

Transcript of the Testimony of

Marshall Chrisman

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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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 MARSHALL CHRISMAN March 9, 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 5 5 EXAMINATION 6 By Mr. Brockett. 15 7 EXAMINATION 8 By Ms. Jones 22 9 10 11 E X H I B I T 12 Exhibit No. 261 (Statement). 23 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 MARSHALL 2 CHRISMAN, a witness produced at the request of the 3 Defendants, was taken in the above-styled and 4 numbered cause on the 9th day of March, 2015, before 5 Janess Ferguson Smith, Certified Court Reporter and 6 Notary Public in and for Saline County, Arkansas, at 7 the Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas, at 12:34 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 MARSHALL CHRISMAN may be taken for any 17 and all purposes according to the Federal Rules of 18 Civil Procedure. 19 * * * * * 20 21 22 23 24 25

Page 5 1 MARSHALL CHRISMAN. 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. Chrisman, my name is Jamie Jones, and I 9 represent Union Pacific Railroad Company in the 10 lawsuit that the City of Ozark has brought against 11 it. 12 A. Yes, ma'am. 13 Q. And you have been listed as a witness by the 14 city, which is what brings you here today. Now, have 15 you ever given a deposition before? 16 A. I don't remember ever giving a deposition 17 before. 18 Q. Let me go through a little bit of the ground 19 rules so that we are on the same page. Ms. Janess is 20 our court reporter, and she has just sworn you in. 21 So even though this looks like a little 22 informal setting, it is just as formal of testimony 23 under oath as if a judge was sitting here today; 24 okay? 25 A. All right.	Page 7 1 Q. And I am prone to ask a question that I promise 2 you nobody in this room understands. And when I do 3 that, if you will just let me know that I have asked 4 a bad question, and I will rephrase it until you 5 understand it; okay? 6 A. Okay. 7 Q. Now, can you give me your date of birth? 8 A. 5-3-33. 9 Q. And have you lived in Ozark most or all of your 10 life? 11 A. No. 12 Q. Okay. Tell me what years have you lived in 13 Ozark. 14 A. I guess I have lived here since 1979. 15 Q. Okay. And where did you live before -- 16 A. I believe that's '69. 17 Q. Sixty-nine, okay. 18 A. About 1969. 19 Q. And where did you graduate -- well, let me 20 rephrase this. Did you graduate high school? 21 A. Yes. 22 Q. Where? 23 A. Coal Hill. 24 Q. Okay. And what year? 25 A. Fifty-one, 1951.
Page 6 1 Q. And she is taking down everything we say, which 2 means a couple of things for you and I. 3 A. Okay. 4 Q. And the first is you may well anticipate where 5 I am headed with a question, but if you will wait and 6 let me get my question out instead of interrupting 7 me, I will let you get your answer out before I ask 8 the next question; okay? 9 A. Very good. 10 Q. And the second thing is she can only get verbal 11 communications, so you may nod your head or say 12 "uh-huh" or "huh-uh." I understand what that means, 13 but I'm going to ask you to verbalize it so she can 14 get it for the record; okay? 15 A. Uh-huh. 16 Q. Is that "yes"? 17 A. Yes. 18 Q. Okay. And if at any point -- 19 A. I missed the first one. 20 Q. Everybody does it, so don't worry about it. 21 A. Okay. 22 Q. If at some point -- we are not going to go very 23 long today with you, but at some point if you need a 24 break, you let me know, and we will take one. Okay? 25 A. All right. Thank you.	Page 8 1 Q. Did you receive any post high school education? 2 Did you go to college anywhere? 3 A. I enrolled in college at the College of the 4 Ozarks. 5 Q. Okay. 6 A. But I didn't finish a semester. 7 Q. Okay. What did you do to make a living for 8 yourself? 9 A. Construction. 10 Q. Okay. And as I understand from your brother, 11 you owned a construction company? 12 A. A small construction company, yes. 13 Q. Okay. And was that Chrisman Ready Mix, or was 14 that called something different, and Chrisman Ready 15 Mix was an additional company? 16 A. I had no part of Chrisman Ready Mix. 17 Q. Okay. What company did you own? 18 A. Chrisman and Sons. 19 Q. Okay. Now, sir, one of the things you were 20 asked to do today was to bring any documents that you 21 had that were responsive to this subpoena. Did you 22 look through these categories and see if you had any 23 documents? 24 A. No. 25 Q. Okay.

2 (Pages 5 to 8)

Page 9 1 A. I didn't. 2 Q. I am going to ask if you will just look through 3 these categories, one through six, and just kind of 4 read them to yourself and tell me if you would have 5 even had anything. 6 A. (Witness reviews document.) I don't read very 7 well. 8 Q. Okay. Do you want me to read it to you? 9 A. Well, that might help me. 10 Q. Please produce a copy of all documents, 11 correspondence, email, reports that you have sent or 12 received from Union Pacific Railroad Company or any 13 representative of UP regarding the removal or 14 installation of a crossing in Ozark. Who would you 15 have had anything? 16 A. No. 17 Q. Okay. And I am guessing that's probably going 18 to be most of these, but we will still go through the 19 process anyway so we can say we did it; okay? 20 A. Okay. 21 Q. All right. Any documents that you have sent or 22 received from UP or any representative of Union 23 Pacific regarding access to city property? 24 A. None. 25 Q. Okay. Any documents that you have regarding	Page 11 1 Q. Okay. And I have been told that at one point 2 this, this road that went across the railroad tracks 3 led down to a city dump. Do you remember that? 4 A. Yes, vaguely. 5 Q. Vaguely, and you getting here in '69 was 6 probably the end of the dump time -- 7 A. Uh-huh. 8 Q. -- is that right? Okay. Would you have ever 9 had an occasion to use the location of this crossing? 10 A. Yes. 11 Q. Okay. Tell me about that. What would you have 12 used that crossing for? 13 A. Well, I had a tugboat parked down there. 14 Q. Okay. 15 A. And I probably went over there once a day to 16 check on the boat. 17 Q. Okay. Where was the tugboat? I mean, kind of 18 describe for me. If you were telling me how to get 19 to your tugboat, tell me how I would go to get to it. 20 A. You would cross that crossing that was in 21 question. 22 Q. Okay. 23 A. And then you would go downstream about 50 24 yards. 25 Q. Okay.
Page 10 1 the removal or installation of a crossing in Ozark, 2 Arkansas? 3 A. None. 4 Q. Okay. Any diaries, notes, or calendars 5 regarding efforts to seek a crossing in Ozark, 6 Arkansas? 7 A. No. 8 Q. Okay. Have you ever had any contact with Union 9 Pacific Railroad about any crossing in Ozark? 10 A. No. 11 Q. Okay. And I'm guessing you don't have any 12 documents regarding the removal or crossing in Ozark? 13 A. No. 14 Q. Okay. Have you ever served on the city council 15 for Ozark? 16 A. No. 17 Q. Have you ever served on an organization called 18 Main Street Ozark? 19 A. No. 20 Q. Okay. Now, this lawsuit concerns in part 21 allegations regarding a crossing located in downtown 22 Ozark east of the depot. 23 A. Yes, ma'am. 24 Q. Okay. You're familiar with that location? 25 A. Yes, ma'am.	Page 12 1 A. And you would take a right out towards the 2 river, and you could only go 150 feet before you hit 3 water. 4 Q. Okay. And I understand from your brother there 5 may have been a dock there? 6 A. No, there was no dock there. 7 Q. Okay. So how was, how was the tugboat tied? 8 How was it moored? 9 A. I had driven a pipe in the ground and took one 10 of the winches -- it has two winches on each side 11 behind the tow knots, and I had thrown the cable over 12 the pipe and tightened it up. 13 Q. Okay. Who owned the land that you had the 14 tugboat moored to? 15 A. It would have been the Corps of Engineers, I'm 16 sure. 17 Q. Okay. Did you have permission from the Corps 18 to use that land? 19 A. Didn't ask. 20 Q. Okay. Do you agree you were trespassing? 21 A. I was trespassing, I suppose. 22 Q. Okay. Did you ask anyone for -- well, tell me 23 this, when was the last time the tugboat would have 24 been there, because as I understand it there was 25 something that happened with the lock and dam, and it

3 (Pages 9 to 12)

Page 13	Page 15
1 ended up destroying the boat. Is that correct? 2 A. The tugboat went under, went through one of the 3 Tanner gates. 4 Q. Okay. Do you remember when that was? 5 A. No. 6 Q. Do you remember what decade it was? 7 A. I would say it was after the river. The dam 8 had filled up. 9 Q. Okay. 10 A. I think they hold it about 372, 372 feet above 11 sea level, and I think it had filled up at the time. 12 Q. Okay. So do you know if this was the eighties 13 or nineties when it happened, or seventies, eighties, 14 nineties? 15 A. It would have been the seventies. 16 Q. Okay. So sometime after the tugboat's 17 demise -- 18 A. Uh-huh. 19 Q. -- would you have had a reason to cross there? 20 A. No. 21 Q. Okay. Did you ever cross there? 22 A. Yes. 23 Q. Okay. Tell me when you would have crossed and 24 why? 25 A. Well, probably to help -- Floyd Irvin	1 A. He's done been here? I'm glad you didn't have 2 us here at the same time. He has had some problems 3 with the railroad off and on. I think they might 4 still be in dispute, something about some land down 5 there maybe. Anyway, I don't know. 6 Q. Now -- 7 A. I wasn't involved in any lawsuits. 8 Q. Okay. Do you have any personal information 9 regarding when, or the circumstances involving the 10 crossing being taken out? 11 A. I have no -- no. 12 Q. Okay. 13 A. Sure don't. 14 MS. JONES: Thank you so much. I 15 appreciate your time. Mr. Brockett may 16 have a few questions for you. 17 EXAMINATION 18 BY MR. BROCKETT: 19 Q. Marshall, do you, do you fish? 20 A. Do I fish? 21 Q. Yes, sir. 22 A. In the past I used to fish. 23 Q. Okay. Did you ever use that crossing with a 24 flat bottom boat to fish on that side of the river? 25 A. I can't say I have.
Page 14	Page 16
1 (phonetic) at that time owned Peach Valley Gas 2 Company, and they had an unloading facility there 3 pretty close to where my tugboat was moored. 4 Q. Okay. 5 A. And I would go over there on his request for 6 some reason or another to check on something. 7 Q. Okay. Do you remember when the last time you 8 would have done that for him was, what decade? 9 A. No. No. It would have been in the nineties 10 or, wait a minute, the seventies. 11 Q. Okay. So can we agree that after the 1970s you 12 did not cross that crossing? 13 A. Not to my, not that I can remember. 14 Q. Okay. All right. Have you ever had any 15 conversations with anyone from Union Pacific Railroad 16 Company about this crossing? 17 A. No. 18 Q. Okay. Now, have you -- I think from your 19 brother I got a sense that there had been some 20 lawsuits with the railroad. Were you in on any of 21 those? 22 A. No. 23 Q. Okay. 24 A. My brother -- he must have already testified. 25 Q. Yes, sir.	1 Q. Okay. Did you have a flat bottom boat? 2 A. Yes. 3 Q. Okay. But you don't remember fishing on the 4 north side of the river? 5 A. I don't remember. 6 Q. Okay. 7 A. The last boat I had was not a flat bottom. 8 It's an oceangoing boat. I've still got it. I don't 9 take it out anymore. 10 Q. Well, Sandy Key has represented that you used 11 to go across there with a little flat bottom two-man 12 boat that you would fish off of. 13 A. I don't remember telling Sandy that. 14 Q. Okay. And what did you use the tugboat for? 15 A. We were selling sand when they were building 16 Nuclear One in Russellville, and we had a -- Owen 17 Parnell (phonetic) was pushing our barges to Nuclear 18 One, this side of Russellville. 19 And I used my little tugboat to load the 20 barges, get them ready to tow. And they had six 21 barges. Three of them would be on their way to 22 Russellville back, and I would load the other three. 23 When he would get back he would make a three-barge 24 tow and tow the other three down here. 25 Q. Okay.

Page 17	Page 19
1 A. We sold 75,000 tons to, of sand to Nuclear One. 2 Q. Okay. And where were you getting the sand at? 3 A. Getting it off of Guthrie Island (phonetic). 4 Q. Is that is that north or west on the river? 5 A. No. It's right below the steam generator 6 plant. There is an island there. My brother is 7 still running it -- or no, he sold it. 8 Q. Oh, okay. 9 A. Recently, recently. 10 Q. Okay. 11 A. That's the company that I started, Ozark 12 Material Company. 13 Q. Okay. All right. And so the water at that 14 time was high enough that you would have been able to 15 float down the river? 16 A. Oh yes, oh yes. 17 Q. Okay. Do you, do you remember approximately 18 when that tugboat would you have been destroyed? 19 A. Don't get me to lying about dates, because I, I 20 can't even remember what I did yesterday. 21 Q. All right. Fair enough. 22 A. I can watch the same movie that I watched last 23 night again tonight, and I don't even know what's 24 going to happen. That's the good part of it. 25 Q. When you were crossing the tracks to go down to	1 A. Yes. 2 Q. Okay. So what I am trying to get at is why did 3 you pick that spot to moor your towboat? 4 A. Well, it was the closest place I could get to, 5 to moor it. And I don't know if you remember 6 somebody turned it loose, took the cable off and let 7 it go free. 8 I don't know -- to this day, I don't know 9 who that was. I don't know who would have -- whether 10 they were mad at me or whether it was intentional, 11 but the boat wound up -- there used to be an old boy 12 that was the lockmaster down here. 13 His name was -- anyway, he called me one 14 Sunday morning and said, "Marshall, your tugboat is 15 in the Tanner gate down here. You need to come check 16 on it." 17 And that was the first I knew it was wedged 18 in that gate, and it was -- that gate is about 35 19 foot long, and this boat was about 32. It probably 20 had three feet it could shift back and forth. 21 Q. Okay. 22 A. I was in the process of trying to get it out of 23 there when it washed under the Tanner gate. 24 Q. Oh, okay. Do you remember what kind of road 25 you were using when you crossed over the tracks?
Page 18	Page 20
1 the tugboat to check on it -- 2 A. Uh-huh. 3 Q. -- do you remember what kind of track or what 4 kind of crossing it was? 5 A. It was wooden. 6 Q. It was wooden? 7 A. Wood before you went onto the first track, and 8 then it was wood between the tracks, and then it was 9 wood the other side of the tracks, creosoted 10 crossties. 11 Q. Okay. So it had an asphalt-type material over 12 the wood? 13 A. I don't remember if there was any asphalt over 14 the top of it or not. 15 Q. Okay. Do you know if it had any signs up that 16 said this is a crossing, or crossbucks, or any other 17 stop signs or anything like that? 18 A. I don't remember how it was signed. I really 19 don't. I would be lying if I said I did. 20 Q. Okay. How did you find the crossing? 21 A. How did I find it? 22 Q. Yes. 23 A. From watching vehicles go across it. 24 Q. Okay. I mean, other vehicles were going across 25 it?	1 A. I don't think it was asphalt. 2 Q. Was it gravel? 3 A. Yes, it was gravel. No doubt about that. I 4 put some gravel on it one time for Floyd Irvin -- 5 Q. Okay. 6 A. -- when he used to travel in and out of there 7 with his truck. 8 Q. Okay. What kind of truck did he have? 9 A. Delivered propane. 10 Q. Okay. 11 A. A delivery truck. His storage tank, he had a 12 facility there to bring in railroad car loads of 13 propane gas. 14 Q. Uh-huh. 15 A. And he would pump them off the car into this 16 big storage tank there. And then he would come over 17 there out of that storage tank and fill his delivery 18 truck. Harrison Allred was his delivery truck 19 driver. 20 Q. Okay. 21 A. When did you have my brother in here, today? 22 Q. Yeah, right before you. 23 A. Okay. Well, I thought you were scraping the 24 bottom of the barrel when you had Lonnie in here. 25 Q. Were you around when F&S Lumber Company?

5 (Pages 17 to 20)

Page 21

1 A. No.

2 Q. Okay. That was before your time?

3 A. That was before my time. Was it F&S?

4 Q. Yes.

5 A. We always called it the thick and thin lumber

6 company. Kenneth Smith, I think, ran it.

7 Q. Yes, sir. All right. You said you put gravel

8 on it for Floyd. Did he ask you to put -- I mean, I

9 guess he hired you to put gravel on?

10 A. Yeah, yeah. He bought the gravel and paid me

11 to haul it.

12 Q. Okay.

13 A. And we put some SB2 on that road and kept it,

14 kept the road up for a little while.

15 Q. Okay. Did you get just go straight to his

16 tanks, or did you put more gravel than just his

17 tanks?

18 A. Well, it went from the crossing all of the way

19 to his, past his tanks a little bit, and then on, on

20 a little past that.

21 Q. Okay.

22 A. He had a parking area there where he would park

23 his, his delivery truck occasionally.

24 Q. Okay. Was there just one delivery truck, that

25 you remember?

Page 22

1 A. One is all I ever knew of.

2 Q. Okay.

3 A. Harrison Allred drove it.

4 Q. And the crossing, what kind of -- did you take

5 a dual axle dump truck? A single axle dump truck?

6 What kind of dump truck did you take over?

7 A. I don't remember what I had then. I have got

8 some twin scooters still sitting down there on the

9 side of the road. You can see them.

10 Q. Okay.

11 A. I never did sell nothing. I just shut her

12 down, but I might have just had single axles back

13 when I was helping Floyd fix the road.

14 MR. BROCKETT: Okay. All right. I

15 don't have any more questions.

16 EXAMINATION

17 BY MS. JONES:

18 Q. I have a few more for you. Did you -- was

19 there a name for the road? Did you call it a name?

20 A. No.

21 Q. Okay. Have you ever heard of Oliver Street?

22 A. No.

23 Q. Okay.

24 A. I have heard it called the Bell Street

25 crossing.

Page 23

1 Q. Okay. Do you remember signing a statement in

2 2012? I am going to hand you what I am marking as

3 261, Exhibit 261. Take a look at that.

4 (Exhibit No. 261 was marked.)

5 A. (Witness reviews document.) This is to attest

6 in fact that personally I have used the Oliver Street

7 rail crossing, either walking or driving to cross in

8 a vehicle during years past prior to removal of

9 access -- I read very poorly. I'm sorry.

10 Q. Well, and that's fine. I am not asking you to

11 read it aloud, but do you, do you remember signing

12 that statement?

13 A. No, I really don't.

14 Q. Okay. And you wouldn't have called it Oliver

15 Street; would you? I mean, if you were -- if you had

16 written that yourself, you wouldn't call it Oliver

17 Street; right?

18 A. I don't know. I never knew -- I have heard it

19 referred to as the Bell Street crossing.

20 Q. Okay. And you had never heard of Oliver Street

21 until I showed that to you today?

22 A. No.

23 MS. JONES: Okay. All right. Thank

24 you, sir. I appreciate you.

25 THE WITNESS: Is that it?

MR. BROCKETT: That's it.

(The deposition was concluded at 12:55 p.m.)

Page 24

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

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

6 (Pages 21 to 24)

Transcript of the Testimony of

Lonnie Turner

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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Lonnie Turner 3/9/2015

City of Ozark v. Union Pacific Railroad Company

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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 LONNIE TURNER March 9, 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 5 5 EXAMINATION 6 By Mr. Brockett. 18 7 8 9 E X H I B I T S 10 Exhibit No. 260 (Statement) 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 LONNIE TURNER, 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 12:09 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 LONNIE TURNER 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

Page 5 1 LONNIE TURNER, 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 MR. JONES: 8 Q. Can you state your name for the record? 9 A. Lonnie C. Turner. 10 Q. And I know you any not have been deposed 11 before, but you have taken some depositions before? 12 A. Yes. 13 Q. Okay. So I'll skip all of the -- 14 A. Okay. 15 Q. -- the basics rules. Sir, as you know and 16 we've talked before, I represent the railroad in the 17 action that the city has brought against it, and you 18 have been listed as a witness. 19 A. Okay. 20 Q. And one of -- well, let me get some background 21 information from you so that we have it for the 22 record. Have you lived in Ozark most of your life? 23 A. Most of it, yes. 24 Q. Okay. Can you kind of give me the years that 25 you have lived in Ozark?	Page 7 1 A. Yes. 2 Q. Do you know where that location is? 3 A. I do. 4 Q. Can you tell me, have you had an occasion to 5 use that crossing? 6 A. I have. 7 Q. And can you tell me what occasion would have 8 caused you to use that crossing? 9 A. Well, whenever I came down, when I come down 10 and stay all night with my cousin when I was in 11 school, and we would go down there and shoot rats -- 12 Q. Okay. 13 A. -- at the city dump. That would have been the 14 first time I had ever been down there. 15 Q. Okay. Do you recall the last time you had ever 16 been? 17 A. Oh, no, I don't recall the date for you, but it 18 would have been after the dam went in, and Floyd Owen 19 (phonetic) had his butane tanks down there. And it 20 would have been sometime during that time period 21 before they, after they took them out. 22 Q. Did you say it was after they took out the 23 tanks? 24 A. Uh-huh. 25 Q. Okay.
Page 6 1 A. Okay. I was raised at Turner Bend. 2 Q. Okay. 3 A. I went to school at White Oak, and then when I 4 finished grade school we come into Ozark. Turner 5 Bend is about 15 miles north of here. 6 Q. Okay. 7 A. And I left, oh, in the '62 when I graduated 8 from high school I went to Arkansas Tech. This was 9 still my home of record. 10 And then I went into the service, and I was 11 in the service for two years and down in Georgia and 12 over at Vietnam, and back to law school at Rogers, 13 and then I graduated in '71 and moved down here and 14 been here ever since. 15 Q. Okay. Can you give me your current home 16 address? 17 A. Yes, I think I can. Thirteen -- it's either 18 Highway 64 West or -- 1339 Highway 64 West, I believe 19 it is. 20 Q. Okay. And what is the best phone number to 21 reach you? 22 A. 667-2155 in the daytime and 667-3875 at night. 23 Q. Okay. Now, this lawsuit involves allegations 24 regarding a crossing that existed east of the depot 25 in downtown Ozark?	Page 8 1 A. I was down there before and after, but you said 2 the last time. 3 Q. Right. And what would -- what had caused you 4 to go over that crossing after they had taken the 5 tanks out? 6 A. Just to look around probably. 7 Q. Okay. Do you know about what decade it was, 8 eighties, nineties, 2000s? 9 A. It would probably have been in the eighties. 10 Q. Okay. 11 A. That is my guess now. 12 Q. Okay. 13 A. I come back in '71, and it was after quite a 14 while. And so I'm kind of thinking it came out 15 whenever Todd was mayor, but I'm not positive of 16 that. 17 Q. When it came out, do you mean the crossing? 18 A. The crossing, uh-huh. 19 Q. Okay. So sometime -- you think the last time 20 you had used the crossing was sometime maybe in the 21 eighties, but it was after Floyd Owen had taken the 22 tanks out; is that correct? 23 A. Well, I don't know who took them out. 24 Q. Well, after Floyd's tanks -- 25 A. They were taken out, uh-huh.

2 (Pages 5 to 8)

Page 9

1 Q. Okay. So is that correct how I have said it
2 now?
3 **A. I think so.**
4 Q. Okay. Good. Now, what would you have called
5 that street?
6 **A. I wouldn't have.**
7 Q. It didn't have a name to you?
8 **A. Not to me. I don't -- I might know where you**
9 **live, but I wouldn't know what street you were on.**
10 Q. Okay.
11 **A. I don't keep up with streets unless -- now that**
12 **we have got these telephones that you have to put**
13 **those in to find people, well, used to you just go**
14 **down that street up there by where so-and-so lives.**
15 Q. Right. So there wouldn't have been -- if it
16 was called Oliver Street, you wouldn't have known it?
17 **A. I wouldn't have paid no mind to it.**
18 Q. Okay. If someone had asked you -- up until
19 kind of this, before this lawsuit became in the
20 papers if someone had asked you where Oliver Street
21 was would you have known?
22 **A. I would have probably thought it was over by**
23 **the old grade school because the Oliver family lived**
24 **over there.**
25 Q. Okay. At some point in about 2012 do you

Page 10

1 remember anyone asking you to sign a statement,
2 Royce Gattis or somebody asking you to sign a
3 statement?
4 **A. I can't remember that. I've signed lots of**
5 **statements.**
6 Q. Yes.
7 **A. I've sent a lot of statements too, even**
8 **collected on a few of them.**
9 Q. I am going to hand you what I am marking as 260
10 to this deposition.
11 **A. Okay.**
12 **(Exhibit No. 260 was marked.)**
13 BY MS. JONES:
14 Q. Do you remember signing this statement?
15 **A. No, I do not remember it.**
16 Q. Okay. Is that your signature?
17 **A. It appears to me it is.**
18 Q. Okay.
19 **A. It looks exactly like my writing.**
20 Q. Okay. Why don't you read that and then tell
21 me, and then we will talk about it.
22 **A. (Witness reviews document.) Okay.**
23 Q. Okay. It says, This is to attest in fact that
24 I personally have used the Oliver Street rail
25 crossing. That is the first part of the sentence?

Page 11

1 **A. Yes.**
2 Q. Can you agree with me that you don't know if
3 you used Oliver Street or not, that you wouldn't have
4 called it Oliver Street; correct?
5 **A. Whatever that street was.**
6 Q. Okay. So the times that this refers to Oliver
7 Street in here, can we agree that you're not
8 testifying that it was indeed Oliver Street?
9 **A. I'm not going to tell you that I knew it was**
10 **Oliver Street.**
11 Q. Right.
12 **A. No. It was two crossings, to my knowledge.**
13 **There was one there.**
14 Q. Okay.
15 **A. And there was one on up on the other side of**
16 **the depot, right out here where you went down, where**
17 **Chrisman went down to his sand plant.**
18 Q. Okay. So there was -- would that be west of
19 the depot, or would that be to the east of the depot?
20 **A. That would be west.**
21 Q. Okay. There was one east that we are talking
22 about right now, and then there was one west?
23 **A. Uh-huh, but I never used the one on the west.**
24 **I know where it's at because James Hugh Gilmer's wife**
25 **lives over there. And they have their home there,**

Page 12

1 **and that street took off and went down through there.**
2 **Chrisman used to go down there and get his sand**
3 **before the dam.**
4 Q. Okay. Now, it also states in here, To my
5 knowledge Oliver Street and the Oliver Street rail
6 crossing was always available for public use.
7 Can we agree that after 1970 there wasn't a
8 need to cross the tracks at that location, a public
9 need?
10 **A. I wouldn't say that.**
11 Q. Okay.
12 **A. I don't know -- I don't necessarily know what**
13 **the need might have been, but, you know, kind of like**
14 **the chicken, just to get across the road. I mean,**
15 **that could be a need.**
16 Q. You didn't personally have a need to cross it
17 after the --
18 **A. Well, I went down there once to look for**
19 **Robert's tugboat whenever -- he had his tugboat tied**
20 **off down there, and the river came up, and it went**
21 **through the dam.**
22 Q. Okay. And, in fact, I think that would have
23 been the only time you would have gone across for the
24 tugboat because it didn't exist after, after the dam
25 kind of flooded and took it downstream; right?

3 (Pages 9 to 12)

Page 13

1 **A. After it come loose or whatever it did and took**
 2 **off, I didn't go back down there to look for the**
 3 **tugboat.**
 4 Q. Okay. And did you have any, did you have
 5 anything to do with how it was tied in terms of if
 6 there was a lease for him to tie it there or anything
 7 like that?
 8 **A. No.**
 9 Q. Okay. All right. And you don't have any
 10 knowledge of whether or not the street that had the
 11 crossing that we're talking about east of the depot,
 12 whether it's Oliver Street or no street name, was an
 13 actual city street; correct?
 14 **A. Okay. I don't have any memory of knowledge;**
 15 **okay?**
 16 Q. Okay.
 17 **A. There's a lot of things that I knew at one**
 18 **time --**
 19 Q. Right.
 20 **A. -- that I cannot recall to tell you as a fact**
 21 **today that I knew or didn't know.**
 22 Q. Right. But you --
 23 **A. I've got my wife a name tag, and when we go**
 24 **places I can introduce her without stuttering.**
 25 Q. That's a good thing to do.

Page 14

1 **A. It helps.**
 2 Q. As we sit here today, you cannot point to any
 3 written documentation that would show that Oliver
 4 Street or any street east of depot was ever dedicated
 5 as a city street?
 6 **A. I cannot point to anything today. I know we**
 7 **worked on city maps at one time, you know, to rezone,**
 8 **set up zoning.**
 9 **I know I remember in high school when we**
 10 **were in shop we made those concrete street markers**
 11 **and put them up around town, but I can't sit here**
 12 **today and tell you we put one there.**
 13 Q. Right. Well, and putting a street marker isn't
 14 a dedication by the city of a city street; is it?
 15 **A. No.**
 16 Q. Okay. And you understand as a lawyer that
 17 there are certain things that cities must do in order
 18 to, certain prerequisites that have to be met in
 19 order to make a street a city street; correct?
 20 **A. Not necessarily.**
 21 Q. Okay.
 22 **A. I don't understand that much of it.**
 23 Q. Okay. So, for example, do you have any
 24 evidence that the street was ever dedicated by the
 25 city as a city street?

Page 15

1 **A. I have no memory of it.**
 2 Q. Okay. Do you have any memory or any
 3 documentation that you can point to that shows that
 4 there was a recorded plat dedicating Oliver Street or
 5 any street east of depot at this location as a public
 6 use?
 7 **A. No. The only thing I have seen with any**
 8 **streets shown on it, that I remember, is a, is those**
 9 **railroad maps.**
 10 Q. Okay. And can you point to any ordinance
 11 accepting a recorded plat dedicating Oliver Street as
 12 a public use?
 13 **A. I can't point to any ordinances at all. I**
 14 **don't have the ordinances.**
 15 Q. Okay. And you don't have any knowledge of any
 16 ordinance that dedicated the street as a public use?
 17 **A. Not that I recall.**
 18 Q. Okay. All right. Do you have any personal
 19 knowledge as to the circumstances in which the
 20 crossing was taken out?
 21 **A. I do not.**
 22 Q. Okay.
 23 **A. Other than know that it's gone.**
 24 Q. Right. It was there, and then you saw it, and
 25 it was gone?

Page 16

1 **A. Uh-huh.**
 2 Q. Okay. Have you ever spoken with anyone for
 3 Union Pacific Railroad Company regarding this
 4 crossing or this lawsuit?
 5 **A. I think, I think I have talked to you. I don't**
 6 **know if I have talked to you or not. I have talked**
 7 **to several people.**
 8 Q. But have you ever talked with anyone who was a
 9 Union Pacific employee?
 10 **A. Not that I'm aware of.**
 11 Q. Okay. Have you ever been a city council
 12 member?
 13 **A. No, ma'am.**
 14 Q. Have you ever served on Main Street Ozark?
 15 **A. Let me tell you I don't think so.**
 16 Q. Okay. That's fair. Do you have any personal
 17 knowledge regarding the city's plans for the crossing
 18 at issue or a hiking, biking trail, I mean, other
 19 than what you have read in the paper, any personal
 20 knowledge that you have, you have personally been
 21 involved with?
 22 **A. Okay. That's a little bit difficult to answer.**
 23 **Do I know about them talking about a hiking trail and**
 24 **stuff of that nature, I have heard it discussed some,**
 25 **but I have not -- I avoid trying to get into civic**

Page 17 1 stuff. I am not a real good do-gooder. 2 Q. Okay. 3 A. If it wasn't for the do-gooders, we would all 4 be in trouble, but I just don't do a lot of that. 5 Q. All right. 6 A. But I have, you know, several people will ask 7 about it. Those things. What was -- what is the 8 girl's name that's, is head of that Main Street? 9 Q. Sandy Key? 10 A. Sandy Key, she has asked me about that stuff, 11 and we have talked about it, or the marina over here, 12 too. 13 Q. Okay. 14 A. That mayor at times, I have talked to the 15 mayors about stuff like that. I served as city 16 attorney back in '75, '76, somewhere along in there. 17 And a lot of times when they can't find things, they 18 will ask me if I know about it or know where I might 19 find it or this, that or the other. 20 Q. Okay. 21 A. But most of the time it's more or less like the 22 answers you are getting, no, I don't remember. 23 Q. Okay. Well, that is what I was going to ask 24 you, if you remember having any knowledge about 25 anything that Ms. Key or Ms. Sneath or Mr. McNutt had	Page 19 1 Q. Okay. 2 A. It was a -- and what, what I remember about the 3 map was what we were trying to -- what I was trying 4 to get done was something, something, something 5 another to show the various zones. 6 Q. Okay. 7 A. Whether it was commercial, whether it was 8 residential. 9 Q. Okay. 10 A. And, you know, the zoning ordinances. 11 Q. Sure. 12 A. We didn't have a good map, and you come in, and 13 you want to build or you want to do something, and 14 well is this zoned what, well, we don't know, we will 15 call up the city and ask. 16 Q. Okay. 17 A. So we worked on a color-coded map, and we had 18 it where we had every -- a new zoning, we passed a 19 new zoning ordinance, I think, and we also had a 20 color-coded map. 21 Q. Okay. So it was color coded for zones? 22 A. Uh-huh. 23 Q. Okay. I don't -- if you will flip to the next 24 page, you will see a screenshot or a small print of 25 this map, and it's not color coded. It was a -- I
Page 18 1 asked you about with regards to this lawsuit. 2 A. No. I really -- I have -- they have -- we have 3 asked about it. We have talked about stuff, but we 4 haven't -- but I'm not, I'm not working on any of 5 that. 6 Q. Okay. 7 MS. JONES: All right. Thank you so 8 much for your time. I appreciate you here 9 today. Mr. Brockett may have some for you. 10 MR. BROCKETT: A few. 11 EXAMINATION 12 BY MR. BROCKETT: 13 Q. Mr. Turner, when you were city attorney, I 14 believe, somewhere '75, '76, somewhere like that? 15 A. Somewhere in that neighborhood. 16 Q. Okay. I want to show you what's Exhibit E to 17 what has been marked as Exhibit Number 51 to the 18 deposition. 19 Could you look at that and tell me if you, 20 that references a map that was prepared May of 1975. 21 Would you have had anything to do with the 22 preparation of that map when you were city attorney 23 back in '75? 24 A. Okay. I don't know what map this is. I 25 remember a map that we worked on.	Page 20 1 would say a map of different city streets. 2 A. Uh-huh. 3 Q. So you wouldn't have had -- you wouldn't have 4 helped develop that map with Western Planning and 5 Zoning? 6 A. I wouldn't have -- I wouldn't have -- I would 7 have no memory of helping to develop a map, but we 8 used a map to put those on. 9 Q. Oh, okay. 10 A. And it was -- we didn't draw the map. In other 11 words, we took a map, and we -- 12 Q. Okay. 13 A. -- tried to color out what we -- 14 Q. Okay. 15 A. -- had. 16 Q. Okay. All right. That's all. And I just want 17 to be clear. Were there still propane tanks across 18 the railroad tracks the last time you used the 19 crossing or had those already been removed? 20 A. They had been removed. 21 Q. Okay. 22 A. I come back in April of 1971. 23 Q. Okay. 24 A. And the butane tanks was there then. 25 Q. Okay.

5 (Pages 17 to 20)

Page 21 1 A. Floyd had the gas distributorship down here 2 where the donut shop is. 3 Q. Okay. Down by the Shipley's donuts? 4 A. On the other this side of the -- 5 Q. Down by -- 6 A. -- Butterball. 7 Q. Okay. 8 A. Cargill. And that was his office there. And 9 Floyd handled the receipts over at the sale barn. 10 And I represented Floyd, and every Wednesday night we 11 would meet at his house and shoot the bull and drink 12 a little sour mash whiskey. And he would sit there 13 with his Geiger counter adding up the receipts from 14 the sale barn. 15 Q. Okay. When you were using it, did you have to 16 ask permission from anybody to use that crossing? 17 A. No. 18 Q. Okay. Did you believe there was a, that you 19 had to ask permission to anybody? 20 A. No. 21 Q. Okay. Prior to preparing these signs when you 22 were in shop class at high school, did the city 23 streets have signs? 24 A. Not that I remember. My memory was we made 25 those concrete ones, and then we set them in the	Page 23 1 it. That's the way I remember it. 2 Q. Okay. 3 A. Or at least that's my knowledge of it. But 4 there is some pictures of that, all of that area, 5 taken off the top of Randall Lee Mountain (phonetic) 6 up here. 7 Q. Yes, sir. 8 A. And then there is some more of them down here 9 in that barbecue place right now, or it was a couple 10 of months ago whenever I ate down there. 11 Q. Oh, okay. What about houses, are you aware if 12 anybody lived down there? 13 A. There were some houses right down there. I 14 don't remember who. 15 Q. Okay. 16 A. Gary Collins lived -- I don't remember whether 17 he lived on Chrisman's side of the tracks or whether 18 he lived on the back side of the tracks. 19 Q. Okay. When you were -- Exhibit D to the -- 20 Exhibit D to Exhibit 51 is notated as the City of 21 Ozark Arkansas house numbers, March of 1962. Have 22 you ever seen a document like that before? 23 A. No. 24 Q. Okay. 25 A. 1962 is when I graduated from high school.
Page 22 1 ground. 2 And then we had the stencils that we put 3 the street names on them, but I am not going to tell 4 you that they were the first ones. 5 They might have had street signs before 6 that, but I don't -- so I don't remember. That was a 7 lot of work that we did. 8 Q. Sure. Do you remember the city dump being 9 located south of the railroad track? 10 A. Yes. 11 Q. Okay. So if I was sitting here, and I asked 12 you how do I get to the city dump, how would you tell 13 me to get there? 14 A. I would tell you to go down past the train 15 station and turn right across the railroad tracks and 16 you will get down there. 17 Q. Okay. You wouldn't have used names, street 18 names? 19 A. No. 20 Q. Okay. Are you aware there was a F&S Lumber 21 Company located south of the railroad tracks? 22 A. There are some pictures of those. 23 Q. Okay. But as far as personal knowledge, do you 24 know if it was located there? 25 A. Yeah, Kenneth Smith used to be involved with	Page 24 1 That would have been when we would have been working 2 on those things. 3 Q. Okay. All right. But you don't remember 4 seeing anything like that? 5 A. No. 6 Q. Okay. And on that second page it lists Oliver 7 Street with some names on there. Do any of those 8 names sound familiar as people that would have lived 9 south of the railroad tracks? 10 A. Not to me. Now, I knew Tom Kirkendall, but I 11 didn't know where he lived. 12 Q. Okay. 13 A. And I knew Barry Collins. 14 Q. Okay. Do you know if either of those are 15 still living? 16 A. No. They are all dead. 17 Q. Okay. 18 A. Barry shot and killed somebody down there. 19 Q. South of the railroad tracks? 20 A. Wherever he lived down there. 21 Q. Okay. 22 A. Who is the "F" in that F&S? 23 Q. A gentleman by the name of Flocks. 24 A. No. 25 MR. BROCKETT: Okay. I think that's

6 (Pages 21 to 24)

Page 25

1 all I have got then.
 2 THE WITNESS: Okay.
 3 MR. BROCKETT: Thank you.
 4 MS. JONES: Thanks, Lonnie. It's good
 5 to see you.
 6 THE WITNESS: You too.
 7 (The deposition was concluded at 12:31 p.m.)
 8
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Page 26

1 COURT REPORTER'S CERTIFICATE
 2 STATE OF ARKANSAS)
)ss.
 3 COUNTY OF SALINE)
 4 I, JANESE FERGUSON SMITH, CCR, RPR, a
 5 Notary Public in and for Saline County, Arkansas do
 6 hereby certify that the facts stated by me in the
 7 caption of the foregoing matter are true; and that
 8 the foregoing matter was transcribed by me, to the
 9 best of my ability and understanding, from my machine
 10 shorthand notes taken at the time and place set out
 11 in the caption hereto.
 12 In accordance with Rule 30(e) of the
 13 Rules of Civil Procedure, review of the transcript
 14 was waived by the deponent or a party thereto.
 15 I FURTHER CERTIFY that I am neither
 16 counsel for, related to, nor employed by any of the
 17 parties to the action in which this proceeding was
 18 taken; and, further that I am not a relative or
 19 employee of any attorney or counsel employed by the
 20 parties hereto, not financially interested or
 21 otherwise, in the outcome of this action.
 22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
 this, the 9th day of March, 2015.
 23
 24 JANESE FERGUSON SMITH, CCR, RPR
 Notary Public for Saline County
 25 and Court Reporter.

