

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE
CITY OF RICHMOND

THEODORE J. HOLLIDAY, JR., :
 :
 Plaintiff :
 :
-vs- :CIVIL NO. CL09-430-1
 :
CSX TRANSPORTATION, INC., :
 :
 Defendant :

MARCH 10, 2010
11:00 A.M.

DEPOSITION OF:
WILLIAM E. HONEYCUTT

CENTRAL VIRGINIA REPORTERS
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ROANOKE, VIRGINIA

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1 APPEARANCES:
 2
 3 SHAPIRO, COOPER, LEWIS & APPLETON, PC
 Virginia Beach, Virginia
 4 BY: RANDALL E. APPLETON, ESQ. (By telephone)
 5 Counsel on behalf of the Plaintiff
 6 SETLIFF, TURNER & HOLLAND
 Glen Allen, Virginia
 7 BY: GREGORY F. HOLLAND, ESQ. (By telephone)
 8 Counsel on behalf of the Defendant
 9
 10 * * * * *
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1 The deposition of WILLIAM E. HONEYCUTT was
 2 taken at Central Virginia Reporters, Salem, Virginia,
 3 on the 10th day of March 2010 in the presence of
 4 Randall E. Appleton, Attorney for the Plaintiff, and
 5 Gregory F. Holland, Attorney for the Defendant.
 6 All formalities as to caption, certificate and
 7 Notice of Filing were waived. It was agreed that
 8 Patricia J. Jensen, notary public in and for the
 9 Commonwealth of Virginia, at large, would take said
 10 deposition in machine shorthand and reduce the same to
 11 writing by means of computer-aided transcription.
 12 Said deposition was taken subject alone to the
 13 objections that are required by the Rules of the
 14 Supreme Court of Virginia to be made at the time that
 15 the deposition is taken. All other objections are
 16 reserved until the trial.
 17
 18
 19 WILLIAM E. HONEYCUTT
 20
 21 was called as a witness and after having first been
 22 duly sworn to tell the truth, the whole truth, and
 23 nothing but the truth, was examined and testified as
 24 follows:

1 (11:01 a.m.)
 2
 3 EXAMINATION
 4
 5 BY MR. APPLETON:
 6 Q Mr. Honeycutt, can you give me your
 7 full name and your residential address, please.
 8 A It's William E. Honeycutt, 100 Chadwick
 9 Drive, Troutville, Virginia, 24175.
 10 Q And what is your date of birth,
 11 Mr. Honeycutt?
 12 A October 22, 1942.
 13 Q Do you have any family that lives in
 14 the city of Richmond?
 15 A No, sir, I don't.
 16 Q Any close business associates that live
 17 in the city of Richmond?
 18 A No, sir.
 19 Q And are you a member of any social or
 20 civic organizations?
 21 A In what regard?
 22 Q Well, I don't know if I can be any
 23 more -- are you a member of like Lions Club, Ruritans,
 24 anything like that?

1 A None of those. I belong to some
 2 fraternal organizations, like the Elks and the Moose.
 3 Q I'm sorry, I heard you say the Moose,
 4 and what was the other one?
 5 A The Elks.
 6 Q Okay. Are you a member of a church?
 7 A Yes, sir, I am.
 8 Q What denomination, and what is the name
 9 of church?
 10 A Raleigh Court Presbyterian Church in
 11 Roanoke.
 12 Q Do you hold any office in the church?
 13 A I have been an elder. I'm not an
 14 active elder right at this point on session.
 15 Q The reason I ask you is, do you go to
 16 any kind of meetings that are affiliated with the
 17 church where you would perhaps come in contact with
 18 people that live in the city of Richmond?
 19 A None that I know of, no, sir.
 20 Q Okay. What is your charge for this
 21 deposition?
 22 A It's \$180 per hour plus mileage.
 23 Q Okay. What have you done to prepare
 24 for the deposition?

1 A Essentially, just printed the
2 information off of the computer and made the copies
3 that you requested and brought the pieces with me that
4 I printed off at home.

5 Q Okay. And because we're on the
6 telephone, I'd like to make sure that Mr. Holland has
7 what you sent to me. Did you either send him a copy
8 of what you sent me, or have you sent him copies of
9 things that you didn't get from him originally so he
10 knows what is all in your file?

11 A Yes, sir, he should know. I have
12 nothing in the file that didn't come from his office.

13 Q Okay. And since you sent me the file,
14 have there been any additions to it?

15 A Yes, sir. There was one document that
16 came to me after I left for FedEx yesterday afternoon,
17 and it's not in the packet that you have. It's a
18 cover sheet, I believe, and five pages.

19 Q Tell me who it came from and what it
20 is.

21 A This came from Ms. Hatz, the paralegal
22 at Mr. Holland's office. As I said, it's an e-mail
23 cover sheet, and then there are, let's see, five
24 pages. These are titled "Locomotive Incident

1 those degrees?

