliver Street” since 1975;

a) Not applicable. The city allocates funds to the street department and the city street department maintains the roads as a whole not per street basis.

10. The existence of any recorded plan purporting to dedicate “Oliver Street” for a public use;

a) N/A. The original city plat is believed to have been lost during the civil war and no plat of the original downtown area of Ozark has been recreated when the Plaintiff was reincorporated. However, Royce Gattis believes he saw a copy of a plat in 1988, but it has not been obtained by the Plaintiff's representatives. Further, based on the testimony of Tom Edgin, he gave a copy of a Plat to Mayor McNutt in 2001, when Mr. Edgin was defeated in his reelection bid for city council.

11. The existence of an ordinance accepting a recording plat dedicating “Oliver Street” for a public use;

a) N/A, until approximately late 1929, there is not ordinances accepting any dedicated city street, including the Oliver St./Lane

12. The existence of any recorded easement or other instrument giving the City the right to cross Union Pacific's right of way at the requested crossing; and

a) Carol Sneath.

13. The details of how this lawsuit has been funded by the City, including from what fund Attorney Brockett has been paid;

a) Carol Sneath

Respectfully submitted,
City of Ozark, Plaintiff

By: /S/ Christopher D. Brockett

Christopher D. Brockett, AR 2007192
Sayre & Brockett
401 W. Commercial St.,
Ozark, Arkansas 72949
Telephone: (479) 667-3000
Facsimile: (479) 667-4188
cbrockett@bslawarkansas.com
Attorney for the Plaintiff, City of Ozark

CERTIFICATE OF SERVICE

I, Christopher D. Brockett, hereby certify that the foregoing pleading was hand delivered to the following individuals on this 20th day of February, 2015:

Jamie Huffman Jones
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue
Suite 2000
Little Rock, Arkansas 72201-3552
jjones@fridayfirm.com

By: /S/ Christopher D. Brockett
Christopher D. Brockett

Transcript of the Testimony of

Kenneth Smith

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

Fax: (501) 378-0077

<www.bushmanreporting.com>

Kenneth Smith 3/9/2015

City of Ozark v. Union Pacific Railroad Company

Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS ORAL DEPOSITION OF KENNETH SMITH March 9, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Ms. Jones 5 5 6 EXAMINATION 7 By Mr. Brockett. 15 8 9 EXAMINATION 10 By Ms. Jones 28 11 12 EXAMINATION 13 By Mr. Brockett 32 14 15 E X H I B I T 16 Exhibit No. 259 (Subpoena). 7 17 18 19 20 21 22 23 24 25
Page 2 1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. 5 Sayre & Brockett 6 401 West Commercial Street 7 Ozark, Arkansas 72949 8 9 ON BEHALF OF THE DEFENDANTS: 10 JAMIE JONES, ESQ. 11 Friday, Eldredge & Clark 12 400 West Capitol 13 Suite 2000 14 Little Rock, Arkansas 72201 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF KENNETH SMITH, 2 witness produced at the request of the Defendants, 3 was taken in the above-styled and numbered cause on 4 the 9th day of March, 2015, before Janess Ferguson 5 Smith, Certified Court Reporter and Notary Public in 6 and for Saline County, Arkansas, at the Offices of 7 Sayre & Brockett, 401 West Commercial Street, Ozark, 8 Arkansas, at 10:45 a.m. 9 10 11 ***** 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of KENNETH SMITH may be taken for any and 17 all purposes according to the Federal Rules of Civil 18 Procedure. 19 ***** 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Kenneth Smith 3/9/2015

City of Ozark v. Union Pacific Railroad Company

Page 5	Page 7
1 KENNETH SMITH, 2 the witness hereinbefore named, having first been 3 duly cautioned and sworn or affirmed to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 BY MS. JONES: 8 Q. Mr. Smith, my name is Jamie Jones, and I 9 represent Union Pacific Railroad Company in the 10 lawsuit that the city has filed against it. Have you 11 ever given a deposition before? 12 A. Once. 13 Q. Okay. Well, I'm just going to remind you of a 14 few of the key facts so that we can be on the same 15 page today. 16 Ms. Janess is our court reporter, and she 17 is taking down everything that we say, which means a 18 couple of things for you and I. 19 One, she can only get verbal response, so 20 nonverbal head nods or uh-huhs and huh-uhs, she can't 21 get that down for the record. So if you can just 22 verbalize your responses for me today; okay? 23 A. All right. 24 Q. And she can't get us speaking at the same time, 25 so you may anticipate where I'm going with the	1 responsive to the requests made here, one through 2 six. Did you look through those to see if you had 3 any documents? 4 A. Yes, I did. 5 Q. Okay. Did you have anything responsive? 6 A. No, ma'am. 7 Q. Okay. Thank you. I appreciate you doing that 8 for me. Can you give me your date of birth? 9 A. 3-15-31. 10 Q. Okay. And that makes you how old today? 11 A. Eighty-three. 12 Q. And what is your home address? 13 A. 308 Williams Street, Ozark, Arkansas. 14 Q. Okay. And what is the best phone number to 15 reach you? 16 A. 667-2668. 17 Q. Okay. And I neglected to say this before, but 18 if at any point you need me to speak up, or if I say 19 a question in a way that nobody understands it, let 20 me know, and I will rephrase it for you. Okay? 21 A. Okay. 22 Q. I tend to do that from time to time, and nobody 23 understands what I have just asked. 24 A. All right. 25 Q. Now, have you -- how long have you lived in
Page 6	Page 8
1 question and interrupt me to respond. If you will 2 just let me finish my question, I will let you finish 3 your answer; okay? 4 A. All right. 5 Q. All right. I don't think we are going to take 6 very long today, but if you need a break at any 7 point, you let me know. 8 A. Okay. 9 Q. Okay. You understand that even though it seems 10 very informal in here, that this is testimony under 11 oath, just as if the judge was sitting in here; 12 right? 13 A. I do. 14 Q. Okay. And it looks like you have brought your 15 subpoena with you. I am going to take that, and I 16 will give you your check back so that you have that. 17 And I am going to mark this as Exhibit 259 to the 18 deposition. 19 (Exhibit No. 259 was marked.) 20 BY MS. JONES: 21 Q. And you were listed as a fact witness by the 22 city which is what's brought you here today; okay? 23 A. Okay. 24 Q. And in the subpoena you were asked to look to 25 see if you have any documents that would be	1 Ozark? 2 A. I was born here, and I've lived the last, say, 3 50 years here. 4 Q. Okay. Did you graduate high school here? 5 A. No. 6 Q. Okay. Where -- did you graduate high school? 7 A. In California. 8 Q. California. Okay. And what year would that 9 have been? 10 A. In '48. 11 Q. Okay. When did you move -- kind of give me the 12 years that you lived -- like, it sounds like you were 13 born here and left to go to California; right? 14 A. Yes. 15 Q. Okay. So about what year did you leave to go 16 to California? 17 A. It was in the forties. 18 Q. Okay. And then when did you come back to 19 Ozark? 20 A. In the early fifties. 21 Q. Okay. So pretty much all of your life? 22 A. Yes. 23 Q. Okay. This lawsuit -- well, let me back up and 24 ask this. What did you do for a living? 25 A. Well, I was in the lumber business.

2 (Pages 5 to 8)

Page 9 1 Q. Okay. Which lumber company? 2 A. Well, here in Ozark was F&S Lumber Company. 3 Q. Okay. 4 A. In Mulberry, Mulberry Lumber Company. 5 Q. Okay. 6 A. And the last several years I was the director 7 of the Bank of the Ozarks. 8 Q. Okay. Okay. Tell me about F&S Lumber. As I 9 understand, it was located close to the river on the 10 other side of the crossing that's at issue in the 11 lawsuit; is that right? 12 A. Yes. 13 Q. Okay. And how long -- when -- how long was 14 that building located in that particular location? 15 A. Early fifties. 16 Q. Okay. 17 A. Probably through the sixties. 18 Q. Okay. And as I have come to understand now, 19 there was a point in the late sixties or early 20 seventies when the Corps flooded the area located on 21 the other side of the tracks and kind of changed the 22 course of the river. Did that impact the location of 23 F&S lumber? 24 A. No. 25 Q. Okay.	Page 11 1 A. I don't think it was a dirt road. It was a 2 gravel road. 3 Q. Gravel road, okay. 4 A. Yeah. 5 Q. And there was some kind of asphalt that may 6 have been poured or something laid on top of the 7 railroad tracks to make the crossing. Is that -- how 8 do you remember that? 9 A. It was a regular crossing with ties, crossties. 10 Q. Okay. 11 A. And probably asphalt. I don't remember really, 12 but it was a regular, regular classing. 13 Q. Okay. So when you would have crossed over from 14 the city side over the tracks, kind of walk me 15 through what you would have, what landmarks you would 16 have hit as you were going down the road there. 17 A. I don't quite understand. 18 Q. Okay. So if I was on the city side, and I 19 crossed over the tracks heading towards kind of the 20 river or towards the dump or towards F&S Lumber, what 21 is the first thing, after I get over the crossing, 22 what is the first thing I would do? Would I go 23 straight, or would I turn? 24 A. You would turn. 25 Q. Okay. And I would turn to the east?
Page 10 1 A. Do you want -- excuse me. 2 Q. Yes. 3 A. Do you want me to expand on any of these? 4 Q. Sure. Go ahead. 5 A. Well, they closed. We -- I worked there from 6 the early fifties -- 7 Q. Okay. 8 A. -- to the mid sixties, and at that time they 9 closed the plant. 10 Q. Okay. 11 A. So I can't really say that it, if when they 12 closed it, I mean, when they moved the river or 13 flooded that area that it had any impact on the 14 lumber company. 15 Q. Because it was already closed? 16 A. Because it had already closed. 17 Q. Okay. So as I understand it, the crossing was 18 located east of the depot in downtown Ozark? 19 A. Yes. 20 Q. Is that right? 21 A. Yes. 22 Q. Okay. And as I understand, the road itself 23 wasn't what we would think of as a street in terms of 24 asphalt and nicely done. It was kind of an old dirt 25 road; is that right?	Page 12 1 A. To the east, yes, ma'am. 2 Q. Okay. And as I understand, there were some 3 propane tanks or something that would have been maybe 4 my first landmark that I would have come across? 5 A. Yes. 6 Q. Is that right? 7 A. Yes. 8 Q. Okay. And then after the propane tanks what 9 would be my next landmark? 10 A. F&S Lumber. 11 Q. Okay. And about how far from the propane tanks 12 would F&S Lumber have been? 13 A. Gee, probably 500 yards maybe. 14 Q. Okay. And if I continued past F&S Lumber what, 15 what would have been my next landmark? 16 A. City dump. 17 Q. City dump. And was it a little bit further 18 down or about how far down? 19 A. Well, you would go by, you would go by -- we 20 had a spur -- 21 Q. Yep. 22 A. -- track -- 23 Q. Uh-huh. 24 A. -- that ran into the lumber company. You would 25 cross it and turn right, which would be south, going

3 (Pages 9 to 12)

Kenneth Smith 3/9/2015

City of Ozark v. Union Pacific Railroad Company

Page 13

1 **into the, into the dump.**
 2 Q. Okay. So, and then I guess what about -- I
 3 have heard about some houses that would have been
 4 down, kind of some shotgun type houses that would
 5 have been down that way. Was that past the dump, or
 6 would you have hit those before the dump?
 7 A. **Well, they weren't shotgun houses.**
 8 Q. Okay.
 9 A. **They were regular houses.**
 10 Q. Okay.
 11 A. **Real, the first one was a real nice house. You**
 12 **would travel -- instead of turning right or east, not**
 13 **east, but south --**
 14 Q. Okay.
 15 A. **-- to the dump. You would go east to the**
 16 **houses --**
 17 Q. Okay.
 18 A. **-- which there was three houses located just**
 19 **east of the lumber company.**
 20 Q. Okay. Do you remember who lived at those
 21 houses?
 22 A. **Pete Oliver lived in one house.**
 23 Q. Okay.
 24 A. **And I can't remember the name of the first**
 25 **house, the first house, but he worked for the**

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1 **railroad company.**
 2 **He lived here and, you know, had a family**
 3 **that lived there. And I can't -- there was a single**
 4 **colored man that lived in the second house.**
 5 Q. Okay. Now, the street that we're kind of
 6 talking about, the street that would have crossed the
 7 railroad tracks to go to F&S Lumber, did it have a
 8 name that you called it at that time, in the fifties
 9 and sixties?
 10 A. **No, ma'am.**
 11 Q. Okay. So if I would have said in the fifties
 12 or sixties, Take Oliver Street, would you have known
 13 what that was?
 14 A. **I would have known where it was at probably,**
 15 **but there -- no, I wouldn't.**
 16 Q. Okay.
 17 A. **To answer your question, no.**
 18 Q. And when, if ever, have you ever heard of a
 19 street called Oliver Street in Ozark?
 20 A. **When?**
 21 Q. Yeah. Is today the first time you've heard?
 22 A. **Not today.**
 23 Q. Okay.
 24 A. **But it's been there for a year or two, you**
 25 **know, the street sign.**

Page 15

1 Q. Okay. So sometime around when the street sign
 2 appeared --
 3 A. **Right.**
 4 Q. -- is when you've heard of someone calling that
 5 Oliver Street?
 6 A. **Yes.**
 7 Q. When -- you have told me about using -- well,
 8 let me back up. I'm assuming you used the crossing,
 9 then, since you used it to get to your lumber
 10 company; correct?
 11 A. **Right.**
 12 Q. After F&S Lumber closed in the mid sixties
 13 would you have had an occasion to use that crossing?
 14 A. **No, ma'am.**
 15 Q. Okay.
 16 MS. JONES: All right. Thank you so
 17 much. I appreciate your time today.
 18 THE WITNESS: All right.
 19 EXAMINATION
 20 BY MR. BROCKETT:
 21 Q. I have a few questions for you. In 1962 we
 22 have -- do you remember what exhibit? Hang on.
 23 (Off-the-record discussion.)
 24 BY MR. BROCKETT:
 25 Q. Okay. I am going to show you what has been

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1 marked previously as Exhibit 51 to a deposition.
 2 This is Exhibit 51, and part of Exhibit 1 to Exhibit
 3 C.
 4 What Exhibit C is classified as is a 1962
 5 telephone directory. This is a -- it shows Exhibit D
 6 now, but this is Exhibit D to Exhibit 51. Have you
 7 ever seen that before, Mr. Smith?
 8 A. **No.**
 9 Q. Okay. It does have an address here on the
 10 second page, and the very top one shows Oliver
 11 Street. And it has F&S Lumber Company listed on
 12 Oliver Street as 211. Do you remember if your
 13 building had an address of any sort?
 14 A. **No, I don't.**
 15 Q. Okay. Did you receive any mail at that
 16 location?
 17 A. **Not delivered mail, no, sir.**
 18 Q. Okay.
 19 A. **We had a post office box.**
 20 Q. Okay. You did have a post office box. Okay.
 21 Do you know if the mail came down onto that street --
 22 A. **No, sir.**
 23 Q. -- to deliver to the other houses?
 24 A. **I have no knowledge of that.**
 25 Q. Okay. Did F&S Lumber Company move to a

4 (Pages 13 to 16)