7 (Pages 25 to 26)

Transcript of the Testimony of

Phillip Smith

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

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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 PHILLIP 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 EXAMINATION 6 By Mr. Brockett. 15 7 8 9 10 E X H I B I T 11 Exhibit No. 258 (Statement) 7 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 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	Page 4 1 ANSWERS AND DEPOSITION OF PHILLIP 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 10:33 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 PHILLIP 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

Page 5 1 PHILLIP 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 MR. JONES: 8 Q. Mr. Smith, my name is Jamie Jones. We just 9 met. I represent Union Pacific Railroad Company in 10 the action that the city has filed against it. Have 11 you ever given a deposition before? 12 A. Yes, ma'am. 13 Q. Okay. Well, I'm going to go through just a 14 little bit of the basics, just so we are on the same 15 page. 16 A. Okay. 17 Q. Ms. Janess is taking down everything we say -- 18 A. Sure. 19 Q. -- which means a couple of things for us. One, 20 you may anticipate exactly where I'm headed with a 21 question, but if you will allow me to finish my 22 question before you answer, I will let you answer 23 your question before I start my next one. Okay? 24 A. Sure. 25 Q. That way she can't, doesn't have to try to get	Page 7 1 Q. Okay. So right here we asked you today to 2 bring certain documents if you had any that were 3 responsive. Did you go through and make sure you 4 didn't have anything? 5 A. I have no documents to provide for this. 6 Q. Okay. Thank you. 7 A. This meeting here. 8 Q. Have you ever served on the city council? 9 A. No, ma'am. 10 Q. Okay. Now, you've been listed -- well, let me 11 back up. Did you -- how long have you lived in 12 Ozark? 13 A. Since 1953. 14 Q. Okay. And did you graduate high school from 15 here? 16 A. Yes, ma'am. 17 Q. What year? 18 A. Seventy-one. 19 Q. Okay. And did you have any education after 20 high school? 21 A. Yes, ma'am. 22 Q. Tell me about that. 23 A. One year at Arkansas Tech University now. 24 Q. Okay. And after you left Russellville did you 25 come back to Ozark?
Page 6 1 us speaking at the same time. 2 A. Okay. 3 Q. And you may use nonverbal cues, and I 4 understand those, like uh-huhs or huh-uhs or nodding 5 your head, but she can't get that down for the 6 record, so if you will just verbalize your responses 7 for me today. Okay? 8 A. Sure. 9 Q. All right. And we're under oath just as if we 10 were in a courtroom with the judge. You understand 11 that; right? 12 A. Yes, ma'am. 13 Q. Okay. And give me your date of birth. 14 A. 3-10-53. 15 Q. Okay. And what is your current address? 16 A. 1037 Highway 309, Ozark. 17 Q. And what is the best phone number to reach you? 18 A. That would be (479)209-0548. 19 Q. And you were served with a subpoena to be here 20 today? 21 A. Yes, ma'am. 22 Q. Okay. And in that there was a document demand 23 that asked for several documents. Did you go through 24 there to see if you would have had anything? 25 A. A document, I don't understand.	Page 8 1 A. Yes, ma'am. 2 Q. Okay. And what did you do for a living? 3 A. I worked with my dad in the hardware store that 4 he owned. 5 Q. Okay. What was that? 6 A. Smith's Plumbing, Electric and Hardware. 7 Q. Okay. 8 A. We had a farm, cattle farm, also. 9 Q. Okay. 10 A. That I worked on, also. 11 Q. Now, this lawsuit concerns in part a crossing 12 that was located east of the depot in downtown Ozark. 13 Are you familiar with that crossing? 14 A. Yes, ma'am. 15 Q. Okay. Have you ever used that crossing? 16 A. Yes, ma'am. 17 Q. Okay. Tell me what occasion you would have 18 used that crossing for. 19 A. Well, the city dump was on the other side, on 20 the south side of the tracks. 21 Q. Okay. 22 A. And so to go to the dump to haul your trash off 23 you crossed the tracks. 24 Q. Okay. Any other occasion that you would have 25 used that crossing for?

2 (Pages 5 to 8)

Page 9 1 A. Fooling around, lollygagging, you know, just 2 out exploring. 3 Q. Okay. 4 A. I mean, you know, it's the river. It's the 5 river, you know. You take all of the roads you can 6 whenever you're young and exploring the neighborhood. 7 Q. Okay. Now, I think it's been pretty well 8 established then, and I kind of understand that 9 sometime around the early 1970s the river was, the 10 course was changed when the Corps put in the 11 navigation way; right? 12 A. That's correct. They raised the water level in 13 what, sixty -- I'm not for sure, '68 or '69-ish. 14 Q. Okay. 15 A. The water started damming up. It consumed the 16 dump area. 17 Q. Right. 18 A. There were some houses, a couple of shotgun 19 houses. 20 Q. Uh-huh. 21 A. And another house down on the south side of the 22 tracks, also. 23 Q. Okay. So after kind of that '68 to early 24 seventies period of time, there wouldn't have been a 25 reason to cross the river to go to the dump because	Page 11 1 Q. Okay. 2 A. And some asphalt in between it, the rail. 3 Q. Okay. 4 A. Just a place to jump the tracks. The re was 5 also an LP, LP tanks. 6 Q. Right. And those were just on the other side 7 of the tracks. 8 A. Yeah, they were Floyd Irvin's, PX Sunoco. 9 Q. And you never worked for him, so you didn't 10 have an occasion to go over there to get on the, on 11 the tanks; right? 12 A. No. 13 Q. Okay. Did you ever hear of a street called 14 Oliver Street? 15 A. No, ma'am. 16 Q. Okay. As we sit here today, could you have 17 told me where Oliver Street was? 18 A. Then or now? 19 Q. Then? 20 A. No. 21 Q. Okay. Could you tell me now? 22 A. Yes. 23 Q. Okay. And -- 24 A. It's where the signage was put up the other 25 day.
Page 10 1 the dump wasn't there; correct? 2 A. That's correct. 3 Q. Okay. And I said cross the river. I meant 4 cross the tracks, but you understood what I meant. 5 What about exploring the river, when was the last 6 time you would have crossed the tracks to kind of do 7 sort of the river explorations? 8 A. It was probably along about the seventies. 9 That would have been about it. 10 Q. Okay. 11 A. I was getting a little too old to go down and 12 fool around the river and things. 13 Q. All right. So sometime -- we can agree that 14 sometime after the, sometime before the 1970s, 15 sometime around when the river changed its course, 16 you wouldn't have had an occasion to use that 17 crossing? 18 A. No, I wouldn't have had no need to. 19 Q. Okay, all right. Now, when you were using that 20 crossing did that street have a name that you knew 21 of, or what did you call it at that time in the 22 sixties, seventies era? 23 A. There was no name. 24 Q. No name, okay. 25 A. It was just a dirt road.	Page 12 1 Q. Okay. So you know because there was a sign 2 that had been put up? 3 A. Yeah. 4 Q. Okay. In the last few years? 5 A. I pretty much knew where the railroad track 6 crossing was over the years. 7 Q. Right. But you didn't call it Oliver Street? 8 A. No, ma'am. 9 Q. You didn't, you didn't know necessarily that 10 anyone called it Oliver Street until there was a sign 11 within the last few years put up there? 12 A. That's correct. 13 Q. Okay. 14 A. But most of the streets in this town didn't 15 have the name on it either. 16 Q. Right. And you wouldn't have any personal 17 knowledge as to whether or not Oliver Street was 18 actually located where that, where they put the 19 street sign? 20 A. No, ma'am. 21 Q. Okay. 22 A. I would not. 23 Q. Do you remember signing a statement in about 24 2012? 25 A. Yes, ma'am.

3 (Pages 9 to 12)

Page 13 1 Q. Okay. Tell me what you remember about signing 2 that. 3 A. It was signing a petition stating that there 4 was a road crossing the tracks. 5 Q. Okay. And what did it look like? I mean, was 6 it, was it a petition where it was just all of you 7 signing names, or was it a statement? What did it 8 look like? 9 A. Well, there was some kind of statement that, of 10 some sort, but, I mean, I just -- basically it was a 11 list of, you know, where you sign your name. I 12 signed it because it was stating that there was a 13 road crossing the tracks. 14 Q. Okay. And what is your memory of what it said? 15 A. Well, not too good. I can't... 16 Q. I understand. 17 A. Really, I can't remember what it said. 18 Q. Okay. I am going to hand you what I have 19 marked as 258. 20 (Exhibit No. 258 was marked.) 21 BY MS. JONES: 22 Q. Is this what you signed? Is that what it 23 looked like? 24 A. I assume that is, because it's got my name on 25 it. I mean, I am not going -- I am not going to put	Page 15 1 EXAMINATION 2 BY MR. BROCKETT: 3 Q. You were talking about houses. Do you remember 4 how many houses were down in that area? 5 A. I think there was two shotgun houses and maybe 6 Barry Collins'. I think there were three houses down 7 there. 8 Q. Okay. 9 A. On the very far end down next to the creek, Gar 10 Creek where it comes in. 11 Q. Okay. Do you remember a pallet plant being 12 down in that area? 13 A. I remember an old building being out, on the -- 14 down there and adjacent to the propane. 15 Q. Okay. 16 A. That's where those propane tanks were at. 17 Q. Okay. So was that, was that old building still 18 there after the river was flooded? 19 A. I think they tore all of that -- they tore all 20 of the houses down and moved all of the structures 21 when they were -- so that when the water came up they 22 wouldn't be, you know. So these were things were 23 removed. 24 Q. Okay. 25 A. The Corps of Engineers, I think, removed these,
Page 14 1 my name on something that, that -- but I didn't read 2 the fine print. 3 Q. Okay. You signed it, but you didn't read it? 4 A. Yes. 5 Q. Okay. 6 A. We'll just do it that way. 7 Q. Okay. And can we agree because it says, To my 8 knowledge, Oliver Street and the Oliver Street rail 9 crossing was always available for public use. 10 Could we agree that that, you don't know 11 that to be true? 12 A. Okay. To -- do that again. 13 Q. Okay. The statement right here, To my 14 knowledge, Oliver Street and the Oliver Street rail 15 crossing was always available for public use? 16 A. Until the railroad, I mean until the water came 17 up and there was no need to go over there. 18 Q. Right. 19 A. There is nothing, nothing there. 20 Q. And you would have called it Oliver Street? 21 A. No, ma'am. 22 Q. Okay. 23 MS. JONES: All right. Thank you so 24 much. I appreciate your time today. 25 THE WITNESS: Sure.	Page 16 1 these things. 2 Q. Okay. When you were a young kid utilizing the 3 crossing to access the dump, do you remember an 4 occasion of any horses being stored down there? 5 A. Horses? 6 Q. Yes, sir. 7 A. No. 8 Q. Okay. 9 A. I do not. 10 Q. So you didn't ride any horses while you were 11 down there? 12 A. No. 13 Q. All right. From 1970 until, let's say 2000. 14 2001, somewhere in that area, do you remember that 15 crossing being there? 16 A. The crossing going across? 17 Q. Yes, sir. 18 A. There was a -- I can't say for sure about the 19 propane tanks, when Floyd quit using the propane 20 tanks, but however long he was -- that's the only way 21 he had to get across the track was to get those 22 propane tanks. 23 So how long that lasted, to answer your 24 question, I would say it would be seventy-ish when he 25 quit using that, but I'm not -- I can't say for sure,

Page 17

1 you know.

2 Q. Okay. But do you remember any other crossing,
3 either one at Bell Street or anywhere else in between
4 there that was over the tracks?

5 A. I think there is another crossing east of the
6 one that y'all are talking about, but it's the same
7 way. It was, it was like where they poured some
8 blacktop in between the rail.

9 Q. Uh-huh.

10 A. So you could go across it, and then that road,
11 I believe, went back to the west that run into, you
12 know, run parallel to the tracks.

13 Q. Okay. Kind of made a circle maybe?

14 A. Yeah. It just ran parallel. It had side
15 tracks there like where the people would buy feed by
16 the rail car, whole car load.

17 Q. Uh-huh.

18 A. And you would unload feed down there on the
19 side tracks and, you know, things like that. I did
20 things just to make money.

21 Q. I understand.

22 MR. BROCKETT: That's all I have.

23 MS. JONES: All right. Thank you so
24 much. I appreciate your time.

25 THE WITNESS: Thank you very much.

Page 18

1 COURT REPORTER'S CERTIFICATE
2 STATE OF ARKANSAS)

)ss.

3 COUNTY OF SALINE)

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

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

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

22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
23 this, the 9th day of March, 2015.

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

5 (Pages 17 to 18)

Transcript of the Testimony of

Joe Powell

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>

Joe Powell 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 JOE POWELL 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..... 13 8 9 EXAMINATION 10 By Ms. Jones 17 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 JOE POWELL. 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 11:35 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 JOE POWELL 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 JOE POWELL. 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. Powell, my name is Jamie Jones, and I 9 represent Union Pacific Railroad Company in the 10 lawsuit that the City of Ozark has brought against 11 it. Have you ever given a deposition before? 12 A. Yes, uh-huh. 13 Q. Okay. What occasion would you have had to give 14 a deposition? 15 A. Oh, insurance company, lawsuit thing. I was 16 turned over to the ethics commission one time for not 17 reporting all of my ads in the paper. 18 Q. Okay. Insurance agent: is that right? 19 A. Uh-huh. 20 Q. Okay. 21 A. I had a tractor and trailer burn and Farm 22 Bureau sued New Holland. So I had to -- I was the 23 owner, so I had to... 24 Q. Okay. Well, let me -- you have given them 25 before, but let me give you a little bit of the	1 time, but if at any point you need a break, you let 2 me know, and we will take one. Okay? 3 A. Okay. 4 Q. And also kind of the last thing is, I may ask a 5 question that's just a bad question, no one in the 6 room understands it, and if I do that will you let me 7 know, and I will rephrase it for you? 8 A. Okay. 9 Q. Okay. Why don't you give me your date of 10 birth? 11 A. 11-2-1948. 12 Q. And what is your current home address? 13 A. 6900 Powell Drive, Ozark, Arkansas. 14 Q. What is the best phone number to reach you? 15 A. (479)667-2392. 16 Q. And I am assuming that Janet Powell is your 17 wife? 18 A. Yes. 19 Q. Okay. And how long have you lived in Ozark? 20 A. All my life. 21 Q. Okay. What year did you -- well, let me 22 rephrase it this way. Did you graduate high school? 23 A. 1966. 24 Q. Okay. Ozark? 25 A. Pleasant View.
Page 6	Page 8
1 ground rules, that way we are on the same page. 2 Ms. Janess is our court reporter, and she 3 has sworn you in, and so even though it's a little 4 informal in here, it's just as if the judge was 5 sitting in here and you were under oath; correct? 6 A. Uh-huh. 7 Q. And you've, you've just done one thing I want 8 to ask you not to do, and that is you said "uh-huh," 9 and I understand that that meant yes, but for the 10 purposes of this deposition she can't get that down. 11 So can you verbalize and say "yes" or "no" or 12 whatever your answer is; okay? 13 A. Okay. 14 Q. And you're probably going to forget at some 15 point, and I am going to remind you. And I'm not 16 doing it to be rude. I am just doing it so we have a 17 good record; okay? Is that "yes"? 18 A. Yes. 19 Q. Okay. And the other thing is you may 20 anticipate exactly where I'm headed with a question 21 and start to answer it and interrupt me, and I am 22 going to ask you to refrain from doing that because 23 she can't get us speaking at the same time. Okay? 24 A. Okay. 25 Q. And this isn't going to take an incredibly long	1 Q. Pleasant View. And how far is that from Ozark? 2 A. It's six miles west. 3 Q. Okay. And did you obtain any education after 4 high school? 5 A. I went to the University of Ozarks in 6 Clarksville for one year. 7 Q. Okay. And when you left U of O, did you come 8 back to Ozark? 9 A. Yes, I did. 10 Q. Okay. And you how did you support yourself? 11 What did you do for a living? 12 A. I wanted to be a farmer. 13 Q. Okay. 14 A. I already had livestock, so I built me some 15 poultry houses. 16 Q. And at some point you got involved in the 17 insurance business? 18 A. No. I got involved in politics. 19 Q. Okay. You got involved in politics, all right. 20 How did you get involved in politics? 21 A. Well, in 1976 I ran for county judge and got 22 elected. 23 Q. Okay. And how long were you county judge? 24 A. Thirty-six years and two months. 25 Q. Okay. And at some point during that you also

2 (Pages 5 to 8)

Page 9 1 had an insurance business? 2 A. No. 3 Q. I must have understood that, so -- 4 A. I was just involved in that insurance thing 5 because I had some equipment burn up. 6 Q. Oh, okay. 7 A. And my insurance company sued the manufacturer. 8 Q. Okay. Okay. All right. So you had a lawsuit 9 because of some of your farm equipment, and so that 10 was one thing you told me about, right? 11 A. Yes. 12 Q. And then the ethics commission was part of when 13 you were county judge? 14 A. Yes. 15 Q. Okay. All right, okay. So I'm guessing then 16 when you retired as county judge that's when your 17 wife was appointed to fulfill the rest of your term; 18 is that right? 19 A. Yes, ma'am. 20 Q. Okay. All right. Things are making sense to 21 me now. It may take me a minute, but things are 22 making sense. 23 Okay. This lawsuit involves in part 24 allegations about a crossing east of the depot in 25 downtown Ozark. Are you familiar with that location?	Page 11 1 Q. Okay. 2 A. He's deceased now. 3 Q. Okay. So that would have been -- I'm assuming 4 that he had some agreement with the railroad that got 5 him onto the railroad property to load and unload, 6 and then he hired you to help him with that; is that 7 accurate? 8 A. It was some of the last shallow coal they 9 mined. There used to be lots of people putting coal 10 down here, and so they hauled in there, and we had a 11 job loading that train car. 12 Q. Okay. 13 A. Dumped trucked it in there, the best I 14 remember. 15 Q. Okay. When was about the last time you would 16 have done this job with Cass Wagner, about what year 17 it would have been? 18 A. It was back in the seventies. 19 Q. Okay. After your job with Cass Wagner in the 20 seventies would you have had an occasion to use that 21 crossing? 22 A. No. 23 Q. Okay. And I've heard enough now to kind of 24 understand that that road was kind of a gravel road; 25 is that right?
Page 10 1 A. Yes. 2 Q. Okay. Have you ever utilized that crossing? 3 A. I have. 4 Q. Can you tell me what occasion you would have 5 used for that crossing? 6 A. My dad used to work for Kenneth Smith, F&S 7 Lumber Company over there -- 8 Q. Okay. 9 A. -- when I was a child. 10 Q. And we have had some testimony that F&S was 11 located on the other side of that crossing, and to 12 get to it you would have had to use that crossing; 13 correct? 14 A. Yes. 15 Q. Okay. Would you have used that crossing for 16 anything else, other than to go see your dad at work? 17 A. About 20 years ago, or 30 years ago, I'm sorry, 18 I loaded coal over there for Cass Wagner (phonetic). 19 I worked for him part-time, and he got a job loading 20 coal on these railroad cars. 21 Q. Okay. So did you work for the railroad, or did 22 you work -- 23 A. No, I worked for an individual. 24 Q. Okay. And it was Cass Wagner? 25 A. Cass Wagner, uh-huh.	Page 12 1 A. Uh-huh. 2 Q. Okay. Is that "yes"? Sorry. 3 A. Yes. 4 Q. In the sixties and seventies when you were 5 utilizing that crossing did you have a name for that 6 road that you used? 7 A. Just Oliver Street is all I ever knew. 8 Q. Okay. And that's what you called it in the 9 sixties and seventies? 10 A. Yes. 11 Q. Okay. You don't have any knowledge, do you, 12 sir, in particular as county judge, of any 13 documentation that shows that Oliver Street was ever 14 dedicated as a city street? 15 A. No, I do not. 16 Q. Okay. Or that any crossing at that location 17 was ever dedicated as a city street? 18 A. I wouldn't know that. 19 Q. Okay. 20 A. I was in charge of rural roads, not city 21 streets. 22 Q. Okay. So you wouldn't have any knowledge about 23 any, any prerequisites for establishing Oliver Street 24 or any street at that location as an actual city 25 street; correct?

3 (Pages 9 to 12)

Page 13 1 A. Right. 2 Q. Okay, all right. That takes care of a lot of 3 questions then. Did you, do you have any personal 4 knowledge, and by "personal knowledge," I mean 5 something that you took part in, not just read about 6 or someone told you about, when this crossing was 7 taken out or the circumstances leading to it? 8 A. No. 9 Q. Okay. All right. Well, thank you, sir. Have 10 you ever served on Main Street Ozark? 11 A. No, I have not. 12 Q. Okay. 13 MS. JONES: All right. I think that's 14 all I have for you. Mr. Brockett may have 15 some. 16 EXAMINATION 17 BY MR. BROCKETT: 18 Q. Do you remember any other crossings near the 19 Oliver -- for simplicity, we will refer to it as 20 Oliver Street crossing. 21 Do you remember any other crossings to the 22 east of that crossing, closer to Bell Street? Do you 23 remember if there was a crossing at the Bell Street 24 crossing? 25 A. Best I remember there was, and then you kind of	Page 15 1 ever seen that before or anything similar to that? 2 A. No, I haven't. 3 Q. Okay. This is designated as City House 4 Numbers. I want to read off the names and see if you 5 recognize any of them. 6 According to this city book there is a 7 street classified as Oliver Street, and there was a 8 211. There was an F&S Lumber Company. Do you know 9 what that one was? 10 A. F&S Lumber, yes. 11 Q. Okay. Are you familiar with that? 12 A. I can just see that now. 13 Q. Okay. There was also a Tom Kirkendall. Did 14 you ever have any -- 15 A. I do remember that name. 16 Q. You do? Okay. Do you remember if he lived on, 17 south of the railroad tracks? 18 A. I think he did. 19 Q. Okay. Do you know which house -- 20 A. There was two houses over there, I believe. 21 Q. Okay. You think there was two houses? 22 A. Yeah. 23 Q. Okay. How would you classify those houses? 24 Were they shacks? Were they fairly nice homes? 25 A. Just average for around here actually at that
Page 14 1 drove along the tracks. 2 Q. Okay. So those two kind of went over -- 3 A. And went kind of, kind of drove over the track. 4 I have been over there to get propane with my parents 5 before. 6 Q. Okay. 7 A. There used to be a propane tank over there that 8 Boyd Evans' father-in-law owned, Mr. Rambo (names 9 phonetic). 10 Q. Uh-huh. 11 A. I did forget about that. 12 Q. Okay. Were there any houses on the south of 13 the railroad tracks? 14 A. I do remember the Oliver families lived over 15 there. 16 Q. Okay. I want to -- 17 A. I barely remember that. 18 Q. Okay. Did you, did you know any of them that 19 lived over there? 20 A. No, just the name. 21 Q. Okay. I want to show you what's been marked as 22 Exhibit 51. 23 A. Uh-huh. 24 Q. I am going to show you two different sheets. 25 The first one is Exhibit D to Exhibit 51. Have you	Page 16 1 time. 2 Q. Average homes. Okay. There was an Alfred 3 Oliver. Does that sound familiar? 4 A. I do remember the name, but I personally do not 5 remember them. 6 Q. Just remember the Oliver name? 7 A. Yes. 8 Q. Okay. Did you ever have any communications 9 with anyone that lived in those houses? 10 A. No, other than just waving, you know. 11 Q. Okay. Do you -- did you have to ask permission 12 to use that crossing? 13 A. No. 14 Q. Okay. After 1970 did you have to ask 15 permission to, to go across it to load the coal? 16 A. No. 17 Q. Okay. Did you ride with your employer, or did 18 you meet him over there? 19 A. I moved the tractor and loader in there with 20 the trailer and unloaded it and back and forth 21 loading the coal. 22 Q. Okay. Do you hunt or fish? 23 A. I do. 24 Q. Okay. 25 A. I don't fish, but I hunt.

4 (Pages 13 to 16)

Page 17

1 Q. Okay. Did you ever go over the tracks to do
2 any hunting?
3 A. No.
4 Q. Okay. And you don't fish; correct?
5 A. No.
6 Q. Okay.
7 MR. BROCKETT: All right, fair enough.
8 That's, that's all I've got.
9 THE WITNESS: I was raised on the
10 Arkansas River and don't fish. That
11 doesn't make sense.
12 EXAMINATION
13 BY MS. JONES:
14 Q. I do have a follow-up question. Mr. Brockett
15 asked if you had to ask permission to cross over that
16 crossing. Is it fair to say you don't know if you
17 had to have permission; you just didn't ask for
18 permission?
19 A. **I just assumed it was a public access because**
20 **there was quite a bit of traffic.**
21 Q. All right. So you made that assumption, but --
22 A. **Several dump trucks was coming in and out of**
23 **there when I was there, so.**
24 Q. Is it fair that you don't really know if there
25 was, if it was public or private?

Page 18

1 A. No.
2 Q. Okay. That's a, that's fair that you didn't
3 know it was?
4 A. **I just assumed it was public.**
5 Q. Okay. You just make that assumption?
6 A. Yes.
7 Q. But you didn't really have -- like you don't,
8 you don't know that there was, for example, anything
9 official that said you could cross there or couldn't
10 cross there. You just don't know one way or the
11 other; right?
12 A. **I didn't have any reason to ask questions.**
13 MS. JONES: Okay. All right. Thank
14 you so much.
15 MR. BROCKETT: No further questions.
16 (The deposition was concluded at 11:47 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.
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Transcript of the Testimony of

Robert Chrisman

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

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Robert Chrisman 3/9/2015

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	INDEX
CITY OF OZARK, a Municipal Corporation PLAINTIFF	EXAMINATION By Ms. Jones 5
VS. CASE ACTION NO. 2:14-CV-02196-TLB	EXAMINATION By Mr. Brockett. 18
UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANT'S	EXAMINATION By Ms. Jones 20
ORAL DEPOSITION OF ROBERT CHRISMAN March 9, 2015	
BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	
Page 2	Page 4
APPEARANCES	ANSWERS AND DEPOSITION OF ROBERT CHRISMAN
ON BEHALF OF THE PLAINTIFF: CHRISTOPHER D. BROCKETT, ESQ. Sayre & Brockett 401 West Commercial Street Ozark, Arkansas 72949	a witness produced at the request of the Defendants, was taken in the above-styled and numbered cause on the 9th day of March, 2015, before Janess Ferguson Smith, Certified Court Reporter and Notary Public in and for Saline County, Arkansas, at the Offices of Sayre & Brockett, 401 West Commercial Street, Ozark, Arkansas, at 11:49 a.m.
ON BEHALF OF THE DEFENDANTS: JAMIE JONES, ESQ. Friday, Eldredge & Clark 400 West Capitol Suite 2000 Little Rock, Arkansas 72201	*****
	STIPULATIONS
	It is stipulated and agreed by and between the parties through their respective counsel that the deposition of ROBERT CHRISMAN may be taken for any and all purposes according to the Federal Rules of Civil Procedure.

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Page 5	Page 7
1 ROBERT CHRISMAN, 2 the witness hereinbefore named, having first 3 been 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. Chrisman, we just met, but my name is Jamie 9 Jones, and I represent Union Pacific Railroad Company 10 in the lawsuit that's been filed against it by the 11 City of Ozark, and you have been listed as a fact 12 witness by the city, which is what brings you here 13 today. Have you ever given a deposition before? 14 A. Do what now? 15 Q. Have you ever given a deposition before? 16 A. Given -- oh, yes, ma'am. 17 Q. Okay. 18 A. Yes, ma'am. Yes, ma'am. 19 Q. Well, I'm going to just remind you a little bit 20 of the ground rules, just so we're on the same page. 21 Ms. Janess is taking down everything you say today, 22 which means a couple of things for you and I, and the 23 first of which is she can only get down verbal 24 responses. 25 So if you nod your head or say "uh-huh" or	1 responsive. 2 A. Document demands, this is where you want me to 3 read? 4 Q. Yes, sir. And you can just read it to yourself 5 and just tell me if you would have had anything. 6 A. (Witness reviews document.) I don't believe I 7 have anything here. 8 Q. Okay. Thank you for looking at that for me. 9 Can you give me your date of birth? 10 A. 8-5-30. 11 Q. Okay. And what is your current address? 12 A. 6533 West Creek Road. 13 Q. Okay. And that's here in Ozark? 14 A. In the Ozark area. 15 Q. Okay. What is the best phone number to reach 16 you? 17 A. 651-7514. 18 Q. Okay. Did you graduate from high school in 19 Ozark? 20 A. No, ma'am. 21 Q. Okay. Did you graduate from high school? 22 A. Yes, ma'am, Hartman. 23 Q. Hartman. What year was that? 24 A. Forty-eight, I think. 25 Q. Okay. And have you lived most of your life in
Page 6	Page 8
1 "huh-uh," although I understand it, we -- I'm going 2 to have to ask you to verbalize it so that we have a 3 good record. Okay? 4 A. Okay. 5 Q. The second thing is she can't get us speaking 6 at the same time, so you may well anticipate where 7 I'm heading with a question and interrupt me to 8 answer it for me, but if you will just hold off and 9 let me finish my question. I will let you finish your 10 answer. Okay? 11 A. Okay. 12 Q. I am going to ask a question, I assure you, 13 today that nobody in the room will understand, and 14 when I do that will you let me know so that I can 15 rephrase it for you? 16 A. Okay. 17 Q. Okay. And you were asked to be here today, and 18 you were given a subpoena that had some document 19 requests on it that asked you to bring some 20 documents. Did you look to see if you had anything 21 responsive? 22 A. I'm sorry to say I didn't look at that. 23 Q. Okay. Well, can you take a moment and look 24 here for me at these one through six and read that, 25 and then tell me if you would have had anything	1 the Ozark area? 2 A. Yes, ma'am. 3 Q. Okay. Did you get any post high school 4 education; did you go to college anywhere? 5 A. No, ma'am. 6 Q. Okay. What did you do for a living? 7 A. I was in the general construction business. 8 Q. Okay. Did you work for any particular company? 9 A. I owned the company. 10 Q. Okay. What company was that? 11 A. Chrisman Ready Mix, Inc. 12 Q. Okay. And where was that located? 13 A. In Ozark, Arkansas. 14 Q. Okay. And where specifically in Ozark; do you 15 have an address? 16 A. We were in Clarksville, Ozark, Johnson, 17 Franklin County. 18 Q. Okay. 19 A. We had ready mix plants. We had rock crushing 20 plants, and we had an oilfield moving business, a 21 heavy haul trucking business. I was in business for 22 many, many, many years. 23 Q. Okay. Your Ozark location, can you tell me 24 where it was located in Ozark? 25 A. The Ozark location, Chrisman Ready Mix office,

2 (Pages 5 to 8)

Page 9

1 **main office, was at 219 East Main.**
 2 Q. Okay. Now, this lawsuit involves, in part,
 3 allegations regarding a crossing that was alleged to
 4 have been located east of the depot in downtown
 5 Ozark. Are you familiar with that crossing location?
 6 **A. Yes, ma'am.**
 7 Q. Okay. Can you tell me have you ever used that
 8 crossing location?
 9 **A. Yes, ma'am.**
 10 Q. Okay. Can you tell me what occasion you would
 11 have had to use that crossing?
 12 **A. We used to keep our tugboat moored there.**
 13 Q. Okay. And where -- can you kind of describe to
 14 me where it was moored?
 15 **A. Not really.**
 16 Q. Okay, that's fair.
 17 **A. Not really. I'm not sure I was ever even over**
 18 **there.**
 19 Q. Okay. So did you ever use the crossing to get
 20 to the tugboat?
 21 **A. We did, yes, ma'am.**
 22 Q. Did you?
 23 **A. Not me, no, ma'am.**
 24 Q. Okay. Okay. So have you ever used that
 25 crossing?

Page 10

1 **A. Yes, ma'am.**
 2 Q. Okay. What did you personally use that
 3 crossing for?
 4 **A. I do not know exactly my personal use of it.**
 5 Q. Okay. Do you know, has it been since the
 6 1970s?
 7 **A. I would think so, yes, ma'am.**
 8 Q. Okay. Sometime in the late sixties, early
 9 seventies the water changed its course, and some of
 10 that area over there was flooded by the Corps. Do
 11 you, do you remember that?
 12 **A. Yes, ma'am.**
 13 Q. Okay. Have you ever used the crossing after
 14 the river changed its course?
 15 **A. Yes, ma'am.**
 16 Q. Okay. What for?
 17 **A. To get to my tugboat.**
 18 Q. Okay. I was miss -- I was misunderstanding
 19 because I thought you said you never used it to get
 20 to your tugboat.
 21 **A. I never used it personally but a time or two.**
 22 **I was over there but a time or two. I do not**
 23 **remember specific times, dates.**
 24 Q. Okay. Did you ever personally use the crossing
 25 to get to your tugboat?

