

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF WASHINGTON
 3
 4 JAKE SHREVES,)
) **CERTIFIED COPY**
 5 Plaintiff,)
) Case No.:
 6 vs.) 1:19-cv-03012-SMJ
)
 7 FRONTIER RAIL CORPORATION; and)
 YAKIMA CENTRAL RAILWAY,)
 8)
 Defendants.)
 9)
 10 _____)
 11)
 12)
 13)
 14 VIDEOTAPED REMOTE 30(b)(6) DEPOSITION OF
 15 YAKIMA CENTRAL RAILWAY
 16 BY AND THROUGH PAUL DIDELIUS
 17 WEDNESDAY, JANUARY 27, 2021, 10:08 A.M.
 18
 19
 20
 21
 22 Reported by Lori A. Yock, CSR No. 5801
 Job No. 710115-A
 23
 24
 25

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 14)
 15 VIDEOTAPED REMOTE 30(b)(6) DEPOSITION OF YAKIMA
 16 CENTRAL RAILWAY, BY AND THROUGH PAUL DIDELIUS, taken on
 17 behalf of Plaintiff, on Wednesday, January 27, 2021,
 18 10:08 a.m., before Lori A. Yock, Certified Shorthand
 19 Reporter, in and for the State of California.
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 21
 22
 23
 24
 25

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1 REMOTE APPEARANCES:
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<p style="text-align: right;">Page 5</p> <p>1 INDEX TO EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 1 Plaintiff Jake Shreves' Amended Notice of 30(b)(6) Deposition to Yakima Central Railway, 4 pages 8</p> <p>4</p> <p>5 Exhibit 2 Toppenish to White Swan Railroad Line Lease Agreement, Bates Nos. YCR 000038 to 50 51</p> <p>6</p> <p>7 Exhibit 3 Sec. 225.33-compliant Internal Control Plan, Bates Nos. YCR 000549 to 554 54</p> <p>8</p> <p>9 Exhibit 4 YCR MAIN, Maximum Speeds, Bates No. YCR 000658 56</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 PAUL DIDELIUS,</p> <p>2 having been first duly sworn remotely,</p> <p>3 testifies as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. DINGWALL:</p> <p>7 Q. Good morning, Mr. Didelius. Would you please</p> <p>8 just state your first and last name for the record.</p> <p>9 A. Paul Didelius.</p> <p>10 Q. Thank you. I want to see if we can agree on a</p> <p>11 few rules at the outset here.</p> <p>12 Will you tell me if you don't understand a</p> <p>13 question?</p> <p>14 A. Will I?</p> <p>15 Q. Yes.</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Will you tell me if you find a question</p> <p>18 confusing?</p> <p>19 A. Sure.</p> <p>20 Q. Will you tell me if I have assumed a fact</p> <p>21 incorrectly in one of my questions?</p> <p>22 A. If I discern something to that effect, I'll do</p> <p>23 my best to raise it.</p> <p>24 Q. Will you tell me if you don't know the answer to</p> <p>25 one of my questions?</p>
<p style="text-align: right;">Page 6</p> <p>1 WEDNESDAY, JANUARY 27, 2021, 10:08 A.M.</p> <p>2 REPORTED REMOTELY FROM CONTRA COSTA COUNTY, CALIFORNIA</p> <p>3</p> <p>4 THE VIDEOGRAPHER: And good morning. Here</p> <p>5 begins the the remote deposition of 30(b)(6) Yakima</p> <p>6 Central Railway in the matter of Jake Shreves versus</p> <p>7 Frontier Rail Corporation. This case is being heard in</p> <p>8 the United States District Court for the Eastern</p> <p>9 District of Washington. The case number today is</p> <p>10 1:19-cv-03012-SMJ. Today's date is January 27th, 2021.</p> <p>11 The time on the monitor is 10:09 a.m. This is a remote</p> <p>12 deposition through Zoom videoconferencing. Your</p> <p>13 videographer today is Kyle Loskamp appearing on behalf</p> <p>14 of Centext Litigation Services.</p> <p>15 Would you counsel please identify yourselves</p> <p>16 and state whom you represent.</p> <p>17 MR. DINGWALL: Jeff Dingwall for the plaintiff.</p> <p>18 MR. ROSSMILLER: David Rossmiller here</p> <p>19 representing defendants.</p> <p>20 THE VIDEOGRAPHER: Thank you very much. The</p> <p>21 court reporter today is Lori Yock, also of Centext.</p> <p>22 Would you please swear in the witness.</p> <p>23 //</p> <p>24 //</p> <p>25 //</p>	<p style="text-align: right;">Page 8</p> <p>1 A. I will respond as I have been sworn.</p> <p>2 Q. And do you think you need to be reminded of any</p> <p>3 of these rules that we just agreed upon?</p> <p>4 A. Feel free to remind me. I just care to answer</p> <p>5 the questions today.</p> <p>6 MR. DINGWALL: All right. I'm going to start</p> <p>7 off by sending over what we are going to mark as</p> <p>8 Exhibit 1. Let me know when you get that.</p> <p>9 (Exhibit 1 marked for identification.)</p> <p>10 THE WITNESS: What am I looking for?</p> <p>11 BY MR. DINGWALL:</p> <p>12 Q. It should say Exhibit 1.</p> <p>13 A. Stand by. Okay.</p> <p>14 Q. Did you receive what we've marked as Exhibit 1?</p> <p>15 A. Yes.</p> <p>16 Q. And it's a four-page document. It's just the</p> <p>17 Notice of Deposition for today's --</p> <p>18 A. Okay.</p> <p>19 Q. -- 30(b)(6) deposition of Yakima Central Railway.</p> <p>20 Did you get that also, David?</p> <p>21 MR. ROSSMILLER: Yes.</p> <p>22 MR. DINGWALL: David, did you receive that as</p> <p>23 well?</p> <p>24 MR. ROSSMILLER: Yes, I did. I'm opening it</p> <p>25 now and I've got it, yes.</p>

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1 BY MR. DINGWALL:
 2 Q. Mr. Didelius, are you currently an officer of
 3 Yakima Central Railway?
 4 A. I'm a little confused. Is this the deposition
 5 of Frontier Rail Corp.?
 6 Q. This is the deposition of Yakima Central Railway.
 7 A. Okay. I thought it was introduced as the
 8 deposition of Frontier.
 9 Q. It's the deposition of Yakima Central Railway.
 10 THE WITNESS: David, did I mishear things
 11 earlier?
 12 MR. ROSSMILLER: I believe that the court
 13 reporter did say that it was Frontier, but if --
 14 MR. DINGWALL: I think the caption of the case
 15 was read as Frontier.
 16 MR. ROSSMILLER: Okay. All right. Yes. As
 17 long as we are all under the understanding that we are
 18 doing the 30(b)(6) of Yakima Central, then we are good
 19 to go.
 20 BY MR. DINGWALL:
 21 Q. Is that your understanding, Mr. Didelius?
 22 A. That seems like we are in accordance that we
 23 are talking about Yakima Central at this time.
 24 Q. And if you want to refer to Exhibit No. 1, this
 25 is the deposition notice. It's Yakima Central Railway at

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1 10 a.m. on January 27th.
 2 A. Okay. What was the question?
 3 Q. Are you currently an officer of Yakima Central
 4 Railway?
 5 A. Yes.
 6 Q. Which office do you hold?
 7 A. Presidency of the corporation.
 8 Q. How long have you held that position?
 9 A. Since 2009.
 10 Q. Have you been designated by Yakima Central to
 11 testify on its behalf regarding the matters of examination
 12 that are in Exhibit 1?
 13 A. I run the company. So yes.
 14 Q. And do you have full authority to speak on behalf
 15 of Yakima Central Railway?
 16 A. Yes.
 17 Q. Who designated you to testify on behalf of Yakima
 18 Central today?
 19 A. I think I said that I did.
 20 Q. And do you have full authority to designate
 21 someone to testify on behalf of Yakima Central?
 22 A. I run the company. I don't know who else -- I
 23 am the president of the company. I don't know who else
 24 would do that.
 25 Q. Are you aware that the answers you give to my

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1 questions today will be binding upon Yakima Central?
 2 MR. ROSSMILLER: Well, I object to that
 3 characterization. That is not true under the Ninth
 4 Circuit precedent. But go ahead and answer the
 5 question.
 6 THE WITNESS: It sounds like a legal
 7 determination. I don't know that that's my area of
 8 expertise.
 9 BY MR. DINGWALL:
 10 Q. And do you agree to have your answers to my
 11 questions be binding on Yakima Central?
 12 MR. ROSSMILLER: I am going to object. This is
 13 a fact deposition. A 30(b)(6) deposition is a fact
 14 deposition. Legal conclusions are not going to be
 15 testified to today. To the degree that's a legal
 16 conclusion, don't answer it.
 17 THE WITNESS: I don't know that I can answer
 18 that question.
 19 MR. DINGWALL: Just at the outset,
 20 Mr. Rossmiller, I would appreciate it if you would not
 21 make objections that are speaking in nature and also may
 22 suggest an answer to the witness.
 23 MR. ROSSMILLER: I would appreciate you not
 24 asking for legal conclusions. Then I won't have to
 25 speak at all.

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1 MR. DINGWALL: Mr. Rossmiller, if you would
 2 like, I would offer you a stipulation that objections to
 3 form will preserve all objections other than privilege.
 4 That way we don't have to get into lengthy interruptions
 5 to the deposition. Are you agreeable to that?
 6 MR. ROSSMILLER: I will instruct the witness
 7 not to answer any question that calls for a legal
 8 conclusion.
 9 MR. DINGWALL: And what's the basis for that
 10 instruction?
 11 MR. ROSSMILLER: That -- just what I said.
 12 According to the Ninth Circuit, a 30(b)(6) deposition is
 13 a fact witness deposition, not an expert witness
 14 deposition.
 15 MR. DINGWALL: And are you agreeable to the
 16 stipulation that I offered you?
 17 MR. ROSSMILLER: I don't remember what your
 18 stipulation was, but I stated what I'm going to do.
 19 MR. DINGWALL: Well, let me just make sure we
 20 have a clear record on this because I prefer to get this
 21 over as quickly as possible and not take up any more of
 22 Mr. Didelius's time.
 23 I would like to offer you a stipulation that
 24 objections to form will preserve all objections other
 25 than those to privilege.