Page 17	Page 19
1 different location? 2 A. We had two different locations here, one there 3 in the main plant there at Oliver Street. 4 Q. Okay. 5 A. The other one on 23, out on Highway 23. 6 Q. Okay. Is M&S Lumber Company, is that related 7 to F&S at all? 8 A. Well, yes. I'm the "S" in M&S Lumber Company, 9 which bought the old canning plant. 10 Q. Okay. Okay. And when exactly did it move to 11 the north side of the tracks? 12 A. We didn't move. 13 Q. You did not? 14 A. We didn't move F&S Lumber there. This is a 15 new, this was a new business that started back in 16 probably the seventies or maybe early eighties. 17 Q. I believe it's seventies, based on the filing 18 with the Secretary of State? 19 A. Okay. 20 Q. Okay. 21 A. See, I'm getting, I'm getting a little older 22 and forgetful, probably. 23 Q. Sure. And was the "M" in M&S Lumber, was that 24 Medlock? 25 A. Medlock and Smith, yes.	1 Q. Was your business open to the public? 2 A. The F&S Lumber, no. 3 Q. Okay. 4 A. M&S, yes. 5 Q. Okay. And let's just stick with F&S. 6 A. Okay. 7 Q. Okay. What did you do with your products that 8 you -- 9 A. It was sold to the government. 10 Q. Okay. Was it all loaded onto train cars, or 11 did you ever ship it out on roads? 12 A. Both ways. 13 Q. Okay. So it would be produced at F&S Lumber 14 and then did you own trucks, or did you hire trucks? 15 A. We owned the trucks. 16 Q. Okay. Were those trucks -- now forgive me for 17 my age, but at that time were those trucks licensed? 18 A. Certainly. 19 Q. Okay. Through the State of Arkansas? 20 A. Yes. 21 Q. Okay. For purposes of licensing, what address 22 did you list on those titles; do you remember? 23 A. The address probably was at Fort Smith. 24 Q. Okay. Is that where your main -- 25 A. Main office.
Page 18	Page 20
1 Q. Okay. Okay. Do you know if you would have any 2 records from F&S Lumber Company? 3 A. No, sir, I don't. 4 Q. Okay. Do you know if there was another 5 crossing close to the crossing at issue in this case, 6 the one right next to the east of the depot? Was 7 there ever another crossing further down, that you 8 can remember? 9 A. You mean in that locality -- 10 Q. Yes. 11 A. -- or close -- 12 Q. Further east, further east of the, let's call 13 it the Oliver Street crossing for just simplicity 14 purposes. Was there another crossing further down to 15 the east around the Bell Street area? 16 A. Not that I'm aware of. 17 Q. Okay. 18 A. No, sir. 19 Q. All right. So the only one that you used to 20 access your building was the Oliver Street crossing? 21 A. Oh yes. 22 MS. JONES: Object to form. 23 BY MR. BROCKETT: 24 Q. All right. Did, did you sell to the public? 25 A. Pardon me?	1 Q. Okay. Was in Fort Smith, okay. Is that where 2 most of the mail would have been shipped then? 3 A. Yes. 4 Q. Okay. All right. Did, did you keep a truck 5 here in Ozark? 6 A. Yes. 7 Q. Okay. And it was parked there? 8 A. Yes. 9 Q. Okay. About how often do you think a truck 10 would leave that location and cross the tracks? 11 A. Daily. 12 Q. Okay. Just once per day or -- 13 A. Yes, it was long haul. 14 Q. Okay. 15 A. Long hauls, yes. 16 Q. Okay. Did -- how many employees did F&S Lumber 17 Company have? 18 A. Thirty to forty -- 19 Q. Okay. 20 A. -- people. 21 Q. Wow. How big a building did you guys have? 22 A. Pardon me? 23 Q. How big a building? 24 A. Well, we had two buildings, actually. There 25 was -- I'm just estimating probably 50 by 150. It

5 (Pages 17 to 20)

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Page 21 1 was the large main manufacturing plant. 2 Q. And both of those were listed, or located south 3 of the railroad tracks? 4 A. Yes. 5 Q. Okay. I'm going to refer to Exhibit 51 still, 6 and I'm going to show you two different maps. One is 7 listed as Exhibit C, and according to this letter 8 that's Exhibit 51. Exhibit C is a copy of a 1962 9 city map. 10 And then the second page, after you look at 11 the first page, if you will kind of look at it and 12 see if it appears to be downtown Ozark as you 13 remember it in 1962. I want you to flip to the 14 second page and take a look at it. 15 A. (Witness reviews document.) It appears, yes. 16 Q. Would that be a representation of Ozark? 17 A. Ozark, yes. 18 Q. Okay. 19 A. I'm going by the river and the -- 20 Q. Yes, sir. 21 A. -- the courthouse. 22 Q. Where the courthouse is? 23 A. Yes. 24 Q. And on the second page, that is a, for purposes 25 of this deposition, that's just to stipulate that	Page 23 1 permission from anybody to use that crossing? 2 A. No. 3 Q. Did you buy land south of the river? 4 A. No. 5 Q. Okay. Did you -- who did you lease that 6 property from? 7 A. Missouri Pacific Railroad. 8 Q. Missouri Pacific Railroad Company, okay. 9 A. I believe that would be correct. 10 Q. Okay. Do you know how much land you leased 11 from them? 12 A. Probably, probably ten acres. 13 Q. Ten? Okay. Okay. Was that road already there 14 when -- well, strike that. Did F&S Lumber Company 15 build the building, or was the building already 16 there? 17 A. We built the buildings. 18 Q. Okay. Okay. And was that road already there 19 when you built the buildings? 20 A. Yes. 21 Q. Okay. Do you know if the City of Ozark ever 22 maintained the building, or the road? Did they put 23 gravel on it or grade it or anything like that? 24 A. I can't, I can't remember anyone doing the work 25 on it, but someone had to.
Page 22 1 it's an insert of that same map at a different 2 location that shows Oliver Street. Do you see that? 3 A. Yes. 4 Q. Okay. 5 MS. JONES: I'm not stipulating to 6 that, but. 7 BY MR. BROCKETT: 8 Q. Well, not for you, for the purposes of this 9 question. Would that -- where there is a large 10 building on there, would that be where F&S Lumber 11 Company was located? 12 A. Yes, I would say so. 13 Q. Okay. And does the road look how it was back 14 in 1962 when your building is located there? 15 A. Yes. 16 Q. Okay. And you would have traveled on that road 17 as it's identified on that map to get to your company 18 and also to the houses that were past your, your 19 company? 20 A. Yes. 21 Q. Okay. All right. Did all of your 30 to 40 22 employees utilize the Oliver Street crossing to go to 23 work? 24 A. Yes. 25 Q. Okay. All right. Did you have to ask	Page 24 1 Q. Okay. It didn't just deteriorate? 2 A. Yeah, it would have deteriorated over time, but 3 I can't say for sure who done it. 4 Q. Okay. Fair enough. Did you, I guess did F&S 5 Lumber Company utilize the dump? 6 A. Not as such. 7 Q. No? Okay. And you did mention that you 8 remember a Pete Oliver living there? According to 9 Exhibit 51, Exhibit D to Exhibit 51, there was also a 10 Tom Kirkendall that lived down there. 11 A. I was trying to think of his name, yes. 12 Q. Okay. He lived in the nice house? 13 A. In the first house, yes. 14 Q. Okay. In your opinion that was a nice house? 15 A. It was a good house, yes. 16 Q. Okay. And then according to this exhibit there 17 was a vacant lot down there. Do you remember looking 18 at those houses if there was a vacant house or a 19 vacant lot? 20 A. I never was on that property, so I can't -- 21 Q. Okay. You didn't drive on down in there? 22 A. No. 23 Q. Okay. There was an Alfred Oliver. Does that 24 sound familiar? 25 A. I think -- I'm sure that's the one they called

6 (Pages 21 to 24)

Page 25	Page 27
1 Pete Oliver. 2 Q. Okay. You think Alfred was Pete? Okay. And 3 then there was a gentleman named Frank Oliver? 4 A. Yes. 5 Q. Okay. Do you think he was the other colored 6 guy? 7 A. Yeah, the third house, yes. 8 Q. Okay. What about a Barry Collins? 9 A. I don't remember him living over there. 10 Q. And what about Martin Oliver, Junior? 11 A. I don't remember him. 12 Q. Okay. From the ten acres that you believe you 13 leased from Missouri Pacific, we will call it MoPac, 14 do you remember how much you paid them in lease? 15 A. No, sir. 16 Q. Okay. And I know it's been years ago. 17 A. Years ago. 18 Q. Do you know if it was an annual lease or a 19 monthly lease? 20 A. It was an evergreen lease. 21 Q. Okay. So just as long as you stayed there you 22 got the lease? 23 A. And pay the rent you had possession of it, yes. 24 Q. And did you pay your rent annually or monthly? 25 A. Annually.	1 Q. Okay. Did -- do you remember if you had to 2 carry any type of insurance policy when you leased 3 this land from MoPac? 4 A. No, sir. 5 Q. Okay. And let me be very clear on what type of 6 insurance I am talking about. Did you have to carry 7 any type of insurance regarding that crossing? 8 A. No. 9 Q. So they didn't say you can use this land, but 10 you have to carry a liability policy? 11 A. No, sir. 12 Q. Okay. 13 A. Not that I remember. 14 Q. Not that you remember? 15 A. Huh-uh. 16 Q. Okay. After you vacated did you, do you 17 remember ever using that crossing again after the mid 18 sixties? 19 A. No, sir. 20 Q. Okay. Are you familiar with when the crossing 21 was removed? 22 A. No, I'm not. 23 Q. Okay. 24 A. No. 25 Q. Do you remember from, let's say 1974, do you
Page 26	Page 28
1 Q. Once a year? 2 A. Once a year. 3 Q. Okay. When you vacated that property sometime 4 in the mid sixties did you have to tear down the 5 building? 6 A. No. 7 Q. Okay. You did not? 8 A. No. 9 Q. Okay. Do you know if the building was torn 10 down? 11 A. I don't know. 12 Q. Okay. 13 A. I left. 14 Q. Okay. All right. Do you have an opinion as to 15 whether or not this gravel road was a public road or 16 a private road? 17 MS. JONES: Object to form, 18 foundation. 19 A. I would have to assume it was a public road. 20 Q. Okay. And what would you base that opinion on? 21 A. No one -- you had -- you didn't have to get 22 permission to travel. 23 Q. Okay. So if someone wanted to come across they 24 could come across? 25 A. Yes.	1 remember if the crossing was still there? 2 A. I don't remember. 3 Q. Okay. That's fine. You wouldn't have had 4 any -- 5 A. I would have no occasion to use it. 6 Q. Okay. All right. So even when M&S Lumber 7 Company was located on Bell Street, I believe that's 8 where it was located -- 9 A. Yes. 10 Q. -- your guys would have, I guess, taken a left 11 out of there and not to the right? 12 A. Yes. 13 Q. Okay. 14 MR. BROCKETT: All right. I think 15 that's all I've got. I appreciate it. 16 EXAMINATION 17 BY MS. JONES: 18 Q. I have got a few follow-ups. In answer to some 19 of Mr. Brockett's questions you used the term "Oliver 20 Street," and you were, you were doing that just in 21 responding to his questions; correct? 22 You don't know if that was actually Oliver 23 Street that was the name of that road that crossed 24 over the tracks to F&S Lumber; correct? 25 A. Repeat that to me.

7 (Pages 25 to 28)

Page 29	Page 31
1 Q. Yes, absolutely. In our conversation you had 2 told me, I believe, and correct me if I'm wrong, that 3 you never called that street Oliver Street; correct? 4 A. Correct. 5 Q. And in response to a couple of questions from 6 Mr. Brockett, you used the term "Oliver Street" when 7 talking about the crossing and the street in which 8 F&S Lumber was located on. 9 You were doing that just out of convenience 10 in responding to his questions, not that you consider 11 that to be Oliver Street; correct? 12 A. Right. 13 Q. Okay. 14 A. Could I expand on that a little? 15 Q. Absolutely, sure. 16 A. I don't, I don't remember using the name 17 "Oliver Street" when -- I may have answered a 18 question, but I don't think I said "Oliver Street." 19 Q. Okay. 20 A. But I was just -- I was answering a question. 21 Q. You wouldn't want anyone to take -- if you did 22 use the term "Oliver Street," you wouldn't want 23 anyone to take that and say that you were saying it 24 was named Oliver Street; correct? 25 A. Right.	1 A. For their own business, we did. 2 Q. You did. And I'm assuming you didn't have your 3 own railroad, so you used another railroad company. 4 You used a railroad company to come onto that track 5 to get your product, right, or deliver product to 6 you? 7 A. Yes. 8 Q. Okay. What railroad did you use? 9 A. MoPac. 10 Q. Okay. So you might have also had a separate 11 agreement with them on, sort of them using their 12 trains to come onto the property to ship and receive 13 your product? 14 A. I'm a little confused. 15 Q. Okay. 16 A. Yeah. 17 Q. It was a bad question. It was a really bad 18 question. 19 A. Now, really, the railroad at that time was 20 owned by Missouri Pacific. 21 Q. Right. 22 A. They brought our product in, they took -- we 23 shipped our product out -- 24 Q. Okay. 25 A. -- on their line with their equipment.
Page 30	Page 32
1 Q. Okay. When you were talking about the lease 2 with MoPac, did it also, did you have a lease for the 3 land, and then did you have a track lease for the 4 spur track? 5 A. I'm sure we did. 6 Q. Okay. And do you remember any of the terms of 7 the track, the track agreement? 8 A. No. 9 Q. Okay. But I'm guessing you -- was the spur 10 track built when you leased the land, or did you 11 build the spur track? 12 A. It was already there. 13 Q. Okay. And I'm -- did you use, did you have 14 your own short line, or did you have the railroad use 15 that to help you -- did you have Union Pacific or 16 MoPac at the time, did MoPac use that short, use that 17 spur track to help you load or unload, or what 18 railroad did you use? 19 A. Let me make sure I answer your question 20 correctly. 21 Q. Yes. 22 A. As I understood it, you wanted to know if I 23 used -- if F&S Lumber Company used the track, the 24 spur track? 25 Q. Yes.	1 Q. Yeah, that's what I was getting at. Good, 2 thank you. I just asked it in a very bad way, so 3 thank you for helping me out there. 4 A. I didn't quite understand. 5 Q. That's what I was getting to. And you wouldn't 6 necessarily have needed to go -- you didn't -- well, 7 strike all of that. 8 You didn't go looking to see whether or not 9 you needed permission to use that crossing; correct? 10 I mean, you didn't go and look and ask. Do I need to 11 have permission to use that crossing? 12 A. No. 13 Q. Okay. And you had a lease, so you assumed you 14 could use it; correct? 15 A. Yes. 16 Q. And you don't know who owned that crossing, 17 whether it was the railroad or the city; correct? 18 A. No. 19 MS. JONES: Thank you so much. I 20 appreciate it. 21 EXAMINATION 22 BY MR. BROCKETT: 23 Q. I have got just a couple more. Who was the "F" 24 in F&S Lumber Company? 25 A. Flocks.