Page 11

1 **A. Yes, ma'am.**
 2 Q. Okay. When did you last store your tugboat?
 3 **A. I do not know.**
 4 Q. Okay. In the 1980s, 1970s?
 5 **A. I do not know. Somewhere after '69.**
 6 Q. Sometime after '69 --
 7 **A. Uh-huh.**
 8 Q. -- you put it there; correct?
 9 **A. I do not remember the exact dates. I'm sorry,**
 10 **but I do not.**
 11 Q. Now, and I understand. That's fair. I am just
 12 trying to get kind of a decade. I mean, did you, did
 13 you have a tugboat there in the eighties?
 14 **A. I don't think so.**
 15 Q. Okay. So it's fair to say sometime before 1980
 16 your tugboat would not have been there anymore;
 17 right? We don't know when, but by 1980 it wasn't
 18 there; correct?
 19 **A. I do not know.**
 20 Q. Okay.
 21 THE WITNESS: Do you know?
 22 Christopher, do you know?
 23 MR. BROCKETT: No.
 24 THE WITNESS: Do you know when they
 25 opened the lock and gates and washed all of

Page 12

1 the turkeys away and this, that, and the
 2 other?
 3 BY MS. JONES:
 4 Q. Is that kind of -- because, I mean --
 5 **A. They washed our tugboat away at that same time.**
 6 Q. Okay.
 7 **A. And destroyed it.**
 8 Q. So sometime when the lock and dam was opened?
 9 **A. Yes, ma'am.**
 10 Q. You wouldn't have used it after that because
 11 the tugboat didn't exist anymore?
 12 **A. Yes, ma'am. My tugboat got destroyed going**
 13 **through the gate, number four gate on the lock and**
 14 **dam.**
 15 Q. Okay. So if we can find out when that date was
 16 we will know exactly --
 17 **A. Then you know exactly when the last time, yes,**
 18 **ma'am.**
 19 Q. Okay, all right. That's good. Thank you so
 20 much.
 21 **A. I'm doing the best I can.**
 22 Q. And that's all, that's all we could ask for.
 23 We are all doing the same thing. Is there any other
 24 use you would have had outside the tugboat -- that
 25 would have been the last time you would have had an

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City of Ozark v. Union Pacific Railroad Company

Page 13 1 occasion to use that crossing was to get to your 2 tugboat; correct? 3 A. Yes, ma'am, I think so. 4 Q. Okay, all right. And you don't have -- do you 5 know what, what that street was called? Did it have 6 a name that you used at that time when you were 7 getting your tugboat? 8 A. It was probably an extension of Bell Street. 9 Q. Okay. Now, I'm trying to think -- I'm trying 10 to figure out once the river was flooded, so after 11 1968, early 1970s, where would your tugboat have 12 been? Can you kind of describe when you go across 13 the crossing how you would have gotten to your 14 tugboat? 15 A. It was almost directly across the crossing tied 16 up at a small dock we had there. 17 Q. Okay. Did you install the dock there? 18 A. I do not know. 19 Q. Okay. Did you have permission to install the 20 dock there? 21 A. I assume so, yes, ma'am. 22 Q. Okay. What is your assumption based on? 23 A. The assumption is based on we did this in the 24 name of Ozark Material Company, and my brother run 25 Ozark Material Company.	Page 15 1 A. I doubt -- no, I don't think -- 2 Q. Okay. 3 A. No, it didn't exist at that time. 4 Q. Okay. So what was your dealings with the 5 railroad concerning? 6 A. We put in Ozark Material Company. We put in a 7 sand plant. We crossed the railroad. We put in some 8 crossings. 9 Q. Okay. 10 A. I've had -- I have been on the railroad, had 11 dealings with the railroad many times. I do not 12 remember the specific times -- 13 Q. Okay. 14 A. -- or what it was about. 15 Q. Okay. 16 A. But I have had dealings with the railroad ever 17 since 50 or 60 years. 18 Q. Okay. But unrelated to the crossing located 19 east of the depot in downtown Ozark? 20 A. I don't ever remember having any problems with 21 that crossing. 22 Q. Okay. 23 A. Period. 24 Q. And you said that you have had wrecks. Can you 25 tell me about that?
Page 14 1 Q. Okay. What is your brother's name? 2 A. His name is Marshall. 3 Q. Okay. All right. Did you have a lease or 4 anything to use the land? 5 A. I don't think so. 6 Q. Okay. I would have to talk to Marshall to find 7 out? 8 A. Yes, ma'am. 9 Q. Okay, all right. That's fair. Do you have -- 10 have you ever talked to Union Pacific Railroad 11 Company about anything to do with the crossing or any 12 of the land over there? 13 A. We've had various dealings up and down the 14 river with the railroad company. 15 Q. Okay. Well -- 16 A. And we have had several wrecks with the 17 railroad company. 18 Q. Okay. Well, let's -- 19 A. I do not know of all of the talkings that we 20 have done with the railroad company. 21 Q. Was it anything to do with this lawsuit that 22 you would have talked to the railroad company about? 23 A. What lawsuit are you talking about? 24 Q. The lawsuit that you are here today being 25 deposed of, the city's lawsuit against the railroad?	Page 16 1 A. Do what now? 2 Q. You said wrecks that had involved the railroad. 3 Can you -- 4 A. Several. 5 Q. Okay. Can you elaborate and tell me what you 6 mean by that? 7 A. Truck wrecks. 8 Q. The crossing -- 9 A. Where the trains have hit my trucks, and trains 10 have hit trucks. 11 Q. Okay. 12 A. And a train wreck one time scattered all over 13 my pasture. 14 Q. Okay. So have you firsthand experienced a 15 train wreck? Were you in one of the trucks that were 16 hit? 17 A. No. 18 Q. Okay. All right. Have you ever been involved 19 with any lawsuits against the railroad for any of 20 these wrecks? 21 A. Yes, ma'am. 22 Q. Okay. Tell me about those. 23 A. I can't tell you about those. I don't remember 24 them. They are just vague in my mind. 25 Q. Okay. Were they where you or your company sued

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Page 17	Page 19
1 the railroad? 2 A. I can't remember whether they sued me or I sued 3 them. 4 Q. Okay. But you do know firsthand that there's 5 -- you have had accidents at crossing locations? 6 A. Yes, ma'am. 7 Q. Okay. All right. Have you had good 8 experiences with the railroad -- I guess I am 9 hesitant to say "bad experiences." since you have 10 told me about wrecks, but how could you characterize 11 your experiences with the railroad? 12 A. Reasonable. 13 Q. Okay. Do you feel they have dealt with you in 14 a reasonable manner? 15 A. Fairly reasonable, yes, ma'am. 16 Q. Okay. Have you ever been a city council 17 member? 18 A. No, ma'am. 19 Q. Have you ever been on the organization called 20 Main Street Ozark? 21 A. No, ma'am. I don't -- I do not know. 22 Q. Okay. You don't remember? 23 A. I think that someone could have joined that. I 24 don't know that. 25 MS. JONES: All right. I think that's	1 Q. Okay. And that's my understanding on that one, 2 as well. 3 A. Uh-huh. 4 Q. Now, further near the depot where was that 5 crossing at, a little closer to the depot? 6 A. That would have been almost directly across 7 from where the post office is down there. 8 Q. Okay. All right. 9 A. We had a warehouse there at the time, a mud 10 warehouse, drilling mud for the drilling companies. 11 Q. Okay. 12 A. And we unloaded our railroad cars there, and I 13 remember people crossing that track -- 14 Q. Okay. 15 A. -- when we were unloading the railroad cars. 16 Q. Okay. Did you personally cross it, or did you 17 just have employees crossing it? 18 A. I'm sure I have crossed it several times. 19 Q. Uh-huh. 20 A. It would just stand to reason. I have been 21 down in that area for 60 years. 22 Q. Right. But as we sit here -- 23 A. And it would stand to reason I have crossed 24 that railroad many times. 25 Q. Yes, sir. But as we sit here today, do you
Page 18	Page 20
1 all I have for you. Thank you. 2 THE WITNESS: Okay. 3 MS. JONES: Mr. Brockett may have 4 some. 5 EXAMINATION 6 BY MR. BROCKETT: 7 Q. I just want to make sure that we're clear on 8 the -- do you know what spot we are talking about 9 east of the depot? Do you know where the crossing 10 is? 11 A. I know where generally a crossing used to be. 12 Q. Okay. Where was that? 13 A. We had two crossings at Ozark: One at the end 14 of Second Street, and one there. 15 Q. Okay. So the one at the end of Second Street 16 was for the old Ferry road; is that correct? 17 A. We went down to work on the bridge, and I had a 18 topsoil pit down there. 19 Q. Okay. And that was kind of curved to the right 20 a little bit? 21 A. It went at an angle off of River Street about 22 the 2nd Street area. 23 Q. Okay. 24 A. But I don't think you could go directly to 2nd 25 Street down it. You had to go to Main and come back.	1 remember -- 2 A. I don't remember specific times, no. 3 Q. Okay. 4 A. I don't. 5 MR. BROCKETT: MR. BROCKETT: I don't 6 have any questions then. 7 EXAMINATION 8 BY MS. JONES: 9 Q. I just -- about what -- when was this where you 10 were unloading railroad cars? Do you know what, the 11 sixties, seventies, what time period it was? 12 A. Probably prior to '69. 13 Q. Okay. 14 MS. JONES: All right. Thank you. 15 MR. BROCKETT: That's all I have. 16 MS. JONES: Thank you, sir. 17 (The deposition was concluded at 12:05 p.m.) 18 19 20 21 22 23 24 25

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

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Transcript of the Testimony of

Janet Powell

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION	INDEX
CITY OF OZARK, a Municipal Corporation PLAINTIFF	EXAMINATION By Ms. Jones 5
VS. CASE ACTION NO. 2:14-CV-02196-TLB	EXAMINATION By Mr. Brockett. 14
UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS	
ORAL DEPOSITION OF JANET POWELL	
March 9, 2015	
BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	
Page 2	Page 4
APPEARANCES	ANSWERS AND DEPOSITION OF JANET POWELL.
ON BEHALF OF THE PLAINTIFF:	witness produced at the request of the Defendants.
CHRISTOPHER D. BROCKETT, ESQ.	was taken in the above-styled and numbered cause on
Sayre & Brockett	the 9th day of March, 2015, before Janess Ferguson
401 West Commercial Street	Smith, Certified Court Reporter and Notary Public in
Ozark, Arkansas 72949	and for Saline County, Arkansas, at the Offices of
ON BEHALF OF THE DEFENDANTS:	Sayre & Brockett, 401 West Commercial Street, Ozark,
JAMIE JONES, ESQ.	Arkansas, at 11:23 a.m.
Friday, Eldredge & Clark	
400 West Capitol	*****
Suite 2000	STIPULATIONS
Little Rock, Arkansas 72201	It is stipulated and agreed by and between
	the parties through their respective counsel that the
	deposition of JANET POWELL may be taken for any and
	all purposes according to the Federal Rules of Civil
	Procedure.

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Janet Powell 3/9/2015

City of Ozark v. Union Pacific Railroad Company

Page 5 1 JANET POWELL, 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. Powell, my name is Jamie Jones, and I 9 represent Union Pacific Railroad Company in a lawsuit 10 that's been filed by the city. Have you ever given a 11 deposition before? 12 A. No, ma'am. 13 Q. Okay. Well, let me tell you a little bit about 14 what's going to happen today. I don't think this is 15 going to take a whole long time, but if you need a 16 break at any point, you let me know, and we will take 17 one; okay? 18 A. Okay. 19 Q. Ms. Janess is taking down everything we say. 20 She has sworn you in, and so it seems a little bit 21 informal, but it is just as -- your testimony is 22 testimony under oath, just as if the judge was 23 standing here; okay? 24 A. Right. 25 Q. Okay. Ms. Janess can only get us speaking one	Page 7 1 A. (479)667-2392. 2 Q. Okay. And you were served with a subpoena to 3 be here today? 4 A. Yes. 5 Q. And in that subpoena there were some requests 6 for you to bring some documents if you had them. Did 7 you go through these categories one through six to 8 see if you had anything? 9 A. I did, and I did not have any. 10 Q. Okay. Thank you for going through and checking 11 that for me. Now, have you ever served on the city 12 council? 13 A. No. 14 Q. Okay. Have you ever spoken with anyone from 15 the railroad about anything to do with this lawsuit? 16 A. No. 17 Q. Okay. Have you ever worked for the railroad? 18 A. No. 19 Q. Okay. Any family members work for the 20 railroad? 21 A. No. 22 Q. Did you graduate from high school in Ozark? 23 A. Yes. 24 Q. What year? 25 A. 1974.
Page 6 1 at a time, so you may well anticipate where I'm going 2 with the question, but if you will allow me to finish 3 my question, I will allow you to finish your answer 4 before I start again so that she can get us down; 5 okay? 6 A. Okay. 7 Q. And the other thing is she can only get verbal 8 responses, so you may do a head nod or a "uh-huh" and 9 a "huh-uh," and I understand that, but I am going to 10 ask you to verbalize it so she can get it for the 11 record; okay? 12 A. Okay. 13 Q. And there may be a question I ask that is just 14 a bad question, and no one understands it. If I do 15 that, will you let me know, and I will rephrase it 16 for you? 17 A. Yes. 18 Q. Okay. What is your date of birth? 19 A. June 5, 1956. 20 Q. Okay. And how long have you lived in Ozark? 21 A. All my life. 22 Q. Okay. What is your current address? 23 A. 6900 Powell Drive, Ozark, Arkansas. 24 Q. Okay. And what is the best number to reach 25 you?	Page 8 1 Q. Okay. And did you go anywhere for college 2 after high school? 3 A. Yes. I went to University of the Ozarks, 4 graduated in '78 with a bachelor's, and then I 5 graduated from the university in 1982. 6 Q. Okay. 7 A. A master's degree. 8 Q. And what is was your BA in? 9 A. Vocational education. 10 Q. Okay. And what was your master's? 11 A. No, I'm sorry. My bachelor's degree was 12 business education and business administration. 13 Q. Okay. 14 A. And my master's was in vocational education. 15 Q. Okay. Did you after finishing with your 16 master's return to Ozark? 17 A. Yes. 18 Q. Okay. And what did you do for a living? 19 A. I taught school at the high school for 32 20 years. 21 Q. Okay. What subject did you teach? 22 A. And then I taught high school in the vocational 23 department. I taught accounting, keyboarding, and 24 then I taught general property of education and jobs 25 for American graduates for my last job, when students

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City of Ozark v. Union Pacific Railroad Company

Page 9 1 went out and worked in the afternoon. 2 Q. Okay, great. This lawsuit concerns, in part, a 3 crossing that has been located or said to be located 4 east of the depot in downtown Ozark. Are you 5 familiar with that location? 6 A. Yes. 7 Q. Okay. Have you ever used that crossing? 8 A. Yes. 9 Q. Okay. Tell me what occasion you would have had 10 to use that crossing. 11 A. Well, back, I would say in the early sixties, 12 my father, Kenneth Smith, had a business, F&S Lumber 13 Company. 14 Of course, I was at a young age, but I did 15 travel it every day, I'm sure, to go, at least every 16 day to go down and see him with my mother. 17 Q. Okay. 18 A. That's basically it. 19 Q. Was that the only reason you would have used it 20 to -- 21 A. Well, I did that, and I do remember, of course, 22 the city dump was there, and I do kind of remember 23 that, going over there for that also, but mainly 24 because my dad owned, had a business there. 25 Q. Okay. Now, your dad testified that the F&S	Page 11 1 matters, but, I mean, I, after I retired from 2 teaching school I was appointed to be Franklin County 3 judge for 22 months. 4 Q. Okay. 5 A. So that's been my last job. 6 Q. Okay, okay. Good. And as county judge did you 7 have anything that would have come to your attention 8 about this crossing at all? 9 A. You might want to explain that to me. 10 Q. Okay. 11 A. Of course, I heard what all was going on, but 12 that's -- and I attended some meetings, but that's, 13 that's basically all of it. 14 Q. Okay. Well, in your capacity, though, as 15 county judge did you have any, any personal 16 responsibility -- 17 A. No. 18 Q. -- to do with anything with this crossing? 19 A. No. 20 Q. Okay. You've heard in the newspapers or heard 21 at city council meetings about the lawsuit and what's 22 going on with the crossing; correct? 23 A. Yes. 24 Q. Did you, do you have any personal knowledge as 25 to the circumstances in which the crossing was taken
Page 10 1 Lumber closed in the mid to late 1960s. Is that your 2 memory as well? 3 A. Yes. 4 Q. Would you have had an occasion to use that 5 crossing after F&S Lumber closed? 6 A. No. I was at a young age, and I don't truly 7 remember. If I did it would have been going over 8 there, you know, like I said, to the city dump. I 9 mean, I have... 10 Q. Would that have been the only other reason you 11 would have used it? 12 A. Yes, the main thing was going to his business. 13 Q. Okay. 14 A. After that I'm not sure. 15 Q. And the dump, I think, it's been well 16 established didn't exist after 1970 when the river 17 changed its course. Is that your memory as well? 18 A. Yeah, I would say about that time. 19 Q. Okay. So can we agree that after 1970 you 20 wouldn't have had a reason to use that crossing? 21 A. No, probably not. 22 Q. Okay. You agree with that statement then? 23 A. Yes. 24 Q. Okay. All right. Let me make sure. 25 A. Another thing on my jobs, I don't know if it	Page 12 1 out? 2 A. No. Well, yes, I guess I do, what I have read. 3 Q. Well, I mean -- 4 A. I have not attended any meetings, but what I 5 have been reading. 6 Q. Okay. And what I mean is like personal 7 knowledge in which you were present at something that 8 happened, or you know as a fact that you have seen 9 yourself something to do with the crossing, not just 10 something you have read or something someone has told 11 you. 12 A. No. 13 Q. Okay. And did you -- after your appointment 14 expired did you run for office again? 15 A. No. 16 Q. Do you have any personal knowledge -- well, let 17 me back up. The street that you used to get to F&S 18 Lumber, did it have a name, that you were aware of, 19 at the time? 20 A. Oliver Street. 21 Q. Is that what you called it in the 1960s? 22 A. Well, like I said, I was five or six. I'm not 23 sure. I will just be honest. 24 Q. Okay. And if your father has testified that he 25 didn't know what Oliver Street was until a few years

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Page 13 1 ago when the street sign got posted, would you have 2 any reason to dispute that? 3 A. No. 4 Q. Okay. And you don't have any personal 5 knowledge or any knowledge as a County Judge as to 6 whether or not that street that went to your father's 7 lumber company was indeed called Oliver Street? 8 A. No. 9 Q. Okay. And you don't have any personal 10 knowledge or knowledge as a county judge as to 11 whether or not the street that went to your father's 12 lumber company was a public, was an actual city 13 street? 14 A. Well, listening to my father I would say it 15 was. Yes, we had a business there. 16 Q. So based on the assumption that because your 17 dad had a business there it had to be a city street 18 that's, that's your only, your only basis; correct? 19 A. Correct. 20 Q. Okay. But you don't know if there was anything 21 ever platted or dedicated or accepted by the city 22 that established that as a city street? 23 A. No. 24 Q. But you know as a county judge that to be 25 established as a city street there are certain	Page 15 1 A. No. 2 Q. Okay. When you were driving by do you re member 3 seeing this crossing there? 4 A. Yes. 5 Q. After 1970? 6 A. Yes. 7 Q. Okay. Do you know when it was removed? 8 A. No. 9 Q. Okay. With regards to the dedication or 10 acceptance or anything like that, are you aware that 11 sometimes cities don't do that? 12 A. What do you mean exactly don't? 13 Q. Well, as far as following a specific 14 requirement that they accept it by dedication or 15 platted, et cetera, are you aware that sometimes 16 cities do not do that? 17 A. No, I did not know that. 18 Q. Okay. Do you know if any of the downtown 19 area's streets have been accepted or dedicated? 20 A. They have not, as far as I know. 21 Q. Okay. 22 A. I have never known that to happen. 23 Q. Okay. Fair enough. 24 MR. BROCKETT: That's all I have. 25 MS. JONES: Thank you. (The deposition was concluded at 11:34 a.m.)
Page 14 1 prerequisites that must occur; correct? 2 A. Correct. 3 Q. And you don't know if any of those 4 prerequisites were met in this case; correct? 5 A. No. No, I do not. 6 Q. Okay. Have you ever served on Main Street 7 Ozark? 8 A. No. 9 Q. Okay. Do you have any personal knowledge about 10 any of the city's plans? And, again, by personal 11 knowledge I mean something where you're involved in 12 firsthand as to the city's plans for either the 13 crossing or the hiking/biking trail in downtown 14 Ozark. 15 A. Am I involved in any? 16 Q. Yes, ma'am. 17 A. No. 18 MS. JONES: All right. Thank you so 19 much. I think that's all I have for you. 20 THE WITNESS: Okay. Thank you. 21 EXAMINATION 22 BY MR. BROCKETT: 23 Q. I just have a couple of quick questions. With 24 regards to the crossing from 1970 to 2001 would you 25 have had any reason to use it? Do you hunt or fish?	Page 16 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 9th day of March, 2015. 25 JANESE FERGUSON SMITH, CCR, RPR Notary Public for Saline County and Court Reporter.

4 (Pages 13 to 16)

Transcript of the Testimony of

Brenda Mann

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

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Brenda Mann 3/9/2015

City of Ozark v. Union Pacific Railroad Company

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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 BRENDA MANN March 9, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	INDEX EXAMINATION By Ms. Jones 5 EXAMINATION By Mr. Brockett, 11 EXAMINATION By Ms. Jones 12
Page 2	Page 4
APPEARANCES ON BEHALF OF THE PLAINTIFF: CHRISTOPHER D. BROCKETT, ESQ. Sayre & Brockett 401 West Commercial Street Ozark, Arkansas 72949 ON BEHALF OF THE DEFENDANTS: JAMIE JONES, ESQ. Friday, Eldredge & Clark 400 West Capitol Suite 2000 Little Rock, Arkansas 72201	ANSWERS AND DEPOSITION OF BRENDA MANN, a witness produced at the request of the Defendants, was taken in the above-styled and numbered cause on the 9th day of March, 2015, before Janess Ferguson Smith, Certified Court Reporter and Notary Public in and for Saline County, Arkansas, at the Offices of Sayre & Brockett, 401 West Commercial Street, Ozark, Arkansas, at 10:02 a.m. ***** STIPULATIONS It is stipulated and agreed by and between the parties through their respective counsel that the deposition of BRENDA MANN may be taken for any and all purposes according to the Federal Rules of Civil Procedure. *****

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Brenda Mann 3/9/2015

City of Ozark v. Union Pacific Railroad Company

Page 5	Page 7
1 BRENDAMANN, 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. Mann, my name is Jamie Jones, and I 9 represent Union Pacific Railroad Company in an action 10 brought by the City of Ozark. Have you ever given a 11 deposition before? 12 A. No, ma'am. 13 Q. Okay. I am going to kind of go through a 14 little bit of the rules. Ms. Janess is our court 15 reporter, which means a couple of things. 16 You have just been sworn in, so it's just 17 as if the judge was here. Your testimony is court 18 testimony, just as if the judge was here to swear you 19 in; okay? 20 A. Okay. 21 Q. And Ms. Janess is taking down everything we 22 say, which means a couple of things for you and I. 23 First, I understand head nods and uh-huhs and 24 huh-uhs, kind of the nonverbal communication, but she 25 can't get that down for the record.	1 Ozark? 2 A. Sixty-six years. 3 Q. Okay. And did you graduate high school from 4 the City of Ozark? 5 A. Yes. 6 Q. What year? 7 A. 1962. 8 Q. And did you get any education after high 9 school? 10 A. Yes. 11 Q. What did you do? 12 A. I graduated from Arkansas Tech in 1966. 13 Q. What was your degree in? 14 A. Elementary education. 15 Q. And did you teach here in Ozark? 16 A. Yes. 17 Q. What grade did you teach? 18 A. First grade and kindergarten. No, I did not 19 teach first grade. I just taught kindergarten here. 20 Q. How long did you teach here? 21 A. I honestly do not remember. Probably five 22 years. 23 Q. Okay. What was -- did you work outside the 24 home other than the five years you taught? 25 A. Yes.
Page 6	Page 8
1 A. Right, okay. 2 Q. All right. So if you will just make sure to 3 verbalize your responses for me today; okay? 4 A. (Witness nods head.) 5 Q. And you're going to forget at some point, and 6 I'm going to remind you and ask you to say "yes" or 7 "no." 8 A. All right. 9 Q. Okay? Yes, you understand that? 10 A. Yes. 11 Q. Okay. And the other thing is she can't get us 12 speaking at the same time, so you may anticipate 13 where I'm going with the question and start to 14 answer, but I will ask you if you will just refrain 15 from that and wait until I ask my question, and then 16 I will let you answer fully before I start again; 17 okay? 18 A. All right. 19 Q. Okay. I don't think we are going to take all 20 that long today, but if you need a break, you just 21 let me know, and we will take one; all right? 22 A. Yes. 23 Q. Now, what is your date of birth? 24 A. 10-11-44. 25 Q. And how long have you lived in the City of	1 Q. What did you do? 2 A. We had Jim Vardaman Furniture. 3 Q. Okay. What is your address, your home address? 4 A. 506 West River Street. 5 Q. Okay. And what is your best number to reach 6 you at? 7 A. (479)209-1109. 8 Q. Okay. And you have been listed by the city as 9 a fact witness regarding a crossing that had been 10 located east of the depot in downtown Ozark. Are you 11 familiar with such a crossing? 12 A. Yes. 13 Q. Okay. Tell me have you ever, have you ever 14 used that crossing? 15 A. Yes. 16 Q. Okay. What purpose would you have used that 17 crossing for? 18 A. There used to be a dump down there, and at 19 different times my father would have stuff from the 20 furniture store to, to take there. And I always 21 thought it was quite a treat to get to go with him. 22 Q. Okay. So about what time period would this 23 have been? 24 A. In the fifties. 25 Q. Okay. And as I understand, sometime in the

2 (Pages 5 to 8)

Page 9	Page 11
1 early seventies the river was changed, the course. 2 When they did the navigation way, when the Corps put 3 in the navigation way the river changed its course, 4 and the dump was no longer there: is that right? 5 A. Yes. 6 Q. Okay. So you agree at least after the, after 7 the water changed its course in the early seventies 8 you wouldn't have had an occasion to use it to go to 9 the dump because it wasn't there? 10 A. Correct. 11 Q. Okay. Did you use it for anything else, other 12 than going to the dump with your dad in the 1950s? 13 A. There were some houses there, and I do not 14 remember those clearly. I do remember that they 15 were, you know, just little, pardon my expression, 16 but shacks. 17 Q. Uh-huh. 18 A. And, and, you know, that's in my memory, but I 19 don't, I don't specifically recall exactly how they 20 appeared. 21 Q. Okay. And you wouldn't have gone -- did you go 22 visit those houses? 23 A. Not that I recall. 24 Q. Okay. So the only reason you would have used 25 the crossing would have been with your dad to go to	1 with your dad, and you were going down to the dump, 2 you wouldn't have used Oliver Street as a name. You 3 would have just said -- 4 A. The dump. 5 Q. -- the dump, all right. 6 A. Right. 7 Q. All right. Have you ever served on the city 8 council? 9 A. No, ma'am. 10 Q. Okay. Do you know anything about the 11 circumstances in which this crossing was removed? 12 A. Just what I have heard. 13 Q. Okay. 14 A. Hearsay, yes. 15 Q. Just what you have read or what somebody has 16 told you? 17 A. Yes. 18 Q. But you don't have any personal experience? 19 A. No. 20 Q. Okay. 21 MS. JONES: All right. Thank you so 22 much. I appreciate your time. 23 EXAMINATION 24 BY MR. BROCKETT: 25 Q. Just one question. You were talking about the
Page 10	Page 12
1 the dump? 2 A. Yes. 3 Q. Okay. Did you call that street a name? Did it 4 have a name that you knew back in the fifties? 5 A. In Ozark we seldom used street names. You 6 know, it was where somebody lived. 7 Q. A landmark, like the dump? 8 A. Yes. 9 Q. Okay. Did you call it Oliver Street back then 10 at all? 11 A. Not that I recall. 12 Q. Okay. Did you ever, have you ever heard of an 13 Oliver street in Ozark? 14 A. Yes. 15 Q. Okay. When did you hear about an Oliver Street 16 in Ozark? 17 A. I can't really answer that. I -- 18 Q. There is no street that if someone had asked 19 you, before this lawsuit got attention, had asked you 20 where Oliver Street was could you have told them 21 where it was? 22 A. Yes, I think so. 23 Q. Okay. And where would you have told them? 24 A. I would have told them down past the depot. 25 Q. Okay. But if you were describing when your,	1 city streets back in this time period. Did the City 2 of Ozark have a lot of street signs? 3 A. Street signs? 4 Q. Yes, ma'am. 5 A. No. 6 Q. Okay. So if you were telling me how to get to 7 the dump would you use specific streets? 8 A. No. 9 MR. BROCKETT: That's all I have. 10 EXAMINATION 11 BY MS. JONES: 12 Q. I guess one more thing to follow up on, or that 13 I forgot to ask. After the navigation way was 14 changed and the river's course was changed, would you 15 agree with me that there was no reason to, at least 16 no reason you personally had to cross there at the 17 tracks? 18 A. No, not unless you were just walking down the, 19 the railroad tracks. 20 Q. Right. 21 A. Which is something that kids did a lot of. 22 Q. And you wouldn't suggest a kid walk down the 23 railroad tracks: right? 24 A. Well, no. My son spent a lot of time down at 25 the railroad tracks, you know.

3 (Pages 9 to 12)

Page 13 1 Q. In fact, being on railroad tracks is 2 trespassing; correct? 3 A. I'm sure it is. 4 Q. Yes. Right. 5 MS. JONES: All right. Thank you so 6 much, ma'am. 7 THE WITNESS: All right. 8 (The deposition was concluded at 10:11 a.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	
Page 14 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 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 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Transcript of the Testimony of

Geneva Sue McClellan

Date: March 3, 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>](http://www.bushmanreporting.com)

Geneva Sue McClellan 3/3/2015

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 GENEVA SUE MCCLELLAN March 3, 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 7 E X H I B I T S 8 9 Exhibit No. 245 (Subpoena). 6 10 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 GENEVA SUE 2 MCCLELLAN, a witness produced at the request of the 3 Defendants, was taken in the above-styled and 4 numbered cause on the 3rd day of March, 2015, before 5 Janess Ferguson Smith, Certified Court Reporter and 6 Notary Public in and for Saline County, Arkansas, at 7 the Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas, at 9:25 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 GENEVA SUE MCCLELLAN may be taken for 17 any and all purposes according to the Federal Rules 18 of Civil Procedure. 19 * * * * * 20 21 22 23 24 25

1 (Pages 1 to 4)

Page 5	Page 7
1 GENEVA SUE MCCLELLAN, 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. McClellan, my name is Jamie Jones. I 9 represent Union Pacific Railroad in the action that 10 the city has brought against it. Have you ever been 11 deposed before? 12 A. Have I ever been what? 13 Q. Have you ever given deposition before? 14 A. No. 15 Q. Okay. Let me kind of walk you through what we 16 are going to do today. Ms. Janess is taking down 17 everything that we say. She is a court reporter, 18 which means a couple of things for us. One, she 19 can't get us speaking at the same time, so you may 20 anticipate where I'm going with the question, but if 21 you allow me to finish my question, I will allow you 22 to finish your answer so we're not speaking on top of 23 each other. Okay? 24 A. Okay. 25 Q. Okay. And the second thing is she can only get	1 Q. And you were asked to bring a number of 2 documents with you today. Did you go through and 3 read the document demand? 4 A. I did. 5 Q. Okay. Did you look to see if you would have 6 anything that would be responsive to those? 7 A. I did. 8 Q. Okay. And did you? 9 A. No, I did not. 10 Q. Okay. All right. Now, do you have an 11 understanding what this lawsuit is about? 12 A. Yes. 13 Q. Okay. Tell me what your understanding of this 14 lawsuit is. 15 A. It's about going over the railroad tracks to 16 build a riverfront project. 17 Q. Okay. And tell me how long have you lived in 18 Ozark? 19 A. All my life. 20 Q. Okay. And what is your date of birth? 21 A. Six, nine of fifty-six. 22 Q. Okay. And what do you do for a living? 23 A. I work for the City of Ozark over parks and 24 rec. 25 Q. Okay. And what do you do for parks and rec?
Page 6	Page 8
1 verbal communication, so you might nod your head at 2 me or say "uh-huh" or "huh-uh," and I understand what 3 that means in normal conversation, but she can't get 4 that down for the record. So if you can, verbalize 5 your responses for me; okay? 6 A. Okay, ma'am. 7 Q. And you're going to forget because everyone 8 does sitting in that chair, and when I remind you, I 9 don't do it to be rude. I just do it so we have a 10 clean record. Okay? 11 A. Okay. 12 Q. Okay. And you're under oath, which means that 13 if you don't tell the truth it's perjury. You 14 understand that; correct? 15 A. I understand that, yeah. 16 Q. Okay. And this is so we can rely upon your 17 testimony for the trial of this action. Okay? 18 A. Okay. 19 Q. All right. You received a subpoena to be here 20 today; correct? 21 A. Correct, ma'am. 22 Q. And I have marked that as Exhibit 245 to this 23 deposition. 24 (Exhibit No. 245 was marked.) 25 BY MS. JONES:	1 A. I take care of all of the parks, do all of the 2 booking of events, make sure they are kept, kept, and 3 just, you know, just like, you know, anything that 4 deals with the parks I do. 5 Q. Okay. And do you have a title? 6 A. Yeah, parks and rec director. 7 Q. Okay. What is your home address? 8 A. 1411 North Second Street, Ozark, Arkansas. 9 Q. Okay. 10 A. 72949. 11 Q. And what is your home phone number or the best 12 number to reach you? 13 A. It will be my cell number. 14 Q. Okay. 15 A. It will be (479)518-0027. 16 Q. Okay. And how long have you been the parks and 17 rec director? 18 A. Well, I have been working for the city, this is 19 going on my ninth year, so I'm going to say probably 20 seven years. 21 Q. Okay. 22 A. Because I used to work for the street 23 department before I was parks. 24 Q. Okay. What did you do for the street 25 department?

2 (Pages 5 to 8)

Page 9 1 A. Basic things, like mow, fix roads, and 2 drainage, and whatever, whatever they needed. 3 Q. You have no history of working in the railroad 4 business? 5 A. No, ma'am. 6 Q. Okay. Any relatives that work for the 7 railroad? 8 A. No, ma'am. 9 Q. Okay. You are married? 10 A. Yes, ma'am. 11 Q. I believe Rick is your husband? 12 A. Yes, ma'am. 13 Q. What does Rick do? 14 A. He was the street superintendent here for 15 Ozark. 16 Q. Okay. 17 A. For seven years. 18 Q. All right. So as director who do you report 19 to? 20 A. Now it's the Mayor of Ozark. 21 Q. Okay. So now that's Mr. T.R. McNutt; correct? 22 A. Yes, ma'am. 23 Q. And before that it was Carol Sneath? 24 A. Yes, ma'am. 25 Q. Is that the only two mayors you have ever	Page 11 1 A. Rick's Backhoe Service. 2 Q. Is that still a company today? 3 A. No, it's not. 4 Q. Okay. So you stopped doing that company as you 5 both went to work for the city; is that why you 6 stopped? 7 A. Yes, ma'am. 8 Q. All right. Now, you referenced a crossing down 9 close to the river when we were talking about what 10 this lawsuit was about, so do you understand the 11 location of where we're talking about then? 12 A. Yes, ma'am, I do. 13 Q. Okay. By the, by the depot? 14 A. Yes, ma'am. 15 Q. Okay. Tell me, when was the last time you used 16 that crossing? 17 A. Years, I mean. 18 Q. Give me a decade. 19 A. When I was -- okay. When I was probably seven 20 years old. 21 Q. Okay. 22 A. Because there was the dump. 23 Q. Okay. So sometime around when you were seven 24 or so you might have gone with your parents out to 25 the dump?
Page 10 1 served under? 2 A. No, ma'am. 3 Q. Who else did you serve under? 4 A. Vernon McDaniel. 5 Q. Okay. All right. Tell me a little bit about 6 your educational background. 7 A. I just, I mean, went to school here and been 8 here all of my life. 9 Q. Okay. 10 A. I mean, I worked construction for 40 years. 11 Q. Okay. 12 A. We've had our own business. 13 Q. Did you graduate from Ozark High School? 14 A. Yes. 15 Q. Okay. What year? 16 A. Seventy-five. 17 Q. Okay. 18 A. I forget. 19 Q. And after you left high school you went into 20 the construction business? 21 A. Yes. 22 Q. Okay. And did your family own a construction 23 company? 24 A. Me and my husband started one. 25 Q. What was the name of that?	Page 12 1 A. Yes, ma'am. 2 Q. Okay. And you wouldn't have gone and used it 3 as an adult? 4 A. No, ma'am. 5 Q. And as I understand, the dump didn't exist 6 probably too much longer because in the seventies the 7 river changed its course; correct? 8 A. That's correct. 9 Q. Well, I guess the river didn't change its 10 course; the Corps changed the river's course? 11 A. Yes, ma'am. 12 Q. Okay. All right. Now, and I know it was when 13 you were seven, so you may not remember, but is it 14 safe to say from what I've heard from other people 15 this wasn't like an asphalt street. This was kind of 16 a dirt road; is that right? 17 A. That's correct. 18 Q. Okay. And do you remember any -- if you don't 19 remember something or you wouldn't have knowledge 20 because you were seven, and I understand that, you 21 just tell me; okay? 22 A. Okay. 23 Q. Do you remember what the crossing was made out 24 of? 25 A. You know, back in those days you -- a kid, you

3 (Pages 9 to 12)

Geneva Sue McClellan 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 13

1 **know, don't really notice a crossing --**
 2 Q. You weren't paying attention.
 3 **A. Yeah.**
 4 Q. I understand.
 5 **A. I was just trying to cross the railroad track.**
 6 Q. Okay. Did you ever hear that road referred to
 7 by name when you were seven?
 8 **A. No, ma'am.**
 9 Q. All right. If I use the word, the name Oliver
 10 Street would you know where that was?
 11 **A. No.**
 12 Q. Okay. All right. Now, as parks director do
 13 you have any job duty that you do over that property
 14 down by the depot?
 15 **A. No, ma'am.**
 16 Q. Okay. And as street, when you were with the
 17 street department did you do anything to the street
 18 over by the crossing?
 19 **A. No, ma'am.**
 20 Q. Okay. All right. And when you were with the
 21 street department you never did any, expend any funds
 22 for anything called Oliver Street, to your knowledge?
 23 **A. Not to my knowledge.**
 24 Q. Okay. How does it work? How does the city
 25 upkeep its streets?

Page 14

1 **A. Well, I mean, there is paving involved. There**
 2 **is drainage involved. I mean, there is patching.**
 3 Q. Okay.
 4 **A. Potholes involved.**
 5 Q. So what about on the budget, are you given a
 6 budget that's a gross sum that you're told to use as
 7 needed, or is it given per street?
 8 **A. Oh, that would be the superintendent.**
 9 Q. Okay.
 10 **A. He has the budget.**
 11 Q. Okay. So you just -- someone told you to do
 12 something, and you do it?
 13 **A. And you do it.**
 14 Q. Okay.
 15 Q. All right. Well, ma'am, I thank you for your
 16 time, and I appreciate it here today.
 17 **A. You're welcome.**
 18 MR. BROCKETT: I don't have any
 19 questions.
 20 MS. JONES: All right. Thanks so
 21 much.
 22 (The deposition was concluded at 9:34 a.m.)
 23
 24
 25

Page 15

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.
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Transcript of the Testimony of

Thomas Watson

Date: February 24, 2014

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

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City of Ozark v. Union Pacific Railroad Company

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION	1 INDEX
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VS. CASE ACTION NO. 2:14-CV-02196-TLB	3 EXAMINATION
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ARKANSAS STATE HIGHWAY	5 EXAMINATION
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Page 2	Page 4
1 APPEARANCES	1 ANSWERS AND DEPOSITION OF THOMAS WATSON, a
2	2 witness produced at the request of the Defendants,
3 ON BEHALF OF THE PLAINTIFF:	3 was taken in the above-styled and numbered cause on
4 CHRISTOPHER D. BROCKETT, ESQ.	4 the 24th day of February, 2015, before Janess
5 Sayre & Brockett	5 Ferguson Smith, Certified Court Reporter and Notary
6 401 West Commercial Street	6 Public in and for Saline County, Arkansas, at 2800
7 Ozark, Arkansas 72949	7 Cantrell, Suite 500, Little Rock, Arkansas, at 11:54
8	8 a.m.
9 ON BEHALF OF THE DEFENDANTS:	9
10 JOSEPH MCKAY, ESQ.	10 *****
11 Friday, Eldredge & Clark	11
12 400 West Capitol	12 STIPULATIONS
13 Suite 2000	13 It is stipulated and agreed by and between
14 Little Rock, Arkansas 72201	14 the parties through their respective counsel that the
15	15 deposition of THOMAS WATSON may be taken for any and
16	16 all purposes according to the Federal Rules of Civil
17	17 Procedure.
18	18 *****
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1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

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1 THOMAS WATSON. 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 MR. BROCKETT: Same normal 7 stipulation, you know, agreement, 8 deposition by agreement of the parties, all 9 objections are reserved except to the form 10 of the question and responsiveness of the 11 answer. 12 MR. MCKAY: Agreed. 13 EXAMINATION 14 BY MR. MCKAY: 15 Q. Will you state your full name for the record, 16 sir? 17 A. Thomas Eugene Watson. 18 Q. Okay. And, Mr. Watson, what is your residence 19 address? 20 A. 69 Pine Street, Ratcliff, Arkansas 72951. 21 Q. All right. Have you ever given sworn testimony 22 in a deposition like this? 23 A. Yes, it's been a long time, but yes. 24 Q. Okay. Let me just go over some ground rules to 25 hopefully make this process a little shorter and	1 Q. And the reason is because if you answer a 2 question, we will assume that you understood it, and 3 we will be relying upon that testimony as we prepare 4 for this case. 5 A. Okay. 6 Q. All right. Are you employed, Ms. Watson? 7 A. Yes. 8 Q. And what do you do? 9 A. I am a closing agent for Adams Abstract. 10 Q. Okay. Where is Adams Abstract? 11 A. Here in Ozark, 107 South Third Street. 12 Q. Okay. Are you from this area originally? 13 A. Yes. 14 Q. Okay. 15 A. I was originally raised in south Franklin 16 County. 17 Q. Okay. What year were you born? 18 A. 1963. 19 Q. So does that make you 50 -- 20 A. Fifty-two. 21 Q. Okay. Did you go to high school in Ozark? 22 A. County Line. 23 Q. Is that the name of the high school? 24 A. Yes. 25 Q. Okay. And what year would you have graduated
Page 6	Page 8
1 easier, more efficient. 2 I don't think we are going to be here very 3 long, but if you need to take a break for any reason, 4 you just say so, and we will be happy to take a 5 break. 6 If we do take a break, if you'll just -- if 7 there is a question that's pending, go ahead and 8 answer the question, and then we can take a break. 9 A. Okay. 10 Q. You are doing great so far. Be sure to answer 11 out loud when I ask you a question because Ms. Smith 12 is taking down everything that we say, and head nods 13 don't show up on the record. 14 A. Right. 15 Q. And if you will do your best to let me finish 16 my question, a lot of times you will know exactly 17 where I am going, but just so we have a complete 18 record, let me finish my question, and then you can 19 start your answer. Is that agreeable? 20 A. Yes. 21 Q. Okay. And if at any time I ask a question that 22 is either confusing or you don't understand, please, 23 if you will agree to ask me to rephrase the question. 24 Is that fair enough? 25 A. Yes.	1 from high school? 2 A. 1981. 3 Q. Okay. And then did you have any formal 4 education after high school? 5 A. University of Arkansas. 6 Q. At Fayetteville? 7 A. Yes. 8 Q. Did you go straight from high school to 9 Fayetteville? 10 A. Yes. 11 Q. Okay. And did you graduate from the University 12 of Arkansas? 13 A. Yes. 14 Q. What year? 15 A. 1985. 16 Q. Okay. And what is your degree in? 17 A. Agri business. 18 Q. Okay. How long have you been in the abstract 19 business? 20 A. Going on ten years. 21 Q. Okay. What did you do before being in the 22 abstract business? 23 A. I worked in a bank as a loan officer. I've 24 also held a real estate broker's license and an 25 appraiser's license at one time.