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1 MR. ROSSMILLER: No, I don't agree to that. As
 2 I mentioned, the Ninth Circuit says that 30(b)(6)
 3 depositions are fact witnesses, and we are not going to
 4 answer any questions today that call for legal
 5 conclusions.
 6 BY MR. DINGWALL:
 7 Q. Mr. Didelius, do you agree to have your answers
 8 to my questions today be binding upon Yakima Central
 9 Railway?
 10 MR. ROSSMILLER: That calls for a legal
 11 conclusion. Don't answer that.
 12 BY MR. DINGWALL:
 13 Q. Mr. Didelius, would you like to answer my
 14 question?
 15 MR. ROSSMILLER: I've instructed the witness
 16 not to answer the question. Don't ask it again.
 17 BY MR. DINGWALL:
 18 Q. Mr. Didelius, are you accepting your counsel's
 19 direction not to answer my question?
 20 A. I don't know that there is a question there for
 21 me to handle.
 22 Q. Well, let me ask it again so it's clear.
 23 Do you agree to have your answers to my questions
 24 today be binding upon Yakima Central Railway?
 25 MR. ROSSMILLER: Don't answer the question. It

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1 calls for a legal conclusion.
 2 BY MR. DINGWALL:
 3 Q. Mr. Didelius, are you taking your counsel's
 4 instruction not to answer my question?
 5 MR. ROSSMILLER: Counsel, I'm going to ask you
 6 to stop harassing the witness. I've instructed him not
 7 to answer. He's not answering. So --
 8 BY MR. DINGWALL:
 9 Q. Mr. Didelius, are you going to answer that
 10 question?
 11 A. I don't know that there is anything for me to
 12 answer there.
 13 MR. ROSSMILLER: Yeah. Don't answer the
 14 question.
 15 THE WITNESS: Roger.
 16 BY MR. DINGWALL:
 17 Q. Mr. Didelius, what has Yakima Central Railway
 18 done to gather all of the information known or reasonably
 19 available to it with respect to the matters of examination
 20 listed in the deposition notice that we have marked as
 21 Exhibit 1?
 22 A. I don't understand the question.
 23 Q. You understand that you are here to testify today
 24 to all of the information known or reasonably available to
 25 Yakima Central Railway with respect to the matters of

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1 examination listed in the deposition notice that we've
 2 marked as Exhibit 1?
 3 A. You are kind of covering a lot of territory.
 4 Can you give me a smaller question?
 5 Q. I'm going to try.
 6 A. I lost track of, you know, all the context and
 7 background.
 8 Q. Do you understand that you have been designated
 9 to testify today on behalf of Yakima Central Railway?
 10 A. Yes.
 11 Q. And do you understand that by virtue of that
 12 designation you are to testify as to all of the
 13 information known or reasonably available to Yakima
 14 Central Railway with respect to the matters that are set
 15 forth in Exhibit 1?
 16 A. Tell me the first part of the question again.
 17 Do I understand what?
 18 Q. Do you understand that you are here to testify
 19 today to all of the information known or reasonably
 20 available to the Yakima Central Railway with respect to
 21 the matters of examination that are listed in the
 22 deposition notice that we've marked as Exhibit 1?
 23 A. I understand that.
 24 Q. With that understanding, what has Yakima Central
 25 Railway done to gather all of the information known or

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1 reasonably available to Yakima Central with respect to
 2 those matters that are set forth in Exhibit 1?
 3 A. We've done a great deal of document digging and
 4 review.
 5 Q. Okay. Tell me about that great deal of documents
 6 that you reviewed.
 7 A. It's been a great deal of time that I haven't
 8 had with relation to my physical and time capabilities,
 9 my family obligations, my business and occupational
 10 occupation. It's been a great deal of time that I've
 11 put into looking at records, primarily emails, from five
 12 years ago.
 13 Q. So other than reviewing documents, is there
 14 anything else that Yakima Central has done to prepare you
 15 to provide all the information known or reasonably
 16 available to it with regard to the matters of examination
 17 in Exhibit 1?
 18 A. Would you like to give me an example of
 19 something that I am supposed to be providing there?
 20 Q. No. Unfortunately, I can't, because I really
 21 need to know what your experience was.
 22 A. What my experience? I don't follow.
 23 Q. You stated that you reviewed some documents in
 24 preparation for your testimony today; is that right?
 25 A. Yes.

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1 Q. A great deal of them; right?

2 A. Yes.

3 Q. Other than reviewing a great deal of documents in

4 preparation for your testimony today, what else was done

5 to prepare you to provide all of the information known or

6 reasonably available to Yakima Central with regard to the

7 matters of examination in Exhibit 1?

8 A. I made an effort to refresh my memory or

9 understanding with various topical matters that would be

10 relevant to documents that we needed to review to handle

11 the topical matter on the -- your legal requests.

12 Q. Okay. So other than reviewing a great deal of

13 documents and refreshing your memory, was there anything

14 else that you did or that was done to prepare you to

15 testify today?

16 A. I'm trying to think. I don't know where you

17 are going with it. Obviously, I discussed things with

18 my attorneys.

19 Q. Okay. Was there anything else?

20 A. Nothing comes to mind at this time.

21 Q. Okay. Will you let me know if anything else does

22 come to mind?

23 A. Subject to responding to your questions, yes.

24 Q. That's all I'm asking you to do is respond to my

25 questions.

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1 What are the sources of all of the factual

2 information that were available to Yakima Central in

3 gathering the information known or reasonably available

4 with regard to the matters of examination in Exhibit 1?

5 A. My intellect, my memory, and my emails

6 primarily.

7 Q. Anything else besides your intellect, your

8 memory, and emails?

9 A. Nothing is coming to mind.

10 Q. Who are all of the people who provided factual

11 information known or reasonably available to Yakima

12 Central with regard to the matters of examination listed

13 in the deposition notice?

14 A. During what time frame?

15 Q. In preparation for your testimony today.

16 A. Myself.

17 Q. Anyone else?

18 A. I don't have -- I don't have -- Yakima

19 Central -- YCR Corp. does not have any current employees

20 or participants that have any information to offer.

21 Q. And how did you make that determination?

22 A. It's the reality. There were no current YCR

23 resources for me to call upon and essentially a review

24 of emails.

25 Q. And did you make an effort to determine whether

Page 19

1 any former YCR employees had any factual information

2 related to the topics of examination in Exhibit 1?

3 A. I don't believe so. I mean, with regards to

4 this case, there's other parties that have been deposed.

5 But in terms of my preparing for today's deposition,

6 there were no resources for me to call on, and I called

7 on no YCR Corp. resources, current or past.

8 Q. Did anybody from Frontier Rail help you prepare

9 for your testimony today?

10 A. No.

11 Q. What facts in response to the matters of

12 examination that are listed in the deposition notice were

13 provided to you by YCR attorneys?

14 MR. ROSSMILLER: Don't answer that question.

15 Attorney-client privilege.

16 MR. DINGWALL: You are instructing him not to

17 answer based on attorney-client privilege?

18 MR. ROSSMILLER: If you are asking what his

19 attorneys have told him, yes, I am.

20 MR. DINGWALL: Did you understand the question.

21 Mr. Rossmiller?

22 MR. ROSSMILLER: Maybe I didn't. Could you ask

23 it again?

24 MR. DINGWALL: Sure.

25 Q. Mr. Didelius, what facts in response to the

Page 20

1 matters of examination that are listed in Exhibit 1 were

2 provided to you by Yakima Central attorneys?

3 MR. ROSSMILLER: Don't answer that question.

4 It's attorney-client privilege.

5 BY MR. DINGWALL:

6 Q. Mr. Didelius, are you accepting your attorney's

7 instruction not to answer that question?

8 A. I have nothing to answer here.

9 Q. Are you choosing not to answer based on your

10 attorney's instruction or are you saying you don't have an

11 answer?

12 A. Why don't we --

13 MR. ROSSMILLER: I've instructed the witness

14 not to answer based on attorney-client privilege. Don't

15 ask the question again.

16 BY MR. DINGWALL:

17 Q. Mr. Didelius, are you not answering the question

18 based on your attorney's instruction not to answer?

19 MR. ROSSMILLER: I've instructed the witness

20 not to answer the question. Don't answer the question.

21 Move on.

22 MR. DINGWALL: I'm entitled to a response from

23 the witness and I would like to know what that is.

24 MR. ROSSMILLER: I've instructed the witness

25 not to answer the question and I want you to stop

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1 harassing the witness and trying to break the
 2 attorney-client privilege.
 3 BY MR. DINGWALL:
 4 Q. Mr. Didelius, do you have an answer to my
 5 question?
 6 MR. ROSSMILLER: I've instructed the witness
 7 not to answer the question and we can just keep
 8 repeating this all day if necessary. Maybe you will
 9 understand it -- what I've said. The witness is not
 10 answering the question.
 11 BY MR. DINGWALL:
 12 Q. Mr. Didelius, did you speak with Yakima Central
 13 Railway attorneys in preparation for your testimony today?
 14 MR. ROSSMILLER: You can mention that you have
 15 spoken to your attorneys.
 16 THE WITNESS: Yes.
 17 BY MR. DINGWALL:
 18 Q. And which attorneys did you speak with?
 19 MR. ROSSMILLER: Don't answer that question.
 20 It's attorney-client privilege.
 21 BY MR. DINGWALL:
 22 Q. Did you speak with Mr. Rossmiller?
 23 MR. ROSSMILLER: We are going to end the
 24 deposition if you keep harassing the witness. I've
 25 instructed him not to answer. And so you will move on

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1 or we'll -- we'll end the deposition if you are going to
 2 harass the witness.
 3 BY MR. DINGWALL:
 4 Q. Mr. Didelius, did you speak with Kelsey Terry in
 5 preparation for your testimony --
 6 MR. ROSSMILLER: Don't answer the question.
 7 Attorney-client privilege.
 8 BY MR. DINGWALL:
 9 Q. Mr. Didelius, are you choosing to accept your
 10 attorney's instruction not to answer that question?
 11 MR. ROSSMILLER: You may answer "yes."
 12 THE WITNESS: Yes.
 13 BY MR. DINGWALL:
 14 Q. Mr. Didelius, what was your role in gathering all
 15 of the information known or reasonably available to Yakima
 16 Central with respect to the matters of examination listed
 17 in Exhibit 1?
 18 A. I was the one person to respond to this request
 19 and handled it.
 20 Q. Other than what you've told me so far, is there
 21 anything else that was done to prepare you for this
 22 deposition?
 23 A. I don't know how to answer that. I don't know
 24 what you're looking for.
 25 Q. I'm not looking for anything other than your

Page 23

1 answer.
 2 A. I've explained to you how I prepared for the
 3 deposition. I have nothing further to offer on that.
 4 Q. Let's make sure we are on the same page before we
 5 go forward.
 6 So in preparing for your testimony today, you
 7 reviewed a great deal of documents; is that right?
 8 MR. ROSSMILLER: Objection. It's been asked
 9 and answered.
 10 BY MR. DINGWALL:
 11 Q. Is that correct, Mr. Didelius?
 12 A. I said yes.
 13 Q. You also refreshed your memory; is that right?
 14 MR. ROSSMILLER: Objection; asked and answered.
 15 BY MR. DINGWALL:
 16 Q. Is that correct, Mr. Didelius?
 17 A. Yes.
 18 Q. You spoke with your attorneys; correct?
 19 MR. ROSSMILLER: You may answer "yes."
 20 THE WITNESS: Yes.
 21 BY MR. DINGWALL:
 22 Q. You relied on your intellect, your memory, and
 23 emails; correct?
 24 MR. ROSSMILLER: Objection; asked and answered.
 25 BY MR. DINGWALL:

Page 24

1 Q. Is that correct, Mr. Didelius?
 2 A. Yes.
 3 Q. So other than those things we've just talked
 4 about, is there anything else that was done to prepare you
 5 for this deposition?
 6 MR. ROSSMILLER: Objection. It's been asked
 7 and answered.
 8 BY MR. DINGWALL:
 9 Q. You may answer.
 10 A. I think I've already said that I'm not
 11 recalling any other input, sir.
 12 Q. Okay. How much time did you spend preparing to
 13 respond to the matters of examination that are listed in
 14 Exhibit 1?
 15 A. Specific to preparing for response to
 16 Exhibit 1, as far as my time, I would say approximately
 17 six hours.
 18 Q. And are you fully prepared today to provide all
 19 of the information known or reasonably available to Yakima
 20 Central Railway with respect to the matters of examination
 21 that are listed in Exhibit 1?
 22 A. I'm not prepared to offer an assessment of
 23 what's reasonable.
 24 Q. So is the answer to my question "yes" or "no"?
 25 A. Why don't you try asking it again.

Page 25

1 O. Sure. Are you fully prepared today to provide
 2 all of the information known or reasonably available to
 3 Yakima Central Railway with respect to the matters of
 4 examination that are set forth in the deposition notice
 5 we've marked as Exhibit 1?