2 A My BS was from Virginia Tech in 1964,
3 and my MBA was from Lynchburg College in 1988.

4 Q Have you had a chance to review the
5 designation of your opinion in this case?

6 A Yes, sir, I have.

7 Q Does that designation pretty accurately
8 reflect the positions that you have held for Norfolk
9 Southern or the N&W and the locations in which you
10 worked?

11 A Yes, sir.

12 Q Have you had any training dealing with
13 the inspection or the maintenance of locomotives other
14 than through Norfolk Southern or Norfolk & Western
15 mandated programs?

16 A I have been to a number of the
17 locomotive manufacturers' schools that dealt with
18 maintenance and inspection of their product. I don't
19 have a list of those, but I have been to at least
20 three or four that I can think of right off the top of
21 my head.

22 Q Do you recall who the manufacturer of
23 the unit that's involved in this case is?

24 A This was the Electromotive Division of

1 History".

2 Q And does that set of documents refer to
3 the locomotive that's involved in this case?

4 A Yes, sir. This is for locomotive
5 CSXT6090.

6 Q And does that report reflect what work
7 has been done on the locomotive?

8 A It does show several items of trouble
9 on the locomotive and corrections that were made.

10 Q Any trouble or corrections that are
11 related with any aspect of this case?

12 A I did not find any on here, on any of
13 the pages.

14 Q Did your review of that document in any
15 way alter the opinions that you held before you
16 received that set of documents?

17 A No, sir, it does not.

18 Q Okay. And then your educational
19 background, Mr. Honeycutt. How far did you go in
20 school?

21 A I have a bachelor's degree in
22 mechanical engineering and a master of business
23 administration degree.

24 Q And when and where did you achieve

1 General Motors.

2 Q So did you attend schools that General
3 Motors offered?

4 A Yes, sir, I did.

5 Q Do you recall if any of those schools
6 dealt with the issues in this case, which I understand
7 to be restraining mechanisms on access doors on
8 locomotives and covers of drive shafts?

9 A I don't recall any of those in any of
10 the classes that I went to as being specifically dealt
11 with.

12 Q Okay. When you reviewed the expert
13 designation that the defendant has provided me in this
14 case, did you find it to be pretty complete?

15 The reason I ask, do you have any
16 opinions concerning this case other than what is
17 reflected in the designation? Because I'm going to
18 confine my examination of you to what has been given
19 to me in that designation unless you tell me you have
20 any other opinions.

21 A Based on the information I have at this
22 point, I don't have any additional opinions.

23 Q Give me a little information on your
24 vocational background. You are currently retired from

1 the railroad?

2 A Yes, sir, that's correct.

3 Q And is it fair for me to characterize
4 what you are doing here as a forensic evaluation?

5 A I would think that's proper, yes.

6 Q And is this a full-time activity for
7 you in your retirement or a part-time?

8 A Since I have retired, I have offered
9 consulting services from time to time. It's not a
10 full-time thing, but I do do it from time to time.

11 Q Give me an idea as to what time to time
12 means. Is that one case a month, one case a week, one
13 case a year? Some kind of general characterization of
14 how much work you are doing.

15 A It would probably work out to about a
16 week a month.

17 Q Do you think your earnings from doing
18 these types of forensic evaluations are less or
19 greater than \$10,000 annually?

20 A There have been a couple years it's
21 been more than that. I don't know right off what it
22 was last year. I suspect that '09 was about \$10,000.

23 Q And my next question was whether or not
24 there had been any variation in the amount of work

1 Q Do you remember anything about the
2 attorneys in the case? Do you remember who
3 represented the railroad or who represented the
4 plaintiff?

5 A No, sir. I don't remember either side
6 at this point.

7 Q Do you keep any records other than for
8 tax purposes of what your past involvement has been on
9 these forensic evaluations?

10 A I have kept a record that I have needed
11 to have from time to time on the testimony that I have
12 done.

13 Q That's what I was getting to. So you
14 maintain the type of list that federal court requires
15 you to produce and identify the testimony over the
16 last I think it's five years?

17 A Yes, sir.

18 Q Can you produce a copy of that for me
19 so I don't have to go through all that with you today?

20 A I don't have a copy with me, so --

21 Q Can you send it to Mr. Holland so that
22 he can look at it and, if it's appropriate, forward it
23 to me?

24 A Yes, sir.

1 activity you have been engaged in over the last, I
2 don't know, three to five years.

3 A There's been some variation, yes, sir.

4 Q Have you gotten more work or less work?

5 A The work level has probably been about
6 the same. The way that it probably has fallen during
7 the calendar year has made more difference in what the
8 income has been.