2 (Pages 5 to 8)

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City of Ozark v. Union Pacific Railroad Company

Page 9

1 Q. Okay. Let's start at college and just briefly
 2 work forward and tell me where you worked and what
 3 you did.
 4 **A. Out of college I worked at McRoy Bank in**
 5 **Fayetteville. As far as a title, I was in bank**
 6 **accounting.**
 7 Q. Okay.
 8 **A. Internal bank accounting. I worked there for**
 9 **roughly three years. I worked in Texarkana for the**
 10 **USDA ASCS office.**
 11 Q. What office is that?
 12 **A. It's --**
 13 Q. What did you say, it's ASCS?
 14 **A. It's ASCS at that time. It's different now.**
 15 **They combined their farm service agency, soil**
 16 **conservation.**
 17 Q. Okay.
 18 **A. It was a farm program.**
 19 Q. Okay.
 20 **A. Farm program office.**
 21 Q. All right. And what was your job there?
 22 **A. Just, I guess program specialist.**
 23 Q. Okay.
 24 **A. Like emergency fee program, crops.**
 25 Q. So would you help administer the program? I

Page 10

1 mean, if people wanted to apply for the program --
 2 **A. Yes, I provided the paperwork. They came in,**
 3 **and we filled out paperwork. I actually handed out**
 4 **checks for the farm program type of things.**
 5 Q. Okay. So kind of a liaison between the agency
 6 and the individuals who are applying for the program?
 7 **A. Yes.**
 8 Q. Okay. All right. And how long did you do
 9 that, you said for --
 10 **A. That would have been about a year and a half.**
 11 Q. Okay. What did you do after that?
 12 **A. I moved back home and worked with my dad's**
 13 **business, assisting him until he retired. He was a**
 14 **contract milk hauler. He had a trucking business,**
 15 **and he had hauled milk from the fifties up until he**
 16 **retired in the 1990's.**
 17 Q. Okay. So would this have been around 1990?
 18 **A. This was around '92 to '95, '96.**
 19 Q. Okay.
 20 **A. Somewhere in there.**
 21 Q. Okay. And so was he retired, did you say, at
 22 that time?
 23 **A. Yes. He retired, and we sold the business.**
 24 Q. Okay.
 25 **A. It's not something I wanted to do.**

Page 11

1 Q. Okay. So did you actually help run that
 2 business?
 3 **A. Yes.**
 4 Q. And what did you do after that?
 5 **A. I went to work for First National Bank at Paris**
 6 **as their farm specialist, slash, appraiser.**
 7 Q. Had you ever done appraising before then?
 8 **A. No. They actually sent me to real estate**
 9 **appraisal school.**
 10 Q. Okay.
 11 **A. And I was their in-house real estate appraiser,**
 12 **and I was also their farm specialist. I went out and**
 13 **did cattle farm equipment appraisals and helped them**
 14 **fill out their annual financial statements --**
 15 Q. Okay. So did --
 16 **A. -- for the bank. I wasn't a loan officer, per**
 17 **se, but I was kind of a --**
 18 Q. Would --
 19 **A. -- a liaison between the farmers and the bank.**
 20 Q. Okay. Were you actually a licensed appraiser?
 21 **A. They sent me to school, and I was licensed**
 22 **while working for them.**
 23 Q. Okay. And that license is by the State of
 24 Arkansas?
 25 **A. Yes.**

Page 12

1 Q. Are there different types of appraisal
 2 licenses, or is this just one general?
 3 **A. That's different levels.**
 4 Q. And what were you licensed in?
 5 **A. I was just the basic license. I was not a**
 6 **commercial specialist --**
 7 Q. Okay.
 8 **A. -- or anything. That was just the basic.**
 9 Q. Okay.
 10 **A. I could actually appraise, but you could**
 11 **actually get a commercial designation at that time.**
 12 Q. Okay.
 13 **A. I don't know what they have now.**
 14 Q. Okay. And did you have to serve some kind of
 15 an apprenticeship under a licensed appraiser before
 16 you got licensed?
 17 **A. Actually, at that time no.**
 18 Q. Okay.
 19 **A. It was just presenting the work for them to**
 20 **review.**
 21 Q. Okay.
 22 **A. Some of the guidelines have changed now.**
 23 Q. Okay. So how long were you with First National
 24 Bank?
 25 **A. I was actually with them -- I'm trying to**

3 (Pages 9 to 12)

Page 13	Page 15
1 remember the exact timeframe -- probably around two 2 years. 3 Q. Okay. 4 A. Three. 5 Q. All right. And what did you do after that? 6 A. I went to work for Wade Real Estate as an 7 appraiser, and I also got my real estate license to 8 sell real estate. 9 Q. Okay. Is Wade Real Estate a real estate agency 10 here in Ozark? 11 A. It was -- actually, I worked here in Ozark. 12 They had an office in Paris, Ozark, and Charleston. 13 Q. Where were they based out of? 14 A. Originally based out of Paris. 15 Q. Okay. So you sold residential real estate -- 16 A. Yes. 17 Q. -- as well as commercial and farm? 18 A. Any kind of real estate. 19 Q. Whatever? 20 A. Whatever. 21 Q. I understand. And you served as an appraiser 22 also? 23 A. Yes. 24 Q. Residential? 25 A. Primarily, but whatever a bank did, when you	1 A. That was about five years. 2 Q. How far is Booneville from Ozark? 3 A. About 28 miles south. 4 Q. So you still lived -- 5 A. I lived in Clarksville. 6 Q. Clarksville. 7 A. And they had a branch in Clarksville, or 8 Clarksville, Ratcliff, so it was about a mile from my 9 house. 10 Q. Okay. And you did that for how long? 11 A. About five years. 12 Q. So that takes it up to about 2005? 13 A. 2005. 14 Q. Okay. And is that when you became -- 15 A. And then came to work for Adams Abstract -- 16 Q. Okay. 17 A. -- as a closing agent, and then also have 18 acquired my title insurance license. 19 Q. Okay. As a closing agent what all do you do 20 for Adams Abstract? 21 A. I close all of the real estate transactions 22 that come through our office for a closing. I am 23 actually the one that closes those. 24 I prepare the closing paperwork, sit down 25 with the buyer and seller, have them sign the
Page 14	Page 16
1 are a small town if it was a farm, if it was a small 2 business, a little bit of everything. 3 Q. So did you have a separate appraisal company 4 that was your company -- 5 A. No. 6 Q. -- that you worked out of? 7 A. Wade. Wade had a license -- actually had two 8 other licensed appraisers up there with their company 9 that had been appraisers for a long time. 10 Q. All right. How long did you do that? 11 A. Until around, probably until around 2000. 12 Q. Okay. 13 A. Or 1999. 14 Q. What did you do then? 15 A. I was, in that time I worked out of Ozark, but 16 probably the last year and a half to two years I 17 worked as a broker out of their office in Charleston. 18 From there I went to work at what was at that time 19 Citizen's Bank in Booneville. 20 Q. Okay. 21 A. While I was working there they became First 22 Western Bank, and I worked there as a loan officer 23 and eventually branch manager at the Clarksville 24 branch. 25 Q. Okay. How long --	1 documents, explain documents to them. 2 Q. Okay. Do you actually do the title searches, 3 or does somebody else do that? 4 A. I generally do not do the title searches. 5 There is another lady in our office that has been 6 there for 40 years that does the title searches. 7 Q. Okay. 8 A. But I am also licensed, so if she's on 9 vacation, I can do those. We do also a few 10 out-of-county searches, and she does not want to go 11 to an out-of-county courthouse, so if we have one out 12 of county, I am the one that goes and does that. 13 Q. Okay. So do you have to have some kind of 14 license to be a title searcher in Arkansas? 15 A. To be a licensed title insurance agent, yes, 16 you have to have a license. 17 Q. Okay. So when you're doing a title search 18 you're doing that for an insurance company that's 19 then going to carry title insurance? 20 A. We have -- our search, we have an underwriter 21 over public and another underwriter agent's title 22 that are actually the insurance underwriters, like 23 with the insurance company that provides the actual 24 insurance. We are just basically an agent. 25 Q. Okay.

4 (Pages 13 to 16)

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Page 17 1 A. But title insurance requires a certain -- 2 unlike other types of insurance, we have to search 3 the title and provide a lot of upfront work. 4 Q. Okay. So do they do, does the title insurance 5 company do an additional title search before they 6 write a policy, or do they rely upon what you do? 7 A. No, we are the agent. We are their title 8 search agent. 9 Q. Okay. Okay. So did you say there is a license 10 or registration? 11 A. There is a license, yes. 12 Q. Is that through the State of Arkansas? 13 A. Yes. 14 Q. Is that -- what board is that? 15 A. It falls under the Arkansas Insurance 16 Department. 17 Q. Okay. How long have you been the registered 18 title searcher in Arkansas? 19 A. It's not really a registered title searcher. 20 It's a licensed insurance agent. 21 Q. Okay. 22 A. Title insurance agent. 23 Q. Okay. 24 A. I guess about seven years now. 25 Q. Okay. All right. Let me get to why I think	Page 19 1 (Exhibit No. 93 was marked.) 2 BY MR. MCKAY: 3 Q. And just let you review that and tell me -- 4 actually, let me just have you put a check mark or a 5 star next to any of the documents that you think you 6 had something to do with. 7 A. I -- just because it says "deed," that doesn't 8 mean it came from us. I can't tell you if it did or 9 didn't just by someone saying a deed of ownership. 10 Q. Okay. 11 A. That could have been presented to them by 12 anybody. I don't know it unless -- and if I look at 13 it I can say that it likely came from our office, I 14 couldn't say 100 percent. 15 Q. Okay. 16 A. But chances are it did, but. 17 Q. Okay. 18 A. You know, I don't know what other people might 19 have brought in. 20 Q. Okay. Would you have had anything to do with 21 any of the documents on this Exhibit 93, other than 22 deeds, as far as pulling documents for the city for 23 purposes of this lawsuit? 24 A. (Witness reviews document.) I don't know if 25 it's one of these. I know there was an aerial
Page 18 1 you're here. 2 A. Okay. 3 Q. I have had a conversation with Mr. Brockett 4 before the deposition, and he said that there are 5 several deeds that you had actually obtained for him 6 that were attached to the Complaint that's part of 7 this lawsuit. 8 A. Yes. 9 Q. And so what I want to do is ask you about the 10 exhibits to the Complaint and ask you about those 11 deeds, and then we'll go into some other questions 12 just to see if you know anything else about the 13 particular lawsuit. 14 A. Okay. 15 Q. If I were to show you a table of the exhibits 16 that were attached to the City of Ozark's Complaint 17 in this case, would you be able from that list to 18 say, yeah, this is a document that I had something to 19 do with pulling? 20 A. If I looked at the document, yes. 21 Q. Okay. Let me show you -- let's go ahead. 22 A. Okay. 23 Q. Let's go ahead and mark as Exhibit 93 the table 24 of exhibits that is attached to the City of Ozark's 25 Complaint in this case.	Page 20 1 photograph from our office that showed that area 2 that -- but I am not sure -- 3 Q. Okay. 4 A. -- what year it was from, but it could be one 5 of those. 6 Q. Okay. 7 A. But other than that, and there might be copies 8 of a possible plat map. 9 Q. Okay. 10 A. I do not know. 11 Q. Let's do this, and I understand until you see 12 the documents you don't know if you had anything to 13 do with pulling them. 14 Let's just ask you to put a check mark on 15 the documents on Exhibit 93 that you may have had a 16 role in, and then I'll actually show you the 17 documents and get you to tell me whether or not you 18 think you did have a role. 19 So what I'm trying to do is just narrow 20 down the documents that I need to ask you questions 21 about. 22 A. Okay. 23 Q. So if you will just put a check mark next to 24 any of the documents that you think you may have had 25 a role in obtaining, I would appreciate it.

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Page 21 1 A. (Witness complies.) 2 Q. Okay. Before we get into the specifics let me 3 just ask you, at some point were you asked to do some 4 kind of research as it relates to this lawsuit? 5 A. Yes. We were asked to look for deeds to 6 property along the railroad track. 7 Q. Okay. 8 A. South part of Ozark, land south of that 9 railroad track. 10 Q. Okay. And who asked you to do that, 11 Mr. Brockett? 12 A. Chris Brockett. 13 Q. Okay. So you were asked to what, research the 14 ownership of the land south of the railroad tracks 15 near downtown Ozarks? 16 A. Yes, or to find deeds that showed an ownership 17 in that. 18 Q. Okay. 19 A. In that property. 20 Q. Okay. Were you given any other information as 21 far as previous owners or the specific deeds you were 22 looking for, or how did you go about doing your work? 23 A. Possibly along the way there might have been 24 some names mentioned that might have helped us guide. 25 I can't remember because it was done a long,	Page 23 1 A. Like if you're in town, most of the town is 2 lotted and blocked. You could say in this area 3 between street so-and-so. 4 Q. I see. So if you have a lot and a block you 5 can go to documents somewhere and look at who the 6 owners of that particular tract were? 7 A. Yes. 8 Q. And then you see who it was transferred to, and 9 you go to that deed? 10 A. Yes. 11 Q. And you keep going back as far back as the 12 records go? 13 A. Yes. 14 Q. Okay. What did you start with in this case? 15 How did you know where to begin? 16 A. The property is not lotted and blocked across 17 the river. 18 Q. Uh-huh. 19 A. It is in -- it's just by section and township 20 and range, which a lot of Ozark is in that same 21 section, township, and range. So you have a 22 tremendous history there trying to follow that all of 23 the way back. 24 Q. Uh-huh. 25 A. But it's basically just going through and
Page 22 1 different times, and we do a lot of research for 2 different people. 3 But there may have been some names that 4 were provided from time to time saying, Hey, look for 5 this name, because we think these people were down 6 there. 7 Q. Okay. So were you trying to find the line of 8 ownership for this tract of land that you have 9 described south of the railroad tracks near downtown 10 Ozark? 11 A. I would say yes. 12 Q. Okay. 13 A. For the most part. 14 Q. Okay. 15 A. Or at least any kind of deeds that showed some 16 ownership. You get way, way back, and a lot of times 17 the history is hard to follow. 18 Q. Right. Were you given any kind of legal 19 description of the land, or how did you know what you 20 were looking for? 21 A. Basically just by being told where it was. 22 Q. What do you mean? 23 A. Like an area south of a certain part of Ozark, 24 and you look at a map and see where that land is. 25 Q. Okay.	Page 24 1 follow that and looking for land that might have been 2 narrowed down to that quarter of a quarter, which is 3 how our books are narrowed down to. 4 Q. Okay. 5 A. Which that still covers a 40 mile square, so it 6 covers a lot of Ozark. So every time you find a 7 deed, you've got to figure out if that's in that 8 little area or not. 9 Q. Okay. 10 A. Basically just going back or looking for deeds 11 in that or maybe trying to match up if they have 12 given us a name somewhere along the way. 13 Q. And when you say "a quarter of a quarter," is 14 that a quarter of a quarter section? 15 A. Yes. 16 Q. And that, a quarter of a quarter section is -- 17 A. Forty acres. 18 Q. -- forty square miles? 19 A. Forty acres. 20 Q. Forty acres, okay. Okay. So were you able to 21 find deeds that -- 22 A. We found several deeds. As I recall, they -- 23 we never really came up with a true chain, like you 24 would want for most things going back that far. 25 Q. Okay. But --

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1 A. You were going back further in history than 2 title insurance requires for most things. 3 Q. Right. 4 A. If we're running title insurance on a typical 5 residential property, the requirement is a 30-year 6 search. 7 Q. Okay. So you were able to find deeds to 8 property that was in this 40 acres south of the 9 railroad tracks? 10 A. Well, there wasn't forty acres south of the 11 railroad tracts. 12 Q. Pardon? 13 A. There is not necessarily forty acres south of 14 the railroad tracks. A quarter of a quarter contains 15 40 acres. That area is in a -- 16 Q. I see. 17 A. -- a certain quarter of a quarter. Our books 18 narrow property down to a quarter of a quarter. 19 Q. Okay. So the railroad track -- some of that 20 property could be north of the railroad tracks; is 21 that what you're saying? 22 A. We didn't -- we wouldn't have kept those 23 details. We might have looked at it and said, This 24 doesn't apply. 25 Q. Right. I understand what you're saying. When	1 Q. Okay. Did you do any research on the 2 railroad's land or how the railroad got its land upon 3 which the tracks are run? 4 A. Not specifically. 5 Q. Okay. 6 A. No. 7 Q. All right. 8 A. I didn't. Janette (phonetic) might have that I 9 was not aware of, but I did not. 10 Q. Okay. In your search were you able to find 11 deeds relating to areas south of the railroad tracks? 12 A. There were several -- 13 Q. Okay. 14 A. -- related to the land around the railroad 15 track, and I think there were a couple south of the 16 railroad track. 17 Q. Okay. Now, once you found those deeds did you 18 make any efforts to try to pinpoint specifically 19 where that property was located on a map or anything? 20 A. As best we could -- 21 Q. Okay. 22 A. -- from describing it. I mean, you know, we 23 are not surveyors -- 24 Q. Right. 25 A. -- so our accuracy might not be perfect.
Page 26	Page 28
1 I said the 40 acres south of the railroad track, that 2 was not a correct statement? 3 A. That's right. 4 Q. Okay. And you were just trying to make sure I 5 understood the 40 acres could have encompassed land 6 north of the railroad tracks? 7 A. Yes. 8 Q. I understand. Thank you for that. 9 A. Our track books that we have to search by 10 narrow property down that's not lotted and blocked in 11 a town, and it generally, like, narrows it down to a 12 40-acre piece. 13 Q. Okay. All right. And are you relying upon 14 records that are kept at the courthouse, or does 15 Adams Abstract have their own title -- 16 A. Records from Adams Abstract. 17 Q. They have their own title plan? 18 A. We have our own title plan that goes back to 19 patent. 20 Q. Okay. When you say "goes back to patent," 21 that's when the federal government -- 22 A. Issued land. 23 Q. -- issued land, okay. 24 A. Or it's -- it's kind of incomplete when you get 25 back that far at times.	1 Q. Okay. 2 A. But looking at it on a map you can pretty much 3 figure that, figure out where it's at. 4 Q. Did you document that on a map? Is there 5 anything where y'all wrote that on? 6 A. No. Not that I did, no. 7 Q. Okay. So if I were to ask you about the deeds 8 that we have here, assuming you had something to do 9 with the deed, you wouldn't necessarily be able to 10 say this is specifically where that land was located 11 as far as a specific exact location on a map? 12 A. If I look at the description and I have a map, 13 I can very likely place it on a map. 14 Q. Okay. 15 A. And it would be quite close. 16 Q. And what kind of map would you have to have to 17 do that? 18 A. A map that shows the city, shows the lot and 19 blocks, or shows quarter, quarter lines, something 20 that would indicate where you're at. 21 Q. Range and township? 22 A. Yes. Because the description is based on 23 township and range, and as metes and bounds from that 24 I would need a starting point to be able to see where 25 that is on a map.

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Page 29 1 Q. Okay. Were there ever any discussions as to 2 why you were being asked to do this? 3 A. Yes. 4 Q. Okay. Why, what was your understanding of why 5 you were asked to do this? 6 A. We were asked to look it up for the city or 7 Chris, the city's attorney, because they were in 8 dispute with the railroad about access to the lands 9 across from the railroad. 10 Q. Okay. Did you have any other discussions with 11 Mr. Brockett as it relates to your work in this case? 12 A. Not -- either I don't know what you mean or no. 13 Q. Well, do you remember any other discussions -- 14 let's start with when you were hired to perform this 15 work. 16 Do you remember any other discussions, 17 other than the discussions that you have described 18 here today? 19 A. No. 20 Q. As far as what your objective was? 21 A. No. 22 Q. Okay. And when you find information you would 23 relay that, I assume, to Mr. Brockett? 24 A. Yes. 25 Q. Okay. Would you relay that information to	Page 31 1 hopefully will make sense in the record. 2 A. Okay. 3 (Exhibit No. 94 was marked.) 4 BY MR. MCKAY: 5 Q. So let me show you what we have identified, we 6 will mark this as Exhibit 94, and it appears that 7 Exhibit 94 is the same thing as on the table of 8 exhibits. It's listed as number four, Exhibit B-2, 9 which is a deed involving the Hails. 10 Can you look at Exhibit 94, and can you 11 tell from looking at that whether or not that is a 12 deed that you had anything to do with obtaining? 13 A. It -- yes. 14 Q. Okay. 15 A. It most likely came from us. This is a copy of 16 a takeoff card from our office, which a takeoff card 17 is a, basically an old type copy of the deed before 18 we had copiers and so forth. We have actual cards of 19 all of those deeds in our office, and that is a copy 20 of one of those. 21 Q. Okay. 22 A. So yes. 23 Q. So is a takeoff card something that's created 24 at the time the deed is filed? 25 A. It was created right after the deed was filed.
Page 30 1 anyone else besides him? 2 A. No. Possibly Royce Gattis. 3 Q. Okay. 4 A. But, was in with Chris a couple of times, and 5 he may have had questions. 6 Q. Okay. But are there any other discussions you 7 specifically recall as it relates to, that you had 8 with Mr. Brockett as it relates to your research in 9 this case? 10 A. No. 11 Q. Okay. Let's look at, on Exhibit 93 the first 12 one that you checked as being a possible exhibit that 13 you had something to do with is on the table of 14 exhibits. 15 It's listed as number three, and it's 16 labeled Exhibit B-1, which I don't think I have here. 17 We'll come back to that one. Let me go to -- let me 18 just make sure. 19 (Off-the-record discussion.) 20 BY MR. MCKAY: 21 Q. What we'll do, since Exhibit 93 also refers to 22 Exhibits B-1, B-2, B-3, I'm going to try to simplify 23 it. We're going to label these Exhibits B-1, B-2, et 24 cetera, as an exhibit to this deposition so that we 25 can actually refer to an exhibit number that	Page 32 1 Q. Okay. 2 A. I, I personally don't know. I wasn't around 3 back in the early 1900s and 1800s, and that's when 4 they did it. 5 I can tell you that now as of today we go 6 once a week and scan the courthouse records into our 7 computer system. 8 Q. Okay. 9 A. Years ago they went to the courthouse, I guess, 10 and actually hand typed directly from the deed a 11 little card. 12 Q. Okay. And what's the name of this, the card, 13 what do you call it? 14 A. A takeoff card. 15 Q. Takeoff card, okay. So let me ask you this, is 16 a takeoff card, that is something that is just kept 17 by an abstract company, or is it something that's 18 also kept in the courthouse? 19 A. It is just by our abstract company. It has a 20 record book and page on it. If you go to the 21 courthouse to record book 37, page 70, you will find 22 the actual deed where it is filed. 23 Q. Okay. Does the abstract company, for instance, 24 for this takeoff card, which is labeled as Exhibit 25 94, would the abstract company have an actual deed,

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Page 33 1 or would you just go to the courthouse to find it? 2 A. This was done in 1939, and I don't know how 3 they would have managed to copy that in 1939. Again, 4 that was done is my understanding in 1939, way before 5 my time, they went to the courthouse or somehow used 6 the deed, and they copied the exact wording from the 7 deed, top to bottom, put the book and page it had 8 been filed in, and kept a card for the abstract 9 office records. 10 Q. Okay. I guess my question is would the title 11 company have ever gone back and tried to make copies 12 of the deeds to match up with the takeoff cards they 13 keep at the title company? 14 A. No, as I would see no reason to. 15 Q. Okay. 16 A. We've got the takeoff card. If that's not 17 enough information, we can walk across the street to 18 the courthouse and look at the actual deed. 19 Q. Okay. Does the title company now, does it rely 20 on takeoff cards, or does it go actually with the 21 deed now? 22 A. Again, we go to the courthouse, and we scan the 23 records once a week and bring them back and put them 24 into our computer system, so we have actual copies of 25 the deeds.	Page 35 1 Q. -- the takeoff if you were giving an opinion as 2 to title? 3 A. Yes. 4 Q. Okay. 5 A. If another abstract office had takeoff cards, 6 and we were researching something from one of their 7 offices, and they sent us a takeoff card, as opposed 8 to the original deed, unless we thought there was a 9 problem within that legal description, we would, we 10 would accept it -- 11 Q. Okay. 12 A. -- you know. But if it's something, and you 13 need more information than what's given with the 14 card, and it's something we had, you can go to the 15 courthouse and pull the actual copy of the record. 16 We have some copies, but it is on an old 17 fiche machine, and it's almost always not readable if 18 we trying to print it out. 19 Q. Okay. 20 A. So if we need one of these, we will generally 21 go back to the courthouse. 22 Q. Okay. Are there any other title companies in 23 this county besides the one that you worked for, 24 Adams Abstract? 25 A. No.
Page 34 1 Q. Okay. 2 A. But 1939 we couldn't do that, so. 3 Q. Sure. So just so that I understand, the 4 takeoff cards are not used anymore? 5 A. Not by our office. 6 Q. Okay. All right. And when you're doing a 7 title search, I mean, do you rely upon the takeoff 8 cards when you're doing a title search to, for 9 purposes of title insurance? 10 A. We have and would because they are what our 11 office done, or as good as a copy unless there was 12 some sort of oddball typo. 13 But generally our title -- the laws and the 14 guidelines for our title search are a 30-year search 15 on almost all title policies. We are going to have 16 basically good copies of everything -- 17 Q. Okay. 18 A. -- for the past 30 years. 19 Q. Okay. So for most 30 year searches you're 20 going to have the actual deed? 21 A. Yes. 22 Q. I understand. Okay. But in, in the title 23 industry, I guess, it would be an acceptable standard 24 to rely upon -- 25 A. The takeoff card from the abstract office.	Page 36 1 Q. Okay. And then on Exhibit 94 there is some 2 handwriting. Is that something that's actually on 3 the takeoff card itself, or is that something that 4 was added after the fact, or do you know? 5 A. I do not know when that was written on there -- 6 Q. Okay. 7 A. -- without looking at the card. I don't -- it 8 looks like this was on the copy of the card when it 9 was taken, but it might have been if it's handwritten 10 on there it was probably just some notes that were 11 written on there later. 12 Q. Okay. 13 A. Because someone might have had a question about 14 it, or just a note that might help someone if they 15 were researching title to it. 16 Q. Okay. And let me -- if you don't mind, I am 17 going to stand over your shoulder, but can you just 18 read because some of these things I can't read. Can 19 you just read what's typed on that Exhibit 94? 20 A. Beginning at Southwest Corner of the Southwest 21 Fractional Quarter, Section 36, Township 10 North, 22 Range 27 West, thence down Arkansas River with the 23 meanderings -- 24 Q. What's -- can you tell what that word is? 25 A. Thence.

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Page 37 1 Q. Thence. Okay. You said that. I'm sorry. 2 A. Meanderings to a mul- -- I'm thinking that 3 would have been mulberry tree, would be -- I'll take 4 that -- near the river as a corner to said tract, so 5 as to embrace all of the land to the water's edge 6 along said river, the whole extent of said line, 7 thence north to the north body line of said 8 fractional one quarter section, thence was said 9 north, excuse me, boundary line to the northwest 10 corner of said fractional one quarter section, thence 11 south with a line between Sections 35 and 36 in said 12 township to beginning containing 50 acres more or 13 less. 14 This handwritten part was a note 15 acknowledgment of John Hail not taken wife signed in 16 front of David Walker. It's just notes that somebody 17 made on that. 18 Q. Okay. All right. Let me mark the next exhibit 19 as Exhibit 95. 20 (Exhibit No. 95 was marked.) 21 BY MR. MCKAY: 22 Q. And Exhibit 95 is a two-page exhibit. It has a 23 cover sheet that says Exhibit B-2, and then the 24 second page appears to be another deed, which is deed 25 number four listed on Exhibit 93.	Page 39 1 difficult. 2 Q. Yeah. The grantor, is that the right name for 3 Mr. Hail on this deed? 4 A. It looks like it's W.M., which I'm assuming -- 5 I don't know if that's short for William or not. 6 Q. Okay. 7 A. But that's W.M. Hail -- 8 Q. Okay. 9 A. -- to William Cureton. 10 Q. W.M. Hail would be the grantor? 11 A. Yes. 12 Q. William Cureton would be the grantee? 13 A. Yes. 14 Q. Looking at Exhibit 94, is, and Exhibit 94 was 15 from John and Sarah Hail to William Hail. 16 A. Yes. 17 Q. Is Exhibits 94 and 95 talking about the same 18 piece of land or not? 19 A. (Witness reviews document.) I would have to 20 sit down and draw it out, if possible, to tell you. 21 Q. Okay. Can you tell if Exhibit 95 is a smaller 22 piece of land than Exhibit 94? 23 A. Without knowing what has been here, without 24 drawing it out, all of that fractional quarter, or 25 fractional quarter, roughly, you know, that narrows
Page 38 1 Can you tell from looking at Exhibit 95 2 whether or not that's a deed you had anything to do 3 with obtaining? 4 A. I would say yes, this is, again, a copy of 5 another one of our takeoff cards. 6 Q. Okay. 7 A. And it is handwritten in, but a lot of the old 8 ones instead of typed were handwritten. 9 Q. Okay. And can you read that, the handwritten 10 portion into the record? 11 A. All that fraction of the southwest fractional 12 quarter of Section 36 in Township 10, Range 28 West 13 which is not em- -- 14 Q. Embraced? 15 A. Which is not embraced land off and designated 16 as the tract on which Ozark is situated. Hard to 17 read that word. 18 Q. Okay. 19 A. Which is before -- 20 Q. Is that laid off land, or can you tell? 21 A. Which is -- which is not embraced land off and 22 designated tract in which Ozark -- it's hard to tell 23 what's written on there. 24 Q. Okay. 25 A. And it being a copy makes it a little more	Page 40 1 it down to 160 acres right there. 2 Q. Okay. 3 A. Okay. So this is also in that fractional 4 quarter, so I would -- this doesn't say beginning. 5 It just says "which is not embraced," which I'm 6 possibly taking it means included land often 7 designated as the tract on which Ozark is situated. 8 So it's -- I can't tell you that it is exactly the 9 same piece. 10 Q. Okay. 11 A. You know, a surveyor might could. I don't know 12 that there is enough information on that -- 13 Q. Okay. 14 A. -- to determine that. 15 Q. Okay. 16 A. Because you've got to determine what that -- 17 it's all that quarter, which is not part of that. 18 Q. Okay. 19 A. Well, what is -- you would have to find what 20 that is. 21 Q. Okay. And when you're talking about you have 22 to find out what that is, you are talking about on 23 Exhibit 95? 24 A. On Exhibit 95 the not embraced land often 25 designated as the tract on which Ozark is situated.

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Page 41 1 Q. That is just not specific at all -- 2 A. No. 3 Q. -- as to what it's referring to, okay. 4 A. And, unfortunately, in an old deed you find a 5 lot of information like that. 6 Q. Okay. 7 (Exhibit No. 96 was marked.) 8 BY MR. MCKAY: 9 Q. Okay. Let's go to the next check mark, which 10 is, we will label as Exhibit 96, which is identified 11 on Exhibit 93 as Exhibit B-3. 12 And, again, same questions, the 96 is a 13 two-page document. The first page is a cover page, 14 and the second page appears to be a deed. Is that a 15 deed that you would have had something to do with 16 obtaining? 17 A. Yes. 18 Q. Okay. 19 A. Which one of these are we, B -- 20 Q. B-3, I believe. Yeah, B-3. 21 A. Cureton to Quaile. 22 Q. Yes, it would be three. Okay. Now, can you 23 read this? 24 A. Beginning where mulberry tree stood on it, 25 and --	Page 43 1 Arkansas River, thence west with the meanderings of 2 said Arkansas River to beginning, so as to include 3 all the land to the water's edge. 4 Q. Okay. 5 A. Containing 43, 75, 100 acres. 6 Q. Okay. You know, when these deeds refer to the 7 mulberry tree and the line of the Arkansas River, if 8 those objects don't exist anymore, is there any way 9 to know what their, what this deed actually refers 10 to? 11 A. Not exactly. 12 Q. Okay. So, I mean, you would certainly have the 13 section, township, and range -- 14 A. Right. 15 Q. -- but other than that, you really can't get 16 more specific without knowing where those specific 17 objects are? 18 A. Right. And a tree could be gone now -- 19 Q. Right. 20 A. -- unfortunately. 21 Q. Okay. 22 A. But when you look at the quarters of the 23 quarters of the quarters, I can't tell you where it's 24 at. A surveyor very probably could get close -- 25 Q. Okay.
Page 42 1 Q. And if you aren't sure what it says, be sure 2 and state in the record. 3 A. I'm not, I'm not sure. These are very hard to 4 read. 5 Q. Okay. 6 A. As mentioned as -- in a deed made from William 7 Hail and Sarah Hail, his wife, to David Walkin, 8 Walker. 9 Isn't that -- to David -- mentioned that in 10 a deed to David Walker and Archibald -- I cannot read 11 that last name. 12 Q. Okay. 13 A. Yale, Wale (phonetic) for that on which this 14 town of Ozark is the state of, something State of 15 Arkansas is situated, which is known and designated 16 on the, something of the survey of public lands as 17 the southwest fractional quarter of 361027. This -- 18 that's north to the north boundary line of the 19 fractional said quarter section, thence east with 20 said north line. 21 I'm not sure what it says. Northern 22 boundary lines to the northeast corner of said 23 fractional quarter, thence fractional quarter 24 section, thence south with the line between the 25 southeast and southwest fractional quarter of 36 to	Page 44 1 A. -- but even they would not know, but we know 2 what area we're in and roughly the distances. 3 Q. Yeah. Do you know if the land referenced in 4 Exhibit 96 is the same as the land referenced in 5 Exhibits 94 and 95, or can you tell? 6 A. I do not know. 7 Q. Okay. 8 A. Again, I would have to plat it out to determine 9 that. 10 Q. Okay. Okay. 11 A. And I'm not sure it can truly be platted, 12 again, by using trees. 13 Q. Right. And the river has changed since that 14 time, so without knowing those you really wouldn't 15 have a reference point; would you? 16 A. No. 17 Q. Okay. All right. The next one we'll label as 18 Exhibit 97, which on Exhibit 93 is number six, 19 Exhibit C. 20 (Exhibit No. 97 was marked.) 21 BY MR. MCKAY: 22 Q. Again, Exhibit 97 is a two-page document. The 23 first document is a cover page which says Exhibit C, 24 LR&FS Purchase Deed from John Quaile, and then the 25 second page -- I'm sorry, this exhibit is three

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1 pages. The second and third page of that exhibit 2 appear to be a deed. 3 So let me ask you to look at Exhibit 97, 4 and the same question, is that a deed that you had 5 anything to do with obtaining? 6 A. I would say yes, it is a copy of a takeoff card 7 from our office. 8 Q. Okay. And do you know what this deed refers to 9 as far as -- 10 A. It is a deed from James F. Quaile and Frank A. 11 Quaile to Little Rock and Fort Smith Railway with 12 names -- they are hard for me to read. I might have 13 missed the middle initial, but I believe that it's F. 14 Q. Okay. 15 A. It is for part of the southeast quarter and 16 southwest quarter of the southwest quarter of Section 17 36, Township 10, Range 27, beginning at a stone that 18 bears south six -- it looks like one-quarter degrees 19 west, 67 feet from a stone set on the foundation of 20 the south side of -- I can't read that street name. 21 Q. Okay. 22 A. At the distance of -- at the distance of 23 1,100 feet south 83 and a half degrees east from the 24 northwest corner of block three in the town of Ozark, 25 County of Franklin, State of Arkansas.	1 would be the street to the west and north of that. 2 Q. To the west and north, okay. 3 A. Is this where the depot is now, would be the 4 next question because it talks about it being a 5 depot. 6 Q. Okay. Do you know if that's where the depot is 7 now, or you would have to plat it? 8 A. I couldn't answer for sure that it is. 9 Q. Okay. So this appears to be land where at 10 least the intention of the deed is to build a depot? 11 A. Yes -- 12 Q. Okay. 13 A. -- with the street remaining on the north and 14 west, east or west side -- west and north, yes. 15 Q. Okay. So the street referred to in the deed is 16 a street on the north and west side of the tract of 17 land referred to in the deed? 18 A. Yeah, in this deed. 19 Q. Okay. So, but assuming, and I don't -- I'm 20 just asking you to assume this. Assume this deed in 21 Exhibit 97 relates to the land where the depot is 22 located now. 23 A. Okay. 24 Q. The road referred to in, in the deed would not 25 be a crossing that goes over the tracks because this,
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1 You can't really read that, but it's 2 indicating you go direction south six and a quarter 3 degrees, west 383 feet to a stone, thence south 68 4 and a quarter degrees east, 672 feet to a stone on 5 the east boundary line of the southeast quarter of 6 the fractional southwest quarter of Section 36, 7 Township 10 north, Range 27 west, thence north along 8 said boundary line and 393 feet to a stone, and 9 thence north 68 and a quarter degrees west 630 feet 10 to the point of beginning containing 5.50 acres, more 11 or less. 12 Continuing on the second page of this, 13 Conditional on the establishment and permanent 14 maintenance of a depot for the town of Ozark on said 15 tract of land and on the further conditions that 16 60 feet on the west and north of said five and one 17 half acres is to receive -- is to remain as 18 abstracted for a street or public highway. 19 Q. Okay. Do you know what street or public 20 highway that's referring to? 21 A. I would need to -- it does not say on here. I 22 would have to look at where this is located with that 23 street. 24 Q. Okay. And it reference -- 25 A. It would be a -- where this piece of land is it	1 this road is north and west of the depot; correct? 2 A. I can't tell you that it doesn't cross the 3 tracks. I can't tell you that this piece of land 4 doesn't cross the track. 5 It's five and a half acres, so if you went 6 all of the way down two sides of it, how far down 7 that five acres it might cross the track, I don't 8 know. 9 Q. But north -- the tracks -- as the depot sits 10 today, the tracks are south of the depot; correct? 11 A. Okay. But if the depot is on the north side of 12 this track, and you have a road all of the way down 13 one side of this tract of land, that doesn't mean 14 that it stops only beside the depot. It goes down 15 the whole tract of land. 16 Q. Okay. But just to make sure the record is 17 clear, the tracks -- as the depot sits today, the 18 tracks are south of the depot; correct? 19 A. Yes. 20 Q. Okay. All right. 21 A. But that does not mean that the tracks do not 22 run through this piece of land. 23 Q. We just don't -- we don't know where? 24 A. They might, they might not. We don't know. 25 Q. Okay.