6 A. The time for the deposition has arrived. I am
 7 prepared to handle this to the best of my time and
 8 abilities.

9 MR. ROSSMILLER: And so that it doesn't come as
 10 a surprise here to the court reporters, Andrew Gust was
 11 also supposed to be on here. He has had some difficulty
 12 here. So if he -- is it going to interrupt the
 13 questioning or the video streaming if Andrew does get on
 14 here soon? For the court reporter, Andrew is another
 15 attorney in this matter.

16 MR. DINGWALL: Thanks for that.

17 MR. ROSSMILLER: Will that be all right or do
 18 we need to wait for a break?

19 MR. DINGWALL: I don't know who -- I don't know
 20 why you chose just now to ask that question.

21 MR. ROSSMILLER: What did you just say to me?

22 MR. DINGWALL: I said I don't know who you are
 23 asking or why you decided to ask that in the middle of
 24 my examination of Mr. Didelius.

25 MR. ROSSMILLER: I'm asking because -- all

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1 right. You don't know why I chose to ask that question.

2 MR. DINGWALL: We are going to move on. I'm
 3 sure we can handle it if Mr. Gust comes on.

4 MR. ROSSMILLER: Are you sure? I don't want to
 5 interrupt your deposition.

6 BY MR. DINGWALL:

7 O. Mr. Didelius, what is your experience working
 8 with matter of examination No. 1 that's set forth in
 9 Exhibit No. 1?

10 Did you understand the question, Mr. Didelius?

11 A. I'm sorry. What?

12 O. Did you understand my question?

13 A. I accidentally lost the audio for the last two
 14 minutes so I didn't realize you asked me a question.

15 O. Can you hear me all right now?

16 A. Yes.

17 O. What is your experience working with matter of
 18 examination No. 1 that is set forth in the deposition
 19 notice that we've marked as Exhibit 1?

20 A. What is my what?

21 O. What is your experience working with matter of
 22 examination 1 that's set forth in Exhibit 1?

23 A. Stand by. I don't know how I would answer
 24 that. I'm aware and familiarized, have recollection of
 25 the track safety standards at YCR during 2015 and 2016.

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1 O. And how are you aware of those standards in 2015
 2 and 2016?

3 A. Recollection and review of documents.

4 O. Which documents did you review?

5 A. Various emails.

6 O. Was there something specific to your role in 2015
 7 and 2016 that would have given you experience with regard
 8 to track safety standards at Yakima Central?

9 A. I was the president of YCR Corp. and the
 10 ultimate --

11 (Reporter clarification.)

12 THE WITNESS: -- manager or responsible party
 13 for, you know, the management of the company. So I was
 14 involved with visiting the property from time to time
 15 and dealing with its various employees or levels of, you
 16 know, performance of the railroad.

17 BY MR. DINGWALL:

18 O. Okay. Who are all of the other people besides
 19 yourself at Yakima Central that have knowledge about
 20 matter of examination No. 1?

21 A. Who are or who were?

22 O. Both.

23 A. Are you asking me for a list of the current
 24 people involved in the YCR Corp.? I don't know how that
 25 would have any bearing on 2015 and 2016.

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1 O. I'm asking you who are all of the people who have
 2 knowledge about matter of examination No. 1.

3 A. With regards to the YCR, that would be myself,
 4 Steve Hall, Bob Litts, and Jake Shreves. I don't know
 5 that there would be anyone in the command chain that
 6 would -- that would extend beyond that list.

7 O. Okay. Is there anyone outside of your
 8 organization, meaning Yakima Central, that has information
 9 about matter of examination No. 1?

10 A. No.

11 O. Has Yakima Central talked to any of these
 12 individuals that you just listed to ensure that
 13 100 percent of the information available to Yakima Central
 14 has been gathered about matter of examination 1?

15 A. This deposition is of me. I'm the party both
 16 currently with and previously involved with YCR Corp.
 17 that can answer these questions.

18 O. Did you talk to any of these people that you just
 19 listed to ensure that you have 100 percent of the
 20 information available about matter of examination 1?

21 A. I believe that all four of the names I
 22 referenced have been deposed as a part of this case.

23 O. And I understand that. I'm just asking a very
 24 specific question and for the purposes of my question I'll
 25 except Jake Shreves and limit it to Mr. Hall and

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1 Mr. Litts.
 2 Did you speak to them in preparation for your
 3 deposition today to ensure that you have 100 percent of
 4 the information known or available to Yakima Central with
 5 regard to matter of examination No. 1?
 6 MR. ROSSMILLER: Object to the form of the
 7 question.
 8 BY MR. DINGWALL:
 9 Q. I'm sorry. I didn't catch your answer.
 10 A. Why don't you ask the question again, please.
 11 Q. Sure. You mentioned that Steve Hall and Bob
 12 Litts would have had information about matter of
 13 examination No. 1; correct?
 14 A. I might have. I don't want to agree to that.
 15 Q. Well, if I asked you that question right now,
 16 would you agree with it?
 17 A. It's a different question than I answered
 18 before when I provided the list. So I don't necessarily
 19 want to agree to that.
 20 Q. Did you talk to Steve Hall or Bob Litts in
 21 preparation for your testimony today to ensure that you
 22 had 100 percent of the information available to Yakima
 23 Central with regard to matter of examination No. 1?
 24 MR. ROSSMILLER: Object to the form of the
 25 question.

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1 BY MR. DINGWALL:
 2 Q. You may answer.
 3 A. They are not current employees. They haven't
 4 been employees of YCR Corp. or their other employer, as
 5 the case may be, for a number of years. The answer to
 6 the question, did I consult with either Steve Hall or
 7 Bob Litts in preparation, would be no.
 8 Q. Were there any documents that contain information
 9 about matter of examination No. 1?
 10 A. I've referenced that I've reviewed documents,
 11 yes.
 12 Q. What documents are they?
 13 A. There's emails. There's track bulletins.
 14 There's what's called a timetable or line guide. Those
 15 come to mind.
 16 Q. Any other documents?
 17 A. I don't know if I would call them documents,
 18 but there's the General Code of Operating Rules.
 19 There's Code of Federal Regulations which govern
 20 railroad companies' operations.
 21 Q. Anything else?
 22 A. Nothing that comes to mind at this time.
 23 Q. Okay. And has Yakima Central gathered and
 24 reviewed those documents to ensure that 100 percent of the
 25 information available has been gathered about matter of

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1 examination 1?
 2 MR. ROSSMILLER: Object to the form of the
 3 question.
 4 BY MR. DINGWALL:
 5 Q. You may answer.
 6 A. I think I've already said that I've done my
 7 best to aggregate the information necessary to answer
 8 your questions today and the time of the deposition is
 9 here.
 10 Q. Okay. I'm not sure that entirely answers my
 11 question.
 12 Has Yakima Central gathered and reviewed those
 13 documents that you just referenced to ensure that
 14 100 percent of the information --
 15 MR. ROSSMILLER: Objection. The question is
 16 asked and answered. You don't need to answer this
 17 question any further.
 18 MR. DINGWALL: I would ask you when you make an
 19 objection that you let me finish my question before
 20 doing so so we have a clean record. Is that okay? Do
 21 you agree with me on that, Mr. Rossmiller?
 22 Q. I'm going to ask you again, Mr. Didelius, because
 23 I don't believe we got a clear record there.
 24 Has Yakima Central gathered and reviewed those
 25 documents that you just referenced to ensure that

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1 100 percent of the information available to Yakima Central
 2 has been gathered about matter of examination No. 1?
 3 MR. ROSSMILLER: Objection. The question has
 4 been asked and answered and this is harassment. So you
 5 don't need to answer questions seven times. So we'll
 6 just refrain from answering questions that you are
 7 asking repeatedly.
 8 BY MR. DINGWALL:
 9 Q. Mr. Didelius, are you going to answer the
 10 question that I just posed?
 11 A. No.
 12 Q. The documents that you referenced just now, how
 13 were they gathered by yourself?
 14 A. I have a couple of computers by which I'm able
 15 to pull up the Worldwide Web. I'm able to pull up my
 16 company Gmail account that has emails going back to
 17 about 2012.
 18 Q. How did you decide which documents to search for?
 19 A. I think I've already explained that I've gone
 20 off of my personal knowledge, my intellect, my memory.
 21 I don't know what else I would do.
 22 Q. Did anybody provide to you a range or scope of
 23 documents to look for?
 24 MR. ROSSMILLER: To the degree that you are
 25 talking about anything that has to do with

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1 attorney-client privilege, Mr. Didelius, don't answer
 2 the question.
 3 THE WITNESS: I've responded to the topical
 4 matter of the questions in the exhibit that you've
 5 provided to me here.
 6 BY MR. DINGWALL:
 7 Q. I understand that and I appreciate that. I
 8 really need to understand in what ways you have done that
 9 so I can understand whether or not we have all the
 10 information known or reasonably available to Yakima
 11 Central. Do you understand that?
 12 MR. ROSSMILLER: Don't answer the question to
 13 the degree that it involves any attorney-client
 14 communications or privilege.
 15 THE WITNESS: I don't know that there is a
 16 question there. I didn't catch it.
 17 BY MR. DINGWALL:
 18 Q. Did your lawyers provide to you any search
 19 criteria for documents to look for in response to matter
 20 of examination 1?
 21 MR. ROSSMILLER: Don't answer that question.
 22 That is attorney-client privilege.
 23 BY MR. DINGWALL:
 24 Q. And are you going to answer that question,
 25 Mr. Didelius?

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1 A. No.
 2 Q. Let's take it one by one. You stated that there
 3 are emails that contain information with regard to matter
 4 of examination 1; correct?
 5 A. Yes.
 6 Q. Which emails contain information regarding matter
 7 of examination 1?
 8 A. One could argue that the production of all the
 9 emails we've provided in this case, considering
 10 Mr. Shreves's work at the railroad, that 100 percent of
 11 those emails relate to the track standards.
 12 Q. So every email that's been produced so far in
 13 this case has information regarding matter of examination
 14 1?
 15 A. At the very least tangentially.
 16 Q. And did you review all of those emails in
 17 preparation for your testimony today?
 18 A. Oh, no.
 19 Q. And why not?
 20 A. Some of them were more informative or relevant
 21 than others.
 22 Q. And so which ones did you choose to review?
 23 A. I looked -- my -- the email system I use has a
 24 fairly efficient and effective search feature, and I
 25 searched on certain terms that were going to help nail

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1 down certain -- certain items.
 2 Q. And which -- what search criteria did you use in
 3 searching your email?
 4 A. I doubt I'll remember all of them, but there
 5 was a fair number.
 6 Q. Which ones do you remember?
 7 A. Timetable, line guide, excepted, certain
 8 people's names, agencies. There's a few.
 9 Q. Timetable, line guides, excepted, agencies, and
 10 certain people's names; is that right?
 11 A. It sounds like what I just said.
 12 Q. Which people's names did you search?
 13 A. There's Steve Hall, Jake Shreves, some of the
 14 state and federal track inspectors.
 15 Q. Which state and federal track inspectors did you
 16 search for?
 17 A. Martinsen, Gangstad, Spurlock. I can't think
 18 of any others right now.
 19 Q. Which agency did you search for?
 20 A. Washington Utilities and Transportation
 21 Commission, Federal Railroad Administration.
 22 Q. Any others?
 23 A. Not specifically.
 24 Q. And you said you used Gmail as your email server
 25 or service?