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Page 33	Page 35
1 Q. Flocks? 2 A. F-l-o-c-k-s. 3 Q. And do you know if they, if anyone in his 4 family is still living, or is he still living? 5 A. I don't think so. 6 Q. Okay. Did Flocks, I guess, pass away while you 7 were still partners? 8 A. Yes. 9 Q. Okay. And that's how Medlock, I guess, came to 10 exist, Medlock and Smith came to exist? After Flocks 11 passed away did you search for a new partner, I 12 guess? 13 A. Yes. 14 Q. Okay. And is that why F&S Lumber Company 15 closed? 16 A. No, now they are two different, two different 17 companies altogether. 18 Q. Okay. 19 A. Flocks and Medlock -- Medlock owned Mulberry 20 Lumber Company, which I became a partner in. 21 Q. Okay, okay. 22 A. At that time we bought, it was known as 23 Mulberry Lumber Company. 24 Q. Okay. 25 A. A separate company which was started by Medlock	1 Q. Okay. 2 A. I can't remember the name of the compa ny. 3 Q. Okay, that's fine. 4 A. But it was a public phone. 5 Q. Okay. So if I called you up and asked where 6 you were located, how would you tell me to get there? 7 A. Ozark. 8 Q. Okay. But if I was sitting in Ozark, and I 9 said, I'm at the courthouse. How do I get to your 10 building? 11 A. You go to the depot, and you turn across the 12 tracks and go south across the track. 13 Q. And follow that road? 14 A. And basically I'm just speaking what I would do 15 now. 16 Q. Sure. Okay. All right. So you wouldn't have 17 told me a street name or any street names? 18 A. No -- 19 Q. Okay. 20 A. -- as to where to cross? 21 Q. Well -- 22 A. How to get there? 23 Q. Yes. 24 A. Well, I would use 64 Highway. You turn on Bell 25 Street and go south.
Page 34	Page 36
1 and Smith -- 2 Q. Okay. 3 A. -- bought the property here in Ozark -- 4 Q. Okay. 5 A. -- and started M&S Lumber Company. 6 Q. Okay. So F&S and M&S have no relations? 7 A. No relations whatsoever. 8 Q. Okay. All right. Why did, I guess, F&S Lumber 9 stop operating in the mid sixties? 10 A. F&S? 11 Q. Yes. 12 A. We were basically a government contractor. 13 Q. Okay. 14 A. And at that time the product that we were 15 making was not in demand. 16 Q. Okay. 17 A. Business got slowed, we slowed. We closed it 18 down. 19 Q. Okay. I understand. If I was asking -- well, 20 strike that. Did you have a telephone at F&S Lumber 21 Company? 22 A. Yes, we did. 23 Q. Okay. And who provided that telephone? Was it 24 the City of Ozark or a public utility? 25 A. Public utility, yeah.	1 Q. Okay. And then I guess -- 2 A. And cross, cross the tracks. 3 Q. Cross at Bell Street, or would I have had to 4 take a right, I guess, on Water Street or River 5 Street? 6 A. River Street, yes. 7 Q. Okay. It was referred to as River Street at 8 that time? 9 A. River Street, yes. 10 Q. Okay. Have you ever heard it referred to as 11 Water Street before? 12 A. No. 13 Q. Okay. Okay. And so, just to be very clear, to 14 your knowledge, the road wasn't necessarily -- it 15 didn't have any name? 16 A. Not that I'm aware of. 17 Q. It was just a gravel road? 18 A. Not that I'm aware of. 19 Q. Okay. So it was just a gravel road? 20 A. Yes. 21 MR. BROCKETT: All right. I don't 22 think I have any other questions. 23 MS. JONES: Thank you, sir. I 24 appreciate you. 25 (The deposition was concluded at 11:22 a.m.)

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1 COURT REPORTER'S CERTIFICATE

2 STATE OF ARKANSAS)

3 ss.

4 COUNTY OF SALINE)

5 I, JANESE FERGUSON SMITH, CCR, RPR, a

6 Notary Public in and for Saline County, Arkansas do

7 hereby certify that the facts stated by me in the

8 caption of the foregoing matter are true; and that

9 the foregoing matter was transcribed by me, to the

10 best of my ability and understanding, from my machine

11 shorthand notes taken at the time and place set out

12 in the caption hereto.

13 In accordance with Rule 30(e) of the

14 Rules of Civil Procedure, review of the transcript

15 was waived by the deponent or a party thereto.

16 I FURTHER CERTIFY that I am neither

17 counsel for, related to, nor employed by any of the

18 parties to the action in which this proceeding was

19 taken; and, further that I am not a relative or

20 employee of any attorney or counsel employed by the

21 parties hereto, not financially interested or

22 otherwise, in the outcome of this action.

23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on

24 this, the 9th day of March, 2015.

25

26 JANESE FERGUSON SMITH, CCR, RPR

27 Notary Public for Saline County

28 and Court Reporter.

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Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Alice Brooks

Date: March 3, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

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[<www.bushmanreporting.com>](http://www.bushmanreporting.com)

Alice Brooks 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 1	Page 3
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS ORAL DEPOSITION OF ALICE BROOKS March 3, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	1 I N D E X 2 3 EXAMINATION 4 By Ms. Jones 14 5 EXAMINATION 6 By Mr. Brockett. 10 7 EXAMINATION 8 By Ms. Jones 12 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. 5 Sayre & Brockett 6 401 West Commercial Street 7 Ozark, Arkansas 72949 8 ON BEHALF OF THE DEFENDANTS: 9 JAMIE JONES, ESQ. 10 Friday, Eldredge & Clark 11 400 West Capitol 12 Suite 2000 13 Little Rock, Arkansas 72201 14 15 16 17 18 19 20 21 22 23 24 25	1 ANSWERS AND DEPOSITION OF ALICE BROOKS, a 2 witness produced at the request of the Defendants. 3 was taken in the above-styled and numbered cause on 4 the 3rd day of March, 2015, before Janess Ferguson 5 Smith, Certified Court Reporter and Notary Public in 6 and for Saline County, Arkansas, at the Offices of 7 Sayre & Brockett, 401 West Commercial Street, Ozark, 8 Arkansas, at 2:16 p.m. 9 10 11 * * * * * 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of ALICE BROOKS may be taken for any and 17 all purposes according to the Federal Rules of Civil 18 Procedure. 19 * * * * * 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

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City of Ozark v. Union Pacific Railroad Company

Page 5	Page 7
1 ALICE BROOKS, 2 the witness hereinbefore named, having first been 3 duly cautioned and sworn or affirmed to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 BY MS. JONES: 8 Q. Ms. Brooks, my name is Jamie Jones. I 9 represent Union Pacific Railroad Company in a lawsuit 10 filed against it by the City of Ozark. You have been 11 listed by the City of Ozark as a witness, and that's 12 why we've asked to depose you today. Have you given 13 a deposition before? 14 A. No. 15 Q. Okay. Let me tell you what's going to go on 16 today. Ms. Janess is our court reporter, and she has 17 just sworn you in. So you are under oath, just like 18 you would be if you were sitting in front of a judge, 19 okay? 20 A. (Witness nods head.) 21 Q. And Ms. Janess is going to take down everything 22 that we say, which means a couple of things. One, 23 you just did it. You shook your head yes to me and 24 gave me a non verbal response, which I understand 25 completely as we are sitting across from each other,	1 A. Yes. 2 Q. And it asked for a number of documents. If you 3 had any. 4 A. I didn't have any of it. 5 Q. Okay. I just wanted to get that on the record. 6 Now, ma'am, can you give me your current home 7 address? 8 A. 307 North 5th, Ozark, Arkansas. 9 Q. Okay. And what is the best phone number to 10 reach you? 11 A. 667-2453, and I have got another one -- let me 12 think -- 667-7570. 13 Q. Okay. And what's your date of birth? 14 A. 10-10-24. 15 Q. Okay. And have you lived in Ozark most of your 16 life? 17 A. Since 1948. 18 Q. Okay. 19 A. But I graduated -- I went to school here. 20 Q. Okay. What year did you graduate from Ozark 21 High? 22 A. Forty-two. 23 Q. Okay. And did you have any education after 24 high school? 25 A. Yes. I have a master's degree.
Page 6	Page 8
1 but she can't get that down for the record. So I am 2 going to ask you to verbalize all of your responses. 3 Okay? 4 A. I think you ought to figure that one out. 5 Q. Well, unfortunately she can't do that. She is 6 not allowed to, so she has to only get down things 7 that are verbalized; okay? 8 A. Okay. 9 Q. And the second thing is you may well anticipate 10 where I am going with the question and kind of 11 interrupt me to answer it, and I'm going to ask that 12 you don't do that and you let me finish my question 13 to you, and I will let you finish your answer to me, 14 because it makes her job very difficult if she has to 15 get us at the same time. Okay? 16 A. Okay. 17 Q. If at any point you need a break or anything, 18 you let me know, and we will take one. Okay? 19 A. Okay. 20 Q. And if I ask a question that doesn't make sense 21 to you, will you please let me know, and I will 22 rephrase it for you; okay? 23 A. Yes, ma'am. 24 Q. Okay. Now, you were served with a subpoena 25 asking you to be there today; correct?	1 Q. Okay. And what in? 2 A. Science. 3 Q. Okay. Is there a particular science that 4 you -- 5 A. My BS was chemistry. 6 Q. Okay. 7 A. And then the other was just science. It's 8 science teaching. 9 Q. Okay. Were you a school teacher? 10 A. Yes. 11 Q. Okay. Where did you teach school? 12 A. Ozark, Arkansas. 13 Q. Okay. And how long did you teach at Ozark? 14 A. Thirty years. 15 Q. Okay. Did you teach -- was it the high school? 16 A. High school. 17 Q. Okay. Have you ever been on the city council? 18 A. No. 19 Q. Okay. Have you ever been a part of an 20 organization called Main Street Ozark? 21 A. No. 22 Q. Okay. Are you aware of what the lawsuit is 23 about between the railroad and the city? 24 A. What I read in the paper. 25 Q. Okay. Do you understand that the city is

2 (Pages 5 to 8)

Page 9 1 asking that a crossing be installed or reinstalled to 2 the east of the depot in downtown Ozark? 3 A. Read it in the paper. 4 Q. Okay. Had you ever used a crossing east of the 5 depot? 6 A. Yes. 7 Q. Okay. And I kind of understand it went to the 8 dump? 9 A. It was back in the early -- the latter part of 10 the forties and the early fifties. 11 Q. Okay. That's when you would have used it. 12 A. Yes. 13 Q. Did you use it after the fifties? 14 A. No. 15 Q. Okay. What did you use it for? 16 A. In our church we had a very poor family. We 17 had -- there were houses over there. 18 Q. Yes, ma'am. 19 A. And we had a very poor family, and I took food 20 and clothing to the children. 21 Q. Okay. Would you have had any other occasion to 22 use that crossing? 23 A. No. 24 Q. Okay. And have you -- I'm guessing you haven't 25 ever done any research to determine who put that	Page 11 1 BY MR. BROCKETT: 2 Q. The family that you provided stuff to, do you 3 remember the name of that family? 4 A. No, I really don't. 5 Q. Okay. Does Kuykendall or Hobbs, do either of 6 those sound familiar? 7 A. No. 8 Q. What about Oliver? 9 A. I don't -- I can't -- after all, I'm ninety 10 years old. 11 Q. Yes, ma'am. I understand, and that was quite a 12 few years ago. Were they a white family or black? 13 A. White. 14 Q. They were white? 15 A. We were not integrated at that time. 16 Q. Okay. Do you know if there was any black 17 families that lived on that side? 18 A. No, they did not. 19 Q. Okay. 20 A. To my knowledge. 21 Q. Okay. 22 A. They lived over close to where I live now. 23 Q. Oh, okay. Do you remember any other structures 24 down there besides a few houses? 25 A. There was a barn.
Page 10 1 crossing in, for example? 2 A. No. 3 Q. Okay. Did you -- was it called, did it have a 4 name that people called it, or, like if someone was 5 going to tell you how to get to this family's house, 6 would that, how would they tell you to go there? 7 A. Well, the city dump was down there. We didn't 8 have pick up. 9 Q. Okay. 10 A. So the whole city just hauled their junk -- 11 Q. Okay. 12 A. -- down there. 13 Q. So everyone kind of knows the street that led 14 to the dump? 15 A. Yeah. 16 Q. Did it they call it a name? 17 A. If they did I don't remember it. 18 Q. Okay. Have you ever heard of a street called 19 Oliver? 20 A. If I did I don't remember it. 21 Q. Okay. 22 MS. JONES: All right. Thank you so 23 much, ma'am. I appreciate your time today. 24 EXAMINATION 25	Page 12 1 Q. Okay. Were horses in that barn? 2 A. Yes. 3 Q. Okay. Do you remember who owned those horses? 4 A. No. 5 Q. Okay. Did you ever ride horses down in that 6 area? 7 A. Heavens, no. 8 Q. Okay. 9 MR. BROCKETT: All right. I think 10 that's all I have for you as well. 11 EXAMINATION 12 BY MS. JONES: 13 Q. Mr. Brooks, just one more. You have never had 14 any conversations with anyone at Union Pacific 15 Railroad about the crossing or anything; correct? 16 A. No. 17 Q. Okay. Thank you so very much. I appreciate 18 your time. 19 A. All I read was in the paper. 20 MS. JONES: Yes, ma'am. I understand. 21 Thank you so much. 22 MR. BROCKETT: That's all we have. I 23 appreciate it. 24 (The deposition was concluded at 2:23 p.m.) 25

3 (Pages 9 to 12)

Alice Brooks 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 13

1 COURT REPORTER'S CERTIFICATE
2 STATE OF ARKANSAS)

3)ss.

4 COUNTY OF SALINE)

5 I, JANESE FERGUSON SMITH, CCR, RPR, a
6 Notary Public in and for Saline County, Arkansas do
7 hereby certify that the facts stated by me in the
8 caption of the foregoing matter are true; and that
9 the foregoing matter was transcribed by me, to the
10 best of my ability and understanding, from my machine
11 shorthand notes taken at the time and place set out
12 in the caption hereto.

13 In accordance with Rule 30(c) of the
14 Rules of Civil Procedure, review of the transcript
15 was waived by the deponent or a party thereto.

16 I FURTHER CERTIFY that I am neither
17 counsel for, related to, nor employed by any of the
18 parties to the action in which this proceeding was
19 taken; and, further that I am not a relative or
20 employee of any attorney or counsel employed by the
21 parties hereto, not financially interested or
22 otherwise, in the outcome of this action.

23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
24 this, the 3rd day of March, 2015.