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1 A. Is the depot located on the very north part of 2 this tract? The very south part of it? The very 3 west? The very north? Right in the middle? There 4 is no way to know from the deed. 5 Q. Yeah, okay. Let's go to the next exhibit. 6 (Exhibit No. 98 was marked.) 7 BY MR. MCKAY: 8 Q. We are going to label it as Exhibit 98, and 9 Exhibit 98 is a two-page exhibit with a cover sheet 10 that says Exhibit D. M. Oliver's ownership deed. 11 And then the deed is contained on one page, 12 and let me get you to confirm Exhibit 98 is the same 13 thing as item number seven on Exhibit 93. 14 A. Yes. 15 Q. Okay. And at the bottom of that deed it says 16 "Over." Does that mean there is a second page that 17 we don't have? 18 A. There should have been a continuation from that 19 if it says "Over." 20 Q. Okay. 21 A. I don't know what's on it. It might have just 22 been the information on the acknowledgment. 23 Q. Okay. And what is -- is this a deed that you 24 had something to do with obtaining? 25 A. It is a copy of a takeoff card from our office.	1 27 in Ozark, Arkansas south of the Little Rock and 2 Fort Smith Railway at the mouth of Gar Creek between 3 the Railway and the Arkansas River being lands 4 formerly owned by Samuel Church, being lands conveyed 5 by R.R. Walting by will to me and Janice Cunningham, 6 I hereby intend to convey my undivided one-half 7 interest in all said lands. 8 And there's probably some continuation, but 9 it notes that that would be a three and a half acre 10 piece. 11 Q. Okay. 12 A. Or estimated to be. 13 Q. Now, the three and a half acres, does it refer 14 to the -- let me back up. Are there two different 15 tracts referred to in this deed? 16 A. There are two different tracts referred to. 17 The first one is described out as a 120 by 60 feet 18 piece of land. 19 Q. Okay. 20 A. The second one it describes out as south of 21 Little Rock and Fort Smith Railway at the mouth of 22 Gar Creek in between the Railway and Arkansas River 23 is a three and a half acre piece. 24 Q. Okay. All right. Let me go to in the next one 25 on our list. It says -- on Exhibit 93, listed as
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1 Q. Okay. How can you tell, just because you're 2 the only -- 3 A. We're the -- 4 Q. -- in the county? 5 A. -- only ones in town that would have had one, 6 and I have looked at them off and on over the years. 7 Q. Okay. 8 A. And -- 9 Q. You just know what they are? 10 A. Another one might look like ours, but I'm -- it 11 very most likely is ours. 12 Q. Okay. And then just read this one and see if 13 you can tell me what property this refers to. 14 A. Okay. From Julia Walting to Martin Oliver. It 15 mentions lot two beginning at a corner on the south 16 side of Main Street in Ozark, Arkansas on the west 17 side of the Little Rock and Fort Smith Railway land, 18 thence from said corner south 120 feet, thence west 19 60 feet, thence north 120 feet, thence east 60 feet 20 from the place of beginning, same being a part of the 21 southwest fractional quarter of Section 36, Township 22 10, Range 27, and the land is formerly by Sarah C. 23 Cole. 24 Also, part of the southwest quarter of the 25 southeast quarter of Section 36, Township 10, Range	1 number seven as an Exhibit D. M. Oliver's purchase 2 for 5.78 acres. We don't have that one here. Don't 3 see that one. 4 A. That's what we just did. 5 Q. Is that what we just did? Oh, you're right. 6 You're right. I'm sorry. So the one we just did, 7 Exhibit 98 was number seven on Exhibit D. marked as 8 Exhibit 93? 9 A. Yes. 10 Q. Okay. Now, let's go to Exhibit E, item number 11 8 on Exhibit 93, and we will label this document as 12 Exhibit 99. 13 (Exhibit No. 99 was marked.) 14 BY MR. MCKAY: 15 Q. And Exhibit 99 is a cover sheet labeled Exhibit 16 E. Small Estate Administration for M. Oliver, and it 17 appears to be three pages following that. Can you 18 identify those documents? I should say that exhibit. 19 A. The first part of this exhibit, or actually the 20 second page is an affidavit. It is stamped with 21 Adams Abstract and Title Company at the top, so I 22 suspect it did come from our office. 23 Q. Okay. 24 A. It looks like on it Nelsie Oliver, upon oath 25 states, I'm a resident of Ozark, Franklin County,

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Page 53 1 Arkansas, and am the widow of Martin Oliver who died 2 testate in the town of Ozark on the 18th day of 3 January, 1934, seized and possessed of the following 4 described real estate part of the southwest -- 5 Q. I'll tell you what, this one -- I can read this 6 one. 7 A. Okay. 8 Q. So you don't need to go through and read it 9 word for word. 10 A. Okay. 11 Q. Just to save time, but what exactly is this 12 affidavit? I mean, is it just transferring property? 13 A. She -- it's not transferring property. She is 14 affirming -- it's an affidavit saying that, where 15 Nelsie is stating that Martin Oliver owned and 16 possessed this property described in this affidavit. 17 Q. Okay. All right. And then it looks like she 18 inherited the property, or -- 19 A. He left the following -- he left the following 20 children and the following grandchildren. She is 21 also describing who his heirs were in her affidavit. 22 Q. Is she listed as one of the heirs, or does it 23 say? 24 A. She is the widow of Martin Oliver. 25 Q. Okay. There you go. All right. And then if	Page 55 1 I would guess so, but it might not have actually been 2 filed. 3 It might not have just been done through 4 the courts, and there might not have been something 5 filed in the real estate record. 6 Q. Okay. All right. Let's go to our next one. 7 The next one checked on Exhibit 93 is number 13, 8 which is Exhibit G, copy of aerial photo. I don't 9 have that in here. Let's go off the record just a 10 second. 11 (Off-the-record discussion.) 12 BY MR. MCKAY: 13 Q. I want to show you what was labeled as Exhibit 14 G to the City of Ozark's Complaint. We are not going 15 to attach this as an exhibit to the deposition, but 16 do you recognize what is labeled as Exhibit G to the 17 City of Ozark's Complaint? 18 A. If this was from the picture on our wall, it's 19 way, way zoomed in and blown up. 20 Q. Okay. 21 A. And I don't know if that could be or not. 22 Q. Okay. So as we look at the exhibit you can't 23 say one way or the other? 24 A. I can't say one way or another, but it appears 25 to be something that could have been zoomed in from a
Page 54 1 you will just explain what this next page is? 2 A. The next page is the Last Will and Testament of 3 Martin Oliver -- 4 Q. Okay. 5 A. -- where he is deciding who he wanted his 6 property to go to when he died. 7 Q. And I can read that. Let me just ask you, so 8 you would have a takeoff card in the records for last 9 will and testaments, in addition to deeds? 10 A. If they were filed of record. 11 Q. Okay. 12 A. It was filed in Will Book C, page 135, in 1934. 13 Q. Okay. And then looking through this takeoff 14 card, does it reference transfer of property 15 anywhere? 16 A. On this takeoff card, no, it is the will. 17 Q. Okay. 18 A. There may have been some other records possibly 19 or possibly not filed in the probate. 20 Q. Okay. 21 A. Following records back, back then, again, is 22 tricky with what was actually filed and not filed. 23 Q. Okay. 24 A. But they did manage to file the will. I don't 25 know if probate was open and the will was probated.	Page 56 1 picture, it could be, but I cannot say for sure. 2 Q. Okay. All right. Let me ask you the same 3 question about the document, which I will hand to 4 you, which is Exhibit H to the City of Ozark's 5 Complaint. Do you recognize that photograph? 6 A. No. 7 Q. Okay. The next thing that's checked on Exhibit 8 93 are exhibits -- Exhibit M-1. Do you have that? 9 MR. BROCKETT: Yes. 10 BY MR. MCKAY: 11 Q. Let me hand you what is attached as Exhibit M-1 12 to the City of Ozark's Complaint and get you to tell 13 me if you recognize that document. 14 A. No. 15 Q. Okay. 16 A. It's not something that came from our office. 17 Q. And, actually, since you know that's one that 18 did not come from your office, I wonder if we should 19 put a check mark on Exhibit, or an "x" on Exhibit 93 20 through the check mark, just so that we know that one 21 didn't come from you? Is that okay? 22 A. That would be fine. 23 Q. Go ahead and put an "x" through the check mark 24 on number 19, which is part of Exhibit 93. 25 A. (Witness complies.)

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1 Q. What about Exhibit H? 2 A. I said I didn't think -- 3 Q. Do you think -- well, I may have misunderstood. 4 I thought -- 5 A. The first one I said maybe. The second one I 6 did not recognize. 7 Q. Okay. 8 A. The first one might be a zoomed-in version. 9 Q. Okay. 10 A. But the second one I -- 11 Q. Okay. 12 A. It could be, but I don't think so. 13 Q. So as I understand, on Exhibit G you said that 14 you didn't know one way or another? 15 A. Right. 16 Q. That may have been a zoomed-in shot from a 17 photograph in y'all's office? 18 A. Yes, and I don't think the second one was. 19 Q. Okay. Let's go ahead and -- 20 A. Or you could leave -- because it might have 21 been. I can't really -- 22 Q. If you don't know one way or the other -- 23 A. I don't. 24 Q. -- let's just leave it as a possibility. 25 A. Okay.	1 it's been highlighted and copied. 2 Q. Okay. 3 A. It does say, See description attached. I do 4 not -- I cannot read what's been -- 5 Q. Okay. Is there a description attached of that 6 warranty deed? 7 A. There is not here with this. 8 Q. Okay. 9 A. No. 10 Q. Is there a description of the property in that 11 deed? 12 A. It says, See description attached hereto and 13 made a part thereof. Do we not have that part? 14 Q. So we would have to see that attachment in 15 order to know what property the deed refers to? 16 A. Yes. This was a document from book 92, page 17 247. 18 Q. Okay. 19 A. It was filed in 1968. 20 Q. It was filed in '68? 21 A. Yes, it was executed -- I don't know if this 22 goes with -- yeah. 23 MR. MCKAY: Let's go off the record 24 for a minute. 25 (Off-the-record discussion.)
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1 Q. Okay. Okay. The next thing checked on Exhibit 2 93 is number 24, which is a deed from John Burns to 3 Helen Burns -- John and Helen to the Corps of 4 Engineers, and I'm going to take that Exhibit 0-1. 5 For purposes of this deposition I will label that as 6 Exhibit 100. 7 (Exhibit No. 100 was marked.) 8 BY MR. MCKAY: 9 Q. And can you tell me if you recognize Exhibit 10 100? 11 A. It's a copy of a warranty deed. 12 Q. Do you know if you pulled this deed? 13 A. I think we did. 14 Q. Okay. 15 A. I don't think they would have got it anywhere 16 else. 17 Q. Okay. 18 A. I would -- I would be confident in saying that 19 we most likely pulled it. 20 Q. Okay. And then on that first page it looks 21 like there are some parts that are either drawn 22 through or highlighted. Can you read that portion? 23 A. The part that's highlighted, it looks like it 24 had been highlighted at one time, but it actually 25 almost made it dark, and now I cannot read it since	1 BY MR. MCKAY: 2 Q. With regard to the acknowledgment which is the, 3 actually the fourth page of Exhibit 100, can you tell 4 if that acknowledgment goes with this warranty deed 5 that's in this Exhibit 100? 6 A. It appears to. The bottom page of that is 7 where the circuit clerk's office typed that it was 8 filed of record the 12th day of April, 1968, 9 11:30 a.m., and recorded this 12th day of 10 April, 1968, and that's typed at the bottom of that 11 page. 12 Q. Okay. But then the Notary states that her 13 commission expires 15 June 1959? 14 A. Yes. 15 Q. Okay. All right. 16 A. But she dated her Notary 12th of April 1968 as 17 the date that it was signed in front of her. 18 Q. We assume she dated it. We don't know? 19 A. We assume. 20 Q. Actually, we don't know who dated the 21 acknowledgment; right? 22 A. I wasn't there, so no. 23 Q. Okay. 24 A. I could not know for sure -- 25 Q. Okay.

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Page 61 1 A. -- how or why. 2 Q. Okay. Let's go to the next exhibit checked on 3 Exhibit 93, which is Exhibit 0-2. 4 (Exhibit No. 101 was marked.) 5 BY MR. MCKAY: 6 Q. We will just label that as Exhibit 101 to the 7 deposition, and if you will just state for the record 8 what Exhibit 101 is, and if you had a hand in pulling 9 that document. 10 A. It is a Quit Claim Deed entered into between 11 Missouri Pacific Railroad Company, grantor, and the 12 United States of American, grantee -- 13 Q. You don't need to read it. That's okay. 14 A. But that's who it's between. 15 Q. Okay. 16 A. It looks like one that we have pulled. Looking 17 at the information on here, all three of these pages 18 go together. It looks like the copy probably came 19 from our office, yes. 20 Q. Okay. And then we'll go to the next one, which 21 we'll label as Exhibit 102. 22 (Exhibit No. 102 was marked.) 23 BY MR. MCKAY: 24 Q. On Exhibit 93 we are looking at item 26, 25 Exhibit 0-3. And if you'll just confirm Exhibit 102	Page 63 1 THE WITNESS: It does not have the 2 first page. 3 MR. MCKAY: So you've got the same 4 thing? 5 MR. BROCKETT: Yeah. I can look at 6 another copy. 7 BY MR. MCKAY: 8 Q. Okay. As we sit here, then you can't state 9 specifically what Exhibit 103 is? 10 A. No. 11 Q. Okay. 12 A. It looks like page two or the continuation of 13 the takeoff card. It's something that came from our 14 office, but I couldn't tell you -- 15 Q. What that is? 16 A. -- whether it's a deed or what. 17 Q. Okay. If the city had dedicate -- I am sorry. 18 If an individual had dedicated a street to the city, 19 would that be contained in records that are 20 maintained at Adams Abstract? 21 A. Not generally, no. 22 Q. Okay. Are those records that would be at the 23 courthouse, or do you know? 24 A. Generally not. It would probably be in the 25 city's.
Page 62 1 is a deed that you pulled as well? 2 A. I believe that it was one that we pulled for 3 them, yes. 4 Q. Okay. And for all of these deeds unless you 5 had a map and could sit here and plot them, you 6 wouldn't be able to say specifically where they were, 7 other than the -- 8 A. Other than where it refers to the railway, but 9 where along that -- 10 Q. Right. 11 A. -- I would need to look at some maps and -- 12 Q. Okay. 13 A. That's not something I can just do off the top 14 of my head. 15 Q. Okay. I understand. 16 (Exhibit No. 103 was marked.) 17 BY MR. MCKAY: 18 Q. Okay. Then the last exhibit we'll mark is 19 Exhibit 103, which is on Exhibit 93, it's item number 20 27. If you will tell me what that is. 21 A. I'm not sure what it goes with. It's part of a 22 legal description. 23 MR. MCKAY: Can you look for 0-4? We 24 may not have the complete thing. 25 MR. BROCKETT: I know it hung up on --	Page 64 1 Q. The city's record, okay. Same thing with 2 accepting a city street, is that any type of 3 transaction where there would be record? 4 A. That would generally be in the city records. 5 Q. Okay. 6 A. Unless for some reason they came along and 7 decided to file it in the circuit clerk's office. 8 Q. Okay. 9 A. Which would not be normally part of the 10 process. 11 Q. Okay. So, generally the acceptance of a street 12 by the city would not be in the records maintained by 13 Adams Abstract? 14 A. No. 15 Q. Okay. Besides pulling the deeds that we've, 16 and the documents we've identified here today, have 17 you had any other role in doing any research or 18 pulling documents for purposes of this lawsuit? 19 A. Just looking for deeds and looking for, 20 possibly, maps -- 21 Q. Okay. 22 A. -- that would show the land. And that's -- I 23 said, had indicated on there a couple of those aerial 24 photographs, we just kind of stumbled onto them and 25 realized we had an aerial photograph in the office.

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1 Q. Okay. 2 A. And that's why I thought it might have been a 3 copy of one of those. 4 Q. Okay. Have you ever served on the city council 5 in Ozark? 6 A. No. 7 Q. Have you ever served in any capacity with Main 8 Street Ozark? 9 A. No. 10 Q. Have you ever been to any city council 11 meetings? 12 A. No. 13 Q. Do you know anything about the -- well, let me 14 back up. The crossing at issue here is a crossing 15 that's been identified by the city as the Oliver 16 Street crossing. 17 A. Yes. 18 Q. Let me show you Exhibit 19. Exhibit 19 is 19 actually a photograph of a street sign that says 20 Oliver Street. Can you tell where that is located 21 downtown Ozark, just by looking at the photograph? 22 A. Yes. 23 Q. Okay. So that's the area that we're talking 24 about. Do you have any knowledge of the 25 circumstances under which the, what I will refer to	1 Q. Okay. Do you know, have you ever crossed the 2 tracks there where the depot is and gone on the 3 property south of the railroad tracks? 4 A. No. 5 Q. Okay. So it's fair to say you wouldn't have 6 knowledge of what -- you wouldn't have personal 7 knowledge of what existed south of the tracks before 8 the lock and dam system was built; correct? 9 A. No. I'm not -- like I said, no. I'm not even 10 sure I was alive. 11 Q. Okay. 12 A. So I don't know. 13 Q. Fair enough. 14 A. When was the lock and dam system built? 15 Q. I think it was in the seventies; wasn't it? 16 MR. BROCKETT: Sixty-eight. 17 A. Sixty-eight, so I would have been five. 18 Q. Okay. All right. Have you had any discussions 19 with anyone at Union Pacific concerning crossings in 20 downtown Ozark -- 21 A. No. 22 Q. -- or the removal of crossings in Ozark? 23 A. No. 24 Q. Have you had discussions with anyone from Union 25 Pacific concerning anything related to Ozark?
Page 66	Page 68
1 as the Oliver Street crossing being closed? 2 A. No. 3 Q. Okay. Do you ever even remember there being a 4 crossing located at that Oliver Street location 5 that's depicted in Exhibit 19? 6 A. No. 7 Q. Okay. Did you -- 8 A. I've worked in Ozark. I am not a resident of 9 Ozark. 10 Q. Okay. 11 A. So that's... 12 Q. Makes sense. We have had some people testify 13 as a kid, Well, I've went down and crossed the tracks 14 there, but that would not be the case for you? 15 A. Right, but at the same time I don't recall 16 either way. 17 Q. Okay. 18 A. I wouldn't know either way. 19 Q. Fair enough. Did -- do you remember when the 20 lock and dam system was built on the Arkansas River? 21 A. No. 22 Q. Okay. 23 A. That would have been -- I couldn't tell you 24 what year it was built. I don't know if I was a 25 young kid or if it was before my time.	1 A. No. 2 Q. Do you have any role in applying for grants for 3 development of downtown Ozark? 4 A. No. 5 Q. Have you seen -- the answer to these is 6 probably no, but I go through this -- 7 A. That's fine. 8 Q. -- with every witness, so just bear with me. 9 A. Okay. 10 Q. Are you aware of any written documentation that 11 shows Oliver Street was ever dedicated as a city 12 street? 13 A. No. 14 Q. Okay. Can you point to any written 15 documentation that shows that a crossing was ever 16 dedicated as a city crossing in downtown Ozark? 17 A. No. 18 Q. Do you know of any written documentation that 19 shows that any crossing -- let me strike that. 20 That's the one I just asked. Do you know of any 21 plats that actually purport to dedicate Oliver Street 22 for public use? 23 A. No. 24 Q. Have you researched any to see if there were 25 any plats relevant to this lawsuit?

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Page 69 1 A. I haven't found any -- we have got a plat in 2 our office, but I would think if it showed that, 3 there would be copies of it here. I don't recall 4 what it does or doesn't show. 5 Q. Okay. 6 A. I would think they would have had copies of it 7 if it showed that street. 8 Q. Okay. Do you know what date that plat is that 9 is in your office? 10 A. I do not. 11 Q. Okay. But as far as you know, you never 12 obtained a copy of that plat for purposes of giving 13 it to Mr. Brockett for this lawsuit? 14 A. No. 15 Q. Do you know of any document showing that the 16 City of Ozark accepted a recorded plat showing Oliver 17 Street? 18 A. No. 19 Q. Are you aware of any ordinance by the city that 20 establishes Oliver Street or has anything to do with 21 Oliver Street? 22 A. No. 23 Q. You've never worked for a railroad; correct? 24 A. No. 25 Q. So -- I asked a bad question. Have you ever	Page 71 1 Q. Some of which? 2 A. Yes. 3 Q. Some of the documents you pulled relate to 4 that? 5 A. Yes. 6 Q. Okay. Besides the documents that we've gone 7 over here today and the things you have discussed, do 8 you have any other knowledge relating to this lawsuit 9 or the crossing in downtown Ozark? 10 A. No. 11 Q. Okay. 12 MR. MCKAY: That's all I have. Thank 13 you for your time. Let me go back. I 14 think it was -- pull that last exhibit. 15 Yeah, it's Exhibit 103. 16 It looks like we have found an 17 additional page. If there is no objection, 18 we will just add this page to Exhibit 103. 19 MR. BROCKETT: No objection. 20 BY MR. MCKAY: 21 Q. So Exhibit 103 now contains three pages, a 22 cover page that states Exhibit 0-4 Josephine Oliver's 23 deed, and then two pages, which I will ask you to 24 describe for the record what they are. 25 A. It is a copy of a takeoff card from our office,
Page 70 1 worked for a railroad? 2 A. No. 3 Q. All right. And were you actually paid by the 4 City of Ozark for the work that you did in this case? 5 A. No. 6 Q. Okay. Have you formulated any opinions 7 whatsoever as it relates to this case? 8 A. As far as? 9 Q. Have you been hired to give any kind of opinion 10 related to this lawsuit? 11 A. No, I have not been hired to give any opinion, 12 no. 13 Q. Okay. 14 A. We just pulled information that we had in our 15 office. 16 Q. Have you provided any opinions as it relates to 17 this lawsuit to Mr. Brockett or anyone? 18 A. I don't think so. 19 Q. Okay. 20 A. I mean, I don't -- we provided what's there. 21 Q. Okay. 22 A. I mean, it's just -- I don't know if it would 23 be opinion, but when you pull information there were 24 deeds to owners of property that were across the 25 tracks, so someone owned land over there at one time.	Page 72 1 I do believe, being a deed from Josephine Oliver to 2 United States of America. It does describe the 3 property. 4 Q. Okay. Does it have a date on there as to -- 5 A. It was filed in 1967. 6 Q. Okay. Is that, is that -- I mean October 26, 7 was that the date it was filed? 8 A. Yes. 9 Q. Okay. If I can just read this real quick. 10 (Counsel reviews document.) Just from looking at 11 Exhibit 103, can you state just from looking at the 12 deed whether or not this is property that is situated 13 south of the railroad tracks? 14 A. (Witness reviews document.) I don't think it 15 is. I would have to look at a map, but land south of 16 the tracks was not lotted and blocked, and this is 17 describing part of a lot and block. 18 Q. Okay. So anything with a lot and block, as you 19 said, would be property north of the tracks? 20 A. I believe. I am not going to say that with 21 100 percent surety. 22 Q. Okay. As far as you know, there were not any 23 lot and blocks designated south of the railroad 24 tracks in Ozark? 25 A. There wasn't in the land there that we were

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Page 73 1 looking at south of the tracks -- 2 Q. Okay. 3 A. -- that I recall, unless it was right along the 4 edge of the track. 5 Q. Okay. 6 A. Like where the depot actually is might have 7 been. I can't remember off the top of my head. So 8 right where the track is, that might be, but once you 9 got south of that, I don't recall any being lotted 10 and blocked as a part of Quaile Addition. 11 MR. MCKAY: Fair enough. Thank you. 12 That's all I have. 13 EXAMINATION 14 BY MR. BROCKETT: 15 Q. I do have a question about that. Do you know 16 where exactly that property -- I mean, do you have a 17 way of finding out exactly where that property is 18 located? 19 A. It's part of lot two and lot three in block one 20 of Quaile addition, so we will have a map of Quaile 21 Addition that would show that. 22 Q. You would have that? 23 A. Yes. 24 Q. Okay. All right. Do you know whether or not 25 the Corps of Engineers bought any land north of the	Page 75 1 Q. But you think you do have a plat for the Quaile 2 Addition. 3 A. Quaile Addition, yes. 4 Q. Okay. Would you be able to make me a copy of 5 that? 6 A. Yes. 7 Q. Okay. 8 MR. BROCKETT: That's all I have. 9 THE WITNESS: Okay. 10 MR. MCKAY: That's it. Thank you for 11 your time. I appreciate it. 12 THE WITNESS: You're welcome. 13 (The deposition was concluded at 1:21 p.m.) 14 15 16 17 18 19 20 21 22 23 24 25
Page 74 1 railroad tracks? 2 A. I believe they did, but I believe it's along 3 Gar Creek that goes up, pushes north, but I -- I'm 4 pretty sure there were some, or at least they have -- 5 at least the Corps has rights up through there. I 6 don't know if they bought any land, but I know Gar 7 Creek pushes up off the river, I believe. 8 Q. Okay. 9 A. And that may be what that is a part of. I 10 don't know. 11 Q. Okay. Based on what you saw, the small estate 12 administration, do you know if that deed, Exhibit 0-4 13 as Exhibit 103, does it -- is that the same land that 14 was referenced in the small estate administration, or 15 do you know? 16 A. Exhibit 99, is that -- 17 Q. Yes. 18 A. -- the legal description, and the affidavit is 19 -- it's not described the same way. It is just 20 saying they possess the following described real 21 estate, and the way it's described, it does not show 22 to be. But that doesn't mean it couldn't be, so I 23 couldn't answer yes -- 24 Q. Okay. 25 A. -- that it is.	Page 76 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 3rd 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

19 (Pages 73 to 76)

Transcript of the Testimony of

Bill Brockett

Date: March 3, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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Bill Brockett 3/3/2015

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 BILL BROCKETT March 3, 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 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 2 3 A P P E A R A N C E S 4 ON BEHALF OF THE PLAINTIFF: 5 CHRISTOPHER D. BROCKETT, ESQ. 6 Sayre & Brockett 7 401 West Commercial Street 8 Ozark, Arkansas 72949 9 10 ON BEHALF OF THE DEFENDANTS: 11 JAMIE JONES, ESQ. 12 Friday, Eldredge & Clark 13 400 West Capitol 14 Suite 2000 15 Little Rock, Arkansas 72201 16 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF BILL BROCKETT, 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 9:03 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 BILL BROCKETT 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)

Page 5

1 BILL BROCKETT,
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 MR. BROCKETT: Same standard
7 stipulations, this deposition by agreement
8 of the parties, all objections reserved
9 except to the form of the question and
10 responsiveness of the answer.
11 MS. JONES: And we can agree that that
12 will be the same for all of the depositions
13 that we have.
14 MR. BROCKETT: Works for me.
15 MS. JONES: All right.
16 MR. BROCKETT: Thank you.
17 EXAMINATION
18 BY MS. JONES:
19 Q. Mr. Brockett, my name is Jamie Jones. I
20 represent Union Pacific Railroad in the action
21 brought against it by the city. Have you ever given
22 a deposition before?
23 A. Yes.
24 Q. All right. How many times have you given a
25 deposition?

Page 6

1 A. I don't know.
2 Q. More than five?
3 A. More than one.
4 Q. Okay. Well, let me give, just to give you a
5 refresher. Ms. Janess is taking down everything we
6 say, which for us means a couple of things. One,
7 although I understand in conversation uh-huhs and
8 huh-uhs or nonverbal communication, she can't get
9 that down for the record. So if you will just
10 verbalize your responses for me, please?
11 A. Yes.
12 Q. And you will forget that inevitably, as every
13 witness sitting in that chair does. I will remind
14 you. I don't do it to be rude. I just do it for our
15 record; okay?
16 A. Yes.
17 Q. And you may anticipate where I'm going with a
18 question and start to answer me, but if you can allow
19 me to finish my question I will allow you to finish
20 your answer, so we are not speaking over each other.
21 Okay?
22 A. Okay.
23 Q. And if there is a question that I ask that you
24 don't understand, I promise no one else in the room
25 understands it either. It's just a bad question.

Page 7

1 Will you let me know that, and I will rephrase it for
2 you?
3 A. I will.
4 Q. Okay. And I don't know that we will be going
5 all that long with you today, but if you need a
6 break, just let us know. Okay?
7 A. Okay.
8 Q. And we are, I believe, actually at your
9 establishment today; correct?
10 A. Correct.
11 Q. And you own a realty location here in Ozark?
12 A. Yes.
13 Q. Okay. And how long have you been in Ozark?
14 A. Since 1963.
15 Q. Okay. And why don't you go ahead and give us
16 your home address and phone number, so that we have
17 that for the record?
18 A. My home is 1046 Highway 64 West. My telephone
19 number is (479)970-5872.
20 Q. Okay. And I am sure you are the proud father
21 of our own Christopher Brockett, sitting here in the
22 room?
23 A. I thought he was my son.
24 Q. Like I said, you are the proud father?
25 A. My brother, my brother, that's what the other

Page 8

1 one said; isn't it? He likes that. Yes, I am the
2 proud father of Chris.
3 Q. Okay. And have you been in the real estate
4 business the entire time you've been in Ozark?
5 A. No.
6 Q. Tell me about your background a little bit.
7 A. I was raised on a farm north of Ozark. I went
8 to school at Ozark, obviously. Then I went to
9 technical school to become an auto mechanic, bought
10 an auto garage repair shop and from there went in the
11 trucking business. I don't, I don't know the
12 timeframe, but anyway, and then got into real estate.
13 Q. Okay. About what year did you get into real
14 estate?
15 A. In the nineties.
16 Q. Okay.
17 A. Late, late -- early to mid nineties, I guess.
18 Q. Okay. And has it always been under the name
19 Hillbilly Realty?
20 A. I was the manager for Ozark Realty for three or
21 four years, and then I bought Hillbilly Realty.
22 Q. Okay. All right. And you have not worked in
23 the railroad business; correct?
24 A. No.
25 Q. Okay. Now, I think you have been listed as a

Page 9 1 witness for somebody to talk about the public use of 2 the crossing. Is that your understanding, as well, 3 as why you're here today? 4 A. Yes. 5 Q. Okay. Do you understand what crossing is at 6 issue in this lawsuit? 7 A. Yes. 8 Q. Okay. Tell me first off, what did you -- when 9 was the last time you used that crossing? 10 A. I am not sure, the eighties probably. 11 Q. Okay. Can you tell me what was the occasion 12 that brought you to use it? 13 A. Sun Gas was a propane company, and they used my 14 repair shop to repair their vehicles, and I have been 15 down there several times to pick up their trucks or 16 work on their trucks. 17 Q. Okay. Now, the street that the crossing was 18 on, did it have a name? 19 A. Do not recall. 20 Q. Okay. 21 A. I don't -- I just knew where it was at when 22 they told me they needed something done. 23 Q. Right. And when we sometimes think about 24 streets we think about asphalt streets and curbs and 25 blacktop. Is that what kind of street this road was?	Page 11 1 crossing; do you remember? 2 A. I don't recall. 3 Q. Okay. All right. 4 A. I was 14 or so. 5 Q. Right. 6 A. I didn't have my mind on school or the 7 crossing. 8 Q. And I'm sure not, and I'm sure that this 9 crossing wasn't necessarily something you were 10 focused on that point. Is there anything else about 11 the use of the crossing that you believe would be 12 relevant that you have experienced? 13 A. I have towed trucks out of there with small 14 wreckers and big wreckers. 15 Q. Okay. 16 A. So, I mean, I don't know if that's relevant or 17 not, but it certainly was a crossing. 18 Q. So sometimes -- the last time you would have 19 used it, you believe, is sometime in the 1980s when 20 you -- 21 A. And I'm not positive about that. I don't know. 22 It's been -- I was in the garage business from '75 23 maybe -- no, that couldn't be correct, '78 probably. 24 Q. Okay. 25 A. So somewhere between '78 and '94.
Page 10 1 A. No. It was a gravel road that, gravel and 2 dirt, had asphalt across the tracks. 3 Q. Okay. And when you say "asphalt across the 4 tracks," was it pure asphalt, or was it like asphalt 5 ties across? 6 A. I don't know that. I just remember it being 7 asphalt up to when you crossed over. 8 Q. Okay. 9 A. Both directions. 10 Q. Have you done any research as to the history of 11 the crossing or the street at that location? 12 A. Have I did any research? 13 Q. Yeah, have you done any research? 14 A. No, nothing except I read Bud Powell, 15 Mr. Powell's little book, but that's just history of 16 the whole city. 17 Q. Okay. So you read a history of the city by 18 Mr. Bud Powell? 19 A. Is his name Bud? Norman Powell, Norman, sorry. 20 Q. Okay. And was the purpose of that for anything 21 to do with this lawsuit? 22 A. It had nothing to do with this. It was a long 23 time ago. He was my history teacher when I was a 24 kid, so... 25 Q. Okay. Now, did Mr. Powell talk about this	Page 12 1 Q. Okay. All right. You also have served on Main 2 Street Ozark; is that correct? 3 A. I do, and still do. 4 Q. Okay. And at some point you were -- tell me 5 when you became involved with Main Street Ozark. 6 A. I don't know. I have been involved in the 7 city, our area since I got big enough to be involved, 8 I guess, because I want to see it go forward and good 9 things happen for us. Main Street, probably, 10 probably in the late eighties, I would say. 11 Q. Okay. 12 A. So, and that's just a guess. I don't know. 13 Q. Right. And at some point you were president of 14 Main Street Ozark? 15 A. Yes. 16 Q. What years was that? 17 A. I don't know. 18 Q. Okay. Do you know -- I believe your son is 19 president currently; correct? 20 A. Yes. 21 Q. Were you president immediately preceding him? 22 A. No, no. 23 Q. Okay. 24 A. It's been several, a few years ago. 25 Q. Okay. Did you have any involvement, or do you

Page 13

1 currently have any involvement in any of Main Street
 2 Ozark's plans for the crossing at issue in this
 3 lawsuit?
 4 **A. Say it again.**
 5 Q. Okay. Are you currently involved in any manner
 6 with Main Street Ozark's plans for the crossing
 7 that's involved in this lawsuit?
 8 **A. Well, I sit on their board --**
 9 Q. Okay.
 10 **A. -- obviously, so I guess I am.**
 11 Q. Tell me how -- how does the board work, because
 12 I know some, some boards work differently than
 13 others, so I would like to get a sense of how this
 14 works.
 15 Is the organization more executive director
 16 ran, or does the board of directors have any decision
 17 making in the process?
 18 **A. We have a board meeting once a month. The**
 19 **issues are brought before the board. We either vote**
 20 **on it yea or nay, and it goes from there. And we**
 21 **instruct -- our president instructs our director what**
 22 **we want to do or what needs to be done.**
 23 Q. Okay.
 24 **A. Now, there is brainstorming sessions, and they**
 25 **come up with ideas, such as parks and the sides on**

Page 14

1 **our downtown buildings. That's one of the things**
 2 **that we are working on now is people that can't,**
 3 **doesn't seem to be able to afford, they can apply for**
 4 **grants.**
 5 Q. Okay.
 6 **A. And they get help with their buildings.**
 7 Q. Okay.
 8 **A. Is that good enough?**
 9 Q. Yes, sir, now I understand that. So does the
 10 president or does the executive director determine
 11 what's going to be on the agenda for a board meeting?
 12 **A. I think both.**
 13 Q. Both?
 14 **A. I think they work at it together, or they did**
 15 **when I was president.**
 16 Q. Okay.
 17 **A. Sort of like a city council. You know, a**
 18 **council, a board member can go and tell them, We want**
 19 **this on the agenda to talk about. It works similar**
 20 **to the same way.**
 21 Q. Do you have policies and procedures that
 22 dictate how votes are going to be ran, or do you
 23 follow Robert's Rules of Procedure; how does that
 24 work?
 25 **A. It goes by Robert's Rules of Order, I believe**

Page 15

1 **is the way we follow.**
 2 Q. Okay.
 3 **A. Well, I know it is. I have had the book and**
 4 **read them before.**
 5 Q. Okay. So what -- as a board member of Main
 6 Street Ozark, what is your knowledge of the current
 7 status of the biking/hiking trail that the city
 8 and/or Main Street Ozark is proposing?
 9 **A. I believe that the permits have been applied**
 10 **for or maybe obtained from the Corps of Engineers on**
 11 **their part of it, or leases have been obtained.**
 12 **I know that there's money been spent for**
 13 **preliminary plans maybe for -- I don't -- and I can't**
 14 **remember if we did a survey or not. I'd have to look**
 15 **back at my minutes to see. I'm not sure.**
 16 Q. Okay. Have -- did you ever, as either a board
 17 member or as president, work with the architectural
 18 firm or the engineering firm on any of their plans
 19 related to downtown Ozark that's the subject matter
 20 of this lawsuit?
 21 **A. I've looked at them.**
 22 Q. Okay.
 23 **A. Did I ever work for them; is that what you**
 24 **said?**
 25 Q. Yeah, like work with them or have meetings or

Page 16

1 anything like that?
 2 **A. Oh yeah. You are talking about the fellows in**
 3 **here the other day? Is that who you are talking**
 4 **about?**
 5 Q. No. I'm talking about the architect, which
 6 would be --
 7 **A. Darriell, was he not the architect?**
 8 Q. No, Darriell Mathis is not an architect.
 9 **A. Really, I thought he was. He is not? I've**
 10 **looked at his drawings.**
 11 Q. Okay.
 12 **A. And we had another guy that did some drawings**
 13 **that we looked at, and he had some plans. I do not**
 14 **recall what his name was.**
 15 Q. Okay. And to be fair, you wouldn't be the best
 16 person to speak about any of the current plans;
 17 correct? That would probably be Sandy?
 18 **A. Probably not. That would probably be Sandy --**
 19 **now, I have sat on the board, and I have looked at**
 20 **the plans along the way as we went. I think to say**
 21 **that I would be the one that you would come to would**
 22 **probably be not right.**
 23 Q. Okay. And you are not intending on testifying
 24 about any title research or anything you've done with
 25 regards to this case; correct?