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1 A. That's the, I guess, conduit through which I
 2 manage and use and search email, yes.
 3 Q. And your email search goes back to 2012; is that
 4 right?
 5 A. Yeah, early 2012.
 6 Q. Did your email program purge emails from the
 7 system from time to time?
 8 A. I don't believe I've ever deleted an email, and
 9 it does not, to my knowledge, purge anything.
 10 Q. Does your email back itself up from time to time?
 11 A. I don't want to speculate what Google does, but
 12 I have to think that they do a lot there, and it's been
 13 highly functional, and I've never -- I've never not
 14 found an email that I had recollection of in the history
 15 going back to 2012.
 16 Q. So was the search of your email limited to typing
 17 in search criteria in the search bar in the Gmail app?
 18 A. Substantially. I don't know how else I would
 19 go through like hundreds of thousands of emails.
 20 Q. And are you confident that your search resulted
 21 in you gathering 100 percent of the documents, or emails
 22 at least, that contain information regarding matter of
 23 examination No. 1?
 24 MR. ROSSMILLER: Object to the form of the
 25 question.

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1 BY MR. DINGWALL:
 2 Q. You may answer.
 3 A. I'm confident that my search of the emails was
 4 entirely adequate or reasonable. 100 percent is a
 5 really defined number.
 6 Q. Was it difficult for you to conduct that search?
 7 A. No.
 8 Q. Did you find it unduly burdensome?
 9 MR. ROSSMILLER: Objection. It's a legal
 10 conclusion. He is not a lawyer or a legal expert.
 11 Don't answer these questions about legal conclusions,
 12 including this one.
 13 BY MR. DINGWALL:
 14 Q. Are you choosing not to respond based upon your
 15 counsel's instruction, Mr. Didelius?
 16 A. That is correct.
 17 Q. So in addition to emails, you also mentioned that
 18 you reviewed track bulletins; is that right?
 19 A. I reviewed the track bulletin history.
 20 Q. What is a track bulletin?
 21 A. A track bulletin is something that we use
 22 internal to our company that allows and provides for any
 23 issue that any employee finds with the track be
 24 communicated to the other employees, and typically it
 25 involves something of a safety concern or nature or an

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1 operational restriction based on a particular track, you
 2 know, fact on the ground. It's also used by management
 3 or track inspectors to formally notice the employees of
 4 a condition or factor that they need to comply with.
 5 Q. How many track bulletins were there that you
 6 reviewed for the years 2015 and 2016?
 7 A. I can't give you a specific number at this time
 8 how many track bulletins there were related to 2015 and
 9 2016.
 10 Q. Why not?
 11 A. I -- that's not something I made an effort to
 12 quantify.
 13 Q. How did you know that you reviewed all of the
 14 track bulletins that were responsive to the matters of
 15 examination in Exhibit 1?
 16 MR. ROSSMILLER: Objection to the form of the
 17 question.
 18 BY MR. DINGWALL:
 19 Q. You may answer.
 20 A. I didn't specifically review every single track
 21 bulletin that would have been either written or voided
 22 in 2015 or 2016. That wasn't necessary to answer, to my
 23 sense, the questions of this request.
 24 Q. And tell me about the timetables that you
 25 reviewed.

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1 A. I was able to locate -- these are superseded
 2 documents that are no longer in force. I was able to
 3 locate at least two previous timetables, or as we call
 4 them now, line guides. "Timetable" is really kind of an
 5 archaic term that really doesn't make sense anymore.
 6 Q. Which timetables did you review?
 7 A. I found one that looked like it was issued
 8 sometime prior to 2013 and another that was in force by
 9 late 2017. They did not necessarily have first dates on
 10 them, but I was able to determine that they were in
 11 force on 2013 and 2017. I did not find another
 12 timetable in between those two years.
 13 Q. So you did not review any time tables that were
 14 in effect in 2015 and 2016?
 15 A. I did not say that and I would not agree to
 16 that assertion.
 17 Q. Okay. Which timetables did you review that were
 18 in effect in 2015 and 2016?
 19 A. I don't have any other reason to not see that
 20 the 2013 applicable timetable was still in force as of
 21 2015-2016.
 22 Q. How would one know if one was looking at the 2013
 23 timetable whether it was in effect in 2015 and 2016?
 24 A. It was evident from the track bulletins that a
 25 new timetable was issued prior to 2013, and there was

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1 nothing in the track bulletins that referenced a new
 2 timetable during the years you are asking me about, and
 3 I found no other internal correspondence related to YCR
 4 timetable or line guide or changes thereto. So
 5 everything that I'm seeing shows that the one that I had
 6 a date reference to being in force in 2013 was still in
 7 force.
 8 Q. Who was responsible for timetables at Yakima
 9 Central in 2015 and 2016?
 10 A. Timetable or line guide, myself.
 11 Q. And where do you typically keep timetables?
 12 A. On our company website.
 13 Q. And did you look on the company website for
 14 timetables that were in force in 2015 and 2016?
 15 A. We are not responsible to maintain an archive,
 16 and as I said earlier, the ones that are in force now
 17 superceded the ones that would have been in force in
 18 2015, 2016, at least two, maybe three versions.
 19 Q. But did you look on the company website to
 20 determine whether there were timetables there that were in
 21 force in 2015 and 2016?
 22 A. It's not a -- it's not a valid question. I --
 23 let me think about this. There were links from previous
 24 emails that were dead. In other words, they didn't take
 25 me anywhere because why would they? We've updated those

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1 links. And so I guess to answer your question.
 2 technically I did look on the company website and the
 3 old stuff is not there, just like I would expect it not
 4 to be there.
 5 Q. But you did find a 2013 timetable there?
 6 A. No. I found the 2013 timetable through an
 7 email reference.
 8 Q. Okay. And did you search your emails for
 9 timetables for 2015 and 2016?
 10 A. Yes and no. Yes, I searched for any reference
 11 to timetables or line guides. No, not specifically to
 12 2015-2016. These weren't year specific. They would be
 13 updated when we had -- we had the reason to update them,
 14 and they might straddle even multiple years.
 15 Q. Whose responsibility was it to update timetables
 16 in 2015 and 2016?
 17 A. I think I've already said that that was mine.
 18 Q. So is there anybody else that would know whether
 19 or if a timetable was updated for 2015 and 2016?
 20 A. I seriously doubt any of the other three people
 21 that I named would have that specific recollection. So
 22 I would say no.
 23 Q. And you reviewed the General Code of Operating
 24 Rules in preparation for your testimony; is that right?
 25 A. It came up, but I didn't really review it.

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1 Q. And just for the sake of the record, you earlier
 2 said GCOR. And I want to make sure the record is clear.
 3 That's G-C-O-R?
 4 A. Yeah. I think I said General Code of Operating
 5 Rules. I don't know if that's applicable when you were
 6 asking me about documents, but I did say that there were
 7 things such as the general code and federal regulations
 8 that I referenced. Those aren't necessarily company --
 9 company documents specifically. I mean, they are
 10 broadly used.
 11 Q. Is it your testimony today that the General Code
 12 of Operating Rules has information relative to matter of
 13 examination No. 1 in Exhibit No. 1?
 14 A. Yeah, I would say that's accurate.
 15 Q. And what specifically in the General Code of
 16 Operating Rules would have information with regard to
 17 matter of examination No. 1?
 18 A. I mean, Chapter 1 is full of responsibilities
 19 of employees. There's business about alert and
 20 attentive. There's business about reporting injuries.
 21 There's business about taking the safe course. I mean,
 22 the list goes on and on. Reporting safety issues with
 23 track.
 24 Q. And did you review anything in the General Code
 25 of Operating Rules in preparation for your testimony

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1 today?
 2 MR. ROSSMILLER: Objection; asked and answered.
 3 BY MR. DINGWALL:
 4 Q. I'm sorry. I didn't hear.
 5 A. Not specifically. I didn't spend any time
 6 reviewing the general code. I have got a reasonable
 7 recollection of it.
 8 Q. And you referenced also the Code of Federal
 9 Regulations as having information related to matter of
 10 examination No. 1; is that right?
 11 A. Yes.
 12 Q. And what specifically in the Code of Federal
 13 Regulations has information related to matter of
 14 examination No. 1?
 15 A. Well, it -- so there's Chapter -- I think it's
 16 49 of the Code of Federal Regulations, and the railroad
 17 section is the 200 series. There's quite -- quite a
 18 volume of federal regulations that relate to the
 19 operation of the railroad, management of employees,
 20 inspection and repair of track. I mean, it's
 21 voluminous.
 22 Q. And did you review any portions of the Code of
 23 Federal Regulations in preparation for your testimony
 24 today as to matter of examination No. 1?
 25 A. Not in great depth.

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1 Q. Okay. Other than the emails that you mentioned
 2 and the timetables that were on the company website, is
 3 there any other electronically stored information that
 4 contains information about matter of examination No. 1?
 5 A. I think I referenced the track bulletins, the
 6 history of the track bulletins. I think that covers it.
 7 Q. And where were the track bulletins kept?
 8 A. They are on the company website.
 9 Q. Who maintains the company website?
 10 A. A variety of people. I have some involvement.
 11 My wife has some involvement. There's third-party
 12 vendors that host it. Whoever makes the Worldwide Web
 13 work, they are involved.
 14 Q. And so if someone was to, for example, put a new
 15 timetable link on the company website, who would be
 16 responsible for that?
 17 A. It could be myself or it could be someone that
 18 I had -- had write that bulletin for me.
 19 Q. Who would write the bulletins for you?
 20 A. Whoever I ask that was involved with YCR.
 21 Q. Does someone need to have a special qualification
 22 to write the track bulletin for YCR?
 23 A. Oh, no. Just need to know how to use the
 24 website.
 25 Q. So anyone that knows how to use the company

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1 website can write a track bulletin at YCR?

2 A. That is correct.

3 Q. And does the company website have any kind of an

4 archive feature for older documents?

5 A. Yes. I've referenced that.

6 Q. And did you search the archive of the company

7 website for documents responsive to matter of examination

8 No. 1?

9 A. At some degree, yes.

10 Q. What degree did you search?

11 A. Again, I was looking at it for certain search

12 terms, just did a control find on the bulletins current

13 and voided.

14 Q. And so how far back does the archive feature on

15 the company website go?

16 A. At least to 2012 or 2011.

17 Q. And do you have any knowledge as to why the

18 archive would not contain timetables for the time period

19 between 2013 and 2017?

20 A. Something didn't come through right. Do I have

21 any -- please reask the question.

22 Q. Do you have any idea why the archive feature on

23 the company website would not contain reference to

24 timetables between 2013 and 2017?

25 A. The only inference I can make is that there

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1 wasn't a new one issued during that time.

2 Q. And as the person who was in charge of timetables

3 during that period, wouldn't you be the one to know

4 whether there were any time tables in between 2013 and

5 2017?

6 A. I think I've said it's something we're not

7 typically expected to maintain in arrears in terms of an

8 archive. I do happen to have email attachments and

9 dates on those emails that reference new timetables, and

10 it does not appear that there was anything issued

11 between the years of 2013 and 2017. So that's been --

12 that's been supported both on the email side and on the

13 track bulletin side.

14 Q. So what timetable was in effect at Yakima Central

15 in 2015?

16 A. The one that I've referenced having seen was in

17 effect in 2013.

18 Q. Which one was that -- I'm sorry. I take that

19 back. So the 2013 timetable was the one that was in

20 effect in 2015; is that right?

21 A. I think I've said that in several ways, yes.

22 Q. And that 2013 timetable has been provided to us?

23 A. I believe so.

24 Q. And was that 2013 timetable also in effect in

25 2016?

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1 A. I've said that, yes.

2 Q. So has Yakima Central gathered and reviewed all

3 of the electronic information to ensure that 100 percent

4 of the information available with regard to matter of

5 examination No. 1 has been gathered?

6 MR. ROSSMILLER: Objection to the form of the

7 question. This question has been answered before and

8 it's been asked before a number of times.

9 BY MR. DINGWALL:

10 Q. You may answer.

11 A. I -- I don't have anything new to offer here.

12 Q. Well, did you do anything else other than search

13 your email and search the company website and the archive

14 of the company website?