25 JANESE FERGUSON SMITH, CCR, RPR
Notary Public for Saline County
and Court Reporter.

4 (Page 13)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

John Milam

Date: February 26, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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Phone: (501) 372-5115

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<www.bushmanreporting.com>

John Milam 2/26/2015

City of Ozark v. Union Pacific Railroad Company

Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS VIDEOTAPED DEPOSITION OF JOHN MILAM February 26, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Ms. Jones 14 5 6 EXAMINATION 7 By Mr. Brockett. 34 8 9 E X H I B I T S 10 Exhibit No. 144 (Notice) 17 11 Exhibit No. 145 (Notice) 18 12 Exhibit No. 146 (Council List) 24 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. 5 Sayre & Brockett 6 401 West Commercial Street 7 Ozark, Arkansas 72949 8 9 ON BEHALF OF THE DEFENDANTS: 10 JAMIE JONES, ESQ. 11 Friday, Eldredge & Clark 12 400 West Capitol 13 Suite 2000 14 Little Rock, Arkansas 72201 15 16 also present: Bob Dunn 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF JOHN MILAM, a 2 witness produced at the request of the Defendants, 3 was taken in the above-styled and numbered cause on 4 the 26th day of February, 2015, before Janess 5 Ferguson Smith, Certified Court Reporter and Notary 6 Public in and for Saline County, Arkansas, at the 7 Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas, at 8:56 a.m. 9 10 11 * * * * * 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of JOHN MILAM may be taken for any and all 17 purposes according to the Federal Rules of Civil 18 Procedure. 19 * * * * * 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Page 5	Page 7
1 THE VIDEOGRAPHER: We are on the audio 2 and video record. Today's date is February 3 the 26th, 2015. The approximate time is 4 8:56 a.m. 5 This is the video-recorded deposition 6 of Mr. John Milam. This deposition is 7 being taken at 401 West Commercial Street, 8 Ozark, Arkansas. 9 Would the attorneys please make a 10 record of their appearance. 11 MR. BROCKETT: Christopher Brockett 12 for the Plaintiff. 13 MS. JONES: Jamie Jones on behalf of 14 Union Pacific Railroad Company. 15 THE VIDEOGRAPHER: Would the reporter 16 please swear the witness. 17 JOHN MILAM, 18 the witness hereinbefore named, having first been 19 duly cautioned and sworn or affirmed to tell the 20 truth, the whole truth and nothing but the truth, 21 testified as follows: 22 MS. JONES: Before we get started on 23 the deposition, I think there's a few 24 things we wanted to put on the record. 25 Christopher, you wanted to put	1 ma'am. 2 MS. JONES: And Sandy Key has been 3 deposed previously. Are you willing to 4 stipulate that her testimony is the city's 5 30(b)(6) testimony? 6 MR. BROCKETT: One of them, yes, along 7 with the other designated witnesses. 8 MS. JONES: Right. But we do not have 9 to re-depose her. Her testimony will stand 10 as 30(b)(6) testimony? 11 MR. BROCKETT: Yes, ma'am, that is 12 correct. 13 MS. JONES: The second category is the 14 details and current existence of the letter 15 read by former Mayor Timmerman as described 16 by Mayor McNutt at the council meeting 17 reflected in the attached Exhibit 1. 18 Mr. Brockett, you have stated in 19 correspondence that you would plan on 20 designating Todd Timmerman, Mayor T.R. 21 McNutt, Carol Sneath, Tom Edgin, Jesse 22 Mason, and John Milam, and Rex Anderson as 23 the 30(b)(6) witnesses for that category; 24 is that correct? 25 MR. BROCKETT: Yes, that is correct.
Page 6	Page 8
1 something on the record first. 2 MR. BROCKETT: Well, in John Milam's 3 deposition, we'll just do it's a deposition 4 by agreement of the parties. 5 All objections are reserved except as 6 to the form of the question and 7 responsiveness of the answer. 8 MS. JONES: That's fine, Mr. Brockett. 9 And we have -- this is for a Notice of 10 30(b)(6) deposition today, and there were a 11 lot of categories, so I thought I would go 12 ahead and put those on the record and get 13 what witnesses are going to be responsive 14 and that sort of thing. 15 So there were thirteen categories, and 16 category one was the design, location, 17 specifications, current status, and planned 18 usage of the walking trail and/or floating 19 dock which is the subject matter of this 20 lawsuit. 21 Mr. Brockett, I understand that the 22 witnesses you designated for that are Sandy 23 Key, Terry Burruss, Darriell Mathis, Bill 24 Ruck, and Thomas Jones; is that correct? 25 MR. BROCKETT: That's correct. Yes,	1 MS. JONES: Okay, and Mr. Timmerman, 2 Mayor McNutt, Ms. Sneath, Mr. Anderson, I 3 believe, are the ones that have been 4 deposed previously; is that correct? Has 5 Mr. Edgin been deposed? 6 MR. BROCKETT: Yes. 7 MS. JONES: Okay, Mr. Edgin. So those 8 five have been deposed previously. Is 9 there a need to re-depose them, or are you 10 stipulating that their testimony is Rule 11 30(b)(6) testimony? 12 MR. BROCKETT: With regards to that 13 issue, they've already been deposed, so it 14 is stipulated. 15 MS. JONES: Okay. And category three 16 is the details of the meeting described by 17 Mayor McNutt at the council meeting 18 reflected in the transcript attached as 19 Exhibit 1 hereto whereby former Mayor 20 Timmerman read a letter from Union Pacific 21 regarding the crossing at issue. 22 The same people have been noticed, or 23 stated by you to be witnesses, Timmerman, 24 McNutt, Sneath, Edgin, Mason, Milam, and 25 Anderson.

2 (Pages 5 to 8)

Page 9	Page 11
1 Do we agree that the testimony 2 previously taken of Timmerman, McNutt, 3 Sneath, Edgin, and Anderson are designated 4 as the Rule 30(b)(6) testimony? 5 MR. BROCKETT: Yes. 6 MS. JONES: Okay. The fourth category 7 is the construction or pouring of the 8 concrete, asphalt, curb cut of the location 9 that the city now requests that a crossing 10 be installed. 11 Mr. Brockett, you haven't given me a 12 witness designation for that. Do you have 13 a witness designation for that category? 14 MR. BROCKETT: No. The other -- 15 Mr. McNutt has already been deposed on 16 that, and so have some of the other council 17 members, and all of them have testified 18 there is no evidence or no records with 19 regards to that request. 20 MS. JONES: Okay. So the city is 21 stipulating that there is no evidence or 22 documents regarding the issue of category 23 four? 24 MR. BROCKETT: That's correct. 25 MS. JONES: Okay. Five is the	1 be installed. 2 Mr. Brockett, you have identified 3 Carol Sneath as the 30(b)(6) witness for 4 that category. 5 She's previously been deposed, do you 6 agree that her testimony stands as 30(b)(6) 7 testimony? 8 MR. BROCKETT: Yes. 9 MS. JONES: Okay. And category eight 10 is the placement and/or existence of the 11 original street sign at the location that 12 the city now requests that a crossing be 13 installed. 14 Mr. Brockett, you have indicated that 15 there is no witness on that. Do you 16 stipulate that there is no evidence or 17 documentation from the city regarding 18 category eight? 19 MR. BROCKETT: Yes. 20 MS. JONES: Nine is any funds expended 21 by the city for the purpose of maintaining 22 Oliver Street since 1975. 23 Mr. Brockett, you have not given me a 24 witness designation for this category. Do 25 you agree and stipulate that the city has
Page 10	Page 12
1 construction or pouring of the concrete 2 curb and asphalt for the street that 3 parallels the tracks at or near the 4 previous location of Oliver Street. 5 Similarly, Mr. Brockett, do you 6 stipulate that the city does not have any 7 evidence or documentation for category 8 five? 9 MR. BROCKETT: Yes. 10 MS. JONES: For category six, the 11 identification of previous location of 12 Oliver Street and the history of its use, 13 Mr. Brockett, you have identified Ms. Key 14 and Mr. Gattis as the witnesses that would 15 be responsive for the city's 30(b)(6) 16 witness to that category; is that correct? 17 MR. BROCKETT: That is correct. 18 MS. JONES: And those two have already 19 been deposed. Do you agree that their 20 testimony stands as 30(b)(6) testimony? 21 MR. BROCKETT: Yes. 22 MS. JONES: Okay. Category seven is 23 the placement of an Oliver Street sign 24 within the last two years at the location 25 that the city now requests that a crossing	1 no evidence of category nine? 2 MR. BROCKETT: Yes. 3 MS. JONES: Okay. Number ten is the 4 existence of any recorded plat purporting 5 to dedicate Oliver Street for a public 6 purpose. I don't have your letter in front 7 of me. Did you have a witness for that? 8 MR. BROCKETT: Tom, Tommy Watkins 9 {sic}, who was deposed yesterday, and Royce 10 Gattis, who was deposed yesterday, both 11 spoke regarding a plat. 12 At this time no plat has been 13 obtained, but they testified to what they 14 remember of a plat. 15 MS. JONES: Okay. So do you agree 16 that Tommy Watkins [sic] and Royce Gattis' 17 testimony that's already on record will 18 stand as the city's 30(b)(6) testimony with 19 regards to category ten? 20 MR. BROCKETT: Yes. 21 MS. JONES: Okay. Eleven is the 22 existence of an ordinance accepting and 23 recording plat dedicating Oliver Street for 24 a public use. 25 Mr. Brockett, no witness has been

3 (Pages 9 to 12)

Page 13	Page 15
1 designated for this category. Do you agree 2 that the city has no evidence or 3 documentation regarding category 11? 4 MR. BROCKETT: Yes. 5 MS. JONES: Okay. Twelve is the 6 existence of any recorded easement or other 7 instrument giving the city the right to 8 cross Union Pacific's right-of-way at the 9 requested crossing. 10 Mr. Brockett, you have identified 11 Carol Sneath as the city's 30(b)(6) 12 designee for that category. 13 Do you agree that her testimony is 14 already of record and stands as the 15 30(b)(6) testimony? 16 MR. BROCKETT: Yes. 17 MS. JONES: And last, 13, the details 18 of how this lawsuit has been funded by the 19 city, including from what fund Attorney 20 Brockett has been paid. Mr. Brockett, you 21 have identified Carol Sneath as the city's 22 30(b)(6) designee for this category. Do we 23 agree that her testimony already of record 24 is the city's 30(b)(6) testimony? 25 MR. BROCKETT: Yes. And I would add	1 A. It means I just, to the best of my knowledge, I 2 recollect what happened back in '04. 3 Q. Okay. And do you understand that your 4 testimony today is testimony as if you were the 5 city's representative? 6 A. I was councilman at that time, yes. 7 Q. Okay. Have you ever been deposed before? 8 A. No. 9 Q. Okay. Let me give you a brief rundown of what 10 will happen today. Ms. Janess is taking down 11 everything that we say, which means a couple of 12 things. 13 One, she can't get us speaking at the same 14 time, so you may anticipate where I'm going with the 15 question, but if you allow me to fully ask my 16 question, I will pause and fully allow you to answer 17 your question before I begin the next question. 18 Okay? 19 A. I understand. 20 Q. Okay. The second thing is she can only get 21 down verbal responses, so while I understand in the 22 course of conversation a head nod or an "uh-huh" or 23 "huh-uh," she can't get that down as a verbal 24 response. So will you verbalize your responses for 25 me today?
Page 14	Page 16
1 T.R. McNutt was also questioned about that. 2 MS. JONES: Okay. So -- okay. 3 MR. BROCKETT: So his testimony 4 already on record would also be classified 5 as 30(b)(6) testimony. 6 MS. JONES: Okay. All right. With 7 that, I think we are ready to actually 8 begin the deposition. Before we do, do you 9 have any water? 10 MR. BROCKETT: Yes. 11 EXAMINATION 12 BY MS. JONES: 13 Q. Mr. Milam, we have just been introduced, but my 14 name is Jamie Jones. I am the attorney for Union 15 Pacific Railroad Company in this lawsuit. 16 You heard me read a number of things into 17 the record, and one of them was the designation of 18 you as a Rule 30(b)(6) witness for the city. Do you 19 understand what that means? 20 A. Yes, I do. 21 Q. Okay. What is your understanding of that? 22 A. That 30(b)(6) what now? 23 Q. That you're a 30(b)(6) witness on behalf of the 24 city. Do you have an understanding of what that 25 means?	1 A. Yes, I will. 2 Q. And you will probably forget, as does every 3 witness who is deposed, and I will remind you, and I 4 don't do that to be rude. I do it just so we have a 5 clear record; okay? 6 A. Okay. 7 Q. And there may be times when I ask a question 8 that I promise nobody in the room understands. If I 9 do that will you ask me to rephrase it so that I can 10 be sure that when you have answered a question you 11 have understood what I've asked you? 12 A. I will. 13 Q. Okay. Have you taken any medication today that 14 would make it hard for you to remember? 15 A. No. 16 Q. Okay. And we're -- the purpose today is to get 17 the city's testimony down so that we have it of 18 record before the trial of this case. Do you 19 understand that? 20 A. I do. 21 Q. Okay. I'm not trying to run a marathon or 22 anything today. So if at any point you need a break, 23 you just let me know, and we'll take one. All right? 24 A. Okay. 25 Q. The only thing I will ask is if there is the

4 (Pages 13 to 16)

Page 17	Page 19
1 pending question, you just answer that question. 2 A. Okay. I just turned my hearing aids up. 3 Q. Okay. Well, and if -- that being said, if 4 there's any time you need me to speak up -- 5 A. No, I'm fine. 6 Q. -- just let me this know. 7 A. It's kind of neat when you can turn things, you 8 can turn the sound up, and you can turn the sound 9 down if you want to. 10 Q. Sometimes turning the sound down probably has 11 some good benefits in some conversations. 12 A. Sometimes. 13 Q. Yes. 14 A. I have got it turned up to the maximum now, so 15 I can hear you. 16 (Exhibit No. 144 was marked.) 17 Q. Okay. I am going to hand you what I have 18 marked as Exhibit 144. 19 MS. JONES: Mr. Brockett, it's just 20 the Notice. 21 BY MS. JONES: 22 Q. Have you been provided with that Notice of 23 Deposition? 24 A. Yes, I have. 25 Q. Okay. And I'm going to have you flip to where	1 that would be responsive to that? 2 A. No, I have not. 3 Q. Okay. So you did not, obviously, bring 4 anything with you today? 5 A. I couldn't. 6 Q. Okay. Number two is. Please produce a copy of 7 all documents, correspondence, email, reports that 8 you have sent or received from Union Pacific Railroad 9 Company or any representative of UP regarding access 10 to city property. 11 Have you ever had any such documents in 12 your possession? 13 A. No. 14 Q. Okay. Third was, Please produce a copy of all 15 documents, correspondence, email, reports that you 16 have sent or received regarding the removal or 17 installation of a crossing in Ozark, Arkansas. 18 Have you ever had any such documentation? 19 A. No. 20 Q. Number four was. Please produce any diaries. 21 notes or calendars that you have kept or created 22 regarding any efforts to seek a crossing in Ozark, 23 Arkansas. 24 Have you ever had any of those in your 25 possession?
Page 18	Page 20
1 it says two and three. Those are the two categories 2 that you have been designated as a Rule 30(b)(6) 3 witness on. 4 A. Okay, two and three. Let me get my glasses on. 5 Q. So I'm going to have you go ahead and read 6 those. 7 A. (Witness reviews document.) 8 Q. Okay. I am going to look at what you have 9 brought with you today. 10 A. Okay. 11 Q. (Counsel reviews documents.) I am going to 12 mark this Notice of Deposition as, as, it's 145. 13 (Exhibit No. 145 was marked.) 14 BY MS. JONES: 15 Q. And you were asked to bring a number of 16 documents with you today; correct? 17 A. I was asked, and I looked, and I couldn't find 18 them. 19 Q. Okay. So I'm going to go through them in 20 specifics. So the first one was to produce a copy of 21 all documents, correspondence, email, reports that 22 you have sent or received from Union Pacific Railroad 23 Company or any representative of UP regarding the 24 removal or installation of a crossing in Ozark, 25 Arkansas. Have you at any point had any documents	1 A. Probably, but I couldn't relocate them. I 2 looked for them, but I didn't have them. I couldn't 3 find them. 4 Q. What was it that you thought you might have had 5 in your possession? 6 A. It would have just been minutes of the meetings 7 or whatever. It wouldn't have been anything other 8 than that. 9 Q. Okay. So minutes that we should have from the 10 city themselves; right? 11 A. Yeah, the city should have them. 12 Q. Okay. And five was, Please produce any 13 diaries, notes, or calendars you have kept or created 14 regarding any contact with UP or its representatives. 15 Did you have anything in your possession at 16 any point that would be responsive to that category? 17 A. No. 18 Q. Okay. And lastly, six, Please produce all 19 diaries, notes, or calendars you have from any 20 council meeting regarding the removal or installation 21 of a crossing in Ozark, Arkansas. 22 Have you ever had any documentation 23 regarding that category? 24 A. No. 25 Q. Okay. Let me just get a little bit of