4 (Pages 13 to 16)

Transcript of the Testimony of

Steve Outlaw

Date: March 3, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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1 (Pages 1 to 4)

Steve Outlaw 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 5 1 STEVE OUTLAW, 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. Outlaw, my name is Jamie Jones. I 9 represent Union Pacific Railroad in the action that 10 the city's filed against it. Have you ever given a 11 deposition before? 12 A. Yes, ma'am. 13 Q. Okay. How many times have you given 14 depositions? 15 A. Just once. 16 Q. Okay. Do you remember what it was for? 17 A. Oh, over -- I have to think about what it was. 18 It has to do with somebody stealing a truck or 19 something -- 20 Q. Okay. 21 A. -- but that was it. 22 Q. Well, you've been through it, but I will just 23 give us a reminder, Ms. Janess is our court reporter. 24 She is taking down everything that we say, which 25 means a couple of things for you and I. One, if you	Page 7 1 somewhat of an understanding of what this lawsuit is 2 about? 3 A. Yes, ma'am. 4 Q. All right. Tell me what your understanding is. 5 A. Over the, what I have understood is with the 6 road being there the subject is was a road ever 7 there. 8 Q. Okay. 9 A. And if it was, when was it, and what was it, 10 where did it go, what was it used for. 11 Q. Okay. And you received a subpoena for today? 12 A. No, ma'am. 13 Q. You did not? 14 A. No. 15 Q. You were scheduled with Mr. Brockett? 16 A. I asked some of my employee -- but you have to 17 understand, I have seven different businesses. 18 Q. Uh-huh. 19 A. So it could have -- 20 Q. Well, why don't you look at these document 21 demands on page one and page two, and tell me -- read 22 through those and tell me if you would have anything 23 responsive to those. 24 A. Okay. Number six, please produce all diaries, 25 notes or calendars that you have from the council
Page 6 1 can use verbal responses. I understand head nods and 2 uh-huhs and huh-uhs, but she can't get that down for 3 the record. 4 A. That's kind of hard to do. 5 Q. Yes. So if you will just make sure to 6 verbalize your responses for her. 7 A. Yes, ma'am. 8 Q. The second thing is you may anticipate exactly 9 where I am going with the question, but if you will 10 let me get my full question out, I will let you get 11 your full answer out, so that we are not speaking on 12 top of one another. Okay? 13 A. Yes, ma'am. 14 Q. It makes her job a lot easier if we can avoid 15 that. I may also ask a question that you don't 16 understand. If I do that, will you let me know so I 17 can rephrase it for you. Okay? 18 A. Yes, ma'am. 19 Q. All right. I am known to ask a bad question a 20 time or two. And I don't think we will be here all 21 that long, but if you need a break at any point, you 22 just let me know, and we will take one. 23 A. Yes, ma'am. 24 Q. Okay. Now, you -- I've seen your name come up 25 in a few places in this lawsuit, but do you have	Page 8 1 meeting, and I don't have any of that. 2 Please produce diaries, notes or calendars 3 kept regarding the contract. I don't have any of 4 that. 5 Produce any diaries, notes or calendars 6 kept regarding any efforts to seek a crossing, I 7 haven't kept anything of any of these documents -- 8 Q. Okay. 9 A. -- on the crossing. 10 Q. Okay. Well, let's start with the crossing 11 itself. If I talk about a crossing that's east of 12 the depot, would you know where that crossing had 13 been located? 14 A. Yes, ma'am. 15 Q. Okay. Had you ever used that crossing? 16 A. Yes, ma'am. 17 Q. Okay. Tell me when the last time you would 18 have used it and what for. 19 A. Well, this is kind of unique in a way. In 1966 20 I turned 16. 21 Q. Okay. 22 A. My uncle had a grocery store here, and when I 23 turned 16 my job was to dump out the dump barrel out 24 of the back of the grocery store, what they used to 25 do the burning of the trash.

2 (Pages 5 to 8)

Page 9

1 Q. Okay.

2 A. And at that time I thought I was really doing

3 something neat, by turning 16 that just gave me an

4 extra job.

5 Q. Right.

6 A. And my job was to load the trash up in the

7 truck and take it to the dump.

8 Q. Okay. And so you would have used that crossing

9 to get to the dump?

10 A. Yes, ma'am.

11 Q. As I understand, it was kind of an old dirt

12 road, is that right, gravel road?

13 A. Gravel road. At that time I remember crossing

14 the railroad track, and how I knew to get there was

15 my uncle had taken me fishing --

16 Q. Okay.

17 A. -- down there. And that was a, seemed like a

18 really neat spot to go fishing because the dump was

19 on one side here, and on down from it was where the

20 sewer of Ozark dumped into the river, and that was a

21 good place to catch catfish. But I used that road

22 until I was 17, a little over 17, in '66 and '67.

23 Q. Okay.

24 A. And then I turned that job over to somebody

25 else.

Page 10

1 Q. Okay. So that would have been the last time

2 you would have used that road and the crossing?

3 A. Yes, ma'am.

4 Q. Okay. And your date of birth, then, would have

5 put you somewhere in 1960; correct?

6 A. 1950.

7 Q. 1950. Oh yeah. I made you --

8 A. Thank you.

9 Q. All right. Give me your address.

10 A. My --

11 Q. Home address?

12 A. Mailing address is P.O. Box 24, 72949. My

13 physical address is 7259 Hilburn Point Road.

14 Q. Okay. And what's the best phone number to

15 reach you at?

16 A. (479)508-7162.

17 Q. Now, sir, are you involved -- have you ever

18 been on the city council?

19 A. No, ma'am.

20 Q. Okay. Have you ever been a member of an

21 organization called Main Street Ozark?

22 A. Yes, ma'am.

23 Q. Okay. Tell me, are you a current member of

24 that organization?

25 A. Yes, ma'am.

Page 11

1 Q. Okay. And I have seen somewhere at one point

2 you were president of that organization?

3 A. Yes, ma'am.

4 Q. Okay. Tell me what years you held -- what year

5 you started on Main Street.

6 A. I feel like my whole life. Let's see, it would

7 have had to be the last five years.

8 Q. Okay. And what years were you president?

9 A. The last, up until let's see, three years ago.

10 Q. Okay. And tell me what the president of Main

11 Street Ozark has responsibilities for.

12 A. Well, my job at that time was just kind of

13 conducting the meetings, making sure everybody was

14 doing their job.

15 Q. Okay. And so do you determine or do you help

16 determine with the executive director what goes on an

17 agenda for a meeting?

18 A. At times.

19 Q. Okay. Do you have any say-so in what the plan

20 is for, let's -- I mean, let's be specific. The Main

21 Street Ozark, as I understand it, is working with the

22 city to do some projects to develop downtown Ozark;

23 correct?

24 A. Yes, ma'am.

25 Q. And one of those projects is a marina; correct?

Page 12

1 A. Yes, ma'am.

2 Q. One of those projects is a floating dock on the

3 north bank of the river; correct?

4 A. Yes, ma'am.

5 Q. And one of those projects is to seek a crossing

6 at the location east of the depot; correct?

7 A. Yes, ma'am.

8 Q. And one of those projects is a biking, walking,

9 hiking trail on the north bank of the river east of

10 the depot as well?

11 A. Yes, ma'am.

12 Q. Okay. What, as president, did you -- what role

13 did you have as president in developing those plans?

14 A. Well, in suggesting what could that be used for

15 and looking over and asking if anybody had done any

16 work on what it would take to get it done.

17 Q. Okay. Now, did you work directly with any of

18 the architects or engineers in developing any of the

19 plans?

20 A. No, ma'am.

21 Q. Okay. At some point you were an investor or a

22 potential investor personally in the marina; is that

23 right?

24 A. Yes, ma'am.

25 Q. Was that when it was on the north shore?

Page 13 1 A. On the south shore. 2 Q. On the south shore. Okay. Tell me what 3 circumstances led you to be a potential investor in 4 the south shore project. 5 A. I own property over there. 6 Q. Okay. Tell me, what property do you own? 7 A. Over toward the Mexican restaurant. 8 Q. Okay. 9 A. I have property over that way next to the 10 restaurant and across the road from the restaurant. 11 Q. Okay. And that's the south shore? 12 A. Yes, ma'am. 13 Q. Okay. And kind of being not from Ozark, can 14 you kind of give me some directional sense of how 15 close that is to, like, the R.V. park or anything? 16 A. It's quite a ways. 17 Q. Quite a ways, okay. So the other side of the 18 bridge? 19 A. It's next to the bridge. 20 Q. Okay. That's what I was going to ask next. 21 All right. How long -- have you spent your whole 22 life in Ozark? 23 A. Just about. 24 Q. Okay. Did you graduate from high school in 25 Ozark?	Page 15 1 Q. Okay. Now, the bailbonds, is that -- I know 2 Mayor McNutt had been a bail bondsman. 3 A. Uh-huh. 4 Q. Was that the same company or a different one? 5 A. No, a different company. 6 Q. Okay. So because you own this property on the 7 south side that made you wish to be a potential 8 investor in the south side marina? 9 A. Uh-huh. 10 Q. Is that "yes"? Sorry. I told you you'd 11 forget. 12 A. Oh, yes. 13 Q. And how did you go about getting involved? Was 14 it because of Main Street Ozark, in your involvement 15 with Main Street Ozark you knew that that was a 16 potential, or how did you know about this? 17 A. Well, I had -- the people that came up to look 18 at the bridge, the marina people had came up, the 19 people that have -- oh, let me think. What is that. 20 The flotilla people that they have the boats and 21 stuff. 22 Q. Okay. 23 A. While they were here they were looking at the 24 bridge, and I was responsible for the lighting of the 25 bridge. I spent seven years campaigning to put the
Page 14 1 A. Yes, I did. 2 Q. What year? 3 A. 1969. 4 Q. Okay. And did you get any post high school 5 education? 6 A. University of Central Arkansas. 7 Q. Okay. And did you get a degree from UCA? 8 A. Business administration, minor in accounting. 9 Q. Okay. Is that a four-year bachelor? 10 A. Four year, uh-huh. 11 Q. And what have you done -- do you own any 12 businesses in town? 13 A. Yes, ma'am. 14 Q. Okay. Tell me what businesses do you own? 15 A. Well, I have a laundry mat here in town. 16 Q. Okay. 17 A. And then I have quite a bit of real estate in 18 town. 19 Q. Okay. 20 A. I have a concession service. 21 Q. Okay. 22 A. A catering service, a bailbond service. 23 Q. Okay. 24 A. And then I have -- I maintain all of my 25 properties myself. That's electric, plumbing,	Page 16 1 lights on the river bridge. 2 Q. Okay. 3 A. That meant going back and forth to the city 4 council. And while they were here they commented on 5 how this was a spot that nobody was taking advantage 6 of. 7 And they had asked me about if anybody 8 would be interested in a marina here, that this would 9 be an ideal place. And I told them that I had 10 property on the south side of the river. 11 So they asked me to come to Little Rock to 12 a meeting, and so I did. And I asked why it would be 13 profitable to have a marina where it would be. 14 They explained to me -- I couldn't 15 understand why a marina would pay for itself in 16 Ozark, Arkansas, but these people -- I was looking at 17 it totally wrong. 18 What they explained to me was that people 19 that have boats on the coast have to pay an 20 exorbitant amount of insurance to dock their boat 21 there, and if they could show that they could, were 22 docking their boats inside where it would be away 23 from hurricanes and everything, their insurance would 24 drop from 80,000 to \$5,000 a year. 25 These people would prepay for their dock

4 (Pages 13 to 16)

Page 17 1 for their boats. So you're looking at a hundred foot 2 slip, you're looking at \$2,000 or \$1,500 a month 3 prepaid for the whole year. 4 Q. Okay. So you got involved because you went to 5 this meeting in Little Rock -- 6 A. Uh-huh. 7 Q. -- by some people who had done the flotilla 8 here in Ozark; correct? 9 A. And they had built a marina in Little Rock. 10 Q. Okay. So did you then take this back to Main 11 Street Ozark, or how was that communicated? 12 A. When I got back here I was, I asked if anybody 13 had thought about putting a marina here. 14 Q. Okay. Now, you are no longer involved in the 15 marina on the south side; correct? 16 A. After -- the only reason I wasn't involved is 17 that they moved -- the Corps preapproved where I 18 wanted to put a marina. 19 That's when we started, or when I asked to 20 help get this thing started, because the Corps had 21 said this would be a good place to put a marina. 22 Q. Okay. Have you ever had any conversations with 23 anyone at Union Pacific Railroad Company about 24 anything to do with the subject matter of this 25 lawsuit?	Page 19 1 Q. So like if your dad would have told you, Hey, 2 go to the dump, do you know what his directions would 3 have been? 4 A. My uncle -- 5 Q. Okay. 6 A. -- was the keeper of the money, and I knew 7 where to go. 8 Q. I mean, but do you remember him telling you 9 directions, or did you just kind of know? 10 A. No, I just knew where to go. 11 Q. Okay. 12 A. When he said take it to the dump, there is only 13 one dump. 14 Q. Okay. 15 A. And you knew where to go. 16 Q. Okay. Fair enough. One final question, back 17 then do you know if most of those streets downtown 18 had street signs, or did you just kind of know which 19 street to go to? 20 A. Not very many did. Most of the streets had, I 21 think they had started putting -- what they really 22 had back then, they didn't have street signs. They 23 had concrete pillars up so high and on the side of it 24 was the name of the street. 25 Q. Okay.
Page 18 1 A. No, ma'am. 2 Q. Okay. And except for -- well, do you know what 3 the current status of the plan is for the hiking, 4 biking trail, or would Sandy Key be the most 5 appropriate person to talk to? 6 A. She would probably be the most. 7 Q. Okay. 8 MS. JONES: All right. Thank you, 9 sir. I appreciate your time today. 10 THE WITNESS: I don't get a candy bar 11 or a -- 12 MS. JONES: No. 13 MR. BROCKETT: You got free coffee. I 14 have just one question. 15 EXAMINATION 16 BY MR. BROCKETT: 17 Q. Did you know the name of this street prior to 18 any research being done back when you were 16? 19 A. I couldn't remember the name of it. 20 Q. Okay. 21 A. Growing up, I couldn't even tell you what 22 street I lived on, I mean, but all I knew was to my 23 -- the job that I hated the most was taking that 24 trash down, and I thought that I was way underpaid at 25 50 cents an hour back then, so.	Page 20 1 A. And I just remembered that. 2 Q. Okay. 3 A. And that's how you could remember, because it 4 was a concrete pillar about so high about this big, 5 and that's what was, told you what street it was on. 6 Q. I think we may still have some of those out 7 north of town. 8 A. Out north of town? 9 Q. Yeah. 10 A. But that's how I can remember, but not 11 knowing -- all I knew was when he said take it to the 12 dump, I knew where to go. 13 MR. BROCKETT: Okay. 14 MS. JONES: That's it. 15 MR. BROCKETT: Okay. That's all I've 16 got. 17 (The deposition was concluded at 11:31 a.m.) 18 19 20 21 22 23 24 25

5 (Pages 17 to 20)

Page 21

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 3rd day of March, 2015.

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

6 (Page 21)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Craig Birchler

Date: March 3, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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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 CRAIG BIRCHLER March 3, 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 By Ms. Jones 14 4 5 EXAMINATION By Mr. Brockett 27 6 7 EXAMINATION By Ms. Jones 28 8 E X H I B I T S 9 10 Exhibit Number 247 (Map). 9 Exhibit Number 248 (Map). 18 11 Exhibit Number 249 (Map). 24 Exhibit Number 250 (Map). 24 12 Exhibit Number 251 (Map). 24 Exhibit Number 252 (Aerial Photograph). 24 13 Exhibit Number 253 (Aerial Photograph). 24 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 A P P E A R A N C E S 1 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. Sayre & Brockett 5 401 West Commercial Street Ozark, Arkansas 72949 6 7 8 ON BEHALF OF THE DEFENDANTS: 9 JAMIE JONES, ESQ. Friday, Eldredge & Clark 10 400 West Capitol Suite 2000 11 Little Rock, Arkansas 72201 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 4 A N S W E R S A N D D E P O S I T I O N O F C R A I G B I R C H L E R, 1 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 1:13 p.m. 9 10 ***** 11 12 S T I P U L A T I O N S 13 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of CRAIG BIRCHLER 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

Page 5	Page 7
1 CRAIG BIRCHLER. 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. Birchler, my name is Jamie Jones. I 9 represent Union Pacific Railroad in the action 10 brought by the City of Ozark against it. Have you 11 ever given a deposition before? 12 A. I have. 13 Q. Okay. Then you are well aware of the rules, 14 but just a few things just to keep in mind. One, 15 Ms. Janess is taking down everything we say, so while 16 I understand nonverbal communications, head nods and 17 uh-huhs and huh-uhs, she can't get those down for the 18 record. So if you will just verbalize your responses 19 for me today; okay? 20 A. Okay. 21 Q. Second, you may anticipate where I am going on 22 a question and start to respond, but if you will wait 23 until I finish my question, I will let you finish 24 your answer so that we are not speaking over each 25 other. Okay?	1 Q. If you called Ozark home what years would you 2 have called Ozark home? 3 A. March 3rd of 1995 to January 15th of 2009. 4 Q. Okay. And did you ever serve on the city 5 council during that time? 6 A. I did not. 7 Q. Okay. Did you ever serve on an organization 8 called Main Street Ozark? 9 A. I worked with Main Street, but I don't believe 10 I ever served on the board. 11 Q. Okay. 12 A. I was a volunteer at different times. 13 Q. Okay. What years would you have volunteered 14 with Main Street Ozark? 15 A. Approximately? 16 Q. Yes, sir. 17 A. 1996 through 2000. 18 Q. Okay. Tell me a little bit about your 19 educational background. Where did you graduate high 20 school? 21 A. Washington, Illinois. 22 Q. Okay. And did you have any post high school 23 education? 24 A. No. 25 Q. Okay.
Page 6	Page 8
1 A. Okay. 2 Q. And if there is a question that I ask that you 3 don't understand, please let me know, and I will 4 rephrase it for you. Okay? 5 A. Okay. 6 Q. All right. Tell me your date of birth. 7 A. January 22nd, 1963. 8 Q. Okay. And what is your home address? 9 A. Physical address? 10 Q. Yes. 11 A. 8808 Moody Road, Fort Smith, Arkansas. 12 Q. Okay. And what is the best phone number to 13 reach you? 14 A. (479)264-7816. 15 Q. Okay. And what do you do for a living? 16 A. I work for Mickle, Wagner, Coleman surveying 17 and engineering firm. 18 Q. Okay. What do you do for them? 19 A. Primarily a project manager overseeing 20 municipal contracts, utility contracts. 21 Q. Okay. Have you ever lived in Ozark? 22 A. I have. 23 Q. Okay. Tell me about that. When did you live 24 in Ozark? 25 A. Inside the city limits, or be more specific.	1 A. Technical training only. 2 Q. Okay. Tell me about your technical training. 3 A. I went to courses that were supported through 4 Southern Arkansas University Environmental Academy. 5 Q. Okay. 6 A. Specifically water and wastewater operations 7 and management. 8 Q. When you were in Ozark from around March of '95 9 through January of 2009, how did you support 10 yourself? 11 A. I was employed by the City of Ozark. 12 Q. Okay. 13 A. From March of '95 through and including 14 December of 2000. 15 Q. And what did you do for the City of Ozark 16 during that time? 17 A. I oversaw the water and wastewater operations 18 for the city. 19 Q. Did you have any responsibility for any of the 20 streets? 21 A. Only if I tore them up while operating the 22 water and wastewater system. 23 Q. Okay. There has -- well, let's first look at 24 the things that you've brought with you today. What 25 did you bring with you? Let's start here.

2 (Pages 5 to 8)

Page 9 1 A. Okay. 2 Q. Well, I will let you start -- if there is an 3 order to this, I will let you start with the order. 4 A. There is not necessarily an order. 5 Q. Okay. 6 A. Some, some of these exhibits are dated. 7 Q. Okay. Well, let's start with this one, and may 8 I mark on this one? 9 A. These are for your use. 10 Q. Okay, okay. So I am going to mark this one as 11 Exhibit 247. 12 (Exhibit No. 247 was marked.) 13 BY MS. JONES: 14 Q. And when we talk about an exhibit if something 15 has been marked, if we can refer to it by that number 16 so that we can understand later on what we're talking 17 about. Okay? 18 A. Okay. 19 Q. So tell me what Exhibit 247 is. 20 A. It's a city map, Ozark, Arkansas, dated 21 February 1962. 22 Q. Okay. And why did you -- what was, what was 23 the purpose of bringing these maps today? 24 A. Whenever I was subpoenaed there was also a 25 principal owner of our engineering firm that was	Page 11 1 A. Not really, no. I have been distant from all 2 of this for many, many years, and other than hearsay 3 or reading the paper, I don't know anything. 4 Q. In your capacity at Mickle Wagner did you work 5 on any project involving the City of Ozark? 6 A. None of any significance, that I can recall. 7 Q. Okay. Let me just -- and I ask a lot of these 8 questions just so we know the parameters of what your 9 knowledge base is. 10 A. Okay. 11 Q. There is a number of projects that this lawsuit 12 sort of touches upon, and I want to see if you have 13 had anything to do with them either in any capacity, 14 whether it be an employee for the city, or a 15 volunteer for Main Street Ozark, or your employment 16 with Mickle Wagner. 17 A. Okay. 18 Q. But there is discussion about a marina project 19 using the -- there early on were talks of it being on 20 the north shore. It's now being talked about for the 21 south shore. Have you had any involvement with the 22 marina project? 23 A. Have not. 24 Q. Okay. There is talk about a north shore 25 hiking/biking trail between the railroad tracks and
Page 10 1 subpoenaed. 2 Q. Uh-huh. 3 A. His -- both of our subpoenas requested any 4 information that we had on file regarding this 5 specific case. 6 Q. Okay. 7 A. That's my understanding. 8 Q. Okay. So the things you have brought here 9 today would be what Mickle Wagner had on file for 10 this particular case? 11 A. That's correct. 12 Q. Okay. Let me back up a little bit and get a 13 little bit more background information. How did you 14 begin to work with Mickle Wagner? 15 A. I had ended my employment and resigned and was 16 looking for something in the same field, and they 17 offered me employment. 18 Q. Was there any particular reason that you 19 resigned from the City of Ozark? 20 A. Well, basically I had completed all of the 21 tasks that I had set out to complete and had actually 22 stayed a few years longer than I had expected to. 23 Q. Okay. Are you aware of the lawsuit that brings 24 us here today? Are you aware of -- do you have an 25 understanding of what that is about?	Page 12 1 the river. Have you had any involvement with any of 2 those plans? 3 A. I met with a volunteer from Main Street, Harvey 4 Waters -- 5 Q. Okay. 6 A. -- who was wanting to put a walking trail 7 across Gar Creek. 8 Q. Okay. 9 A. And I took some drawings he had, brought them 10 into the office, gave them to an engineer and said, 11 This is what Harvey gave me to give you. 12 Q. Okay. 13 A. So I barely touched on that. 14 Q. Okay. And what about a transient dock on the 15 north shore? 16 A. I have no knowledge of that. 17 Q. And what about the request to reinstall a 18 crossing on the north shore east of the depot? 19 A. I have had no involvement in that. 20 Q. Okay. When you were living in the city from 21 March of '95 to approximately December of 2000, did 22 you ever use a crossing east of the depot? 23 A. I have. 24 Q. Okay. Tell me what occasion and approximately 25 when.

3 (Pages 9 to 12)

Page 13 1 A. In mid 1995, the summer of 1995 as a 2 recreational visit a friend had taken me on a Jeep 3 ride down an old road and gave me some background on 4 the road. 5 And part of this was just getting me 6 familiar with Ozark and the dam and the, and a lot of 7 what is interesting to people that are involved in 8 civil projects. And so that was my first. 9 Q. Okay. 10 A. And I believe that is what we refer to as 11 Oliver Street. 12 Q. And did you refer to it as Oliver Street then? 13 A. I think he did. 14 Q. Okay. Who was your friend? 15 A. Jody Chrisman. 16 Q. Okay. I'm guessing in '95 you couldn't have 17 gone down the old road very far because there is a 18 river in the way? 19 A. That is correct. 20 Q. Okay. So tell me about where you started on 21 and -- okay. So let's say you crossed the railroad 22 tracks, where did you go from there? 23 A. I believe, if my memory serves me correctly. 24 Q. Uh-huh. 25 A. That was a long time ago --	Page 15 1 approximately 1996. 2 Q. Okay. 3 A. Give or take a year. Okay? 4 Q. All right. 5 A. We did a lot of projects for a lot of years, 6 but I -- I remember at that time we had crossed a 7 storm collecting box that collected the surface water 8 off of the roads, carried them to the river through 9 an underground pipeline. 10 Q. Okay. 11 A. I can refer to that in a drawing when we start 12 looking at these drawings and show you that pipeline. 13 Q. Okay. Where is -- okay. I'm looking at Exhibit 14 247. Can you put a blue "x" on where River Street 15 is? I'm sorry. I mean where Bell Street is. 16 A. Would you like for me to put it at the 17 intersection of River and Bell? 18 Q. That would be fine. 19 A. (Witness complies.) Okay. I have marked it 20 for you. 21 Q. Great. Thank you. Okay. So when you were on 22 this Jeep ride in the summer of 1995 you -- well, let 23 me back up. 24 You have also highlighted what says Olive 25 Street here. I don't see -- I guess maybe there is
Page 14 1 Q. Uh-huh. 2 A. -- that we had actually went off the end of 3 Bell Road. 4 Q. Okay. 5 A. Okay. And crossed the railroad tracks. And 6 then we would have turned left, which would be 7 southeast or east, you know, several hundred feet. 8 And it was, you know, a Jeep trail 9 basically, but it was a passable trail that we had 10 ridden down in a Jeep. And he was giving me the 11 background with his family and their involvement in 12 this area -- and they were construction-related 13 people -- and his knowledge. And that was what I 14 think he referred to as the old Oliver Street. 15 Q. Is Joe Chrisman still living? 16 A. Jody? 17 Q. Is Jody Chrisman still living? 18 A. To the best of my knowledge. 19 Q. Okay. So is there another time that you had an 20 occasion to cross over that crossing? 21 A. Particularly whenever we -- I was, again, the 22 manager overseeing the water department, and we had 23 done several upgrades of the water system, one of 24 them being on River Street between First Street and 25 Bell Street. And during -- that would have been	Page 16 1 an "r" that got cut off. You have highlighted this 2 section; correct? 3 A. Yes. 4 Q. Okay. And I guess that's where you wanted, 5 where we were wanting to pay attention; correct? 6 A. Well, that's in reference to where Oliver 7 Street came off of River Street, yes. Bell -- as I 8 said earlier, the access that I had used was off, off 9 of the end of Bell Street. 10 Q. Okay. So you never actually used -- I'm going 11 to do a square here at River and what shows Oliver on 12 this map. You never actually used this crossing; 13 correct? 14 A. Not that I recall. 15 Q. Okay. So the crossing that you used -- I'm 16 going to do a triangle -- would be somewhere 17 approximately at that triangle; correct? 18 A. I believe that is correct. 19 Q. Okay. All right. So -- now, you got these 20 maps because of the subpoena to your employer; 21 correct? 22 A. That is correct. 23 Q. Okay. Have you -- had you ever seen the map 24 until your employer gave this to you to bring to the 25 deposition?

Page 17 1 A. Not in this form. We had a lot of city maps 2 when I worked here that we referred to, you know, 3 quite often for locating utilities and different 4 things. 5 Q. Okay. 6 A. But no, not that particular document in that 7 form. 8 Q. Okay. 9 A. I may have seen the original maps from the 10 forties and the fifties and the sixties that were 11 part of the city files at that time. 12 Q. Okay. When you were an employee for the city 13 working on the water and wastewater management, did 14 you ever hear anyone refer to Oliver Street, other 15 than Mr. Chrisman? 16 A. Oh yeah. 17 Q. Okay. 18 A. Yeah, I mean, it was -- it has quite a history, 19 to be honest with you, from what I've heard. 20 Q. What people have told you? 21 A. Correct. 22 Q. You have done no independent research on your 23 own; correct? 24 A. No, I have not. 25 Q. All right. Let's see what else we have here.	Page 19 1 A. For what? 2 Q. For anything? 3 A. Water and wastewater. 4 Q. Okay. 5 A. Primarily. 6 Q. Okay. 7 A. Yeah. 8 Q. You would agree with me you don't have any 9 expertise in surveying or title work or anything to 10 that nature? 11 A. Not in title work. I do work with the 12 surveying and engineering firm on a hands-on 13 out-in-the-field basis, basically translating 14 surveying information into the contractors' hands in 15 order to build projects that we're on. 16 Q. Okay. But you, you don't sign off on the 17 surveying work? 18 A. I do not, no. 19 Q. Okay. And that's not what your, your expertise 20 is? 21 A. I am a field man. 22 Q. Okay. We're talking over each other, so let me 23 finish out my question. Okay? You don't have any 24 expertise in surveying that you would consider 25 yourself an expert to opine on?
Page 18 1 I will mark this map as 248. 2 (Exhibit No. 248 was marked.) 3 BY MS. JONES: 4 Q. And what is the significance of this map? I 5 show it says Mickle Wagner on it. Where's this from? 6 A. Exhibit 248 is a September of 1980 map. This 7 was put together by Mickle Wagner Associates. 8 Q. Did you put this map together? 9 A. No. 10 Q. Did you have anything to do with putting 11 together any of these maps? 12 A. No. 13 Q. Have you done any work surveying or mapping out 14 anything in the City of Ozark? 15 A. Of any kind? 16 Q. Yes. 17 A. When they were involved in my projects, that 18 was part of what we did was shoot the elevation -- 19 you know, about platting and plotting properties. 20 Q. Yes, sir. 21 A. Boundary lines and stuff like that, no. 22 Q. Okay. 23 A. I'm not a registered surveyor. 24 Q. Okay. That was my other question. Are you 25 licensed at all in the State of Arkansas?	Page 20 1 A. Absolutely not. 2 Q. Okay. 3 A. You asked me what this was. 4 Q. Yes. 5 A. Did you want me to continue? 6 Q. Yes, go ahead. 7 A. Okay. This is a -- this Exhibit 248 dated 8 September 1980 is a map of the City of Ozark that was 9 prepared by Mickle Wagner and Associates. Initials 10 Approved By tell me that it was from James Mickle, 11 who was the original founder who has passed away. 12 Q. Okay. 13 A. That's the J.D.M. It was -- and it's called 14 out here to be a bike way. 15 Q. Okay. 16 A. Proposed bike way trail. 17 Q. It looks like a bike trail around Gar Creek; 18 right? 19 A. Well -- (Witness reviews document.) It's a 20 proposed bike way trail that runs from approximately 21 Highway 64 and 7th Street down to Gar Creek. 22 Q. Okay. 23 A. So based on -- I would need to study it a 24 little more. It looks to me like it's 2,200 feet 25 long.

5 (Pages 17 to 20)

Page 21	Page 23
1 Q. Who would be the person that would really know 2 about these documents on why they were created and 3 where they came from? 4 A. I don't know. You would have to consult our 5 firm. 6 Q. Okay. Because I was led to believe that you 7 were the person that would know about the current 8 sort of work that Mickle Wagner was doing with regard 9 to this project. Would that be accurate or not? 10 A. With regards to the bike way project? 11 Q. No. 12 A. Exhibit 248? 13 Q. Anything involving this lawsuit. 14 A. Involving the lawsuit? 15 Q. Yes, sir. 16 A. Okay. The document -- no, Andy Dribble has 17 been the engineer involved in that. 18 Q. Okay. 19 A. He has been the primary engineer involved in 20 the riverfront. 21 Q. And you have had no, no dealings with the 22 riverfront project? 23 A. None. 24 Q. Okay. Do you know why you were chosen to be 25 here today?	1 I think, on behalf of the subpoena they 2 received. 3 I had reviewed it with the engineer 4 basically to walk you through what we were 5 seeing, and that's my involvement with 6 that. 7 MR. BROCKETT: Okay. 8 THE WITNESS: What you're looking at 9 now -- 10 MS. JONES: Hold on. Just let me go 11 through everything, and I will ask you 12 questions, and you can respond to me. 13 Okay? 14 MR. BROCKETT: And I think we probably 15 want to add Andy Dribble to either the 9th 16 or 10th. 17 MS. JONES: We will have to talk about 18 that off the record because I don't believe 19 that we actually have room on the 9th or 20 10th. 21 MR. BROCKETT: Okay. 22 MS. JONES: But we will look at that. 23 MR. BROCKETT: Okay. 24 MS. JONES: Let's go off the record 25 for a minute.
Page 22	Page 24
1 A. I was -- no, I was subpoenaed to be here. 2 Q. Well, actually you weren't. I did not issue a 3 subpoena for you, I don't believe. 4 MR. BROCKETT: There was to him. 5 MS. JONES: I did? Well, then, I take 6 that back. 7 BY MS. JONES: 8 Q. If it was represented to me that you were the 9 person that could talk about the use of this from 10 Mickle Wagner's point of view, we know that I need to 11 talk to someone else at Mickle Wagner; correct? 12 A. (Witness nods head.) 13 Q. Okay. All right. 14 MS. JONES: All right. Let me look at 15 these. 16 MR. BROCKETT: And just to be clear, I 17 think he was listed as a Rule 26 witness as 18 someone who has used the Oliver Street 19 crossing. 20 And then as part of his subpoena it 21 said bring any information. I guess that's 22 where that came from. 23 MS. JONES: Okay. 24 THE WITNESS: Which I had no 25 information. This was sent by the office.	1 (Off-the-record discussion.) 2 (Exhibit Nos. 248 - 253 were marked.) 3 BY MS. JONES: 4 Q. All right. I've marked as Exhibits 248, 249, 5 250, 51, 52 and 53 some documents you brought with 6 you and that we probably need to talk to someone else 7 about; correct? 8 A. (Witness nods head.) 9 Q. That would be correct? 10 A. That would be correct. 11 Q. Okay. So Mr. Dribble would probably be the 12 best person to talk with about these; correct? 13 A. That would be correct. 14 Q. Okay. 15 A. I believe you had subpoenaed Mr. Mickle, who 16 has no knowledge of any of this. He was not the 17 engineer involved in it. Mr. Dribble would be that 18 person. 19 Q. Do you know why Sandy Key's name is on Exhibit 20 251? Is that your handwriting or someone else's? 21 A. That's my handwriting. 22 Q. Okay. What's that? 23 A. I had a note that that was part of the stuff 24 that I think she had asked to bring down or 25 something. Mr. Dribble had given me that to bring,

6 (Pages 21 to 24)

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Page 25	Page 27
1 bring down. 2 Q. Is it your understanding that -- what was -- 3 well, let me ask you this. Do you have any idea on 4 252 what work Mickie Wagner did, or do I need to just 5 talk to Mr. Dribble? 6 A. That is a copy of everything, I believe, that 7 went to the Corps of Engineers -- 8 Q. Okay. 9 A. -- regarding permitting. 10 Q. Okay. All right. 11 A. And a copy of our file, I believe. 12 Q. And I'm not trying to ask you to say something 13 on the record that you don't know about. That's why 14 I'm asking, just to know what your knowledge base is 15 and who I need to talk with you about. Okay? 16 And then, because this is your original, we 17 have just kind of put it on a sticky for 253, an 18 aerial photograph; is that correct? 19 A. It's a highway department aerial photograph. I 20 believe it's dated 1965 -- 21 Q. Okay. 22 A. -- showing the Oliver Street crossing. 23 Q. Okay. I am going to object to responsiveness. 24 A. Okay. 25 Q. Move to strike. Okay. Have you told me	1 about that. Have you ever had any conversations with 2 Union Pacific railroad? 3 A. I have not. 4 Q. Okay. 5 MS. JONES: Well, I thank you so much 6 for your time. I appreciate you coming in 7 and talking to us today. 8 THE WITNESS: Okay. 9 EXAMINATION 10 BY MR. BROCKETT: 11 Q. I just have one. The time in '95 when you and 12 Mr. Chrisman went across it, you said you took a left 13 as you crossed it. Do you know how far down you 14 would have gone to the left after you crossed? 15 A. As far as we could go. 16 Q. Okay. 17 A. Which -- 18 Q. Do you have kind of an approximate? Was it 19 feet? Was it yards, I mean? 20 A. No, it was, it was several hundred feet, and 21 I'm just going to guess that we went 800, 1200 feet 22 before we stopped. 23 And we sat there for a while, and we talked 24 about not even the road but the dam project and what 25 was going on in the background, and then we, we
Page 26	Page 28
1 everything about your use of the crossing? 2 A. No. 3 Q. Okay. Tell me when else did you use the 4 crossing or what else do you have to tell me? 5 A. In approximately 1996. 6 Q. Okay. 7 A. As I mentioned, we were doing the utility work 8 along River Street, and we had crossed a storm 9 collector's box where the water drain line from that 10 box discharged to the Arkansas River. 11 Q. Uh-huh. 12 A. And on that occasion or during that week I had 13 the superintendent for the street department then. 14 Q. Okay. 15 A. He and I -- of course he was street department, 16 and I am water department -- he and I had accessed 17 that crossing onto Oliver Street trying to find the 18 end of the drain line that went to the river. And 19 that lasted a couple of, a couple of days in that 20 week that we were doing construction. 21 Q. Okay. 22 A. That is the last and final time -- 23 Q. Okay. 24 A. -- that I used that access. 25 Q. Okay, great. Thank you so much for telling me	1 turned around and came back. 2 Q. Okay. All right. But you're not sure whether 3 or not it was the Bell Street that you went off to or 4 if you went over closer to the depot? 5 A. I was new to the area. 6 Q. Okay. 7 A. I had just lived here about three months and 8 was trying to get acquainted with things, and Jody 9 took me to different places around town. And this 10 was just one of the stops that we had made over a 11 period of weeks and months, so I am not real clear. 12 Q. Okay. 13 A. To be honest, I'm not. 14 Q. And when you're talking about the, I guess, the 15 drainage, do you remember if you were close to the 16 depot, or were you further away from the depot? 17 A. I believe that I was at or very close to the 18 intersection of River and Bell. 19 Q. Okay. 20 A. If, if we would have been to the west it 21 wouldn't have been much. 22 Q. Okay. 23 MR. BROCKETT: I don't have any 24 questions. 25 EXAMINATION

7 (Pages 25 to 28)

Page 29

1 BY MS. JONES:

2 Q. Okay. So both of those times, both when you
 3 were with Mr. Chrisman and during the water treatment
 4 and the sewer line, you were probably closer, you
 5 think, on this where you put a triangle on Bell and
 6 River; correct?

7 **A. On the second occasion I know for sure that**
 8 **that's very close to where we had came on to that,**
 9 **the old Oliver Street.**

10 Q. Okay.

11 **A. The first time I'm not real sure because,**
 12 **again, I wasn't really familiar with where we were**
 13 **going or what we were doing. He just pulled in here,**
 14 **Let me show you this --**

15 Q. Right.

16 **A. -- so...**

17 Q. And these were kind of old gravel-type roads;
 18 correct?

19 **A. That is correct.**

20 Q. Okay. And there wasn't street signs or
 21 anything; correct?

22 **A. Not that I recall.**

23 MS. JONES: Okay. Thank you so much.
 I appreciate your time.

24 MR. BROCKETT: I don't have anything
 else.

25 (The deposition was concluded at 1:42 p.m.)

Page 30

1 COURT REPORTER'S CERTIFICATE

2 STATE OF ARKANSAS)

)ss.

3 COUNTY OF SALINE)

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

5 Notary Public in and for Saline County, Arkansas do

6 hereby certify that the facts stated by me in the

7 caption of the foregoing matter are true; and that

8 the foregoing matter was transcribed by me, to the

9 best of my ability and understanding, from my machine

10 shorthand notes taken at the time and place set out

11 in the caption hereto.

12 In accordance with Rule 30(e) of the

13 Rules of Civil Procedure, review of the transcript

14 was waived by the deponent or a party thereto.