15 A. I think I explained that I put a number of

16 hours into review, refreshing my memory, validation of

17 recollection, and so on and so forth.

18 Q. And do you believe that you have gathered and

19 reviewed all of the electronic information that would be

20 responsive to matter of examination No. 1?

21 A. I believe I am fully equipped to handle this

22 deposition today.

23 Q. Okay. I understand that. That wasn't exactly my

24 question. So I'm trying to determine whether you feel

25 that you have gathered and reviewed all of the electronic

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1 information that's relative and responsive to matter of

2 examination No. 1.

3 MR. ROSSMILLER: Object to the form of the

4 question and object that it's been asked and answered.

5 BY MR. DINGWALL:

6 Q. You may answer.

7 A. I have everything YCR needs to respond to these

8 questions.

9 Q. Beyond what we've just discussed, did you do

10 anything else in your preparation for any of the matters

11 of examination --

12 MR. ROSSMILLER: Object to the form of the

13 question and object that it's been asked and answered.

14 BY MR. DINGWALL:

15 Q. Mr. Didelius, beyond what we've just discussed

16 with regard to matter of examination No. 1 --

17 (Reporter clarification.)

18 BY MR. DINGWALL:

19 Q. Mr. Didelius, beyond what we've just discussed

20 with regard to matter of examination No. 1, did you do

21 anything else in your preparation to testify with regard

22 to any of the other matters of examination that are in the

23 deposition notice?

24 MR. ROSSMILLER: Object to the form of the

25 question and object that the question has been asked and

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1 answered.

2 BY MR. DINGWALL:

3 Q. You may answer.

4 A. I'm reviewing the document. Did I do anything

5 else to prepare for these other topical matters? Is

6 that what you are saying?

7 Q. Yes.

8 A. Just more of the same.

9 Q. So you would have searched your emails; correct?

10 A. Yes.

11 Q. And you would have searched the company website

12 and the archive of the company website; correct?

13 A. Sure.

14 Q. And anything else?

15 A. Made a brief review of a 225 Internal Control

16 Plan document that came up.

17 MR. DINGWALL: Okay. We have been going a

18 little over an hour. Why don't we take a quick

19 five-minute break and we'll come back.

20 MR. ROSSMILLER: Why don't we take a ten-minute

21 break here just to make sure that there's no

22 difficulties getting back in the room.

23 MR. DINGWALL: That sounds good, David. I hope

24 you don't run into any obstacles.

25 MR. ROSSMILLER: Okay.

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1 THE VIDEOGRAPHER: Off the record at 11:22 a.m.

2 MR. ROSSMILLER: All right. Sounds good.

3 (A recess was taken.)

4 THE VIDEOGRAPHER: We are back on the record at

5 11:37 a.m. This is media No. 2.

6 BY MR. DINGWALL:

7 Q. Mr. Didelius, did you speak with anyone during

8 your break just now?

9 A. I -- I said hello to the accountant,

10 non-related matter.

11 Q. Did you exchange any texts or emails with anyone?

12 A. I'm sorry? What?

13 Q. Did you exchange any texts or emails with anyone?

14 A. Nothing of relevance. I texted my wife, texted

15 a couple of people that I was in deposition.

16 Q. Did you place any phone calls or receive any

17 phone calls?

18 A. I didn't take any phone calls.

19 Q. Did you place any?

20 A. I don't believe so.

21 Q. Did you speak with your attorney?

22 MR. ROSSMILLER: Don't answer that question.

23 It's attorney-client privilege.

24 MR. DINGWALL: Whether he spoke with his

25 attorney is privileged?

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1 MR. ROSSMILLER: Yes.

2 BY MR. DINGWALL:

3 Q. Mr. Didelius, are you going to answer that

4 question?

5 A. I don't believe so.

6 Q. You don't believe you are going to answer or you

7 don't believe you spoke with your attorney?

8 A. I don't believe I'm to answer that.

9 (Exhibit 2 marked for identification.)

10 BY MR. DINGWALL:

11 Q. Okay. And I sent you over a document that we've

12 marked as Exhibit 2. Let me know when you have that,

13 Mr. Didelius.

14 A. Okay.

15 Q. This is a 13-page document. You can look through

16 it if you would like. I'm going to ask you a few

17 questions about it.

18 A. What question do you have?

19 Q. Have you seen this document before?

20 A. Of course.

21 Q. And the title of the document on the first page

22 is Toppenish to White Swan Railroad Line Lease Agreement;

23 is that right?

24 A. That's what I see.

25 Q. And if you go all the way to the last page, which

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1 is page 13, you see a page of signatures there?

2 A. Right.

3 Q. And under "Lessee," is that your signature?

4 A. It is.

5 Q. And the title is "President," and it's signed

6 12/17/2009; is that right?

7 A. That's what I see.

8 Q. Okay. Is this the lease that is in effect or

9 that encompasses the -- why don't we strike that and start

10 over.

11 You signed this document in 2009; is that

12 correct?

13 A. That's what I see.

14 Q. And this lease was in effect for ten years from

15 the date that you signed it; correct?

16 A. That's my recollection.

17 Q. And so this lease would have been in effect in

18 2015 and 2016; correct?

19 A. Yes.

20 Q. And this lease allowed Yakima Central Railway to

21 operate over a section of track in Yakima County; is that

22 correct?

23 A. Yeah.

24 Q. And that's the only track that Yakima Central

25 operated over; is that correct?

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1 A. It operates over customers' customer-owned
 2 tracks that are connected to this track.
 3 Q. Okay. And the track that is encompassed in this
 4 lease agreement would have been the track that Jake
 5 Shreves was assigned to work on in 2015 and 2016 as an
 6 employee of Yakima Central; is that right?
 7 A. Yes.
 8 Q. Did you review this lease agreement at all in
 9 preparation for your testimony today?
 10 A. I did not.
 11 Q. Do you believe that this lease agreement has --
 12 contains information related to any of the topics of
 13 examination that are in Exhibit 1?
 14 A. It covers -- did you say item 1?
 15 Q. Any of the matters of examination in Exhibit 1.
 16 A. Sure.
 17 Q. Which ones in particular?
 18 A. Well, you are asking me to make, you know,
 19 legal evaluations. This is the lease that YCR Corp.
 20 even had a railroad to operate. This is the lease for
 21 which YCR Corp. was founded. It governs a variety of
 22 topical matter which relate to this.
 23 Q. If this document relates to the matters of
 24 examination in Exhibit 1, is there any reason why you did
 25 not review it in preparation for your testimony?

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1 A. I'm not -- I wasn't concerned about reviewing
 2 it. You know, I have some awareness or familiarity with
 3 the document.
 4 MR. DINGWALL: Okay. I'm going to send you
 5 over another document that we are marking as Exhibit 3
 6 -- when you have it.
 7 (Exhibit 3 marked for identification.)
 8 THE WITNESS: Okay.
 9 BY MR. DINGWALL:
 10 Q. And this is a six-page document. Feel free to
 11 look through all six pages if you would like. Have you
 12 seen this document before?
 13 A. Sure.
 14 Q. Can you tell me what it is?
 15 A. It's 225, you know, the railroad section of the
 16 Code of Federal Regulations compliance, what they call
 17 Internal Control Plan.
 18 Q. And was this Internal Control Plan adopted by
 19 Yakima Central in 2015 and 2016?
 20 A. I believe it was in force at that time.
 21 Q. Is there anybody else that would know other than
 22 you?
 23 A. I'm sorry?
 24 Q. Is there anybody else that would know if it was
 25 in force in 2015 and 2016 other than you?

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1 A. It's quite a number of years ago. There might
 2 be others that have some recollection, but specifically
 3 to when it was in force, I doubt that they would have
 4 specific memory of that.
 5 Q. And if you go all the way to the last page of the
 6 document, which is page 6, let me know if you are there.
 7 A. Okay.
 8 Q. And do you see that there are months and years
 9 listed on the left side of this page ranging from February
 10 of 2015 to January of 2016?
 11 A. Okay.
 12 Q. And do you see that after each of those months as
 13 listed, it says, "No reportable incidents or accidents"?
 14 A. Okay. Sure.
 15 Q. And does that refresh your recollection at all as
 16 to whether this document was in force in 2015 and 2016?
 17 A. Well, it's helpful that you pointed this out.
 18 I mean, it makes it clear that this document would have
 19 been updated in early 2016.
 20 Q. Okay. And so you think this document was updated
 21 sometime after January of 2016?
 22 A. It would have had to have been.
 23 Q. Okay. But certainly it was in force in
 24 January 2016; right?
 25 A. January 2016?

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1 Q. Yes.
 2 A. Yes. Based on seeing this, yes.
 3 MR. DINGWALL: I'm going to send another
 4 document here. We'll mark this as Exhibit 4.
 5 (Exhibit 4 marked for identification.)
 6 BY MR. DINGWALL:
 7 Q. Let me know when you have it. The exhibit
 8 sticker is on the left this time so as to avoid
 9 obstructing anything on the document.
 10 A. Okay.
 11 Q. Have you seen this document before?
 12 A. Yes.
 13 Q. Can you tell me what it is?
 14 A. From my cursory review, it looks like the
 15 document that I earlier referenced as the 2013 timetable
 16 or line guide.
 17 Q. Okay. And this would have been a timetable or
 18 line guide that was in effect in 2015 and 2016; correct?
 19 A. Correct.
 20 Q. Okay. And is it true that this document would
 21 set the standard for the speed on which trains were to
 22 travel on Yakima Central's track?
 23 A. Yes, generally. And yes, specifically.
 24 Q. Okay. And do you see at the top of the document
 25 where it says, "Maximum Speeds"?

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1 A. Yes.

2 Q. And then it says, "On main tracks: 20 miles per
3 hour." Is that right?

4 A. I see the same thing you are seeing.

5 Q. Okay. And if you go down, I guess, to about a
6 little bit above the bottom of the page, there's -- in the
7 second column from the left, it says "Harrah." Do you see
8 that?

9 A. Yes.

10 Q. And is it your reading of this document that the
11 speed on the main track at Harrah was 20 miles per hour?

12 A. Yes.

13 Q. The maximum speed on the main track at Harrah was
14 20 miles per hour; correct?

15 A. Yeah, unless there was any bulletin in effect
16 at the time, that would be correct.

17 Q. Okay. And would you agree with me that under the
18 Code of Federal Regulations tracks where the maximum
19 allowable operating speed is between 25 miles per hour and
20 ten miles per hour, track is to be maintained to Class II
21 standards?

22 A. That would be correct.

23 Q. And so in 2015 and 2016, Yakima Central's track,
24 at least in the area at Harrah, was to be maintained at
25 Class II standards; correct?

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1 A. Yeah, that would be correct.

2 Q. Okay. And Class II standards that I'm referring
3 to is set forth in 49 CFR Section 213.9; is that right?

4 A. I can't speak to the precise subchapter, but
5 that sounds in the right area.

6 Q. And the area at Farron -- I'm sorry -- the area
7 at Harrah is the area where Jake Shreves was injured in
8 January 2016; correct?

9 MR. ROSSMILLER: Object to the form of the
10 question.

11 BY MR. DINGWALL:

12 Q. You may answer.

13 A. I can't speak to whether Jake Shreves was
14 injured in 2016. He did not report an injury or agree
15 to receive any medical attention when asked by Steve
16 Hall. The incident to which you refer I believe was
17 not -- not at Harrah.

18 Q. And where do you believe it was?

19 A. I believe it was at Farron.

20 Q. And Farron is right below Harrah on this
21 document, Exhibit No. 4; correct?

22 A. That's what I see.

23 Q. And, again, the maximum allowable speed on the
24 main track at Farron would be 20 miles per hour; correct?

25 A. Yes.

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1 Q. And, again, that would be Class II standards
2 under the Code of Federal Regulations; correct?