5 (Pages 17 to 20)

Page 21 1 background information from you, sir. What is your 2 date of birth? 3 A. Ninth, twentieth and fifty. 4 Q. Okay. And that makes you how old today? 5 A. Sixty-four years old. 6 Q. And are you originally from Ozark? 7 A. That's correct. 8 Q. Okay. Born and raised? 9 A. Yes. 10 Q. Did you graduate from high school from Ozark? 11 A. No. 12 Q. Okay. When was the last year that you would 13 have gone to school in Ozark? 14 A. I graduated from County Line. 15 Q. Okay. What year? 16 A. 1968. 17 Q. Okay. And did you do any post high school 18 education? 19 A. After high school? 20 Q. Yes, sir. 21 A. Yes. I went to Arkansas Tech University or 22 Arkansas Tech. 23 Q. Okay. In Russellville? 24 A. No, out here at Ozark. 25 Q. Okay. And did you get a degree?	Page 23 1 A. Which is (479)209-4462. 2 Q. Okay. And at some point you got involved in 3 city politics; is that correct? 4 A. That's correct. 5 Q. What year did you get involved in city 6 politics? 7 A. It seemed like it was about '02. 8 Q. Okay. 9 A. Maybe. 10 Q. And was that -- was your first involvement with 11 city politics as an, as an alderman? 12 A. That's correct. 13 Q. Okay. And you were -- what ward did you 14 represent? 15 A. Ward Two, I believe. 16 Q. And how long were you a councilman? 17 A. Just one term, two years. 18 Q. Do you think that would have been 2001 and 19 2002? 20 A. Yeah. 21 Q. Okay. 22 A. Okay. That sounds correct. 23 Q. Okay. I am going to mark as Exhibit 146 the 24 mayor and council list that's been provided by the 25 city.
Page 22 1 A. Yes, I did. 2 Q. What was your degree? 3 A. It was in refrigeration and air conditioning 4 technology. 5 Q. Okay. Is that a two-year associate's or a 6 bachelor's degree? 7 A. No. It was technical degree. 8 Q. Okay. And is that what your career has been 9 in, heating and air? 10 A. That's correct. 11 Q. Okay. And do you own a business in Ozark? 12 A. Yes, I do. 13 Q. What business is that? 14 A. It's -- it was Milam Heating and Air 15 Conditioning, which now has gone into the name of 16 John Milam Construction, Incorporated. 17 Q. Okay. What is your address? 18 A. 2700 West Commercial. 19 Q. Okay. And what is your home phone number? 20 A. Actually, I have one for the business; it's 21 (479)667-4080. 22 Q. Okay. 23 A. And I use my cell phone number for most 24 everything. 25 Q. And what's that.	Page 24 1 (Exhibit No. 146 was marked.) 2 BY MS. JONES: 3 Q. Sir, I'm going to show you that and show you 4 2001 and 2002. Did that reflect the year which you 5 were, or the term that you were an alderman for Ward 6 Two? 7 A. I believe that's correct. 8 Q. Okay. And Todd Timmerman was mayor at that 9 time? 10 A. That was correct. 11 Q. And the other council members are listed as Tom 12 Edgin, Roxie Hall, W.D. House, Rick McClellan, T.R. 13 McNutt and yourself; is that -- 14 A. That's correct. 15 Q. Okay. Do you have any history of working in 16 the railroad business at all? 17 A. None. 18 Q. Any family members that work for the railroad? 19 A. None. 20 Q. Okay. You have been designated as what we call 21 a Rule 30(b)(6), or the city's designee for testimony 22 regarding, one, the details and current existence of 23 a letter read by former Mayor Timmerman as described 24 by Mayor McNutt. 25 Do you have a memory of a council meeting

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Page 25	Page 27
1 in which a citizen of Ozark complained about the 2 noise of the horns of the railroads as they came 3 through the crossing downtown? 4 A. Yes. There was -- the, the citizen never came 5 to the meeting. It was reported by Mr. Mayor 6 Timmerman that he had calls from an individual. 7 Q. Okay. Tell me what you remember about that. 8 A. I just remember that he said that he had had 9 calls from an individual complaining about the noise. 10 Q. And do you remember if any action was requested 11 by the city council? 12 A. No. He just advised us of it, and, and that 13 was about it. 14 Q. Do you have any memory of any vote taken or 15 action by the city council to have the mayor talk to 16 the railroad about making it a quiet zone or taking 17 out the crossing or anything of that nature? 18 A. I can remember a discussion about it, but I 19 cannot remember any vote taken. 20 Q. Okay. What do you remember about the 21 discussion? 22 A. Just that we were all pretty much in agreement. 23 Q. And what were you all in agreement about? 24 A. That if-- the letter that he came up with was 25 stated that if they took the crossing out they	1 reach out to the railroad, or was there some 2 discussion that the mayor should reach out and talk 3 to the railroad about the crossing? 4 A. I don't think -- I, as an individual, didn't 5 make that request. 6 Q. Okay. Do you remember that being the 7 discussion of the council? 8 A. I can't remember that. 9 Q. Okay. But you recall at some point, and I'm 10 assuming these are two discussions; am I right? 11 There's the first discussion, that there has been a 12 complaint by -- 13 A. Yes. 14 Q. -- the citizen; right? 15 A. Yes. 16 Q. Okay. What was sort of the walking orders that 17 the mayor had with respect to telling the council 18 about, about the complaint? 19 A. He told us about the complaint, and he said 20 that he would get with the railroad and see if there 21 is anything that could be done about it. 22 Q. Okay. So then there is a second conversation 23 where Mayor Timmerman reports the railroad said they 24 would take the crossing out so that they won't have 25 to blow anymore; is that right?
Page 26	Page 28
1 wouldn't blow the whistle anymore, and therefore the 2 person that was complaining wouldn't be complaining 3 anymore. 4 Q. Okay. So you have a memory of Mayor Timmerman 5 reading a letter from the railroad agreeing to take 6 the crossing out; is that correct? 7 A. That's correct. 8 Q. And if they took the crossing out they would no 9 longer be blowing their horn; correct? 10 A. That's correct. 11 Q. And the council was in agreement for that to be 12 done? 13 A. I never heard any objection to it. 14 Q. Okay. 15 A. From anybody. 16 Q. Okay. So somewhere in 2001 and 2002 the city 17 council was informed that the railroad, pursuant to 18 the city's request, would take the crossing out; is 19 that correct? 20 A. I'm not sure about that. 21 Q. Okay. It's your memory, though, that there was 22 a complaint made by a citizen about the crossing; 23 correct? 24 A. That's correct. 25 Q. And that -- do you remember asking the mayor to	1 A. That was the letter he read to us. 2 Q. Okay. And the council was in agreement that 3 that should be done? 4 A. As far as I know, I didn't hear any objections 5 to it. 6 Q. Okay. And that second conversation, it was 7 your impression that that was the result of Mayor 8 Timmerman reaching out to them from the first 9 conversation; correct? 10 A. Yes. 11 Q. Okay. Do you have any other memory of either 12 of those two conversations? 13 A. No, I do not. 14 Q. Okay. All right. Let's go back and talk a 15 little bit about the crossing that was, that was 16 taken out by the railroad after that letter was read. 17 Do you recall the crossing was taken out 18 not long after that conversation, the second 19 conversation took place at the council meeting that 20 the railroad would take the crossing out so they 21 didn't have to blow the horn anymore? 22 A. I don't remember -- 23 Q. Okay. 24 A. -- anything about that. 25 Q. You weren't really paying much attention to it;

7 (Pages 25 to 28)

Page 29	Page 31
1 right? 2 A. No, I was not. 3 Q. Okay. In part was that because that was not a 4 crossing you were using? 5 A. No. 6 Q. Okay. At the time of 2001, 2002, did you ever 7 use that crossing? 8 A. Never. 9 Q. Okay. Had you used it before? 10 A. Never. 11 Q. Okay. Do you even -- I guess -- I think it's 12 been pretty well established that sometime before the 13 early seventies and before the river had changed its 14 course it might have gone to a public dump. Do you 15 have any knowledge of that? 16 A. No, I do not. 17 Q. Okay. Okay. So you don't have any knowledge 18 at all about what that crossing might have been used 19 for? 20 A. No. 21 Q. Okay. 22 A. No. 23 Q. Can we agree that in the seventies when the 24 Army Corps of Engineers put in the McClellan-Kerr 25 navigation way that the river changed its course?	1 "yes" or "no." 2 A. No. 3 Q. Okay. No, that's not correct? Do you know 4 what -- 5 A. I can't remember. 6 Q. Okay. You don't -- you never used that street? 7 A. No. 8 Q. So you don't really know what it was made of? 9 A. No. 10 Q. Okay. And you don't have any documentation 11 about anything about Oliver Street. You just -- you 12 really don't know anything about it; correct? 13 A. That's correct. 14 Q. Okay. See, this gets rid of categories of 15 questions, when I know what you have knowledge of or 16 don't have knowledge of. 17 Okay. You had said, I think, at the 18 beginning of this that you thought you were here to 19 testify about what happened in 2004. What were you 20 referring to? 21 A. I was, I was mistaken. 22 Q. Okay. 23 A. I am sorry. 24 Q. Okay. 25 A. It was 2001, 2002.
Page 30	Page 32
1 A. I wouldn't -- not -- 2 Q. You don't have any knowledge of that? 3 A. No, I don't have any knowledge of that. 4 Q. Okay. Okay. Do you have any knowledge of a 5 street that the city has told us was called Oliver 6 Street? 7 A. I, I recollect the sign. When I drove down 8 River Street I would see the sign there that said 9 Oliver Street. 10 Q. And that's been just in the last few years; 11 correct? 12 A. That's correct. 13 Q. Okay. But before 2002 there was not a street 14 sign there that said Oliver Street; correct? 15 A. I can't remember. 16 Q. Okay. Do you have any recollection of a street 17 called Oliver Street other than in the last few years 18 seeing that street sign that appeared? 19 A. No, I do not. 20 Q. Okay. Did you ever hear of that, the street 21 that the, where that crossing was -- and we're 22 calling it a street. It was sort of an old dirt 23 road; correct? 24 A. (Witness nods head.) 25 Q. Is that "yes"? I told you you'd forget to say	1 Q. And that's what we've already talked about? 2 A. Yes. 3 Q. Okay. Have, have you ever had any 4 conversations with Union Pacific Railroad or any of 5 its employees? 6 A. No, I have not. 7 Q. Okay. And did you assist with the drafting of 8 the Complaint that was filed in this matter? 9 A. No, I did not. 10 Q. Okay. Do you even -- do you have an 11 understanding of what this lawsuit is about? 12 A. Yes, I do. 13 Q. Okay. What is your understanding? 14 A. It is the understanding that the crossing got 15 taken out so that the train wouldn't have to blow its 16 whistle and, and now they're, the city is wanting the 17 crossing back. 18 Q. Okay. Do you think that's fair, for the city 19 to ask for the crossing back when when you were a 20 council member it agreed to take it out? 21 A. I don't have an opinion about it. 22 Q. Okay. You agree with that, though, that the 23 council agreed for it to be taken out when you were a 24 councilman? 25 A. I think we were all in agreeance.

8 (Pages 29 to 32)

Page 33	Page 35
1 Q. Okay. Do you have any knowledge about the plan 2 for the marina? 3 A. Just very little. 4 Q. Just what you've, maybe, read in the papers. 5 but no firsthand knowledge? 6 A. No firsthand knowledge. 7 Q. Okay. Do you have any firsthand knowledge 8 about the biking/hiking trail that the city has 9 proposed? 10 A. Just what I've read in the paper. 11 Q. Okay. And are you still involved in local 12 politics? 13 A. No. 14 Q. Okay. Two years, two years was enough? 15 A. (Witness nods head.) 16 Q. Yes, sir. 17 A. Yes. 18 Q. Are you or have you ever been a member of Main 19 Street Ozark? 20 A. No. 21 Q. Okay. 22 MS. JONES: All right. Give me one 23 moment, and I may be very quickly finished. 24 (Brief pause.) Sir, I appreciate you 25 coming in today, and I won't take up any	1 A. I did remember him reading the letter to us. 2 Q. Okay. Because your wife was saying no, you 3 would have come home and told me about it if that had 4 happened. 5 A. I don't... I just, I don't know about that. 6 Q. You don't remember about that conversation or 7 this, what happened at the city council meeting? 8 A. I remember we discussed -- I don't remember 9 much of what we discussed there. 10 Q. Again, at Southern Grill or at the city council 11 meeting? 12 A. At Southern Grill. 13 Q. Okay. Well, when he read the letter out loud 14 to the city council, I will tell you that you are the 15 only city council member that remembers him reading 16 it out loud. What did it say? Do you remember? 17 A. He just said that if they took the tracks out 18 they wouldn't blow the whistle anymore. 19 Q. The crossing? 20 A. The crossing, yeah, if they took the crossing 21 out. 22 Q. Okay. Do you remember if you voted on it? 23 A. No, we didn't. It was just discussion. He 24 just more or less told us about it and... 25 Q. Okay. Did you see the letter?
Page 34	Page 36
1 more of your time. Thank you very much. 2 MR. BROCKETT: I've got some questions 3 for you, Mr. Milam. 4 EXAMINATION 5 BY MR. BROCKETT: 6 Q. Do you remember when I served you with the 7 subpoena? 8 A. Yes, I do. 9 Q. Do you remember we briefly discussed what they 10 might be asking you about? 11 A. Yes, I did. 12 Q. Now, have you -- your memory is a little 13 different than what we discussed compared to what you 14 testified today. 15 Have you had some information provided to 16 you, or did you go back and look at notes, or what 17 did you -- how did your memory change? 18 A. I don't think it did. 19 Q. Well, you are stating that the mayor read the 20 letter out loud from Union Pacific; correct? Is that 21 what you're saying here today? 22 A. He read the letter to us, yes. 23 Q. Okay. Do you remember that day that you and 24 your wife were sitting there, and you said you did 25 not remember that?	1 A. No. 2 Q. Okay. And do you know if he read it on the 3 record or -- 4 A. I mean, yeah, he had the letter there, but he 5 didn't actually read the letter. He had the letter, 6 and he told us the contents of the letter, what the 7 letter said. 8 Q. Okay. But he didn't actually read it out loud? 9 A. No, he didn't. I'm sorry. He did not actually 10 read it. 11 Q. Okay. Was that -- 12 A. He just told us what the letter was about. 13 Q. Okay. Was that on the record, or was it after 14 the meeting had adjourned? 15 A. I can't remember. 16 Q. Okay. During the time that you were on the 17 city council did you have the opportunity to close a 18 city street? 19 A. We never voted on anything, no. 20 Q. Like that? 21 A. No. 22 Q. Okay. And I'm asking two different situations. 23 Just in general, did you close any city street, or an 24 alleyway, or an easement during the time that you 25 were on the city council? But we're going to