15 I FURTHER CERTIFY that I am neither

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

17 parties to the action in which this proceeding was

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

19 employee of any attorney or counsel employed by the

20 parties hereto, not financially interested or

21 otherwise, in the outcome of this action.

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

23

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

8 (Pages 29 to 30)

Transcript of the Testimony of

Richard D. McClellan

Date: March 3, 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>

Richard D. McClellan 3/3/2015

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 RICHARD D. MCCLELLAN March 3, 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. 16 8 9 EXAMINATION 10 By Ms. Jones 17 11 E X H I B I T S 12 Exhibit No. 246 (Subpoena). 5 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 RICHARD D. 2 MCCLELLAN, a witness produced at the request of the 3 Defendants, was taken in the above-styled and 4 numbered cause on the 3rd day of March, 2015, before 5 Janess Ferguson Smith, Certified Court Reporter and 6 Notary Public in and for Saline County, Arkansas, at 7 the Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas, at 9:35 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 RICHARD D. MCCLELLAN may be taken for 17 any and all purposes according to the Federal Rules 18 of Civil Procedure. 19 * * * * * 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Richard D. McClellan 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 5 1 RICHARD D. MCCLELLAN, 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. McClellan, my name is Jamie Jones, and I 9 know you're hard of hearing. So at any point you 10 need me to speak up or repeat myself, you let me 11 know, and I will do so. Okay? 12 A. Okay. 13 Q. Okay. I represent the railroad in the action 14 that the city has filed against it. You were 15 subpoenaed here today; correct? 16 A. (Witness nods head.) 17 (Exhibit No. 246 was marked.) 18 Q. All right. I have attached that as 246. The 19 subpoena asked you to bring certain documents with 20 you. Did you see that on the subpoena? 21 A. No, I hadn't paid much attention to that. 22 Q. Okay. I'm going to ask you to -- 23 A. I can't write, I mean. 24 Q. No, I understand. Can you read if I ask you to 25 read one through six? I am just going to ask you to	Page 7 1 I bought me some manhole forms, and I built 2 manholes, made enough money to buy me a backhoe and 3 dozer and dump trucks. And I done that for 12 years. 4 And I was getting on up there, you know, in 5 age, so I sold my stuff and -- well, I tried to get 6 my boy to go in with me, but he just got married, and 7 I couldn't afford no insurance, so he, his wife said 8 no. 9 So I sold my -- I sold out. Then I went to 10 work for the city up here being the street 11 superintendent. And they didn't pay enough money so 12 I hired, went to the mayor and hired my, got him to 13 hire my wife over the parks and stuff. 14 And here I sit today. I got fired for 15 telling the truth. The mayor was drawing an illegal 16 IRA, and I reported her to the council. 17 First of all, I reported it to the council. 18 And they wouldn't do anything, so I reported what I 19 knew about it. And then she got beat in election, 20 and then she paid the city back. In my opinion, she 21 was going to steal that money. 22 Q. All right. So let me kind of make sure I 23 understand. 24 A. It was \$12,000. 25 Q. So the mayor that you're talking about was
Page 6 1 read that and then tell me if you would have anything 2 like that. Okay? 3 A. Okay. (Witness reviews document.) Okay. I 4 have none. 5 Q. Okay. Thank you so much. Tell me a little bit 6 about your background, where you were born, how long 7 you've lived here. 8 A. I was born in Altus, Arkansas. I lived at Cass 9 when I was, you know, a little boy. My grandparents 10 lived out there, and then we moved to town when I was 11 about, let's see, seven years old. 12 I lived up there by the hospital helicopter 13 pad in a two-story house on the corner. They tore it 14 down. I lived there -- well, my grandparents, they 15 lived one, two, about two or three blocks away. My 16 mom and dad got a divorce, and I lived with my 17 grandparents up there. 18 Q. Okay. 19 A. And I went to school and got my football jacket 20 and class ring, and I -- then I quit and went to work 21 on the interstate when I was, I guess, a junior. I 22 would have been a senior. 23 Then I went to work building roads and 24 subdivisions, water, sewer, and roads, curbs and 25 gutters. I done that for several years.	Page 8 1 Carol Sneath? 2 A. Yes. 3 Q. Okay. And so there was an issue with an IRA; 4 is that correct? 5 A. Yeah. 6 Q. Tell me what the issue was. 7 A. Well, after ten years the clerk and the mayor 8 automatically gets half salary. So once you qualify 9 for that, you can't draw another one. 10 Q. Okay. 11 A. That's what it was. 12 Q. Okay. 13 A. And she went ahead and drewed for, until Sonya 14 Eveld caught her in 2000 -- the seventh month of 15 2012. And then Carol stopped, and she was going to 16 take that money when she got beat, but she couldn't 17 take it after I reported it. 18 Q. Okay. And so you were fired, you believe, as a 19 result of reporting -- 20 A. Well, let's go back a little bit. Let's go 21 back to 2000. 22 Q. Yes, sir. 23 A. I was on the council -- 24 Q. Okay. 25 A. -- until 2006. Then I was hired to be the

2 (Pages 5 to 8)

Page 9 1 street supervisor by Vernon McDaniel. 2 Q. Okay. All right. So I guess what you were 3 telling me is you thought you had been fired by Carol 4 Sneath because of reporting her for this IRA 5 violation? 6 A. Well, that ain't what she said, but she said I 7 left a meeting, about the high school road. 8 Q. Okay. 9 A. But I leave all meetings. I mean, when I get 10 done talking, I leave. 11 Q. All right. 12 A. I don't stay for the other stuff I ain't 13 involved with. 14 Q. Okay. 15 A. And she said I left a meeting, but she left the 16 room, her and Sonya, and I was disoriented, I mean 17 confused. I didn't know what was going on. 18 Q. When was your stroke? 19 A. My stroke was -- let me tell you about a 20 stroke. It never ends. 21 Q. Uh-huh. 22 A. There's pain all of the time. But you get, you 23 can't move your arm or your leg, but if you go to 24 therapy you can move it, you know. But, see, that 25 hurts right there and right there in my muscle. I	Page 11 1 a backhoe right now, but that's all I can do. I 2 can't -- if I walk to the, let's say the church up 3 here, that's about as far as I can go. My chest 4 starts burning. 5 See, they got me on heart pills. I got a 6 heart problem, too, and diabetic, and I ain't going 7 to lie. 8 Q. No, sir. And I think I went through this 9 little bit of -- I have done a number of these since 10 early this morning, so I'm starting to forget what 11 I've said and not said. At any point if you need a 12 break you let me know, and we'll take one today. 13 Okay? 14 A. Okay. 15 Q. And Ms. Janess is getting down everything we 16 say today, so, and you have been doing a really good 17 job of this today, but just make sure you verbalize 18 your responses because I can't get -- she can't get 19 down head nods, and you've done a great job of that 20 today, but -- 21 A. Can't what? 22 Q. Verbalizing your responses, you have done a 23 great job, but if I ask you to say "yes" or "no" or 24 verbalize if you shook your head or something, that's 25 only for the record; okay?
Page 10 1 used to be 210-pounds. I'm 165 now. 2 Q. Uh-huh. 3 A. So it kills you eventually. 4 Q. What year was your stroke? 5 A. February the 2nd, two years ago. 6 Q. Okay. Are you on any -- well, I guess is it 7 true to say that there may be, there may be things 8 that's hard for you to remember because of your 9 stroke? 10 A. No. I can remember back when I was a baby. 11 Q. Okay. 12 A. I mean five years old. 13 Q. Okay. Do you take any medication that affects 14 your ability to remember anything? 15 A. No. 16 Q. Okay. 17 A. I just can't -- I can think just like I used 18 to. 19 Q. Right. 20 A. But I can't explain it like I want to. 21 Q. I understand. 22 A. You know, I get frustrated. I'm just as smart 23 as I always was. 24 Q. Uh-huh. 25 A. I mean, I know I can't do stuff, but I can run	Page 12 1 A. Okay. 2 Q. And if I ask you a question today that you 3 don't understand, you let me know, and I will 4 rephrase it for you; okay? 5 A. Okay. 6 Q. Do you recall -- do you understand what the 7 lawsuit here between the city and Union Pacific 8 Railroad is about? Do you -- are you aware of that 9 lawsuit? 10 A. Yeah, I'm not for it or against it. 11 Q. No, and I'm just -- are you aware of kind of 12 what it's about? 13 A. About the road going over it? 14 Q. Yes, sir. 15 A. Yeah. 16 Q. Okay. Do you remember a crossing -- remind me. 17 It's east of the depot; right? I'm getting it 18 confused. 19 MR. BROCKETT: Yeah. 20 Q. Okay. East of the depot? 21 A. Yeah, there was a dump down there. 22 Q. Okay. When's the last time you would have used 23 that crossing? 24 A. Oh, let me see. 25 Q. And you can give me a --

3 (Pages 9 to 12)

Page 13 1 A. Probably -- on foot -- 2 Q. Okay. 3 A. -- or anything? Well, I was about 12 years 4 old. 5 Q. Okay. 6 A. Probably. 7 Q. And did I get your date of birth? 8 A. No. 9 Q. I don't think I did. What is your date of 10 birth? 11 A. 11-23-51. 12 Q. Okay. 13 A. The day before Kennedy got killed. 14 Q. Yes, it was. You have never done -- well, let 15 me ask you this. Do you know what -- if I say the 16 street Oliver Street, would you know where that was? 17 A. Well, now I would. I didn't know until this 18 all came up, you know. 19 Q. Okay. So when you were 12 and you used that 20 crossing, you didn't call it Oliver Street, to your 21 knowledge? 22 A. I didn't. 23 Q. Okay. Did you call it anything? 24 A. Well, it was just a dirt road that, that went 25 over the tracks and down to a sandbar, and you drove	Page 15 1 Q. Okay. And I'm assuming you started with one 2 mayor and then went to a different mayor. What mayor 3 did you start with? 4 A. I started with Todd Timmerman. 5 Q. And then who was the next mayor? 6 A. He went to prison. 7 Q. Right. Who was the mayor after Mr. Timmerman? 8 A. That was real stressful for me. 9 Q. Okay. 10 A. I mean, he had five kids. That broke my heart 11 really to have to send him to prison. 12 Q. Who was the mayor after Mayor Timmerman? 13 A. Bat Coley. 14 Q. Okay. Do you -- 15 A. I don't know his first name. He is dead. We 16 buried him. 17 Q. Do you remember at any point when you were on 18 the council anyone, any discussion on the council 19 about the crossing? 20 A. No. 21 Q. Okay. All right. 22 A. I don't think it's in the minutes. You would 23 have to check. 24 Q. Okay. And there were sometimes discussions 25 that happened that aren't in the minutes; correct?
Page 14 1 down that sandbar -- it was just a, kind of a 2 homemade road. You know what I mean? 3 Q. Uh-huh. 4 A. Just -- it was made by cars and trucks, you 5 know. And you drove down to the sandbar, and that 6 was a huge sandbar there, and it was just a dump. 7 Everybody dumped their trash out there from 8 everywhere. And they'd burn it. And when you would 9 dump -- there was a family that lived down there 10 named the Hobbs, Hobbs, and they lived in a cardboard 11 house. 12 When you would dump your stuff out, they 13 would run over there. They were poor, real poor 14 people, and they would run over there and look and 15 see what you dumped. 16 Q. Okay. 17 A. And I remember asking my dad, I said, Does them 18 people live down here? And he said yes. 19 Q. Okay. 20 A. So I thought that was terrible. 21 Q. What -- you said you served on the city council 22 from 2000 to 2006? 23 A. Yes. 24 Q. What ward did you represent? 25 A. Three. Two.	Page 16 1 A. Okay, repeat. 2 Q. Never mind. Withdrawn. 3 MS. JONES: I think that's all the 4 questions I have for you, sir. Thank you 5 so much. 6 EXAMINATION 7 BY MR. BROCKETT: 8 Q. I've got a couple. Do you remember any other 9 families that lived down there, down by the dump? 10 A. No. 11 Q. Just the Hobbs family was the only one? 12 A. I don't -- yeah, I couldn't believe they lived 13 there. 14 Q. Right. 15 A. You know, but that's the only ones I know of. 16 Q. Okay. Do you remember a pallet plant being 17 down there or a lumber company? 18 A. No. 19 Q. Okay. 20 MR. BROCKETT: All right. That's all 21 I've got. 22 MS. JONES: Thank you for your time, 23 sir. I appreciate it. 24 THE WITNESS: Well, hold it. I have 25 got one more thing to say.

4 (Pages 13 to 16)

Page 17 1 MS. JONES: Yes, sir? 2 THE WITNESS: Now, this is for the 3 health and welfare of the people. That 4 manhole on that corner of Bell? 5 MR. BROCKETT: Uh-huh. 6 THE WITNESS: And river, the EPA needs 7 to know about that because Cecil Zoycopper 8 (phonetic) put an overflow pipe that goes 9 from that manhole down to a drain box. 10 MR. BROCKETT: Okay. 11 THE WITNESS: Raw sewer, raw sewer. 12 If it rains, the raw sewer runs into the, 13 under the railroad track and into the 14 river. 15 You can't build nothing on that river 16 on account of that raw sewer until that's 17 fixed. 18 EXAMINATION 19 BY MS. JONES: 20 Q. Okay. 21 A. And y'all have a pipe. That pipe is almost 22 stopped up. So when it floods, you know, like a 23 two-inch rain, there's two foot of water on that 24 corner right there. 25 And somebody needs to -- I'm not going to	Page 19 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 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 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991 992 993 994 995 996 997 998 999 1000
Page 18 1 do it, but I've told the mayor, and I've told 2 different people. I saw Cecil put that in, and he 3 went like that (gestures), and I drove on. 4 Q. You're mimicking putting a finger to your lips 5 like be quiet? 6 A. Yeah. 7 Q. Okay. All right, thank you so much. 8 A. That is, that is a federal offense. That's 9 EPA. 10 Q. Okay. All right. Thank you so much. 11 A. Okay. 12 Q. I appreciate your time today. 13 A. Now, I'm not for or against the riverfront, but 14 that's got to be fixed before you can build anything 15 down there. 16 MS. JONES: All right. Thank you so 17 much. 18 (The deposition was concluded at 9:56 a.m.) 19 20 21 22 23 24 25	

Transcript of the Testimony of

Andrew Post

Date: March 3, 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>](http://www.bushmanreporting.com)

Andrew Post 3/3/2015

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 ANDREW POST March 3, 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 7 8 9 10 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 ANDREW POST, 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 10:32 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 ANDREW POST 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

Page 5 1 ANDREW POST. 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. Post, we met briefly, but my name is Jamie 9 Jones. I represent Union Pacific Railroad Company in 10 the city's action that it has filed against it. Have 11 you ever given a deposition before? 12 A. Yes. 13 Q. Okay. Well, then, you kind of know what's 14 going on today but just some brief reminders. 15 Ms. Janess, our court reporter, is getting everything 16 we say down, which means a couple of things. 17 You may anticipate exactly where I'm headed 18 in a question, but if you will allow me to finish my 19 question, I will allow you to finish your answer so 20 we are not speaking on top of one another. Okay? 21 A. Okay. 22 Q. That will make her job a lot easier. The 23 second thing is she can't get down nonverbal 24 responses, so although I understand head nods or 25 uh-huhs or huh-uhs, she can't get that down, so I	Page 7 1 A. That's correct. 2 Q. Okay. Have you ever been on the city council 3 for Ozark? 4 A. I have not. 5 Q. Okay. Have you ever been on Main Street Ozark? 6 A. I have not. 7 Q. Okay. Have you ever done anything in local 8 city government in Ozark? 9 A. Not in city government, but I've been active in 10 participating. 11 Q. Okay. 12 A. I have been in other forms of government. 13 Q. Okay. Tell me -- do you understand or do you. 14 do you have any knowledge about what this lawsuit is 15 about? 16 A. I don't totally understand what it's about. 17 Q. Okay. Have you -- you have been listed on the 18 city's witness list as somebody to talk about the use 19 of a crossing east of the depot in downtown Ozark. 20 Do you know where that is located? 21 A. Yes. 22 Q. Okay. Have you ever used a crossing located 23 just east of the depot in downtown Ozark? 24 A. Yes. 25 Q. Okay. Can you tell me what occasion you used
Page 6 1 will ask you to verbalize your responses. Okay? 2 A. Understood. 3 Q. You will probably forget, as does everyone 4 sitting in your seat, and I will remind you. I don't 5 do it to be rude. All right? 6 A. Thank you. 7 Q. And if at any point you need a break, I don't 8 think we will be very long, but if you need a break, 9 you just let me know, and we will take one. Okay? 10 A. Very good. 11 Q. All right. Now, why don't you go ahead and 12 give us your home address? 13 A. 8000 Beulah Land Drive, Ozark, Arkansas. 14 Q. Okay. And what is the best phone number to 15 reach you? 16 A. (479)209-4614. 17 Q. Okay. Mr. Post, have you lived in Ozark all of 18 your life? 19 A. Except when I was away at school, yes. 20 Q. Okay. Tell me about your educational 21 background. 22 A. I have a four-year college degree, BSBA from 23 University of Arkansas, business administration. 24 Q. Okay. And your family is in the wine making 25 business; correct?	Page 8 1 it for and approximately the year? 2 A. We were in that area in 1981 offloading tanks 3 off a railcar, and I would imagine -- the main reason 4 why we crossed the tracks then was really to park a 5 vehicle. 6 I also was in that area as a -- growing up 7 as a child I would go down to the river there for 8 fishing. I would also as a teenager. 9 And in my twenties I went over there to 10 harvest bamboo or cane. I call it cane. I think 11 technically it's bamboo, not a lot, but I would get 12 what a lot of people would think of as fishing poles. 13 We used it in the vineyard for training young vines 14 up. 15 Q. Okay. What's your date of birth? 16 A. It's 11-12-1959. 17 Q. Okay. So that makes you how old as we sit here 18 today? 19 A. I'm 55. 20 Q. Okay. So the -- the last time, then, as you've 21 kind of gone through the different times you might 22 have used that crossing, the most recent would have 23 been this '81 offloading tanks off of a railcar; is 24 that right? 25 A. That's the last time I can remember.

2 (Pages 5 to 8)

Page 9 1 Q. Okay. All right. Now tell me, you were 2 offloading tanks off a railcar. Can you explain 3 that? Can you tell me, was it a Union Pacific car 4 you were using, or was there some other railroad that 5 was using the line? 6 A. I don't remember which railroad it was. 7 Q. Okay. But -- 8 A. But I ordered ten 4,000-gallon tanks that came 9 from spring, from Washington, Missouri. Zero 10 Manufacturing produced some wine tanks for me. 11 Q. Okay. 12 A. And then I had -- I hired Marshall Chrisman to 13 unload them, and Marshall, Marshall's son, Steve, ran 14 the crane. 15 Q. Okay. 16 A. And offloaded the tanks onto a trailer. 17 Q. Okay. I assume that there was some 18 coordination with the railroad in order to get that 19 done then; correct? 20 A. Yes. 21 Q. Okay. You had permission from the railroad to 22 be there; correct? 23 A. Well, that's where they parked the car. 24 Q. Right. So there had been some coordination? 25 A. I don't remember getting permission from the	Page 11 1 A. I know that it's Oliver Street, but there was 2 also another crossing down by Bell Street. 3 Q. Okay. 4 A. That we did talk about. But did I know then 5 what the name of the street was, no. I did not know 6 what the name of the street was. 7 Q. And you know now, you have been told that the 8 city calls it Oliver Street because of this lawsuit; 9 correct? 10 A. I understood that it was always called Oliver 11 Street, irregardless of this lawsuit. 12 Q. But you don't have any personal knowledge of 13 that? 14 A. Well, yes, I read it on maps. 15 Q. Okay. What maps have you read it on? 16 A. City maps. I have seen it on city maps. 17 Q. Okay. Have you done any investigation as to 18 whether or not Oliver Street was a city street? 19 A. No, I did not. 20 Q. Okay. You don't have any knowledge as to 21 whether or not the city had done anything official to 22 make Oliver Street a public street; correct? 23 A. I don't have that information. 24 Q. Okay. 25 MS. JONES: All right. Thank you for
Page 10 1 railroad -- 2 Q. Okay. 3 A. -- but they parked the car there. 4 Q. Right, and there, obviously, had to be some 5 coordination from them, they knew to park it there so 6 that you could get the tanks off of it; correct? 7 A. I don't know how they knew to park it there. I 8 really don't. 9 Q. Okay. All right. I guess, I guess I'm just, 10 from a commonsensical level they weren't anticipating 11 that you were going to steal them off the car. They 12 knew that somebody was coming to get them off the car 13 for you; right? 14 A. Yes. 15 Q. Okay. All right. Is that kind of the extent 16 of your use of that crossing that we have talked 17 about today? 18 A. For me, yes. 19 Q. Okay. And when we're talking -- you don't have 20 any knowledge about the -- back up. The street that 21 this crossing was on, do you know what that street 22 was called? 23 A. I do now because I know, I know that much about 24 what's going on. 25 Q. Okay.	Page 12 1 your time. I appreciate it here today. 2 THE WITNESS: You're welcome, Jamie. 3 MR. BROCKETT: No questions. 4 (The deposition was concluded at 10:41 a.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

3 (Pages 9 to 12)

Andrew Post 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(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 3rd day of March, 2015.

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

4 (Page 13)

Janeess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Matthew Post

Date: March 3, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

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<www.bushmanreporting.com>

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 MATTHEW POST March 3, 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. 11 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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Matthew Post 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 5	Page 7
1 MATTHEW POST. 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. Post, my name is Jamie Jones. I represent 9 Union Pacific Railroad in this action that's been 10 brought against it. Have you ever given a deposition 11 before? 12 A. Yes. 13 Q. Okay. Since you're familiar, I'll just kind of 14 hit some highlights. Ms. Janess, our court reporter, 15 is taking down everything we say, which means a 16 couple of things for you and I. 17 First, I understand head nods and uh-huhs 18 and huh-uhs and other nonverbal communications, but 19 she can't get that down for the record, so if you 20 will verbalize your responses to me. Okay? 21 A. Yes, okay. 22 Q. And you will probably forget that at some 23 point, because every witness does. If I remind you, 24 I do it just for our record, not be rude. Okay? 25 A. Okay.	1 A. Yes. 2 Q. Okay. When were you on Main Street Ozark? 3 A. Oh, few times a week, I mean. 4 Q. So are you a current member? 5 A. Yeah. 6 Q. Okay. And how long have you been a member of 7 Main Street Ozark? 8 A. No, Main Street Ozark. 9 Q. Oh, you meant -- 10 A. I thought you said on Main Street. No, I have 11 not been a member of Main Street. 12 Q. Okay. And that was an example of what I will 13 tell you now, sometimes I am going to ask a really 14 bad question, and when I do just correct me and have 15 we rephrase it for you. Okay. 16 A. Okay. 17 Q. Okay. So you have never served on the 18 organization Main Street Ozark? 19 A. No, I haven't. 20 Q. Okay. Are you -- have you at any point lived 21 in Ozark? 22 A. No. 23 Q. Okay. So you have always lived in Altus or 24 outside of Ozark proper? 25 A. All of my life.
Page 6	Page 8
1 Q. And the other thing is, you may anticipate 2 where I'm going with the question and start to 3 answer, but if you will allow me to get my full 4 question out, I will allow you to fully answer the 5 question before I start speaking again, so we are not 6 speaking on top of one another. All right? 7 A. All right. 8 Q. And this probably won't take very long. You 9 notice it didn't take very long with your son, so we 10 probably won't take too long today, but if at any 11 point you need a break or you need a drink water or 12 something, you let me know, and we will take care of 13 that for you today. Okay? 14 A. Okay. 15 Q. Can you give me your date of birth? 16 A. March the 15th, 1925. 17 Q. And what is your home address? 18 A. 1808 Saint Mary's Road, Altus, Arkansas. 19 Q. Okay. And what is the best phone number to 20 reach you? 21 A. 468-2321. 22 Q. Okay. And have you ever been involved with 23 Ozark city politics? 24 A. No. 25 Q. Okay. Have you ever been on Main Street Ozark?	1 Q. Okay. Do you understand what this lawsuit is 2 about? 3 A. I think I do. 4 Q. Okay. What is your understanding? 5 A. That there is a couple of streets down the 6 railroad track that were closed, and Ozark City wants 7 to open them again. 8 Q. Okay. In particular there is a, there was a 9 crossing east of the depot in downtown Ozark that the 10 city is referring to as Oliver Street. Have you ever 11 heard of Oliver Street? 12 A. Yes. 13 Q. Okay. When did you first hear of Oliver 14 Street? 15 A. Oh, it's been a long time ago. 16 Q. Okay. Did you hear it referred to as Oliver 17 Street or just knew that there was a street? 18 A. I just knew that it was a street. 19 Q. Okay. You didn't know what the name of it was? 20 A. No. 21 Q. Okay. And that crossing -- tell me about that 22 crossing. Did you ever use it? 23 A. I, I used -- it was one of them Oliver 24 Street -- I did use Oliver Street as much as the one 25 below, east of there that I went across once in a

2 (Pages 5 to 8)

Page 9 1 while. 2 Q. Okay. So you never used the crossing east of 3 the depot that the city is referring to as Oliver 4 Street? 5 A. I don't recall. 6 Q. Okay. 7 MS. JONES: Is there any other reason 8 that you have listed him as a witness? 9 MR. BROCKETT: No. 10 MS. JONES: Okay. 11 MR. BROCKETT: My understanding was 12 that he had used the Oliver Street 13 crossing. 14 MS. JONES: Okay. 15 BY MS. JONES: 16 Q. All right. So, Mr. Post -- 17 A. Well, I'm not sure what street that it was. 18 Q. Tell me the crossing that you have a memory of 19 using. Let's start there. 20 A. We went, would come down from the, from the 21 Legion hut. 22 Q. I'm sorry. The where? 23 A. Where the Legion hut is. 24 Q. The Legion hut, okay. 25 MR. BROCKETT: The American Legion	Page 11 1 A. Yeah, yeah. 2 Q. Do you remember about what year that was or 3 what decade? 4 A. This was in the fifties and sixties. 5 Q. Okay. Any other time that you can recall using 6 that crossing? 7 A. No. 8 MS. JONES: All right. Thank you so 9 much, Mr. Post. I appreciate your time. 10 EXAMINATION 11 BY MR. BROCKETT: 12 Q. Mr. Post, do you remember a company called F&S 13 Lumber Company that was located south of the railroad 14 tracks? 15 A. Yes. 16 Q. Did you ever have any business dealings with 17 F&S Lumber Company? 18 A. Yes. 19 Q. Can you briefly describe what those were? 20 A. We bought lumber, lumber there. I was always 21 building something. That would appear to be the 22 easiest place to get it. 23 Q. Okay. And do you remember how you got to F&S 24 Lumber Company. 25 A. Well, I come down that street by the Legion
Page 10 1 building. 2 A. Yeah, the American Legion hut, the old Legion 3 hut, and then you, you cross, you crossed there. 4 Q. Okay. Was that east of the depot, east of the 5 depot? 6 A. East of the depot, yes. 7 Q. Okay. And what, what would that road go to? 8 A. It went down the river. 9 Q. Okay. Did it go to a dump, a city dump? 10 A. You know, I -- I really don't know what it went 11 to. I remember going down there hunting rabbits. 12 Q. Hunting rabbits, okay. 13 A. That's the only thing I remember. 14 Q. Okay. Do you remember about what time period 15 it was that you would go down there and hunt rabbits? 16 A. This was in the forties. 17 Q. Okay. Do you have any memory of using that 18 location or that crossing after the 1940's? 19 A. No. 20 Q. Okay, all right. 21 A. I didn't cross it. I remember unloading cars 22 there. We got sugar shipped in. 23 Q. Okay. And I assume that that would be 24 something you would coordinate with the railroad in 25 order to go pick up your shipment there?	Page 12 1 hut -- 2 Q. Okay. 3 A. -- and... 4 Q. And you would cross the railroad tracks? 5 A. You didn't have to cross the railroad tracks 6 there. The lumber company was on the north side. 7 Q. Well, that was M&K -- or M&S -- 8 A. M&S? 9 Q. -- lumber Company. Yeah. There was also an 10 F&S Lumber Company. Did you ever buy anything from 11 F&S Lumber Company? 12 A. No, it was M&K. 13 MR. BROCKETT: Okay. All right. No 14 further questions. 15 MS. JONES: Thank you, Mr. Post. I 16 appreciate your time. 17 (The deposition was concluded at 10:50 a.m.) 18 19 20 21 22 23 24 25

3 (Pages 9 to 12)

City of Ozark v. Union Pacific Railroad Company

Page 13

1. COURT REPORTER'S CERTIFICATE

2 STATE OF ARKANSAS)

}ss.

3 COUNTY OF SALINE)

4 I. JANESE FERGUSON SMITH, CCR, RPR, a

5 Notary Public in and for Saline County, Arkansas do

6 hereby certify that the facts stated by me in the

7 caption of the foregoing matter are true; and that

8 the foregoing matter was transcribed by me, to the

9 best of my ability and understanding, from my machine

1.0 shorthand notes taken at the time and place set out

1.1 in the caption hereto.

1.2 In accordance with Rule 30(e) of the

13 Rules of Civil Procedure, review of the transcript

14 was waived by the deponent or a party thereto.

15 I FURTHER CERTIFY that I am neither

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

17 parties to the action in which this proceeding was

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

1.9 employee of any attorney or counsel employed by the

20 parties hereto, not financially interested or

21 otherwise, in the outcome of this action,

22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on _____

this, the 3rd day of March, 2015.

23

24 JANESS FERGUSON SMITH, CCR, RPR

Notary Public for Saline County

25 and Court Reporter.

2015/12/24 14:28:21

4 (Page 13)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Bob Bond

Date: March 3, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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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 BOB BOND, et al 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 1:50 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 BOB BOND 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)

Page 5 1 BOB BOND. 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. Bond, my name is Jamie Jones, and I 9 represent Union Pacific Railroad Company in a lawsuit 10 that the City of Ozark has filed against it. 11 You've been listed by the city as somebody 12 who knows about a crossing east of the depot in 13 downtown Ozark, and so that's what we are here to 14 talk to you about today. Okay? 15 A. Okay. 16 Q. Have you ever given a deposition before? 17 A. Oh, when I was -- like I said, when I was 18 working for Arkansas Valley I was in on several, but 19 I wasn't, you know, I wasn't a victim. 20 Q. All right. Let me tell you a little bit about 21 kind of the rules of the deposition. 22 A. Okay. 23 Q. Ms. Janess is our court reporter, which means a 24 couple of things. She has sworn you in -- 25 A. Yeah.	Page 7 1 have marked as 254. 2 (Exhibit No. 254 was marked.) 3 BY MS. JONES: 4 Q. And on that subpoena there were some documents 5 that we requested. Did you look through that to see 6 if you had any documents that would be responsive? 7 A. Yes, ma'am, but I didn't have any. 8 Q. Okay. 9 A. All I've got is up here, and that won't be 10 much. 11 Q. No problem. All right. Well, tell me what is 12 your date of birth. 13 A. 9-4-30. 14 Q. And, sir, have you lived most or all of your 15 life in Ozark? 16 A. All my life. 17 Q. Okay. And you told me, you said before we 18 started that you used to work for the co-op? 19 A. Yes, ma'am. 20 Q. Okay. What did you do for the co-op? 21 A. Well, I started out lineman, groundman, ended 22 up a director of operations. 23 Q. Okay. 24 A. Retired in '92, so that's been a long time ago. 25 Q. Well, I do some work for Entergy, so I'm pretty
Page 6 1 Q. -- so you are under oath? 2 A. Yes. 3 Q. And she is taking down everything we say. 4 A. Yeah. 5 Q. Which means a couple of things for you and I. 6 One, you may anticipate where I am going with a 7 question and start to answer and talk over me. If 8 you will refrain from doing that and let me get my 9 whole question out to you first; okay? 10 A. You bet. 11 Q. And I will let you respond in kind. That way 12 she doesn't have to try to get us talking at the same 13 time; okay? 14 A. Okay. 15 Q. And you're doing a good job of this, 16 verbalizing your responses to me. Even though I 17 understand uh-huhs or huh-uhs and nodding of the 18 head, she can't get that down for the record. So if 19 you will just verbalize your responses; okay? 20 A. Yes, ma'am. 21 Q. You will probably forget at some point, and I 22 will remind you, and I don't do that to be rude. I 23 just do it so we can get a clear record; okay? 24 A. Okay. Good. 25 Q. And we did serve you with a subpoena, which I	Page 8 1 familiar with those types of jobs. 2 A. Yeah. 3 Q. Okay. What is your home address? 4 A. 1205. 5 Q. Okay. 6 A. Highway 23 South. 7 Q. Okay. And what is the best phone number to 8 reach you if we need to talk to you? 9 A. 209. 10 Q. Okay. 11 A. 1227. 12 Q. Okay. Go right ahead. 13 A. 667-2973 is my home. 14 Q. Okay. And you've had no history working in the 15 railroad business; correct? It's just been working 16 for the co-op? 17 A. That's right. 18 Q. And you've got a Cattlemen's Association jacket 19 on? 20 A. Oh yeah, I'm a member of the Cattlemen's 21 Association for several years. 22 Q. Okay. All right. Well, tell me, there is -- 23 tell me what you know about a crossing, a railroad 24 crossing located east of the depot in downtown Ozark. 25 Do you know what I'm referring to?

2 (Pages 5 to 8)

Page 9

1 A. Yes, ma'am.
 2 Q. Okay. Have you ever had occasion to use that
 3 crossing?
 4 A. Yes. Just, it wasn't on business but just to
 5 go to the dump and stuff like that.
 6 Q. Okay.
 7 A. The dump was across the railroad track.
 8 Q. Okay. So you used that crossing to access the
 9 dump?
 10 A. Yes, ma'am.
 11 Q. That used to be kind of where the river is now?
 12 A. That's right, yeah.
 13 Q. Okay. Did you use it for any other thing --
 14 A. No.
 15 Q. -- other than getting to the dump?
 16 A. No, ma'am.
 17 Q. Okay. So can we agree that you haven't used
 18 the crossing since, at least since the seventies when
 19 the river got changed?
 20 A. That's right.
 21 Q. Okay. Is there anything when you were doing --
 22 well, strike that. Okay. So this road was kind of
 23 an old gravel road?
 24 A. Yes, ma'am.
 25 Q. Okay.

Page 10

1 A. Yeah.
 2 Q. Did you know what the street was called?
 3 A. No, ma'am.
 4 Q. Okay. Have you ever heard a street called
 5 Oliver Street?
 6 A. I've heard of Oliver Street, but I really don't
 7 know if that was -- I don't know where it was at.
 8 Q. Okay.
 9 Q. All right. Well, thank you for your time, sir.
 10 I appreciate it today. That's all of the questions I
 11 have.
 12 A. Okay.
 13 MS. JONES: He may have some questions
 14 for you.
 15 EXAMINATION
 16 BY MR. BROCKETT:
 17 Q. I just have a couple.
 18 A. Okay. I was just going to tell you a story
 19 about the little pasture that was across the, from
 20 the depot, between and the river.
 21 Q. Uh-huh.
 22 A. I mean, you don't -- this is just --
 23 Q. It's part of it. Go ahead.
 24 A. And friends of mine, well, the sheriff's boy,
 25 Junior Crawford and Ramsey Clark (names phonetic) and

Page 11

1 people like -- they had their little horses there in
 2 this little pasture.
 3 And I have been with them, you know, go
 4 across there just goofing off, and in this little --
 5 there was quite a bit of room between the depot and
 6 the river. In fact, above the old jail --
 7 Q. Uh-huh.
 8 A. -- going down that street there was a crossing
 9 there. Houses was in that. There were houses in, on
 10 the river.
 11 John Adams, I remember one fellow that
 12 lived there, but every time you get one of them
 13 pretty good floods, you get up on the houses, you
 14 know, but that was another crossing that I remember
 15 back then.
 16 Q. Was that the other crossing on this side of the
 17 jail?
 18 A. That's right.
 19 Q. Was that the ferry crossing?
 20 A. That's right. Yeah, you bet.
 21 Q. Okay.
 22 A. I remember ferry days.
 23 Q. Well, the history is pretty interesting of
 24 everything that's going on.
 25 A. Yeah.

Page 12

1 Q. But you said, did you ride horses down south of
 2 the railroad tracks?
 3 A. Oh yeah, yeah.
 4 Q. Okay. Do you remember when that was?
 5 A. No, it was in the forties, I imagine.
 6 Q. Okay.
 7 A. It was forties and -- I got out of school in
 8 '48 here.
 9 Q. Okay.
 10 A. I hadn't -- I told a lot of people I haven't
 11 been a mile from the house since I was born.
 12 Q. I understand.
 13 A. And I was brush hogging back this fall, and I
 14 brush hogged by this house. I just got to studying
 15 it, well, I was born there 84 year ago.
 16 Q. Oh wow.
 17 A. Yeah.
 18 Q. South of the railroad tracks do you remember a
 19 company called F&S Lumber Company?
 20 A. M&S.
 21 Q. M&S?
 22 A. That's --
 23 Q. Is that south of the railroad tracks?
 24 A. No, I don't, I didn't -- I didn't remember it
 25 being south of the railroad track.

3 (Pages 9 to 12)

Page 13 1 Q. Okay. Well, M&S. I understand, was north of 2 the railroad tracks? 3 A. That's right, yeah. 4 Q. Okay. Do you remember ever having a building 5 south of the railroad tracks? 6 A. I don't remember that. 7 Q. Okay. 8 A. No. 9 Q. Do you ever remember -- you mentioned a John 10 Adams. Do you remember any other houses south of the 11 railroad tracks? 12 A. No, I don't -- there was two houses, but I 13 don't remember who lived in this, the little brick 14 house there where you go down to the track. 15 Q. Uh-huh. 16 A. Oliver, a colored boy lived there. 17 Q. Okay. 18 A. But I don't know. 19 Q. Do you think his last name was Oliver? 20 A. I'm pretty sure it was, but I don't, I don't 21 really -- I don't really remember for sure -- 22 Q. Sure. 23 A. -- his name. 24 Q. Okay. Do you remember -- if someone told you 25 to go to the dump or how do I get to the dump, how	Page 15 1 Q. Shooting gars? 2 A. Shooting gar there -- there is a lot of history 3 crossing the river here. 4 Q. Uh-huh. 5 A. The river bridge had seats on it, you know, and 6 you go across. You could sit down. There are a lot 7 of pictures. A lot of people have pictures, and I 8 don't even have one of them. 9 Q. Well, that's interesting. 10 A. Shooting gar with their rifle, .22 rifle. 11 Q. Okay. 12 A. In the summertime, you know. The river was 13 altogether different now than in those days, you 14 know. 15 Q. Sure, okay. 16 A. I was raised just south of the river, and we 17 farmed this bottom over here, peanuts back in the 18 forties. 19 And the kids swam in the river, you know, 20 after work, and they would just go down there. And 21 there was a pretty good sandbar, kind of like a 22 beach, you know, go out and swim in the evening and 23 everything. 24 Q. Okay. Do you know, other than the crossing to 25 the west of the old jail and the east of the depot,
Page 14 1 would you describe it to them how to get there? 2 A. Oh, of course, it's changed now, but I would 3 tell them to go down past the River Street and go to 4 the, past the depot and first -- just to my memory I 5 would say a hundred yards below the -- I don't know. 6 It might have been further than that. 7 Q. Probably east of the depot? 8 A. East of the depot. 9 Q. Okay. 10 A. It might have been a little further than that, 11 but I don't know. 12 Q. Okay. And then just take a right? 13 A. Yeah. 14 Q. Okay. 15 A. Take a right and go right down there. 16 Q. Okay. 17 A. Well, it was a big deal for kids. I never did 18 do it, but to go down there, rats and things, and go 19 down there and shoot and everything. Of course, you 20 couldn't do that now, but city limits and everything, 21 but, you know. 22 Q. Okay. 23 A. I remember that was a big deal. 24 Q. What about gars? 25 A. Yes.	Page 16 1 was there any other crossings that you can remember 2 on the railroad tracks? 3 A. Well, not here. Up in, on up the river there 4 where we crossed the railroad track going to Meadors, 5 you know, up in the bottoms, up there in Poppin 6 Bottoms they call it. 7 Q. The Meadors' land? 8 A. Yeah. 9 Q. Okay. 10 MR. BROCKETT: I don't have any other 11 questions. 12 MS. JONES: Thank you, sir. I 13 appreciate your time. 14 (The deposition was concluded at 2:00 p.m.) 15 16 17 18 19 20 21 22 23 24 25

4 (Pages 13 to 16)

Bob Bond 3/3/2015

City of Ozark v. Union Pacific Railroad Company

Page 17

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 3rd day of March, 2015.