3 A. Yes.

4 Q. Mr. Didelius, can we agree that Yakima Central
5 Railroad -- Railway should provide a reasonably safe place
6 to work for its employees?

7 A. A reasonably safe what?

8 Q. Place to work for its employees.

9 A. Sure.

10 Q. And why is that?

11 A. The companies I own and operate care for their
12 employees, have ethics, don't want to see anyone hurt.

13 It's the law to provide a safe workplace for your
14 employees.

15 Q. Are there any other reasons?

16 A. None come to mind at this time.

17 Q. And you would agree that Yakima Central Railway
18 should provide a reasonably safe place to work for its
19 employees out of concern for their well-being; right?

20 A. I think you are reiterating what I just said.

21 Q. And you would agree that Yakima Central Railway
22 should have provided a reasonably safe place to work for
23 its employees in 2015 and 2016; correct?

24 A. I wouldn't say that we didn't.

25 Q. But you agree that's the standard that you

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1 believe Yakima Central should have held itself to in 2015
2 and 2016; right?

3 A. We -- from our inception to today, we strive to
4 do our best for our employees and challenge our
5 employees to do their best for the company and for their
6 fellow employees.

7 Q. You would agree that part of YCR providing a
8 reasonably safe place to work for its employees is full
9 compliance with federal railroad safety laws; right?

10 A. I didn't quite stitch that together. Please,
11 again.

12 Q. Sure. You would agree that part of YCR providing
13 a reasonably safe place to work for its employees is full
14 compliance with federal railroad safety laws; correct?

15 A. Sounds fair.

16 Q. You would agree that part of YCR providing a
17 reasonably safe place to work for its employees is full
18 compliance with federal railroad safety regulations;
19 right?

20 A. I don't understand the distinction to what we
21 just discussed. It sounds like the same question again.

22 Q. One was referring to laws and one was referring
23 to regulations. Do you understand the difference?

24 A. Okay. I mean, I generally, in terms of
25 managing our compliance, reference regulations. There's

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1 very few cases where there's a law that hasn't been
 2 codified to the regulations.
 3 Q. Okay. So just in making sure I have an answer to
 4 the question, you would agree that part of YCR providing a
 5 reasonably safe place to work for its employees is full
 6 compliance with federal railroad safety regulations;
 7 correct?
 8 A. Yes.
 9 Q. You would agree that in 2015 and 2016 YCR was
 10 required to fully comply with all applicable federal
 11 railroad safety laws and regulations?
 12 A. There's no years that we aren't required to
 13 fully comply.
 14 Q. You would agree that one of the railroad safety
 15 laws that Yakima Central was required to fully comply with
 16 in 2015 and 2016 was the Federal Railroad Safety Act;
 17 correct?
 18 A. Sure.
 19 Q. You would agree that in 2015 and 2016 Yakima
 20 Central was required to fully comply with Part 213 of the
 21 Code of Federal Regulations, Chapter 49; correct?
 22 A. Everything in that 200 series that's applicable
 23 to our carrier, yes.
 24 Q. And that would include responsibility for
 25 compliance with track maintenance standards; correct?

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1 A. Yes.
 2 Q. And that would include compliance with making
 3 sure you had qualified individuals conducting track
 4 maintenance on the track; correct?
 5 A. Yes.
 6 Q. And that would include complying with regulations
 7 that require qualified individuals to conduct track
 8 inspections; correct?
 9 A. Yes.
 10 Q. You would agree that these federal railroad
 11 safety laws and regulations promote safety for Yakima
 12 Central employees; right?
 13 A. Typically, yes.
 14 Q. You would agree that part of Yakima Central
 15 providing a reasonably safe place to work for its
 16 employees includes fully complying with applicable
 17 Washington railroad safety laws and regulations?
 18 A. Yes.
 19 Q. Would you agree that it would be unsafe for
 20 Yakima Central to fully comply -- I'm sorry.
 21 Would you agree that it would be unsafe for
 22 Yakima Central to fail to fully comply with federal
 23 railroad safety laws and regulations?
 24 A. Not necessarily.
 25 Q. Explain your answer.

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1 A. I think you asked me if it would be unsafe for
 2 Yakima Central to fail to comply; is that correct?
 3 Q. Right.
 4 A. You've asked me if as part of providing a safe
 5 work place, Yakima Central ought to follow the laws and
 6 regulations of the various governments. I've already,
 7 you know, agreed to that. We don't have a choice but to
 8 follow the laws and regulations.
 9 That doesn't necessarily mean that if a
 10 particular regulation -- if there was an omission or
 11 something that was missed that the operation would
 12 necessarily involve a lack of safety, or, you know,
 13 hazard necessarily. The regulations are drawn to
 14 capture all safety and then some.
 15 Q. You don't believe that it would be a safe
 16 business practice at Yakima Central to not comply with
 17 federal railroad safety regulations, do you?
 18 A. I would agree with that.
 19 Q. That it would be unsafe to fail to comply with
 20 federal railroad safety regulations?
 21 A. You know, we could spend all day getting into
 22 my opinions and observations and analysis of various
 23 governing bodies' regulations, but I don't know if
 24 that's relevant to my testimony. That's more getting
 25 towards me making legal determinations.

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1 Q. Well, you would agree that you are here to
 2 testify today about track safety standards at Yakima
 3 Central; correct?
 4 A. To a degree. I'm here to answer your questions
 5 as a fact witness of the YCR Corp.
 6 Q. And you would agree that federal regulations --
 7 I'm sorry. You would agree that there are federal
 8 regulations that govern track safety standards; correct?
 9 A. Yes.
 10 Q. And you would agree that those track safety
 11 regulations are applicable to Yakima Central; correct?
 12 A. Yes.
 13 Q. And so it would not be a safe business practice,
 14 would it, for Yakima Central to fail to comply with
 15 federal track safety regulations, would it?
 16 A. I think I've already agreed to that.
 17 Q. And you would agree that it would be unsafe for
 18 Yakima Central to fail to fully comply with Washington
 19 railroad safety rules and regulations; correct?
 20 A. There's a difference between asking me to say
 21 if something would or would not be unsafe and would or
 22 would not be an unsafe business practice. There's a
 23 real difference to the meaning or impact of that
 24 distinction -- those two distinctions to each other.
 25 Q. What is the distinction?

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1 A. Again, you are really kind of asking me to, you
 2 know, form a lot of conclusions, or, you know, get into
 3 a lot of judgments. What can I answer about the YCR
 4 Corp.?
 5 Q. The question I just asked would be a good start.
 6 A. What's the question?
 7 Q. You would agree that it would be unsafe for YCR
 8 to fail to fully comply with Washington railroad safety
 9 rules and regulations; correct?
 10 MR. ROSSMILLER: Objection. It's been asked
 11 and answered.
 12 BY MR. DINGWALL:
 13 Q. You may answer.
 14 A. I have nothing further to offer there.
 15 Q. So are you unwilling to take a position on
 16 whether it would be safe for Yakima Central to fail to
 17 fully comply with Washington railroad safety rules and
 18 regulations?
 19 MR. ROSSMILLER: Object to the form of the
 20 question.
 21 BY MR. DINGWALL:
 22 Q. You may answer.
 23 A. Specific to if you are asking me if it would be
 24 unsafe to fail to fully comply, I won't agree to that,
 25 same as I didn't at the time you previously asked me

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1 that question.
 2 Q. Can you tell me in which ways it would be safe
 3 for Yakima Central to fail to fully comply with Washington
 4 railroad safety rules and regulations?
 5 A. I don't want to agree --
 6 MR. ROSSMILLER: Object to the form of the
 7 question.
 8 BY MR. DINGWALL:
 9 Q. You may answer.
 10 A. I don't want to agree to the implication that
 11 you are asking me to agree to, that if YCR Corp. was
 12 somehow remiss in a general sense on a particular
 13 regulation that that meant that the YCR Corp. was unsafe
 14 or providing an unsafe work environment. As I said
 15 before, the regulations are drawn to fully encompass
 16 safety. And so there are cases where something might be
 17 temporarily missed.
 18 I draw your attention to the track
 19 regulations -- the federal track regulations. Typically
 20 a defect is to be fixed within 30 days. So I suppose
 21 you can draw your own conclusions about how unsafe a
 22 particular track defect would be if the Federal
 23 Government provides a carrier 30 days to fix it.
 24 Q. Well, if it's set forth in the regulations that
 25 you have 30 days, then you would be in compliance if you

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1 correct it in 30 days; correct?
 2 A. That's probably an accurate way of putting it.
 3 Q. Okay. So then you would be in compliance with
 4 federal rules and regulations; correct?
 5 A. Yes, but in terms of the path that you are
 6 leading me down, to agree to the sense that a given item
 7 of noncompliance -- for whatever reason YCR could be in
 8 noncompliance with a specific factor constituting that
 9 being unsafe, I wouldn't necessarily agree to that. It
 10 would depend on the circumstances and the exact item in
 11 question.
 12 Q. Which federal railroad safety laws and
 13 regulations are you able to not comply with?
 14 A. I --
 15 MR. ROSSMILLER: Objection to the form of the
 16 question.
 17 THE WITNESS: I wouldn't answer that
 18 specifically, and you're taking me into a realm of
 19 opinion and analysis of, you know, federal and state
 20 safety regulation. I wouldn't -- I wouldn't provide any
 21 specificity to that. The regulations are voluminous and
 22 we are only as good as our human employees provide for
 23 us being, specifically track inspectors.
 24 BY MR. DINGWALL:
 25 Q. You would agree that if Yakima Central failed to

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1 fully comply with applicable federal railroad safety laws
2 and regulations, it would be negligent; right?
3 MR. ROSSMILLER: Don't answer that question.
4 It calls for a legal conclusion.
5 BY MR. DINGWALL:
6 Q. Are you going to answer my question,
7 Mr. Didelius?
8 A. I'm directed not to.
9 Q. Do you agree that if Yakima Central failed to
10 comply with federal railroad safety laws and regulations
11 it would be reckless?
12 MR. ROSSMILLER: Don't answer that question.
13 It calls for a legal conclusion.
14 BY MR. DINGWALL:
15 Q. Would you like to answer the question,
16 Mr. Didelius?
17 A. I have been directed not to.
18 Q. Would you agree that if Yakima Central failed to
19 fully comply with Washington railroad safety rules and
20 regulations that it would be negligent?
21 MR. ROSSMILLER: Don't answer the question. It
22 calls for a legal conclusion.
23 BY MR. DINGWALL:
24 Q. Would you like to answer, Mr. Didelius?
25 A. I have been directed not to.