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Page 37 1 disregard the crossing for a moment. So just in 2 general did you ever vote on anything like that? 3 A. Yes, we did. 4 Q. Okay. So was there an affirmative vote by the 5 city council? 6 A. Not on, not -- it wasn't pertaining to this. 7 It was -- 8 Q. Right. I want to talk about what you did vote 9 on. Let's forget about the crossing for a moment and 10 just focus on -- 11 A. We did vote on, like, alleyways closed and 12 stuff. 13 Q. Okay. And do you remember the process that you 14 had to go through to close that? 15 A. Yes. We all took a vote on it and had seconds. 16 Q. Okay. Was it a single reading, or did it have 17 to have multiple readings? 18 A. Multiple readings. 19 Q. Okay. So it wasn't the mayor comes in and 20 says, I want to close this crossing, and you guys 21 vote right then to close it? 22 A. No. 23 Q. Okay. Now, let's go back to the crossing for a 24 moment. On this one, so the mayor read it one time, 25 this potential letter, or at least spoke about it?	Page 39 1 anything for the crossing to be removed? 2 A. I'm not aware of anything. 3 Q. Okay. And Mr. Mayor Timmerman didn't mention 4 that either? 5 A. (Witness shakes head.) 6 MR. BROCKETT: Okay. All right. 7 That's, that's all I've got. 8 MS. JONES: Just a few follow-up. 9 EXAMINATION 10 BY MS. JONES: 11 Q. Do you recall at any point the depot being 12 given to the city by the railroad? Do you, do you 13 have any memory of that? 14 A. No, I do not. 15 Q. Okay, okay. And do you have any knowledge that 16 the crossing that the street sat on was the street, a 17 city street; do you know? 18 A. I don't have any knowledge of that. 19 MS. JONES: Okay. Thank you so much. 20 I appreciate your time. 21 MR. BROCKETT: No further questions. 22 THE VIDEOGRAPHER: This concludes the 23 deposition. We are off the record at 9:33 24 a.m. 25 (The deposition was concluded at 9:33 a.m.)
Page 38 1 A. He spoke about it. 2 Q. Okay. 3 A. He didn't -- he had the letter, and he spoke 4 about it, but as far as him reading it word for word, 5 he did not. 6 Q. Okay. And to your knowledge, was there a city 7 ordinance to close that crossing? 8 A. No. 9 Q. Okay. To your knowledge, there was no vote on 10 it? 11 A. No, there was no vote. 12 Q. Okay. 13 A. To my knowledge. 14 Q. Okay. So the, would you say the residents of 15 Ozark didn't have the opportunity to voice an 16 objection or approval of that decision? 17 A. I'm not sure about that. 18 Q. Okay. But generally that's why you read it 19 three times; is that correct? 20 A. That's correct. 21 Q. Okay. But in this case it was not read three 22 times? 23 A. I don't ever remember it read once. 24 Q. Okay. Fair enough. What about monetary 25 consideration, do you know if the city got paid	Page 40 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS) 3)ss. 4 COUNTY OF SALINE) 5 I, JANESE FERGUSON SMITH, CCR, RPR, a 6 Notary Public in and for Saline County, Arkansas do 7 hereby certify that the facts stated by me in the 8 caption of the foregoing matter are true; and that 9 the foregoing matter was transcribed by me, to the 10 best of my ability and understanding, from my machine 11 shorthand notes taken at the time and place set out 12 in the caption hereto. 13 In accordance with Rule 30(e) of the 14 Rules of Civil Procedure, review of the transcript 15 was waived by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither 17 counsel for, related to, nor employed by any of the 18 parties to the action in which this proceeding was 19 taken; and, further that I am not a relative or 20 employee of any attorney or counsel employed by the 21 parties hereto, not financially interested or 22 otherwise, in the outcome of this action. 23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 24 this, the 26th day of February, 2015. 25 26 JANESE FERGUSON SMITH, CCR, RPR 27 Notary Public for Saline County 28 and Court Reporter.

10 (Pages 37 to 40)

Transcript of the Testimony of

Robert Trotter

Date: March 10, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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Robert Trotter 3/10/2015

City of Ozark v. Union Pacific Railroad Company

Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS ORAL DEPOSITION OF ROBERT TROTTER March 10, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Ms. Jones 5 5 6 EXAMINATION 7 By Mr. Brockett. 18 8 9 EXAMINATION 10 By Ms. Jones 27 11 12 E X H I B I T 13 Exhibit No. 264 (Phone Book). 11 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. 5 Sayre & Brockett 6 401 West Commercial Street 7 Ozark, Arkansas 72949 8 9 ON BEHALF OF THE DEFENDANTS: 10 JAMIE JONES, ESQ. 11 Friday, Eldredge & Clark 12 400 West Capitol 13 Suite 2000 14 Little Rock, Arkansas 72201 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF ROBERT TROTTER, 2 witness produced at the request of the Defendants. 3 was taken in the above-styled and numbered cause on 4 the 10th day of March, 2015, before Janess Ferguson 5 Smith, Certified Court Reporter and Notary Public in 6 and for Saline County, Arkansas, at the Offices of 7 Sayre & Brockett, 401 West Commercial Street, Ozark, 8 Arkansas, at 10:54 a.m. 9 10 11 * * * * * 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of ROBERT TROTTER may be taken for any and 17 all purposes according to the Federal Rules of Civil 18 Procedure. 19 * * * * * 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith

Bushman Court Reporting

501-372-5115

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1 ROBERT TROTTER, 2 the witness hereinbefore named, having first been 3 duly cautioned and sworn or affirmed to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 BY MS. JONES: 8 Q. Could you go ahead and state your name for our 9 record? 10 A. Robert E. Trotter. 11 Q. Mr. Trotter, my name is Jamie Jones, and I 12 represent Union Pacific Railroad Company in the 13 lawsuit that the city has filed against it. 14 A. Okay. 15 Q. You have been named as a witness by the city, 16 which is what brings us here today. Have you ever 17 given a deposition before? 18 A. Yes. 19 Q. Okay. Well, good. You're probably familiar 20 with the rules. I'm just going to re-familiarize 21 them just so that we're on the same page. 22 A. Uh-huh. 23 Q. Ms. Janess is our court reporter. She is 24 taking down everything you say. You are under oath, 25 just as if we were in the courtroom with the judge.	1 for you? 2 A. Yes, ma'am. 3 Q. Okay. And we're not going to go a whole long 4 time here today with you, but if you need a break at 5 any point, you let us know, and we will take one. 6 Okay? 7 A. Fine. 8 Q. Can you give me your date of birth? 9 A. 7-1-35. 10 Q. And that makes you how old today? 11 A. Seven-nine. 12 Q. Okay. And what is your home address? 13 A. 701 North 18th Street, Ozark, Arkansas. 14 Q. And what is the best phone number to reach you? 15 A. (479)518-0281. 16 Q. Okay. And did you graduate -- how long have 17 you lived in the Ozark area? 18 A. All my life. 19 Q. Okay. Did you graduate from high school in 20 Ozark? 21 A. Yes, ma'am. 22 Q. What year? 23 A. 1953. 24 Q. Did you get any post high school education? 25 A. I had some business college afterwards.
Page 6	Page 8
1 You understand that; right? 2 A. Okay. 3 Q. Okay. Since she is taking down what we say, it 4 means a couple of things for us, and the first one is 5 I understand your nonverbal communication. 6 If you nod your head or say "uh-huh" or 7 "huh-uh," I understand that, but we can't get it down 8 for the record. So if you can just verbalize your 9 responses for me; okay? 10 A. That's fine. 11 Q. And you may forget that. Almost every witness 12 sitting there does at some point, and I will remind 13 you. I don't do it to be rude. I do it just so we 14 have a clear record; all right? 15 A. Okay. 16 Q. The other thing is she can't get us both 17 speaking at the same time, so you may anticipate 18 where I'm headed with a question and interrupt me to 19 go ahead and answer it, but if you will refrain from 20 doing that and let me get my full my question out 21 I'll let you fully answer; okay? 22 A. Okay. 23 Q. If I ask a question that you don't understand, 24 you're not the only person in the room. I have just 25 asked a bad question. Will you ask me to rephrase it	1 Q. Okay. Where did you go? 2 A. Draughon's. 3 Q. Okay. 4 A. Fort Smith. 5 Q. All right. And did you receive a degree? 6 A. No. We just had a certificate. 7 Q. Okay. 8 A. It was about a 12 of 16-month course. 9 Q. Okay. How did you make your living, sir? 10 A. Well, to start off with, I just worked at Ozark 11 Creamery. 12 Q. Okay. How long did you work for Ozark 13 Creamery? 14 A. Probably about five years. 15 Q. Okay. What did you do after you left Ozark 16 Creamery? 17 A. I worked one year or a year and a half for 18 Ozark Tire and Supply. 19 Q. Okay. What did you do after that? 20 A. After that? 21 Q. Yes, sir. 22 A. I was in business for myself from September or 23 October 1960 until about September or October 1962. 24 Q. Okay. What did you do? 25 A. At that time?

2 (Pages 5 to 8)

Page 9 1 Q. Yes, sir. 2 A. Had a service station. 3 Q. Okay. What did you do after '62? 4 A. Went to work for the postal service. 5 Q. Okay. How long did you work for the postal 6 service? 7 A. Thirty-two years. 8 Q. Did you retire from the postal service? 9 A. Yes. 10 Q. What did you do for the postal service? 11 A. Started out as a sub clerk carrier, advanced to 12 a full-time clerk, advanced to assistant postmaster, 13 and in 1981 I was appointed postmaster. 14 Q. Okay. What year was it that you were appointed 15 postmaster? 16 A. 1981. 17 Q. What year did you retire? 18 A. 1992. 19 Q. Okay. 20 A. And then in between that I was on the volunteer 21 fire department 35 years. 22 Q. Okay. 23 A. That was during all of this time. 24 Q. Okay. What was sort of the year frame? What 25 year did you start --	Page 11 1 Q. Yes. We will make sure to give this back to 2 you. So I am going to mark this as -- I'm just using 3 a sticky so it won't do anything. 4 A. Okay. 5 Q. Exhibit 264. 6 (Exhibit No. 264 was marked.) 7 BY MS. JONES: 8 Q. I will ask you about that here in a minute. 9 A. And at the fire department I was fire chief for 10 the last 25 years. 11 Q. Okay. Did I ask you your address? 12 A. Yes. 13 Q. Okay. Thank you. I'm sorry. You are not the 14 first person I have spoken with today, so I always 15 have to remember did I ask him. 16 This lawsuit involves allegations in part 17 regarding a crossing located east of the depot in 18 downtown Ozark. Do you recall such a crossing? 19 A. Yes, ma'am. 20 Q. Okay. Did you ever have an occasion to use the 21 crossing? 22 A. Several times. 23 Q. Okay. Tell me what occasion would have made 24 you use that crossing, and if you can what time 25 period it was.
Page 10 1 A. 1961, the best of memory, and retired in 1995. 2 Q. Okay. Have you ever served on the city 3 council? 4 A. No, ma'am. 5 Q. Have you ever served in an organization called 6 Main Street Ozark? 7 A. No, ma'am. 8 Q. Okay. One of the things that we asked when you 9 came to testify today was that you look to see if you 10 had certain documents. 11 There were six document demands we made. 12 Did you look through to see if you had any of those 13 documents? 14 A. The only thing I have is a 1995 telephone 15 directory on the back page it shows the City of Ozark 16 map. 17 Q. Okay. Great. Thank you. Would you mind if I 18 used a sticky to mark this as an exhibit, and our 19 court reporter will make a copy for myself, but she 20 will get the original back to you? 21 A. Yeah. I don't want to lose the original. That 22 was my wife's -- 23 Q. Absolutely. 24 A. -- deceased wife's personal phone directory 25 while she was a telephone operator.	Page 12 1 A. Well, back before the Corps of Engineers come 2 in and took the property it was the city dump down 3 there. Everybody used it. 4 Q. Yes, we have heard about the city dump. So, 5 you would have gone across that crossing to go down 6 to the dump? 7 A. Right. 8 Q. And it was possibly the late sixties, early 9 seventies when the Corps went in and changed the 10 river? 11 A. I don't remember the year but it was there in 12 the late fifties, early sixties. 13 Q. Okay. Did you have an occasion to use the 14 crossing after the Corps came in? 15 A. To my knowledge, no, unless we had some fires 16 over there. 17 Q. Okay. Do you have any -- I guess let's look at 18 the time period after, say, 1970, so that's clearly 19 going to be after the Corps came in and the river had 20 changed. 21 Would you have had -- do you recall ever 22 going across the tracks for any fires or anything 23 after 1970? 24 A. The timeframe, I couldn't verify that. 25 Q. Okay. Okay. But as we sit here, you don't

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1 have a clear memory of using it after that? 2 A. Not as far as '70 -- like I say, we had some 3 grass fires over there, but I don't remember. I 4 don't have any records of that. 5 Q. Okay. 6 A. Also, you know, the pallet factory was over 7 there. There was a fire there at one time, but 8 that -- I think that was before I went on the fire 9 department. 10 Q. Okay. So that would have been before 1970? 11 A. Yes, yes. 12 Q. Okay. 13 A. That would have been before 1961. 14 Q. Right. As I understand, it was the pallet 15 factory, and then it became F&S Lumber? 16 A. Uh-huh. 17 Q. Okay. So it would have been before it was F&S 18 Lumber? 19 A. I don't know when it changed names. 20 Q. Okay. 21 A. I really don't. 22 Q. But, certainly, I think there has been 23 testimony that F&S Lumber was gone by 1968, 1969. 24 Would that be sort of your recollection as well? 25 A. I am not going to say a timeframe, because I	1 the street? 2 A. No. 3 Q. Okay. And that's from when you were working on 4 the fire. As the fireman, you never saw anything 5 that called it Oliver Street officially; correct? 6 A. I don't remember. We didn't have any maps. 7 Unless -- like I say, I went to the fire department 8 not long ago and went to see if there were any of the 9 old maps there, and we couldn't find any. 10 Q. Okay. And what about the time when you were 11 working at the post office, was Oliver Street, to 12 your knowledge, a recognized city address? 13 A. Not to my knowledge. 14 Q. Okay. And I'm assuming, especially as 15 postmaster general, that you were pretty familiar 16 with the streets? 17 A. Yes. 18 Q. Okay. 19 A. There was a directory, and I went to the post 20 office a couple of weeks ago to see if she might 21 still have it down there. 22 We had a directory with something similar 23 to that telephone book there, about the size, maybe a 24 little larger. 25 Q. Okay.
Page 14	Page 16
1 don't remember when it went out. 2 Q. I understand. I understand. But certainly by 3 the time the river changed when the Corps came in 4 there was, there was -- 5 A. I don't recollect going across it after the 6 river changed. 7 Q. Okay. All right. 8 A. I had no business down there. 9 Q. Do you remember if that street had a name? 10 A. No. As far as a named street there, I don't. 11 Q. Okay. In fact, that Exhibit 264 that you 12 brought me which shows a telephone directory for 13 Ozark from May of 1955, do you -- well, first, do you 14 see the crossing that we're talking about on this 15 map? 16 A. The crossing is not there, but I know 17 approximately where it was. 18 Q. Okay. And do you see -- let me ask you this, 19 have you ever heard of a street called Oliver Street? 20 A. I've heard it discussed quite a bit, but as far 21 as -- the only reason I can think that it would have 22 ever been called that is just because the Oliver 23 family lived down there. 24 Q. Okay. You never -- you have never seen 25 anything that made you think it was the legal name of	1 A. And it was printed about 1961 or two. 2 Q. Was it still there? 3 A. There were a couple of ladies in the civic 4 organization was responsible for doing that. They 5 had it as their city project. 6 Q. Okay. And were you able to find that when you 7 went out there? 8 A. No. 9 Q. No? 10 A. No, and I called her again this morning. 11 Q. Okay. 12 A. And she said she couldn't find it. 13 Q. Who is it that you spoke with? 14 A. Today? 15 Q. Yes, sir. 16 A. The postmaster, Vicky. 17 Q. Okay. What is her name? 18 A. Vicky -- just a minute. She's been married 19 again. Vicky Ramsey. 20 Q. Okay. Thank you. And, in fact, Oliver Street 21 is not listed on this 1955 map; correct? 22 A. Correct. 23 Q. Okay. Have you done any other research as with 24 regards to that crossing or this lawsuit? 25 A. No, ma'am.