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

5 (Page 17)

Transcript of the Testimony of

Shirley Wilson

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

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

Shirley Wilson 3/9/2015

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 SHIRLEY WILSON March 9, 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 5 5 EXAMINATION 6 By Mr. Brockett. 15 7 EXAMINATION 8 By Ms. Jones 22 9 10 11 E X H I B I T 12 Exhibit No. 262 (Subpoena). 8 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 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	1 ANSWERS AND DEPOSITION OF SHIRLEY WILSON, 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 1.56 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 SHIRLEY WILSON 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)

Page 5 1 SHIRLEY WILSON, 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. Wilson, will you go ahead and state your 9 full name for the record? 10 A. My full name? 11 Q. Yes. 12 A. Shirley Colleen Wilson. 13 Q. Okay. And my name is Jamie Jones. 14 A. Uh-huh. 15 Q. I represent Union Pacific Railroad Company in 16 the lawsuit that's been filed against it by the City 17 of Ozark. Have you ever given a deposition before? 18 A. I was in a car wreck one time, and I did. 19 Q. Okay. Well, just to kind of familiarize 20 yourself and re-familiarize yourself with the rules, 21 Ms. Janess is a court reporter. 22 She is taking down everything you say, and 23 you are under oath, just as you would be if we were 24 in a formal setting with a judge here. 25 A. Uh-huh.	Page 7 1 Q. Okay. But you consider yourself an Ozark 2 resident? 3 A. Oh, absolutely. 4 Q. Okay. 5 A. Absolutely. Since '75 I have lived here. 6 Q. Okay. 7 A. 1975. 8 Q. And did you graduate high school? 9 A. Yes, I did. 10 Q. Where did you graduate high school? 11 A. Ozark. 12 Q. Okay. What year? 13 A. 1962. 14 Q. Okay. And did you get any education after high 15 school? 16 A. Yes, I first took a course in cosmetology. 17 Later I got a general banking degree. 18 Q. Okay. And what did you -- did you work outside 19 the home? 20 A. Yes, I worked at Bank of the Ozarks for 17 21 years. 22 Q. Okay. And what did you do at Bank of the 23 Ozarks? 24 A. I started out in accounting and ended up as 25 secretary to the president.
Page 6 1 Q. And because she is taking down everything we 2 say, there are a couple of things that we need to 3 keep in mind. 4 First, although I can understand head nods 5 or uh-huhs and huh-uhs, she can't get that on the 6 record, so if you will verbalize for me; okay? 7 A. Okay. 8 Q. And, second, you may anticipate where I'm going 9 with the question and start to answer, but if you 10 will allow me to get my full question out, I will 11 allow you to get your answer out, so she is not 12 trying to get us both speaking at the same time; 13 okay? 14 A. Okay. 15 Q. Can you give me your date of birth? 16 A. February the 7th, 1945. 17 Q. Okay. And how long have you lived in the City 18 of Ozark? 19 A. Actually in the city, since seven -- I'm not 20 really in the city. 21 Q. Okay. 22 A. I'm -- I am just by the lock and dam out there 23 across from the country club. 24 Q. Okay. 25 A. So I don't currently live in the city limits.	Page 8 1 Q. Okay. Was that Kenneth Smith -- 2 A. No. 3 Q. -- or someone else? 4 A. No. It was Mark Ross. 5 Q. Okay. We have had a lot of people come in 6 here. 7 A. Okay. 8 Q. So I am trying to get a sense of who everyone 9 is. What is your home address? 10 A. 6335 Lock and Dam Road. 11 Q. Okay. And what is the best phone number to 12 reach you at? 13 A. (479)667-8788. 14 Q. And I have marked as 262 the subpoena that has 15 brought you here today. 16 A. Uh-huh. 17 (Exhibit No. 262 was marked.) 18 BY MR. BROCKETT: 19 Q. And there was a number -- there were a number 20 of document demands, one through six. Did you review 21 those? 22 A. I did. I don't have any of the documents. 23 Q. Okay. Thank you. Have you ever served on the 24 city council? 25 A. No.

2 (Pages 5 to 8)

Page 9	Page 11
1 Q. Have you ever served on an organization called 2 Main Street Ozark? 3 A. No, I have not. 4 Q. You have been listed by the city as a witness, 5 and that's what has brought you here today. And in 6 particular you have been listed as someone who may 7 have knowledge of a crossing located east of the 8 depot in downtown Ozark. Do you know where I'm 9 referring to? 10 A. Yes, I do. 11 Q. Okay. Have you ever used that crossing? 12 A. Yes. 13 Q. Okay. Can you tell me what occasion made you 14 used that crossing? 15 A. I used it many times. 16 Q. Okay. 17 A. From the time I was probably five years old. 18 That was where the city dump was. 19 Q. Okay. 20 A. I lived in Alice (phonetic), which wasn't in 21 the city limits, but that was our closest dump area. 22 Q. Okay. 23 A. And we would -- at that time and point you 24 could burn your trash. 25 Q. Uh-huh.	1 Q. Okay. 2 A. In the past we have done that, uh-huh. 3 Q. And when is the last time you would have done 4 that? 5 A. Well, he is 47, a long time ago. 6 Q. Okay. So can you give me a decade, like not 7 since the seventies, not since the eighties? 8 A. Not since the eighties probably. 9 Q. Okay. All right. And do you know the street 10 that went across the crossing back in, you know, the 11 eighties and before, did you call it by name? 12 A. Actually, my dad would never say he was going 13 to the dump. 14 Q. Okay. 15 A. He just didn't like that term, and he would 16 say, Tomorrow we are going to Oliver Street. 17 Q. Okay. 18 A. And that's -- that was how that it was -- 19 Q. Okay. So you referred to it as Oliver Street? 20 A. Yes, that's all I ever knew it as. 21 Q. Okay. 22 A. Yes. 23 Q. And you -- would you agree with me that 24 although you heard your dad refer to it as Oliver 25 Street, you don't know that that was the legal name
Page 10	Page 12
1 A. But you couldn't burn cans, you couldn't burn 2 glass, so about once a month we took our refuge to 3 the dump. 4 Q. Okay. 5 A. And I would ride in the back and make sure 6 nothing blew out the back of the truck. 7 Q. Okay. Was there any other reason you would 8 have had to use that crossing, other than the dump? 9 A. Probably -- personally, no. 10 Q. Okay. 11 A. No. 12 Q. And I think so far I haven't met anyone that -- 13 well, let me strike that. As I understand it, 14 somewhere between '68 and maybe the early seventies 15 the Corps came in and changed the course of the river 16 and flooded where the dump was. Is that your 17 understanding? 18 A. Yes, yes. 19 Q. Okay. 20 A. Absolutely. 21 Q. So once the dump no longer existed, you didn't 22 have a reason to use that crossing; is that right. 23 A. I actually have walked across it -- 24 Q. Okay. 25 A. -- with my son to go fishing.	1 of the street? 2 A. I don't, I don't remember ever seeing a sign 3 that said Oliver Street. I do remember railroad 4 crossing signs, you know, the little "x" thing on it 5 right there. 6 Q. And you wouldn't have any knowledge of whether 7 or not the city had done the legal prerequisites to 8 have that street be Oliver Street? 9 A. I wouldn't have any idea. 10 Q. Okay. 11 A. I have no information on that. 12 Q. All right. Have you ever spoken to anybody 13 with Union Pacific Railroad Company regarding 14 anything about this lawsuit? 15 A. No, I have not, no. 16 Q. Okay. Are you involved in this lawsuit in any 17 way, like advising on the Complaint or anything like 18 that? 19 A. No, ma'am. 20 MS. JONES: I think that's it. I 21 appreciate your time. 22 THE WITNESS: Okay. 23 MR. BROCKETT: I don't have any 24 questions for you. 25 THE WITNESS: Okay. Thank you. MR. BROCKETT: Thank you. (The deposition was concluded at 2:03 p.m.)

3 (Pages 9 to 12)

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

4 (Page 13)

Transcript of the Testimony of

Don Whitson

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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<www.bushmanreporting.com>

Don Whitson 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 DON WHITSON 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. 12 8 9 10 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 DON WHITSON, 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 2:10 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 DON WHITSON 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)

Don Whitson 3/9/2015

City of Ozark v. Union Pacific Railroad Company

Page 5

1 DON WHITSON,
 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 the
 9 record?
 10 A. Don Whitson.
 11 Q. And have you ever given a deposition before,
 12 sir?
 13 A. No.
 14 Q. Okay. And let me give you a little bit of the
 15 ground rules. Ms. Janess is our court reporter. She
 16 has just sworn you in, so you are under oath, just as
 17 you would be if we were in the formal courtroom with
 18 the judge there. Do you understand that?
 19 A. Uh-huh.
 20 Q. Okay. And you just did my second thing. She
 21 is taking down everything that we are saying, which
 22 means a couple of things.
 23 I understand when you went "uh-huh" and you
 24 kind of shook your head yes to me. I understand that.
 25 but she can't get that down for the record. So can

Page 6

1 you verbalize your responses for me today?
 2 A. Okay.
 3 Q. And you are probably going to forget that, as
 4 does every person sitting in that chair does. I will
 5 remind you, and I don't do it to be rule. I do it
 6 just so we can get a record; okay?
 7 A. All right.
 8 Q. And the second thing is she can't get us
 9 speaking at the same time. It makes her job very
 10 difficult.
 11 So you may anticipate where I am going with
 12 a question. If you will allow me to get my full
 13 question out, I will allow you to get your answer out
 14 to me before I move on to my next question; okay?
 15 A. All right.
 16 Q. And if I ask a question that you don't
 17 understand, you are not the only one. It's just been
 18 a bad question. So if you will just ask me to
 19 rephrase it, I will do so until it's understandable;
 20 okay?
 21 A. All right.
 22 Q. I don't think we are going to go very long. As
 23 you can tell, it didn't last too long, but if you
 24 need a break, you let me know, and we will take one.
 25 Okay?

Page 7

1 A. All right.
 2 Q. Now, can you give me your date of birth?
 3 A. 9-15-34.
 4 Q. Okay. And have you lived in Ozark most of your
 5 life?
 6 A. Yes, ma'am.
 7 Q. Okay. All of your life?
 8 A. With the exception of two different stints. I
 9 worked in Clarksville for five years, and then I
 10 worked for Clarksville again later on for another two
 11 or three years.
 12 Q. Okay. Did you graduate from high school?
 13 A. Yes.
 14 Q. What year?
 15 A. 1952.
 16 Q. Ozark?
 17 A. Ozark.
 18 Q. Did you get any post high school education?
 19 A. I've got a little bit of college from the
 20 College of the Ozarks, or University of the Ozarks
 21 now in Clarksville.
 22 Q. Okay. What did you do for a living?
 23 A. For the most part I was in the automotive
 24 business. My dad owned the Ford place here in Ozark,
 25 which was Anderson Whitson Motor Company.

Page 8

1 Q. Yep.
 2 A. And I worked there for a while. I worked --
 3 one of those places that I worked in Clarksville was
 4 for my uncle. He had the Ford dealership down there.
 5 Other than that, I started in 1967 teaching
 6 automotive mechanics at the vocational school here in
 7 Ozark.
 8 Q. Okay. And what is your home address?
 9 A. 406 North 18th.
 10 Q. What is the best phone number to reach you?
 11 A. 667-1294.
 12 Q. Okay. And when you were asked to come here
 13 today you were asked to search and see if you had any
 14 documents that were responsive to six questions. Did
 15 you look and see if you had anything?
 16 A. I don't have anything.
 17 Q. Okay. Thank you. I appreciate you for
 18 checking that for me. One of the issues in this
 19 lawsuit concerns a crossing that had been located
 20 east of the depot in downtown Ozark. Are you
 21 familiar with that location?
 22 A. Yes, ma'am.
 23 Q. Okay. And I believe a lot of people kind of
 24 refer to it as the way that they would get to the
 25 dump?

2 (Pages 5 to 8)

Page 9 1 A. Exactly. 2 Q. Okay. And I understand from speaking with your 3 wife that you may have had occasion to use it to go 4 down to the dump yourself? 5 A. Yes, ma'am. 6 Q. Okay. 7 A. I have many times. 8 Q. Okay. And did you use it for anything other 9 than to go to the dump? 10 A. Yes. 11 Q. What? 12 A. When I was a kid I used to go take my .22 and 13 go down there. And off of the end of the dump down 14 there there was always rats and what have you. 15 Q. Uh-huh. 16 A. We would sit up there sometimes and shoot rats. 17 If the river was backed up where there was backwater 18 there, there was always turtles and gar, and we would 19 go down there and shoot turtles and gar, just for 20 the, just for the fun of it. 21 Q. Okay. Any other reason you would have used 22 that crossing? 23 A. Not until, not until later. 24 Q. Okay. And tell me what was, what you would 25 have used it for later.	Page 11 1 A. And it was just a, it was just a street across 2 the tracks, is what it was. 3 Q. And did that street have a name, to your 4 knowledge, back in the sixties? 5 A. From the city records and what have you, all 6 that I ever knew it as was Oliver Street. 7 Q. Okay. And what records did you look at -- who 8 asked you to look at records? 9 A. I didn't. I had, I had seen a city map, and I 10 can't remember now where I, where I saw it. I'm not 11 sure I didn't see it maybe at the museum down here. 12 Q. Okay. But back in the sixties when you were 13 talking about that street how would you refer to it? 14 Would you have called it Oliver, or did you know to 15 call it Oliver at that point? 16 A. Probably not. 17 Q. Okay. All right. And you haven't done any 18 title work or anything to determine if that was 19 indeed Oliver Street that was located there? 20 A. No, ma'am, I haven't. 21 Q. Okay. Have you ever served on the city 22 council? 23 A. Yes. 24 Q. Okay. Tell me when. 25 A. Back in the eighties.
Page 10 1 A. Well, later, M&S -- there was a pallet plant 2 down there. A friend of mine ran the pallet plant, 3 and sometimes I would go down there and visit with 4 him in the evening after work. 5 Q. Okay. So that would have been -- I have heard 6 testimony that there was F&S Lumber. Was that F&S 7 Lumber? 8 A. F&S Lumber. 9 Q. Okay. Would that have been the last time you 10 would have had an occasion to use that crossing? 11 A. Probably. 12 Q. Okay. And I think that Mr. Smith testified 13 that F&S Lumber closed in the late sixties. Was that 14 your memory as well? 15 A. That's correct, about right, yeah. 16 Q. Okay. So you wouldn't have had an occasion to 17 use that crossing after F&S Lumber had closed; 18 correct? 19 A. Right. 20 Q. Okay, all right. And I understand, it was kind 21 of a gravel road that went over the crossing? 22 A. Yes, ma'am. It was just a, it was just a 23 street there. There was, there was railroad, you 24 know, there was railroad crossing signs there. 25 Q. Okay.	Page 12 1 Q. Okay. 2 A. But I can't. 3 Q. And have you ever served in an organization 4 called Main Street Ozark? 5 A. No. 6 Q. Okay. Have you ever had any conversations with 7 anyone from Union Pacific Railroad about the crossing 8 at issue? 9 A. No, ma'am. 10 Q. Okay. 11 MS. JONES: All right. Thank you so 12 much. That's all I have. Mr. Brockett may 13 have some for you. 14 EXAMINATION 15 BY MR. BROCKETT: 16 Q. Mr. Whitson, do you remember past F&S Lumber 17 Company, were there any houses? 18 A. Yes. There were houses, across the tracks, 19 yes. 20 Q. Do you remember how many? 21 A. There was probably, I don't know exactly, 22 probably four or five, and they weren't what you 23 would call, you know, grand houses. They were 24 across-the-tracks type houses. 25 As a matter of fact, at one time, and I

3 (Pages 9 to 12)

Page 13 1 can't give you a date on it, there was a guy, a young 2 fellow by the name of Johnson, C.B. Johnson, and he 3 lived over there. 4 He and his wife lived over there, and he 5 worked for my dad in the Ford plant, in the Ford 6 business. He was the wash and grease and so forth 7 man. 8 Q. Okay. And was his actual name C.B., or was 9 that initials? 10 A. No, his initials was C.B. 11 Q. Okay. Do you remember what his real name was? 12 A. No, I don't. 13 Q. Okay. I am going to show you what's marked as 14 Exhibit D to Exhibit 51 of the deposition. Have you 15 ever seen anything like this before? 16 Think of that as a book. That's a cover 17 page to a book. Have you ever seen anything like 18 that? 19 A. No. 20 Q. Okay. All right. 21 A. No, never have. 22 Q. Okay. Did you know anybody that lived over 23 there south of the tracks besides Mr. Johnson? 24 A. Not really, no. 25 Q. Okay. Do you remember what year Mr. Johnson	Page 15 1 the city dump, how would you tell me to get there? 2 A. Well, from my house I would have said go down 3 to, which is on 23 Highway, go down to Junction 64 4 Highway, go east down to, I'm not sure what that 5 street number is down there, what street it is where 6 that's, whether that's Bell -- I'm not sure. It's 7 the same street now that the post office down here 8 sits on the corner right now. 9 Q. Okay. 10 A. And if you come off of that street that's 11 headed south, in other words, you would, you would -- 12 from there you would go across the, across the 13 tracks. 14 Q. Okay. Would you have used, would you have used 15 more landmarks versus street names back then? And 16 I'm talking back in the fifties and sixties when you 17 would have actually used it. 18 A. Well, some of those, you know, some of those 19 streets, and they all had numbers, but there 20 wasn't -- there was a lot of places where streets 21 were not marked. 22 Q. Okay. 23 A. I mean, the streets were gravel, as far as that 24 goes. 25 Q. So most of the streets back then were gravel?
Page 14 1 lived over there, approximately? 2 A. Oh, gosh, it had to have been in the -- it 3 would have had to have been in the fifties. 4 Q. Do you think he was over there in the fifties? 5 A. Yeah. 6 Q. Okay. All right. According to this Exhibit D 7 to Exhibit 51, it refers to an Oliver Street with 8 some addresses? 9 A. Yeah. 10 Q. Do you remember if F&S Lumber Company had any 11 type of markings to tell people that it's this 12 address on this street? 13 A. Not for sure I don't. 14 Q. Okay. Do you, do you remember a gentleman by 15 the name Tom Kirkendall? 16 A. Tom Kirkendall, I remember the name, yes. 17 Q. Okay. Did you know him very well? 18 A. Not very well. 19 Q. Did you know -- if I was to ask you where Tom 20 Kirkendall lived would you be able to tell me? 21 A. Nothing other than across the -- 22 Q. Just across the tracks? 23 A. Just across the tracks. 24 Q. Okay. Fair enough. If I was, if I was sitting 25 at your house and asked you to tell me how to get to	Page 16 1 A. Yes, yeah. 2 Q. Okay. Do you remember any horses down south of 3 the tracks? 4 A. No, not for sure. 5 Q. Okay. Did you ever have a reason to go over 6 there after, say, 1970 to fish, or did you hunt or 7 anything like that after 1970? 8 A. No. 9 Q. So after the dump closed you wouldn't have 10 crossed? 11 A. Right. 12 Q. Okay. The saw bucks that you're talking about, 13 the crossing marks -- 14 A. Yeah. 15 Q. -- were those on a pole, or how were those -- 16 A. Yeah, they were on a pole. 17 Q. Okay. Was that on both sides or just on one 18 side? 19 A. I can't remember that. I just remember the, I 20 just remember the sign being there and railroad 21 crossing, and that's all. 22 Q. Okay. Was there another crossing further to 23 the east of the crossing closest to the depot, that 24 you remember? Because we've had -- and let me 25 explain.

4 (Pages 13 to 16)

Don Whitson 3/8/2015

City of Ozark v. Union Pacific Railroad Company

Page 17 1 We have had testimony that there was a 2 crossing at the depot location close to the depot, 3 and then further down there was another crossing that 4 came off of Bell Street. Do you remember that 5 crossing? 6 A. Yeah, there was a couple of crossings up 7 through there, but they were not -- I don't know that 8 they were legitimate crossings or whatever, but if 9 you will get, go on west past the depot -- 10 Q. Uh-huh. 11 A. -- past the old co-op building, there was 12 another little road that went down there, which was a 13 crossing for the old ferry that crossed right there. 14 Q. Yeah. That's to the west? 15 A. Yeah, that's to the west, yeah. 16 Q. Yeah. Okay. So to your knowledge was the, 17 this crossing that we are going to refer to as Oliver 18 Street -- 19 A. Okay. 20 Q. -- for purposes of this, was that the only 21 crossing that had sawbucks up? 22 A. As far as I -- yeah, as far as I know, yes. 23 Q. Okay. 24 A. There wasn't any, there wasn't any crossing 25 signs on up, I don't think.	Page 19 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 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
Page 18 1 Q. Okay. 2 MR. BROCKETT: All right. That's all 3 I have got. 4 MS. JONES: Thank you so much, sir. I 5 appreciate you. 6 THE WITNESS: Okay. 7 (The deposition was concluded at 2:23 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	

5 (Pages 17 to 19)

Transcript of the Testimony of

Virginia Brown

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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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 VIRGINIA C. BROWN 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. 14 8 9 10 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 VIRGINIA BROWN, 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 1:01 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 VIRGINIA BROWN 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

Page 5 1 VIRGINIA C. BROWN, 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 state your name for the record? 9 A. Virginia Carolyn Brown. 10 Q. Ms. Brown, my name is Jamie Jones, and I 11 represent Union Pacific Railroad Company in a lawsuit 12 that's been brought against it by the City of Ozark. 13 A. Uh-huh. 14 Q. Have you ever given a deposition before? 15 A. No, I haven't. 16 Q. Okay. Let me go through some of the ground 17 rules with you. 18 A. Okay. 19 Q. Ms. Janess is our court reporter. She has 20 sworn you in. Your testimony is under oath, just as 21 if a judge was in here. Okay? 22 A. Uh-huh, I understand. 23 Q. And she is taking down everything we say, which 24 means a couple of things for you and I. One, she can 25 only get verbal responses, so while I understand head	Page 7 1 Q. Now, what is your date of birth? 2 A. I am always giving my husband's date of 3 birth -- 4 Q. I'm used to doing -- 5 A. -- July 30th, 1938. 6 Q. Okay. 7 A. I'm seventy-six years old. 8 Q. All right. And how long have you lived in 9 Ozark? 10 A. All my life, except for a short period of time 11 when my husband was transferred over to Charleston. 12 Q. Okay. What do you -- did you work outside the 13 home? 14 A. Yes, I did. 15 Q. What did you do? 16 A. I am an RN. 17 Q. Okay. And where did you work at? 18 A. At Sparks and St. Edwards, Sparks last. 19 Q. Okay. Can you give me your home address? 20 A. 2605 West Commercial Street, Ozark, 72949. 21 Q. And can you give me your, the phone number best 22 suited to reaching you? 23 A. (479)667-1212. 24 Q. Okay. Now, has anyone in your family had any 25 history of working with the railroad?
Page 6 1 nods and uh-huhs and huh-uhs, she can't get those 2 down. 3 A. That's right. 4 Q. So if you will just verbalize for me; okay? 5 A. Okay. 6 Q. And you are going to forget, because everyone 7 does, and I will remind you. I don't do it to be 8 rude. I just do it for our record; okay? 9 A. Okay. 10 Q. And she can't get us speaking at the same time, 11 so you may well anticipate where I am headed with a 12 question and interrupt me. If you will allow me to 13 get out my full question, I will let you get out your 14 answer before I move on; okay? 15 A. Okay. 16 Q. And I am going to ask a question at some point 17 during the next few minutes that nobody understands 18 in this room, and when I do that, will you let me 19 know, and I will rephrase it so that it's 20 understandable; okay? 21 A. Sure. 22 Q. And we are not going to go for a long time 23 today, but if at some point you need a break, you 24 just let me know, and we will take one. 25 A. All right.	Page 8 1 A. No. 2 Q. Okay. Have you ever been on the city council? 3 A. No. 4 Q. Okay. Have you ever been a part of an 5 organization called Main Street Ozark? 6 A. No. 7 Q. Okay. Now, this lawsuit concerns allegations 8 regarding a crossing located east of the depot in 9 downtown Ozark. Do you know where I am referring to? 10 A. Yes, I do. 11 Q. Okay. Have you had occasion to use that 12 crossing? 13 A. The crossing? 14 Q. Yes, ma'am. 15 A. No, not, not as it's listed as Oliver Street. 16 My dad worked for the city -- 17 Q. Okay. 18 A. -- back in the forties, the late forties. 19 Q. Okay. 20 A. Early fifties, and he came home one evening and 21 was talking about, you know, taking stuff -- he and a 22 man were taking stuff to the dump, and I asked him -- 23 I didn't know what a dump was, you know. 24 Q. Uh-huh. 25 A. And he said, Well, I will take you. And we

2 (Pages 5 to 8)

Page 9 1 went across the railroad tracks over to the dump, and 2 he showed me what it was. 3 Q. Okay. 4 A. And they, they put the city trash there, and 5 then when it got mounded up they pushed it into the 6 river. 7 Q. Right. 8 A. So. 9 Q. Okay. So, you -- the only time you have ever 10 had an occasion to use that crossing was once in the 11 late forties or early fifties where your dad took you 12 to the dump? 13 A. Right. 14 Q. Okay. And you wouldn't have used it after 15 that? 16 A. Oh, no, huh-uh, never. 17 Q. Okay. 18 A. Never, but if -- there wasn't -- it was just, 19 you know, a dirt road there that went from Bell 20 Street. 21 You know, there is River Street and Bell 22 Street, and I remember that dad went down Bell Street 23 going south and then angled up and across the 24 railroad tracks. It was quite a little ways over 25 there --	Page 11 1 today there were six categories of documents we asked 2 you to look to see if you had anything responsive. 3 A. Uh-huh. 4 Q. Did you look through and see if you would have 5 had anything responsive to those? 6 A. No, I don't have. I was on the planning 7 commission, but we didn't deal with anything that 8 related to the railroad or to that street. 9 Q. Okay. Can you just kind of glance through 10 those there? 11 A. Okay. 12 Q. They are all kind of the same, so it's 13 probably -- 14 A. Okay. (Witness reviews document.) No. 15 Q. Okay. 16 A. I don't have any of them. 17 Q. Okay. Thank you. 18 A. I turned over everything that I had to Chris 19 Anderson, you know. 20 Q. Who is Chris Anderson? 21 A. Nothing that, nothing that I had related to any 22 of this. 23 Q. Okay. Who is Chris Anderson? 24 A. He was on the planning commission and became 25 the chairman of the planning commission --
Page 10 1 Q. Okay. 2 A. -- to the dump. There was a stove mill there. 3 Q. Okay. And, did you know it to be called Oliver 4 Street at any point? 5 A. No. 6 Q. Okay. 7 A. No. I am not familiar with that until just 8 recent, you know. 9 Q. The recent stuff in the paper? 10 A. Yes, yes. 11 Q. And there appeared a street sign? 12 A. Yes, but, you know, that didn't mean that, you 13 know, it might not have been named. I just was not 14 aware of it. 15 Q. Right, that's right. You just -- it wasn't 16 what you heard it being called? 17 A. No. I just -- you know, the only thing I ever 18 heard it referred to, my dad just said we went to the 19 dump. 20 Q. Right. 21 A. To go across the railroad tracks, so. 22 Q. Now, and I am fairly certain you probably 23 didn't have anything, but let me just make sure to 24 ask for the record. 25 Part of when we asked you to come here	Page 12 1 Q. Okay. 2 A. -- upon my resignation. 3 Q. Okay. How long were you on the planning 4 commission? 5 A. 2001 to, I believe to '11, and I am not real 6 sure about that date, 2001 to about nine, eight or 7 nine, I think. 8 You know, like I say, I didn't even keep -- 9 I just put everything in a box and gave it to Chris. 10 I don't have calendars or anything that I have kept. 11 They would have it out at the City Hall, but about 12 2008 I became the chairman -- 13 Q. Okay. 14 A. -- of the planning commission. And then on my 15 resignation, like I said, Chris became the -- and I 16 boxed everything up that I had -- 17 Q. Okay. 18 A. -- so he could use it. 19 Q. Now, is that an elected or appointed position? 20 A. The chairman is an elected. 21 Q. Okay. 22 A. Not publicly -- elected among the, among the 23 members. 24 Q. Okay. Now, the commission member itself, is 25 that appointed?

3 (Pages 9 to 12)

Page 13 1 A. Well, you go in and ask, you know, tell them 2 that you are available to participate and serve on 3 the commission, and then it's at the, at the will of 4 the mayor to turn your name in to the council. 5 Q. Uh-huh. 6 A. And approval by the council and, you know, you 7 say you are, you know, you are willing to take on 8 this thankless job. 9 Q. Right. And what was -- did the planning 10 commission have anything to do with sort of the 11 substance that's at issue in this lawsuit, to your 12 knowledge? 13 A. No. 14 Q. Okay. So it didn't have anything to do with 15 crossings, for example? 16 A. No. 17 Q. Did it have -- did the planning commission have 18 anything to do with any of the city's plans for a 19 biking/hiking trail? 20 A. Not that I remember. 21 Q. Okay. Anything about the marina? 22 A. Not that -- not that I -- not that I recall. 23 Q. Okay. All right. 24 A. No, everything came under Main Street Ozark and 25 through the council.	Page 15 1 A. Yes. Uh-huh, yes. 2 Q. Okay. 3 A. It comes in from Highway 64 here. 4 Q. Right. 5 A. And Bell Street comes down here. This is River 6 Street. 7 Q. Yes, ma'am. 8 A. Like the museum is up here, the post office 9 here. When you come up to Bell and on Bell to River 10 Street, and then it angled over and went up and over. 11 I know because, you know, we wasn't near the depot, 12 and I was fascinated at that time with the depot, you 13 know. 14 Q. Okay. So this crossing you are referring to 15 wasn't close to the depot? 16 A. No, it was down. 17 Q. Okay. 18 A. You know, you think of Bell Street, but it did, 19 you just go across River Street and up and over the 20 railroad tracks, dirt, very bad roads. 21 And there was some little houses there, 22 little -- you know, I hesitate to use the term 23 "shacks," because it was someone's home, but that's 24 what they were, you know. 25 Q. Okay.
Page 14 1 Q. Okay. 2 A. You know, they didn't approach us, you know, 3 about that. 4 Q. Okay. And do you have any personal knowledge 5 of the circumstances involving the crossing being 6 taken out? 7 MS. JONES: All right. Thank you so 8 much, Ms. Brown. It was a pleasure to meet 9 you. Mr. Brockett may have something. 10 EXAMINATION 11 BY MR. BROCKETT: 12 Q. I just a want to make sure that we are clear on 13 where exactly was this crossing located next to the 14 depot? 15 A. Okay. 16 Q. As far as if we're looking at the depot -- 17 A. Down, down east -- say this is River Street 18 here. 19 Q. Uh-huh. 20 A. And then I will use this wide, this here as 21 Bell. 22 Q. Okay. 23 A. Bell is there in front of the, what is it, that 24 shop? I don't remember. 25 Q. The Chrisman location?	Page 16 1 A. And I can't remember the number, two or three 2 maybe. 3 Q. Okay. 4 A. But, but it did -- it did go on -- you know, it 5 did go on down, and then there was a lumber mill, 6 stave mill, something like that there. 7 And when the river work started, well, they 8 took that down, removed all of, you know, took that 9 all out. 10 Q. Okay. 11 A. But that's the -- you know that's all, you 12 know, absolutely all that I know. 13 Q. Okay. 14 A. And I had no idea about an Oliver Street at 15 all. 16 Q. Okay. 17 A. You know, but that's it. 18 MR. BROCKETT: I don't have any other 19 questions. 20 MS. JONES: Thank you, Ms. Brown. I 21 appreciate you. 22 THE WITNESS: You're welcome. 23 (The deposition was concluded at 1:12 p.m.) 24 25

4 (Pages 13 to 16)

Page 17

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

5 (Page 17)

Transcript of the Testimony of

Evelyn Whitson

Date: March 9, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

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Evelyn Whitson 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 EVELYN L. WHITSON 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 EXAMINATION 2 By Ms. Jones 5 3 4 5 6 7 8 9 10 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 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	Page 4 1 ANSWERS AND DEPOSITION OF EVELYN L. 2 WHITSON, a witness produced at the request of the 3 Defendants, was taken in the above-styled and 4 numbered cause on the 9th day of March, 2015, before 5 Janess Ferguson Smith, Certified Court Reporter and 6 Notary Public in and for Saline County, Arkansas, at 7 the Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas. at 2:05 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 EVELYN L. WHITSON may be taken for any 17 and all purposes according to the Federal Rules of 18 Civil Procedure. 19 * 20 * 21 * 22 * 23 * 24 * 25 *

1 (Pages 1 to 4)

Page 5 1 EVELYN WHITSON. 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. Can you state your name for the record? 9 A. Evelyn L. Whitson. 10 Q. Ms. Whitson, my name is Jamie Jones. I 11 represent Union Pacific Railroad Company in a lawsuit 12 brought by it against the City of Ozark. 13 You have been named as a fact witness by 14 the city, and thus this is why you're here today. 15 Have you ever given a deposition before? 16 A. No. 17 Q. Okay. I am going to tell you a little bit 18 about some of our rules so that we know how to 19 proceed today. 20 Ms. Janess is our court reporter. She has 21 sworn you in under oath, just as if we were to 22 sitting in a courtroom with a judge. Do you 23 understand that? 24 A. Right. 25 Q. Okay. She is taking down everything we say,	Page 7 1 A. 12-1-31. 2 Q. How long have you lived in Ozark or its 3 surrounding area? 4 A. Since I was 16 and I'm 83, so. 5 Q. Okay. And what is your home address? 6 A. 407 North -- it's up here on 23. 7 Q. Okay. 8 A. Yeah, it's north. 9 Q. And what is the best phone number to reach you? 10 A. The home phone, 667-1294. 11 Q. Okay. And are you related to Don Whitson at 12 all? 13 A. That is my husband. 14 Q. Okay. 15 A. And he is out here waiting on you. 16 Q. Okay. Perfect. Did you work outside the home? 17 A. Many years, yes. 18 Q. What did you do? 19 A. I was a waitress, and then I was a beautician. 20 Q. Okay. 21 A. For 35 years. 22 Q. Okay. Have you ever served on the city 23 council? 24 A. No. 25 Q. Have you ever served on an organization called
Page 6 1 which means a couple of things for you and I so that 2 we can get a good record and make her job a little 3 bit easier today. 4 A. Okay. 5 Q. You may anticipate where I am going with the 6 question and interrupt me so we can speed this up a 7 little bit, but if you allow me to finish my 8 question, I will allow you to finish your answer 9 before I start talking again. All right? 10 A. Okay. If I can I will. 11 Q. Thank you. Second, if -- I understand 12 nonverbal communications. I understand uh-huhs and 13 huh-uhs and head nods, but she can't get that down 14 for the record, so I will ask you to verbalize for me 15 today. 16 A. Okay. Yes and no. 17 Q. Yes, ma'am. And if at any point you need to 18 break, you let me know, and we will take one. 19 A. Yeah, that's okay. 20 Q. And I sometimes will ask a question that nobody 21 in this room understands. If I do that will you let 22 me know, and I will rephrase it for you; okay? Is 23 that okay? 24 A. Yeah. 25 Q. Okay. What is your date of birth?	Page 8 1 Main Street Ozark? 2 A. No. 3 Q. Have you ever had any conversations with anyone 4 from Union Pacific Railroad regarding anything that 5 might have to do with this lawsuit? 6 A. No, ma'am. 7 Q. Okay. This lawsuit involves, in part, 8 allegations concerning a crossing located east of the 9 depot in downtown Ozark. Are you familiar with that 10 location? 11 A. I know where it is, yes. 12 Q. Okay. Did you ever have an occasion to use 13 that crossing? 14 A. We used to use it and take our trash over 15 there. 16 Q. Okay. Any other reason that you used it, other 17 than to go to the city dump? 18 A. That's all. 19 Q. Okay. And as I understand, the city dump kind 20 of went underwater when they moved the river? 21 A. The water. 22 Q. You wouldn't have had any occasion to use it 23 after it was flooded; correct? 24 A. Well, no, of course, I didn't use it then. It 25 was just my husband and my little girl.

2 (Pages 5 to 8)

Page 9 1 Q. Okay. 2 A. That would take it. 3 Q. Did you ever personally use the crossing? 4 A. No, I didn't, they did. 5 Q. Okay. All right. That's going to speed things 6 up a little bit. If you were going to tell them to 7 go to the dump, was there a street that you would 8 have told them to use? 9 The street -- I know you said you didn't 10 use the crossing, but did you know which street it 11 was on? 12 A. Oh, I knew where it was, yes. 13 Q. Okay. Did it have a name that you called it 14 back then? 15 A. What was it we called it? 16 Q. That's what I am asking you. 17 A. I don't know, North Sixth, wasn't it, North 18 Sixth? 19 Q. North Sixth, is that what you would have called 20 it? 21 A. Wasn't that Sixth Street? 22 MR. BROCKETT: I don't know. 23 A. Gosh, I don't remember. 24 Q. Okay. All right. 25 MS. JONES: Ma'am, that's it. That's	Page 11 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 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
Page 10 1 all I have for you. I appreciate your 2 time. Mr. Brockett may have something. 3 MR. BROCKETT: That's all I have, as 4 well, with you. 5 (The deposition was concluded at 2:09 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	

3 (Pages 9 to 11)