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1 Q. Do you believe it would be reckless for Yakima
 2 Central to fail to comply with applicable Washington
 3 railroad safety rules and regulations?
 4 MR. ROSSMILLER: Don't answer the question. It
 5 calls for a legal conclusion.
 6 BY MR. DINGWALL:
 7 Q. Would you like to answer, Mr. Didelius?
 8 A. I have been directed not to.
 9 Q. Would you agree that if Yakima Central failed to
 10 fully comply with applicable federal railroad safety laws
 11 and regulations that it would be in violation of the
 12 Toppenish to White Swan lease agreement that we've entered
 13 as Exhibit 2?
 14 MR. ROSSMILLER: Objection. That calls for a
 15 legal conclusion. Don't answer it.
 16 BY MR. DINGWALL:
 17 Q. Would you like to answer the question,
 18 Mr. Didelius?
 19 A. I have been directed not to.
 20 Q. You would agree that in 2015 and 2016 Yakima
 21 Central was required to have in place an Internal Control
 22 Plan setting forth procedures and accurate reporting of
 23 all accidents and injuries; correct?
 24 A. I believe we've covered that, yes.
 25 Q. And you would agree that that Internal Control

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1 Plan is required to be in place by 49 CFR 225.33; correct?
 2 A. I can't speak to the specific reference, but
 3 yes.
 4 Q. If you want to pull up Exhibit 3 again and have a
 5 look.
 6 A. How do I get to Exhibit 3? It looks like I'm
 7 on 4.
 8 Q. There should be a back button on your screen.
 9 A. Okay. What's the question?
 10 Q. Do you see on page 1 of Exhibit 3 at the very
 11 top, it says Section 225.33 - Compliant Internal Control
 12 Plan?
 13 A. Okay.
 14 Q. And does that refresh your recollection that an
 15 Internal Control Plan is required to be in place by 49 CFR
 16 225.33?
 17 A. It looks like a -- like a fair assessment.
 18 Q. And you would agree that in 2015 and 2016, Yakima
 19 Central was required to fully comply with its Internal
 20 Control Plan regarding complete and accurate reporting of
 21 all accidents and injuries; right?
 22 MR. ROSSMILLER: Object to the form of the
 23 question.
 24 BY MR. DINGWALL:
 25 Q. You may answer.

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1 A. YCR was to comply with the plan that it had
 2 adopted and put out there.
 3 Q. Which is Exhibit No. 3 that we are looking at;
 4 correct?
 5 A. Yes.
 6 Q. And you would agree that in 2015 and 2016, Yakima
 7 Central's Internal Control Plan required directors to
 8 immediately respond to reports of personal injuries by
 9 employees; correct?
 10 A. I have to reference the plan, but that sounds
 11 correct.
 12 Q. Well, if you want to, you can reference on the
 13 third page of the document and the paragraph entitled
 14 "First Principle" towards the top of the page.
 15 A. Paragraph -- that's what you want me to
 16 refamiliarize myself with is that paragraph?
 17 Q. If you need to refamiliarize yourself in order to
 18 answer that question, please feel free to do so.
 19 A. Okay. What's the question?
 20 Q. You would agree that in 2015 and 2016, Yakima
 21 Central's Internal Control Plan required directors to
 22 immediately respond to reports of personal injuries by
 23 employees; correct?
 24 A. As applicable, yes.
 25 Q. And that one or more directors should immediately

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1 travel to the site of the reported injury; correct?
 2 A. As applicable, yes.
 3 Q. And that Yakima Central respond forcefully to all
 4 reports of injuries with all benefit of the doubt that the
 5 reported incident is legitimate; correct?
 6 A. I'm seeing the same thing you are referencing,
 7 yes.
 8 Q. And you would agree that in 2015 and 2016, Yakima
 9 Central's Internal Control Plan required the director
 10 responding to the report of an employee personal injury to
 11 compile and preserve by email a written report of the
 12 reported incident; correct?
 13 A. What are you referencing here?
 14 Q. On the next page, paragraph 3.
 15 A. Okay.
 16 Q. Do you agree with my question?
 17 A. Ask it again, please.
 18 Q. Do you agree that in 2015 and 2016, Yakima
 19 Central's Internal Control Plan required the director
 20 responding to the report of employee personal injuries to
 21 compile and preserve by email a written report of the
 22 reported incident?
 23 A. Yes.
 24 Q. And that all such reports be distributed to any
 25 other directors of Yakima Central; correct?

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1 A. I'm seeing the same thing you're seeing.
 2 Q. And that all such reports be distributed to the
 3 Yakima Central executive; correct?
 4 A. Yes.
 5 Q. You would agree that in 2015 and 2016, Yakima
 6 Central's Internal Control Plan required that all
 7 accidents and incidents would be responded to with
 8 attentiveness; correct?
 9 A. Of course.
 10 Q. With thorough documentation and archival;
 11 correct?
 12 MR. ROSSMILLER: Objection to the form of the
 13 question.
 14 BY MR. DINGWALL:
 15 Q. You may answer.
 16 A. I don't quite understand then.
 17 Q. If you look at paragraph 4 on the same page, do
 18 you see where it says, "Directors shall handle
 19 accident/incident information with attentiveness to
 20 achieve the most positive outcomes related to" -- and then
 21 there's three items listed below that.
 22 A. Yes.
 23 Q. And one of those says, "Thorough
 24 documentation/archival." Correct?
 25 A. Right.

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1 Q. And the second one says, "Accident/incident
 2 cause-finding with eye toward prevention of future
 3 accident/incident." Correct?
 4 A. Right.
 5 Q. And says, "YCR employee and business privacy."
 6 Correct?
 7 A. Yes. I mean, we could go through the whole
 8 document.
 9 Q. You would agree that in 2015 and 2016, Yakima
 10 Central's Internal Control Plan required that the YCR
 11 director responding to an accident or incident email a
 12 notification of the accident or incident to the executive
 13 and to accounting personnel at YCR; correct?
 14 MR. ROSSMILLER: Object to the form of the
 15 question.
 16 THE WITNESS: Stand by.
 17 BY MR. DINGWALL:
 18 Q. I direct you to paragraph 6 if you need to
 19 refresh your recollection.
 20 A. So in answer to your question, there would need
 21 to be an email if there was a response, that is correct.
 22 Q. And it also required proper reporting to the
 23 Federal Railroad Administration; correct?
 24 A. Obviously.
 25 Q. And you would agree that in 2015 and 2016, Steve

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1 Hall was a director at Yakima Central, at least with
 2 regard to this Internal Control Plan; correct?
 3 A. Yes.
 4 Q. You would agree that in 2015 and 2016, Bob Litts
 5 was a director, at least with regard to this Internal
 6 Control Plan?
 7 A. I'm not certain on that.
 8 Q. If you want to take a look at the next page
 9 towards the bottom --
 10 A. Mm-hmm.
 11 Q. -- and see if it refreshes your recollection.
 12 A. Okay. With regards to this plan, yes.
 13 Q. And you would agree that in 2015 and 2016, you
 14 were an executive at Yakima Central as it's referenced in
 15 this Internal Control Plan?
 16 A. We discussed that earlier, yes.
 17 Q. And you would agree that the Internal Control
 18 Plan in place at Yakima Central in 2015 and 2016 required
 19 you as the executive to be notified of all accidents and
 20 injuries to employees; correct?
 21 A. I believe the trigger was if there was a
 22 response by the director.
 23 Q. But you would agree that you were to be notified
 24 of all accidents and injuries to employees; correct?
 25 A. I would say in general I had an expectation

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1 that I hear about such things. This particular plan
 2 hinges on a director response to a report.
 3 Q. You would agree that in 2015 and 2016, you as the
 4 executive were required to audit compliance with the
 5 Internal Control Plan on an annual basis; correct?
 6 A. I believe that's accurate.
 7 Q. And did you, in fact, audit compliance with the
 8 Internal Control Plan on an annual basis?
 9 A. It's a hard one to answer. I was constantly
 10 auditing the performance of my directors and our
 11 compliance with our own internally adopted or formed
 12 documents, including this one.
 13 Q. And I want to be very specific about this
 14 particular document and whether you did, in fact, audit
 15 compliance with it on an annual basis.
 16 A. I can't give you a specific date or a specific
 17 recollection when I specifically audited compliance with
 18 this document.
 19 Q. Why not?
 20 A. I don't have a recollection of that
 21 specifically.
 22 Q. Have you not kept records of it?
 23 A. I do not keep records of everything I do, no.
 24 Q. And even if it's required by federal regulations?
 25 A. There's a lot to keep track of.

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1 Q. So is this one that you just decided not to keep
2 track of?

3 A. I wouldn't say that.

4 Q. Then where would we find records of the audits
5 that you performed on the Internal Control Plan?

6 A. I'm telling you I can't provide you a record of
7 a specific date and time that I've conducted an audit of
8 this program.

9 Q. And why not?

10 A. I don't recall. I didn't specifically search
11 for one.

12 Q. And why not?

13 A. It didn't come to my mind.

14 Q. Do you think that the Internal Control Plan
15 relates to any of the topics that are in the matters of
16 examination that we marked as Exhibit 1?

17 MR. ROSSMILLER: Objection to form of the
18 question.

19 BY MR. DINGWALL:

20 Q. I didn't hear your answer, Mr. Didelius.

21 A. I said I think I brought it up.

22 Q. In fact, you earlier testified that you came
23 across the Internal Control Plan and reviewed it; correct?

24 A. Cursory, yes.

25 Q. Well, certainly the Internal Control Plan relates

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1 to the policies, procedures, and practices for Yakima
2 Central's response to the reporting of work-related
3 injuries in 2015 and 2016; correct?

4 A. I'm sorry. I'm a little bit distracted at this
5 point. What are you asking?

6 Q. The Internal Control Plan contains information
7 related to the policies, procedures, and practices for
8 Yakima Central Railway's response to reporting of
9 work-related injuries in 2015 and 2016; correct?

10 A. Okay.

11 Q. And you agree that that is topic No. 5 of the
12 matters of examination in this deposition notice; correct?

13 A. Stand by.

14 Q. Is that a "yes"?

15 A. I said stand by. Okay.

16 Q. Is that a "yes"?

17 A. If you are asking me if the Internal Control
18 Plan is relevant to your question No. 5, it appears to
19 be.

20 Q. And so is there any reason why you didn't give
21 more than a cursory review to the Internal Control Plan in
22 preparation of your testimony today?

23 MR. ROSSMILLER: Object to the form of the
24 question.

25 BY MR. DINGWALL:

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1 Q. You may answer.

2 A. Mr. Dingwall, I don't know that I have enough
3 time in the life God has given me to satisfy your thirst
4 for information on this case.

5 Q. Who in --

6 A. I'm doing my best to respond with the time I
7 have.

8 Q. I'm sorry. I didn't hear what you said.

9 A. I'm doing my best to respond to your questions
10 with the time I have.

11 Q. Who is the FRA reporting officer at Yakima
12 Central?

13 A. You'll have to be more specific.

14 Q. Would you go to page 5 of the Internal Control
15 Plan, please.

16 A. Okay.

17 Q. And not quite midway of that page, do you see a
18 paragraph that says, "Paul Didelius or designee"?

19 A. Okay.

20 Q. And it says, "Paul Didelius or designee shall be
21 responsible for auditing once per calendar year."
22 Correct?

23 A. I'm seeing the same thing you're seeing.

24 Q. And you would understand that to mean that you or
25 your designee is responsible to audit the Internal Control

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1 Plan once per calendar year; correct?

2 A. I'm seeing the same thing you are seeing.

3 Q. And it says, "The most recent audit report shall
4 be made available at" and then it says "See FRA reporting
5 officer." Correct?

6 A. I'm seeing the same thing, yes.

7 Q. And so who is the FRA reporting officer at Yakima
8 Central?

9 A. I think at that time it was Crystal Ebberts.

10 Q. And at that time, do you mean 2015 and 2016?

11 A. Yes.

12 Q. And did you speak with Crystal Ebberts in
13 preparation for your testimony today?

14 A. I did not.

15 Q. Did you ask her if she -- I'm sorry. Is Crystal
16 Ebberts still employed with Yakima Central?

17 A. She is not.

18 Q. What became of the records that she would have
19 kept as the FRA reporting officer at Yakima Central?

20 A. I couldn't say. I haven't located any such
21 report.

22 Q. When did Ms. Ebberts leave the employment of
23 Yakima Central?

24 A. I think it was later in 2016.

25 Q. Who is the FRA reporting officer in the time

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1 since she has left employment with Yakima Central?

2 A. I believe it's currently Dirk Fledderjohann.

3 Q. Do you believe or do you know?

4 A. I said what I said.

5 Q. Are you still responsible for auditing compliance

6 with the Internal Control Plan at Yakima Central?