4 (Pages 13 to 16)

Page 17 1 Q. Okay. Do you have any personal knowledge of 2 any of the issues with respect to this lawsuit, that 3 crossing, or the circumstances in which it was taken 4 out, or anything like that? 5 A. No, ma'am. 6 Q. Okay. 7 A. The only thing I know is what I have been 8 reading in the paper. 9 Q. Yes, sir. And I am guessing that's when -- 10 when you started reading stuff in the paper is when 11 you started hearing about Oliver Street is when talk 12 about this lawsuit started coming in the paper? 13 A. Yes. 14 Q. Okay. You never heard the term "Oliver Street" 15 before that? 16 A. Ma'am, I'm not going to say that because it 17 could have been as a lane or something with the 18 Olivers living down there. I don't know. 19 Q. I was kind of -- 20 A. I knew them personally. 21 Q. Okay. Was that kind of common that there may 22 not be an actual city street that had a name, but 23 because there was a family that was, that was the 24 family that lived there, someone would call it that 25 is Oliver Lane because the Olivers live there?	Page 19 1 that -- 2 A. Yeah. 3 Q. -- it does have Oliver Street. Do you 4 recognize any of those names listed on a street 5 called Oliver Street? 6 A. I recognize some of the names. 7 Q. Which names do you recognize? 8 A. Martin Oliver, Junior. 9 Q. And did he have a nickname? 10 A. Pete. 11 Q. Okay. Do you recognize any of the other names? 12 A. Well, F&S Lumber Company. 13 Q. Okay. 14 A. Tom Kirkendall, and the other name, Barry 15 Collins, I recognize that name. 16 Q. Okay. And do you know if those individuals 17 resided on a street south of the railroad tracks? 18 A. I knew Martin did. I really didn't remember 19 Tom Kirkendall living there, because when I knew him 20 he lived up on Carter Street. 21 Q. Okay. 22 A. And this Alfred and Frank Oliver, I don't 23 recognize those names. 24 Q. Okay. 25 A. Barry Collins, yes. Possibly Barry lived down
Page 18 1 A. Could be -- 2 Q. Okay. 3 A. -- a possibility. 4 Q. Okay. 5 MS. JONES: All right. Well, sir, I 6 thank you for your time. Mr. Brockett may 7 have some questions for you. 8 EXAMINATION 9 BY MR. BROCKETT: 10 Q. When did you become employed at the post 11 office? 12 A. March 17th, 1962. 13 Q. Okay. I am going to show you what has been 14 marked as Exhibit D to Exhibit 51. This is notated 15 as the City of Ozark house numbers March 1962. Have 16 you ever seen that before? We don't have it all. We 17 just have the first page and one additional page. 18 A. Yeah. 19 Q. That is what you have seen before? 20 A. I have seen some of that, yeah. 21 Q. Okay. 22 A. That was probably the one that -- 23 Q. That you were trying to find? 24 A. Yeah. 25 Q. Okay. And this one on the second page of	Page 20 1 there. I'm not for sure. 2 Q. Okay. But you're aware that Martin Oliver 3 lived down south of the tracks? 4 A. Yes. 5 Q. Okay. I want to show you a different map here. 6 A. Okay. 7 Q. This is Exhibit C of the same Exhibit 51. Have 8 you ever seen a map that details the City of Ozark 9 similar to that? 10 A. This is -- it is similar to one we had at the 11 post office at one time. 12 Q. Okay. About what year did you have one at the 13 post office that was similar? 14 A. That would have been '62, three, somewhere 15 along there. 16 Q. Okay. Do you know who prepared that map in 17 1962? 18 A. No, I don't. No. 19 Q. Okay. Would the Arkansas Western and Planning 20 Development, does that ring a bell to you at all? 21 A. Yeah. I'm familiar with them, yes. 22 Q. Okay. Do you know if they helped prepare a map 23 for the City of Ozark during that time period? 24 A. That, I don't remember. 25 Q. Okay. The next page is a detailed, a more

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1 detailed map of the area -- 2 A. Area. 3 Q. -- that we're dealing with. 4 A. Yeah. 5 Q. Do you remember that area being similar to 6 that? 7 A. Yes. This would have probably been the pallet 8 factory. 9 Q. Okay. 10 A. I don't remember that many houses down there 11 but, you know, if it shows it, it shows it. 12 Q. Okay. And if you -- can you see some addresses 13 listed on there? 14 A. Yes. I can't read them. 15 Q. Okay. Magnifying glass? 16 A. Well, they're blurred. 17 Q. Okay. 18 A. That 217. 19 Q. Can you read what's on F&S Lumber Company? 20 A. No. 21 Q. Okay. Yeah, that one is a little -- 22 A. It's blurry. 23 Q. But if we go over here to the address book that 24 we were referring to, right here. 25 A. I can see the one, one, but I couldn't see what	1 Oliver Street? 2 A. I wouldn't think so -- 3 Q. Okay. 4 A. -- because they were strictly... 5 Q. Just for telephone numbers? 6 A. Uh-huh. 7 Q. Okay. 8 A. I don't believe there is an Oliver listed there 9 that's associated with this. I looked. 10 Q. That was my belief as well. You had mentioned 11 there was a pallet factory. The pallet company had a 12 fire? 13 A. Yeah, they had a fire down there one time. I 14 don't remember. That was before I was on the fire 15 department. 16 Q. Okay. To your knowledge, did the Ozark Fire 17 Department respond to that? 18 A. Yes. 19 Q. Okay. And during the time that you were on the 20 fire department, if there would have been a fire in 21 that area would the Ozark Fire Department had 22 responded? 23 A. Yes. 24 Q. Do you know if there is any individuals that 25 were on the fire department at that time that are
Page 22	Page 24
1 was in front of it. 2 Q. Okay. All right. Now this telephone 3 directory, is this only for individuals that had 4 telephone numbers, or would it have addresses as 5 well? 6 A. No, that's -- they didn't put the addresses on 7 there at that time. 8 Q. Okay. It was just telephone numbers? 9 A. Right. 10 Q. Okay. And do you know who the company was 11 that -- 12 A. United Telephone Company, I think. 13 Q. Okay. Was that based here in Ozark? 14 A. Well, they had -- yeah, that was one of them. 15 They had Ozark, Charleston. I'm thinking Greenwood. 16 I'm not sure. 17 Q. Okay. 18 A. My deceased wife worked for them. 19 Q. All right. 20 A. That's her personal directory. 21 Q. Okay. 22 A. When she went to the work. 23 Q. Okay. Would this -- and if you don't know, 24 that's fine, but would this have any address or any 25 numbers on Oliver Street if no one had a telephone on	1 still living? 2 A. No. I don't think so right now. 3 Q. Okay. Do you remember what the crossing was 4 made of? 5 A. No. 6 Q. Okay. Do you know if there was any signs at 7 that crossing location? 8 A. I don't remember whether there was crossbucks 9 there or not. 10 Q. Okay. 11 A. It would just be speculation. 12 Q. And that's fine. I want to show you another 13 map that's marked as Exhibit C to Exhibit 51 again. 14 Have you ever seen that map before? 15 A. Well, it's getting back down to this one or the 16 one we saw before as far as our delivery map that we 17 had. 18 Q. Okay. 19 A. And it's not available anymore, so I couldn't 20 say which one was which. 21 Q. Okay. Now that one's dated February of 1962, I 22 believe. 23 A. That one is probably -- I'm guessing now, that 24 this was one we had in the office. 25 Q. You think it was the one you had in --

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Page 25 1 A. Possibly it was. 2 Q. Okay. And do you see on that one it does have 3 Oliver Street on it? 4 A. Yes. 5 Q. Okay. As we sit here today, do you remember if 6 the one that you had at the post office had Oliver 7 Street on it? 8 A. No, I don't. 9 Q. You don't remember? 10 A. No. 11 Q. Okay. 12 A. But it -- if it was this one it was there. 13 Q. Okay. 14 A. But I -- like I say, that's the one I tried to 15 find -- 16 Q. Okay. 17 A. -- and couldn't. It's no longer there. 18 Q. I understand. 19 A. But I do know we never delivered mail there. 20 Q. Okay. I understand. And I -- speaking to the 21 owner of F&S Lumber, they had a P.O. Box in Fort 22 Smith. Do you know if Martin Oliver, did he have a 23 P.O. Box? 24 A. Yes. 25 Q. He did?	Page 27 1 Q. Okay. Do you know if Mr. Oliver had water at 2 his house? 3 A. No, I don't. 4 Q. Okay. 5 A. I don't know whether they had any utilities at 6 all. 7 Q. Okay. 8 MR. BROCKETT: I think that's all I've 9 got. 10 EXAMINATION 11 BY MS. JONES: 12 Q. Sir, just a few follow-up questions. The fire 13 department that you were a volunteer at, was that an 14 established city fire department, or was it a 15 community volunteer fire department? 16 A. Well, I guess you could say it was an 17 established fire department for the city. 18 Q. Okay. Was it -- did it have a city budget and 19 pay with city funds, to your knowledge? 20 A. Yes. 21 Q. Okay. Now, I think you testified you never -- 22 the post office never delivered mail to Oliver 23 Street; is that correct? 24 A. Correct. 25 Q. Okay. Why wouldn't the post office deliver to
Page 26 1 A. Yes. 2 Q. Okay. What about Barry Collins, do you 3 remember if he did? 4 A. I don't remember whether Barry did or not. 5 Q. Okay. 6 A. Because Barry had moved from down there to 7 another place. 8 Q. Oh, did he? 9 A. Yeah. 10 Q. Okay. All right. But you're, you're aware 11 that Martin Oliver, Jr. had? 12 A. Yes, he had a box. 13 Q. Is that how you got to know him? 14 A. No. I knew him before I went to work for the 15 post office. 16 Q. Okay. Other than, I guess, crossing over 17 for -- did you go to the dump? 18 A. Yes. 19 Q. Okay. Other than to cross to go to the dump, 20 did you have a reason to go visit Mr. Oliver down 21 there? 22 A. No. 23 Q. Okay. What about F&S Lumber, did you ever go 24 there? 25 A. Don't recall.	Page 28 1 a certain street? 2 A. Probably didn't qualify for city delivery. 3 Q. And why wouldn't a street -- why wouldn't a 4 section of the city not qualify for city delivery? 5 A. Well, at that time if the people didn't request 6 it we wouldn't have delivered. 7 Q. Okay. Would another possible reason be that 8 they weren't on an established city street? 9 A. Could be, or safety hazards or something. 10 Q. Okay. 11 MS. JONES: I think that's it. Thank 12 you so much for your time. 13 THE WITNESS: Okay. 14 MR. BROCKETT: All right. Thank you, 15 sir. 16 (The deposition was concluded at 11:18 a.m.) 17 18 19 20 21 22 23 24 25

7 (Pages 25 to 28)

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1 COURT REPORTER'S CERTIFICATE
2 STATE OF ARKANSAS)

3)ss.

4 COUNTY OF SALINE)

5 I, JANESE FERGUSON SMITH, CCR, RPR, a
6 Notary Public in and for Saline County, Arkansas do
7 hereby certify that the facts stated by me in the
8 caption of the foregoing matter are true; and that
9 the foregoing matter was transcribed by me, to the
10 best of my ability and understanding, from my machine
11 shorthand notes taken at the time and place set out
12 in the caption hereto.

13 In accordance with Rule 30(c) of the
14 Rules of Civil Procedure, review of the transcript
15 was waived by the deponent or a party thereto.

16 I FURTHER CERTIFY that I am neither
17 counsel for, related to, nor employed by any of the
18 parties to the action in which this proceeding was
19 taken; and, further that I am not a relative or
20 employee of any attorney or counsel employed by the
21 parties hereto, not financially interested or
22 otherwise, in the outcome of this action.

23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
24 this, the 10th day of March, 2015.

25 JANESE FERGUSON SMITH, CCR, RPR
Notary Public for Saline County
and Court Reporter.

8 (Page 29)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Monty Canady

Date: March 10, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

Fax: (501) 378-0077

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Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT. DEFENDANTS ORAL DEPOSITION OF MONTY CANADY March 10, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Ms. Jones 5 5 6 EXAMINATION 7 By Mr. Brockett. 14 8 9 EXAMINATION 10 By Ms. Jones 20 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. 5 Sayre & Brockett 6 401 West Commercial Street 7 Ozark, Arkansas 72949 8 9 ON BEHALF OF THE DEFENDANTS: 10 JAMIE JONES, ESQ. 11 Friday, Eldredge & Clark 12 400 West Capitol 13 Suite 2000 14 Little Rock, Arkansas 72201 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF MONTY CANADY. 2 witness produced at the request of the Defendants, 3 was taken in the above-styled and numbered cause on 4 the 10th day of March, 2015, before Janess Ferguson 5 Smith, Certified Court Reporter and Notary Public in 6 and for Saline County, Arkansas, at the Offices of 7 Sayre & Brockett, 401 West Commercial Street, Ozark, 8 Arkansas, at 9:05 a.m. 9 10 11 ***** 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of MONTY CANADY may be taken for any and 17 all purposes according to the Federal Rules of Civil 18 Procedure. 19 ***** 20 21 22 23 24 25

Monty Canady 3/10/2015

City of Ozark v. Union Pacific Railroad Company

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1 MONTY CANADY. 2 the witness hereinbefore named, having first been 3 duly cautioned and sworn or affirmed to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 BY MS. JONES: 8 Q. Sir, can you state your name for the record? 9 A. Monty L. Canady, Senior. 10 Q. Mr. Canady, my name is Jamie Jones, and I 11 represent Union Pacific Railroad Company in the 12 lawsuit that's been filed against it by the city. 13 You have been named by the city as a fact 14 witness, which is what brings you here today. Have 15 you ever given a deposition before? 16 A. I have. 17 Q. Okay. How many times? 18 A. Twice. 19 Q. Do you remember what they, what circumstances 20 got you to be deposed? 21 A. Yes. One was when I was employed with Arkansas 22 Western Gas Company. There was a vehicle run into 23 the ASA (phonetic) office down here in Ozark, and it 24 caught fire and burned. And they ran over our gas 25 meters is why it caught fire. So, I -- I was	1 Q. And the second thing is she can only get verbal 2 responses. I understand nonverbal communication, 3 head nods and uh-huhs and huh-uhs, but she can't get 4 that down. So if you will just verbalize your 5 responses for me today; okay? 6 A. Yes. 7 Q. You may forget that at some point, as almost 8 every witness in your position does, and if I remind 9 you, I'm not being rude. I just want to have a clean 10 record for us; all right? 11 A. Yes. 12 Q. The other thing is I don't think we will be 13 here incredibly long, but if at any point you need a 14 break, you let me know, and we will take one. Okay? 15 A. Yes. 16 Q. And I will probably ask a question at some 17 point that nobody in the room understands. When I do 18 that, will you let me know I have asked a bad 19 question, and I will rephrase it for you? 20 A. Yes. 21 Q. Okay. Can you give me your date of birth? 22 A. April the 9th, 1948. 23 Q. And that makes you how old today? 24 A. That makes me 66, I guess. 25 Q. Okay. And what is your home address?
Page 6	Page 8
1 supervisor, so I had to give a deposition. 2 Q. Okay. What else? 3 A. And the other one was same as a deposition with 4 Public Service Commission where they questioned me -- 5 Q. Okay. 6 A. -- over an accident at the gas company where we 7 had an accident that involved a fire. 8 Q. Okay. Well, you're familiar, then, with some 9 of the rules, but I will go over a few basic ones 10 just to make sure we are on the same page. 11 A. Okay. 12 Q. Ms. Janess is our court reporter. She has 13 sworn you in, so you are under oath. It's a little 14 bit of an informal setting today, but you are under 15 oath, just as if you were in a formal courtroom with 16 a judge. And you understand that; right? 17 A. Yes. 18 Q. And she is taking down everything that we say, 19 which for us means a couple of things. First, she 20 can't get us both speaking at the same time, so you 21 may well anticipate where I am going with a question 22 and jump in with your answer, but if you will allow 23 me to finish my question, I will allow you to finish 24 your answer; okay? 25 A. Yes.	1 A. 4722 Stagecoach Road, Ozark. 2 Q. And what is the best number to reach you at? 3 A. (479)213-1203, which is my cell phone. 4 Q. Okay. And when you were asked to come here 5 today you were asked to search and see if you had any 6 records that would be responsive to certain document 7 demands we had here. 8 A. Yes. 9 Q. Did you look to see if you had anything? 10 A. Yes. 11 Q. And did you? 12 A. No. 13 Q. Thank you for checking that for me. I 14 appreciate that. Did you graduate from Ozark High 15 School? 16 A. No. 17 Q. Did you graduate from high school? 18 A. No. 19 Q. Okay. Did you -- do you consider -- well, how 20 long have you lived in the Ozark area? 21 A. All of my life. 22 Q. Okay. What did you do -- you said Arkansas 23 Western Gas Company at the very start of this. Is 24 that how you made a living was by being employed by 25 Arkansas Western Gas Company.

2 (Pages 5 to 8)

Page 9	Page 11
1 A. My later years. 2 Q. Okay. How did you make a living when you first 3 started out? 4 A. I done different jobs when I first got married, 5 and I originally just started out with Armeo 6 (phonetic) Steel. 7 Q. Okay. 8 A. I couldn't make a living on the road, so -- 9 with two homes, because my wife stayed here. So I 10 came back here and got a job at Arkansas Western Gas 11 Company, and I put 35 years in with them. 12 Q. What did you do for Arkansas Western Gas? 13 A. I was construction superintendent the last 24 14 years I was there. 15 Q. Where was -- where in Ozark was Arkansas 16 Western Gas located? 17 A. 101 First -- East First Street -- 101 East 18 Commercial, I'm sorry. 19 Q. Okay. 20 A. 101 East Commercial. 21 Q. So just down that way from where we are? 22 A. This way. 23 Q. This way. Okay. I will get my geography in 24 Ozark straight at some point. All right. This 25 lawsuit concerns, in part, allegations concerning a	1 course; is that right? 2 A. After the dam? 3 Q. Yes, sir. 4 A. Yes. 5 Q. Okay. So that's probably why you put the last 6 time being around 1970 when the river changed and the 7 dam got built? 8 A. Yes. 9 Q. Okay. So after around 1970 you wouldn't have 10 had occasion to use the crossing; is that right? 11 A. I have used it. I think I used it around 1972. 12 Q. Okay. 13 A. When the river was down real low, myself and a 14 friend went over on the south side of the tracks and 15 dug some bottles where the old original dump used to 16 be. 17 Q. Okay. 18 A. The original dump was straight across from 19 where the crossing was. And later years it moved 20 down the river. 21 Q. Okay. So sometime around 1972? 22 A. Yes. 23 Q. Water was low enough that you could actually go 24 kind of dig up some of that stuff? 25 A. Yes, the river was -- they lowered it real low
Page 10	Page 12
1 crossing that was alleged to be located east of the 2 depot in downtown Ozark. Are you familiar with the 3 crossing that I have just referred to? 4 A. Yes. 5 Q. Okay. Have you ever had an occasion to use 6 that crossing? 7 A. Yes. 8 Q. Can you tell me what occasions would have 9 brought you to use that crossing? 10 A. Mostly fishing. 11 Q. Okay. Can you tell me about what era you would 12 have used that crossing to go fishing? 13 A. Nineteen -- the first time was 1955. 14 Q. Okay. 15 A. That I remember going down there. 16 Q. Do you remember the last time? 17 A. Probably around 1970, I'm going to say. 18 Q. Now, I have heard about fishing, kind of using 19 the crossing to go fishing, and I have heard that a 20 lot of people went to a spot where the sewer dumped 21 into the river right at the dump. Is that where you 22 were going? 23 A. The mouth of Gar Creek, yes. 24 Q. Okay. Okay. And as I understand, that spot 25 somewhat disappeared after the river changed its	1 one year, and we went down and dug bottles, which we 2 had done before the dam was completed. 3 Q. Okay. And is that the last time, around 1972, 4 when you were digging those bottles? 5 A. Yes. 6 Q. Okay. And you are not the first I've talked 7 with about this crossing, so I'm getting a good sense 8 that this was -- the street was kind of a gravel 9 road? 10 A. Yes. 11 Q. Okay. Do you remember if you, in the 1960s, 12 1970s if you called it a name, the street that went 13 over the crossing? 14 A. Everyone known it as Oliver Lane, that I 15 remember. 16 Q. Okay. So that's what you referred to it as 17 Oliver Lane? 18 A. Yes. 19 Q. And you wouldn't have any knowledge, would you, 20 of whether or not that was the official city name for 21 the street? 22 A. I figured it was called that because of the 23 people that lived down there, because two homes down 24 there had Olivers that lived in them. 25 Q. Okay. So there are some people that named

3 (Pages 9 to 12)

Page 13	Page 15
1 Oliver, so you thought that was why people called it 2 that? 3 A. Yes. 4 Q. Okay. So you wouldn't know if it was an actual 5 city street that met the requirements, the legal 6 requirements for a city to have a street; right? 7 A. No. 8 Q. Okay. Have you ever served on the city 9 council? 10 A. No. 11 Q. Have you ever served with an organization 12 called Main Street Ozark? 13 A. No. 14 Q. Do you have any -- have you been personally 15 involved with this lawsuit at all, helping with the 16 Complaint or anything like that, other than being a 17 fact witness on, as you are here today? 18 A. No. 19 Q. Okay. Was there anything about your use of the 20 crossing that we haven't discussed so far? 21 A. Rephrase that. 22 Q. Is there anything -- did you use the crossing 23 in any other way than what we've already discussed 24 here today? 25 A. To go down to haul trash to the dump.	1 A. Yes. 2 Q. Okay. Was there one or two, or do you 3 remember? 4 A. All I can remember is one that was when you 5 would go onto it. 6 Q. Okay. Do you remember any -- well, you 7 mentioned some houses. Do you remember how many 8 houses were down in that area? 9 A. Best I can remember, there is three: Tom 10 Oliver, and Josie Oliver, and Jim Kirkendall. 11 Q. Jim Kirkendall? 12 A. Barry Collins, the best I remember, lived, best 13 I can remember, lived north of the track, right just 14 in front of the -- 15 Q. I want to show you what has been marked as 16 Exhibit 51 to the deposition. And Exhibit C is a 17 map, and have you ever seen that map before? 18 A. No. 19 Q. Okay. 20 A. Now, now, let me back up. 21 Q. Okay. 22 A. Let me look at it. Yes, I have seen a map with 23 this stuff on it, but I haven't looked at this map. 24 Q. Okay. Based on that map, does that look like a 25 representation of downtown Ozark?
Page 14	Page 16
1 Q. Okay. Anything else you can think of? 2 A. No. 3 Q. Okay. 4 MS. JONES: Well, I appreciate your 5 time. Thank you so much. Mr. Brockett may 6 have a few questions for you. 7 EXAMINATION 8 BY MR. BROCKETT: 9 Q. Can you describe what the crossing looked like 10 or what kind of crossing it was? 11 A. Well, it was like most all other crossings that 12 I remember in that, anywhere up and down the tracks, 13 which I lived on the tracks at Gar Creek. 14 It had the crossties fixed to where a 15 vehicle could go across it, other than just go across 16 a normal straight run track. 17 Q. Okay. Was there any signs that said railroad 18 crossing or stop signs or anything like that? 19 A. Yes. 20 Q. Okay. What kind of signs were there? 21 A. All I can remember is just an "x" railroad 22 crossing. 23 Q. So a saw buck? 24 A. Yes. 25 Q. The "x"?	1 A. Yes. 2 Q. Okay. I want to switch over to the next page, 3 which is a finer, in-depth insert of that lower 4 portion. Is that kind of your memory of how Oliver 5 Lane liked like back in the fifties and sixties? 6 MS. JONES: Object to the form. 7 A. Yes. This was the pallet plant. 8 Q. Okay. And that would have been F&S Lumber? 9 A. Yes. 10 Q. Okay. 11 A. I don't see the propane tanks on here, but the 12 propane tanks was right here south of the tracks. 13 Q. Okay. You said there were residences down 14 there? 15 A. Sir? 16 Q. The other buildings, were those the residences 17 that you remember? 18 A. Yes. I don't remember that many. 19 Q. Okay. 20 A. But, yes, that's -- this, this does not have 21 the track that came down from Hunt Town (phonetic) at 22 that time. 23 Q. Which was for coal: is that correct? 24 A. For coal, where they hauled coal down. And 25 Barry Collins, I thought, lived right here.

4 (Pages 13 to 16)

Page 17	Page 19
1 Q. Okay. I want to show you also part of this 2 Exhibit D. Have you ever seen a document that is 3 entitled that, City of Ozark, Arkansas House Numbers? 4 A. No. 5 Q. Okay. The next page, it lists out some people 6 that lived on Oliver Street up there at the top. Do 7 you remember any of those living down there? 8 A. (Witness reviews document.) Yes. 9 Q. Okay. Which ones do you remember? 10 A. I remember Tom Kirkendall. 11 Q. Okay. 12 A. And I remember Barry Collins. 13 Q. Okay. 14 A. And Martin Oliver, Junior, and Fay Tom 15 (phonetic) lived with -- Tom's daughter lived with 16 him. That's not on here, Fay Tom was her name. 17 Q. Okay. Do you remember Albert Oliver living 18 down there? 19 A. I can't -- no, I can't remember Albert. 20 Q. Okay. 21 A. And Josie is not on here. That was -- no, I 22 can't remember Albert, no. 23 Q. Okay. I appreciate that. How would you 24 describe the houses that were, that were listed down 25 there? I have had ranges from a shack to an average	1 Q. Mules? 2 A. Yeah. 3 Q. Okay. Were those -- where were those located? 4 A. Jim had two mules that he kept down there 5 behind his house. 6 Q. Jim Kirkendall? 7 A. Yes. He hauled trash for people here around 8 Ozark. He had a wagon and a pair of mules. 9 Q. Okay. Were there any other horses -- as you 10 first crossed over the tracks to the left was there a 11 metal building there that you remember? 12 A. I don't remember that. 13 Q. Okay. Did you ever see anyone maintaining 14 Oliver Lane or Oliver Street? 15 A. A portion of it. 16 Q. Where at? 17 A. From about the propane tanks down to the dump. 18 Q. Okay. Do you know who -- I mean, do you know 19 what type of vehicle they were using to maintain? 20 A. Yes, it was an 8-M Ford tractor with a blade on 21 the back of it, and that was Bull Southerland 22 (phonetic). He was my uncle. He worked for the City 23 of Ozark. 24 Q. Okay. 25 A. He used a blade on the back of that 8-M to
Page 18	Page 20
1 house. How would you describe those? 2 A. I would describe them all as the same as I 3 lived in, just mostly shacks. 4 Q. Okay. 5 A. And they were mostly single-walled houses that 6 were thrown up back years ago. 7 Q. Okay. 8 A. A couple of them looked pretty nice. 9 Q. Okay. 10 A. But they were just single-walled houses. 11 Q. Okay. 12 A. I was in Josie Oliver's house once, because she 13 had a couple of boys that were about my same age. 14 And we would, they would come out, and we would shoot 15 rats together. 16 Q. Down there at the town dump? 17 A. At the dump. 18 Q. Okay. On the inside of her house do you know 19 if she had indoor, or water at her house? 20 A. I do not know. 21 Q. Okay. What about F&S Lumber, do you know if 22 they had water? 23 A. I do not know. 24 Q. Okay. Do you remember any horses? 25 A. Mules.	1 blade the road. 2 Q. And he was doing it for the City of Ozark? 3 A. Yes. 4 Q. And what was his name again? 5 A. Bull. 6 Q. Bull? 7 A. Bull Southerland. 8 Q. B-u-l? 9 A. We called him Bull. Everybody known him as 10 Bull Southerland. He retired from the city. 11 Q. Do you know how often he would maintain that 12 road? 13 A. No. Really, I don't know how often, but I have 14 seen him blade it three or four times while I was in 15 that area. 16 Q. Okay. 17 MR. BROCKETT: Okay. I don't think I 18 have any more questions. Thank you. 19 EXAMINATION 20 BY MS. JONES: 21 Q. Just a few things to follow-up. You looked at 22 a map that Mr. Brockett showed you. You didn't have 23 anything to do with creating that map; right? 24 A. No. 25 Q. Okay. And you can't say that any of the street

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Page 21 1 names that were presented on that map were legal 2 names of the streets; correct? 3 A. No. 4 Q. Okay. 5 MS. JONES: Thank you so much. I 6 appreciate your time. 7 (The deposition was concluded at 9:22 a.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	
Page 22 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS) 3)ss. 4 COUNTY OF SALINE) 5 I, JANESE FERGUSON SMITH, CCR, RPR, a 6 Notary Public in and for Saline County, Arkansas do 7 hereby certify that the facts stated by me in the 8 caption of the foregoing matter are true; and that 9 the foregoing matter was transcribed by me, to the 10 best of my ability and understanding, from my machine 11 shorthand notes taken at the time and place set out 12 in the caption hereto. 13 In accordance with Rule 30(e) of the 14 Rules of Civil Procedure, review of the transcript 15 was waived by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither 17 counsel for, related to, nor employed by any of the 18 parties to the action in which this proceeding was 19 taken; and, further that I am not a relative or 20 employee of any attorney or counsel employed by the 21 parties hereto, not financially interested or 22 otherwise, in the outcome of this action. 23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 24 this, the 10th day of March, 2015. 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	

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