7 A. I would have to reference the current document.

8 Q. Where would we find that document?

9 A. I would have to look for it.

10 Q. Well, how would -- who else would know whether

11 you are responsible for auditing the Internal Control

12 Plan?

13 A. I just told you, I would have to look for our

14 current governing document on this topic.

15 Q. Okay. But just in -- using your own intellect

16 and memory, you don't know as you sit here right now

17 whether you are responsible for auditing the Internal

18 Control Plan at Yakima Central?

19 A. I would have to look into it.

20 Q. Well, you would agree, based on -- well, do you

21 have any reason to believe that you did not conduct annual

22 audits of the Internal Control Plan in 2015 and 2016?

23 A. I don't -- please ask again. I didn't quite

24 catch that.

25 Q. Do you have any reason to believe that you did

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1 not conduct audits of the compliance with the Internal

2 Control Plan in 2015 and 2016?

3 A. No, I don't have any reason to believe I did

4 not audit the compliance. I am in a constant state of,

5 you know, review and coaching and development of my

6 managers, constant state of concern and audit of our

7 various compliance programs.

8 You asked me if I had a record of when I

9 performed this audit, and I told you that I can't

10 provide you a reference to when I performed that audit,

11 but it's ongoing.

12 Q. Certainly if you would have found anything in

13 your audit in 2015 and 2016 that indicated the company was

14 out of compliance with the Internal Control Plan, you

15 would have immediately remedied that; correct?

16 MR. ROSSMILLER: Object to the form of the

17 question.

18 BY MR. DINGWALL:

19 Q. You may answer.

20 A. There were personnel that I had to -- there

21 were personnel changes I had to make associated with

22 learning about Jake Shreves's incident, changes I made

23 more generally to the success of my business and its

24 maintenance of, you know, important factors. You know,

25 those changes weren't made specifically to the handling

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1 of or the audit of compliance of the Internal Control

2 Plan.

3 Q. You would agree that in conducting your audits of

4 the Internal Control Plan in 2015 and 2016, you would have

5 immediately remedied anything that you found to be out of

6 compliance; correct?

7 MR. ROSSMILLER: Object to the form of the

8 question.

9 THE WITNESS: You know, if you are asking me if

10 I give a shit about how I run my business or if I try to

11 do my best to try to run a good business, I'm

12 constantly -- I just explained this to you. I'm

13 constantly in the business of monitoring, coaching,

14 developing, improving, managing, minimizing liability,

15 and so on and so forth.

16 So I have to say at this point this deposition

17 is constituting a significant hardship upon my life.

18 It's an imposition on my time, and it would be really

19 helpful if we could like get into just like answering

20 simple questions.

21 BY MR. DINGWALL:

22 Q. What would be a simple question that you would

23 like me to ask?

24 A. I'm not going to do your job for you. I don't

25 have an unlimited fount of time to give you. Can we

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1 focus on your case and get into specifics?

2 (Reporter clarification.)

3 MR. ROSSMILLER: I said I object to the form of

4 the question.

5 (Reporter clarification.)

6 BY MR. DINGWALL:

7 Q. Mr. Didelius, you would agree that Steve Hall was

8 required to fully comply with the Internal Control Plan in

9 2015 and 2016; correct?

10 MR. ROSSMILLER: Object to the form of the

11 question.

12 BY MR. DINGWALL:

13 Q. You may answer.

14 A. I said yes.

15 Q. You would agree that Bob Litts was required to

16 fully comply with the Internal Control Plan in 2015 and

17 2016; correct?

18 MR. ROSSMILLER: Object to the form of the

19 question.

20 THE WITNESS: Yes. His name is on the Internal

21 Control Plan.

22 BY MR. DINGWALL:

23 Q. And you would agree that you were required to

24 fully comply with the Internal Control Plan in 2015 and

25 2016; correct?

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1 A. Yes.

2 MR. ROSSMILLER: Object to the form of the

3 question.

4 BY MR. DINGWALL:

5 Q. I'm sorry. I didn't hear your answer.

6 A. Yes.

7 Q. And there would be no excuse for yourself, Bob

8 Litts, or Steve Hall to not comply with the Internal

9 Control Plan in 2015 and 2016; correct?

10 MR. ROSSMILLER: Object to the form of the

11 question.

12 THE WITNESS: There's never an excuse for

13 imperfection.

14 BY MR. DINGWALL:

15 Q. And you know, based on your audits, that Bob

16 Litts and Steve Hall fully complied with the Internal

17 Control Plan in 2015 and 2016; correct?

18 MR. ROSSMILLER: Object to the form of the

19 question.

20 THE WITNESS: I wouldn't say that I know that.

21 I suggested a moment ago that Steve Hall was let go

22 after my investigation of the Jan. 28 incident with Jake

23 Shreves not being brought to my attention. It was

24 clearly a problematic affair.

25 BY MR. DINGWALL:

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1 Q. And was that something you uncovered as part of

2 your audit?

3 A. Not specifically.

4 Q. Well, you conducted your audit in 2015; correct?

5 A. I -- I can't offer you any specific time that I

6 -- in 2015 that I specifically audited the Internal

7 Control Plan.

8 Q. Well, you would agree that the purpose of an

9 Internal Control Plan is to promote safety of Yakima

10 Central employees; correct?

11 A. At a level, yeah.

12 Q. And so you would agree that it would be unsafe

13 for Yakima Central to fail to fully comply with its

14 Internal Control Plan; right?

15 MR. ROSSMILLER: Object to the form of the

16 question and that is calling for a legal conclusion.

17 BY MR. DINGWALL:

18 Q. You may answer.

19 MR. ROSSMILLER: No, don't answer it. It's

20 calling for a legal conclusion.

21 BY MR. DINGWALL:

22 Q. Are you not going to answer that question,

23 Mr. Didelius?

24 A. I have been directed not to.

25 Q. Well, you would agree that if Yakima Central

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1 failed to fully comply with its Internal Control Plan that

2 it would be in violation of federal regulations; correct?

3 MR. ROSSMILLER: Objection. That calls for a

4 legal conclusion. Don't answer it.

5 BY MR. DINGWALL:

6 Q. Are you going to choose not to answer,

7 Mr. Didelius?

8 A. I have been directed not to.

9 Q. You, again, would agree that if Yakima Central

10 failed to comply with its Internal Control Plan, it would

11 be in violation of the Toppenish to White Swan lease

12 agreement that we've entered as Exhibit 2; is that right?

13 MR. ROSSMILLER: It calls for a legal

14 conclusion. Don't answer it.

15 BY MR. DINGWALL:

16 Q. Are you going to answer that question,

17 Mr. Didelius?

18 A. I have been directed not to.

19 MR. DINGWALL: Why don't we take a five-minute

20 break and we can come back.

21 MR. ROSSMILLER: Are we going to take a lunch

22 break here between the depositions or what are we going

23 to do about that?

24 MR. DINGWALL: We can talk about that off the

25 record when we come back.

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1 THE VIDEOGRAPHER: Off the record at 12:35 p.m.

2 (A recess was taken.)

3 THE VIDEOGRAPHER: We are back on the record at

4 12:45 p.m. This is media No. 3.

5 BY MR. DINGWALL:

6 Q. Mr. Didelius? Are you there, Mr. Didelius?

7 A. What?

8 Q. I just want to make sure you were there. We were

9 back on the record and then you disappeared.

10 You mentioned earlier that there was another

11 individual who took over for Crystal Ebberts as the FRA

12 reporting officer; is that right?

13 A. In essence, yes.

14 Q. And who was that person again?

15 A. Dirk Fledderjohann.

16 Q. Can you spell that for us, please? Did you hear

17 my question, Mr. Didelius?

18 A. I responded via chat.

19 Q. Well, can you please actually spell it so we have

20 it on the record?

21 A. F-L-E-D-D-E-R-J-O-H-A-N-N.

22 Q. That's all one word?

23 A. That's his last name, yes.

24 Q. And the first name is Dirk?

25 A. Mm-hmm -- yes.

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<p>1 Q. D-I-R-K?</p> <p>2 A. Right.</p> <p>3 Q. Okay. Previously we introduced Exhibit No. 3,</p> <p>4 which was the Toppenish to White Swan Railroad Line Lease</p> <p>5 Agreement. And you would agree, Mr. Didelius, that Yakima</p> <p>6 Central was required to be in compliance with that lease</p> <p>7 agreement in 2015 and 2016; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that would include making sure that there was</p> <p>10 adequate qualified staff to operate a railroad; correct?</p> <p>11 A. Sure.</p> <p>12 Q. And that inspection and maintenance of the track</p> <p>13 was conducted in compliance with federal and state laws;</p> <p>14 correct?</p> <p>15 A. To the best of my recollection.</p> <p>16 Q. And that Yakima Central agreed to comply with all</p> <p>17 applicable laws, rules, and regulations; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that Yakima Central was solely responsible</p> <p>20 for safety and operational inspections related to railroad</p> <p>21 operations; correct?</p> <p>22 A. Within its capability.</p> <p>23 MR. DINGWALL: I don't have any other questions</p> <p>24 at this time, Mr. Didelius.</p> <p>25 I will say that I am going to recess this</p>	<p style="text-align: center;">ERRATA SHEET</p> <p>1 Printed Name _____ Date _____</p> <p>2 Signature _____</p> <p>3 Page/Line Correction Reason</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
Page 90	Page 92
<p>1 deposition and reserve the right to recall this witness</p> <p>2 or any other witnesses with regard to the Notice of</p> <p>3 Deposition, pending a meet and confer with opposing</p> <p>4 counsel and potentially court involvement regarding a</p> <p>5 number of the objections that have been made today, and</p> <p>6 specifically with regard to instructions not to answer,</p> <p>7 which I believe to be improper, and I believe that I am</p> <p>8 entitled to answers to a number of those questions. And</p> <p>9 so with that, we will recess the deposition. I have no</p> <p>10 further questions at this time.</p> <p>11 MR. ROSSMILLER: How long is our break going to</p> <p>12 be?</p> <p>13 MR. DINGWALL: We can go off the record and</p> <p>14 talk about it.</p> <p>15 THE VIDEOGRAPHER: We are off the record at</p> <p>16 12:50 p.m.</p> <p>17 THE REPORTER: Mr. Rossmiller, are you ordering</p> <p>18 a transcript?</p> <p>19 MR. ROSSMILLER: Let me talk to Ms. Terry about</p> <p>20 that.</p> <p>21 THE REPORTER: Okay. Thank you.</p> <p>22 (Deposition was adjourned at 12:50 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">DECLARATION UNDER PENALTY OF PERJURY</p> <p>1</p> <p>2</p> <p>3 I, Paul Didelius, do hereby certify under</p> <p>4 penalty of perjury that I have reviewed the foregoing</p> <p>5 transcript of my deposition taken on January 27, 2021;</p> <p>6 that I have made such corrections as appear noted herein</p> <p>7 in ink; that my testimony as contained herein, as</p> <p>8 corrected, is true and correct.</p> <p>9</p> <p>10 DATED this ____ day of _____,</p> <p>11 _____ at _____, California.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 _____</p> <p style="text-align: center;">Paul Didelius</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

REPORTER'S CERTIFICATION

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I, LORI A. YOCK, CSR No. 5801, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken remotely before me via videoconference at the time herein set forth; that the testimony and proceedings were reported stenographically by me and thereafter reduced to computerized transcription under my direction and supervision; that the foregoing is a true record of the testimony and proceedings taken at that time; that before completion of the deposition, review of the transcript [] was [X] was not requested.

And I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name on this date: 1/29/2021.



Lori A. Yock, CSR No. 5801