9 Q Right. And I'm not overly concerned
10 about how much you made. I am concerned about how
11 many cases you have looked at over that period of
12 time.

13 Would there have been a dramatic change
14 where some years you would have been doing twice or
15 three times what you just described as your current
16 caseload?

17 A Yeah. There were a couple years that I
18 didn't do much at all, but I think probably a week a
19 month is descriptive of it right now anyway for the
20 past couple years.

21 Q When was the last time you gave a
22 deposition in any type of an FELA case?

23 A I can't remember the exact date.
24 Sometime last fall, I believe it was.

1 MR. HOLLAND: Randy, I don't have a
2 problem with that.

3 MR. APPLETON: I know you don't, but
4 I'd rather you look at it first just to make
5 sure what's coming over.

6 MR. HOLLAND: I mean, I trust that you
7 would send it to me, but I don't have any
8 problem with you looking at it.

9 MR. APPLETON: All right.

10 BY MR. APPLETON:

11 Q Mr. Honeycutt, how many times have you
12 testified in a case where Mr. Holland has represented
13 the railroad? And when I say testified, either by
14 deposition or at trial.

15 A I recall one case where Mr. Holland was
16 the attorney.

17 Q Where was that case?

18 A Well, I don't know the court that it
19 was in, but I do remember I came down to Richmond for
20 a deposition.

21 Q Do you remember where the incident
22 occurred?

23 A In this case, the railroad was the
24

1 plaintiff, and the defendant was an industry in
2 Botetourt County, Virginia.

3 Q Okay. And what about other members of
4 Mr. Holland's firm? Have you given deposition or
5 trial testimony for any other members of either
6 Setliff & Holland or Setliff, Turner & Holland?

7 A I don't recall working with any of the
8 other members.

9 Q Okay. Do you have a primary source of
10 cases for these type of evaluations from one
11 particular firm?

12 A No, sir.

13 Q How is it that people know that you are
14 available to do this? Do you advertise for this type
15 of work?

16 A No, sir, I don't do any advertising. I
17 presume it's word of mouth.

18 Q Okay. What do you understand happened
19 in this case?

20 A My understanding is that Mr. Holliday
21 had opened the doors at the engine start switch on the
22 locomotive, and it's unclear to me whether he had
23 started the locomotive or was in the process of
24 starting it.

1 whatever deposition testimony has been generated in
2 this case?

3 A If I were to be called as a witness in
4 the trial, yes, sir, I would like to look at probably
5 some of the deposition testimony.

6 Q Would the cause of the door closing
7 potentially have any effect on your opinions in this
8 case?

9 A I can't think of any at this point.

10 Q Do you know why it was that
11 Mr. Holliday had to start that locomotive?

12 A No, sir, I do not.

13 Q Remind me when it was that you were
14 last active for either the N&W or Norfolk Southern,
15 Mr. Honeycutt.

16 A I retired on March 1, 2000.

17 Q And what position did you retire from?

18 A I was assistant vice president
19 operating rules.

20 Q In that position, were you in Roanoke?

21 A Yes, sir, I was.

22 Q Did you ever get out in the shops or
23 out in the yard?

24 A Yes, sir, I did.

1 But, anyway, he was opening -- he had
2 the doors open in connection with starting the
3 locomotive and that some way or another the doors came
4 closed, and he was injured in the process.

5 Q When you say some way or another the
6 doors came closed, you don't know what caused the
7 doors to close?

8 A No, sir.

9 Q What was the source of information
10 concerning what happened to Mr. Holliday?

11 A I reviewed the plaintiff's designation
12 and also a report from their expert, the plaintiff's
13 expert.

14 Q Mike O'Brien?

15 A Mr. O'Brien, yes, sir.

16 Q Have you reviewed any deposition
17 testimony?

18 A None that I recall.

19 Q Do you have any plans to do that?

20 A If some comes available, I would expect
21 to have the opportunity to look at it.

22 Q And I know that you can't anticipate
23 what somebody else is going to do, but if we go to
24 trial on this case, are you going to ask to look at

1 Q Do you have any feel for how often it
2 was that engineers working for your railroad started
3 locomotives back then?

4 A Well, the policy -- and I can't give
5 you a number, but I can tell you what the policy was.
6 When the weather was warm enough that the cooling
7 system in the locomotive wouldn't be subjected to
8 freezing, then the locomotives were shut down when
9 they were not being used.

10 And when an engineer came on duty or
11 perhaps after he had been to lunch and came back from
12 lunch, then one of the duties he had to do before he
13 could resume work would be to start the diesel engine.

14 Q I just want to make sure I'm
15 understanding this correctly. So are you telling me
16 that there were occasions when the weather conditions
17 merited it that your engineer would shut down a
18 locomotive, go to lunch, and then come back and start
19 it back up?

20 A Yes, sir, that's correct.

21 Q How long was the lunch break your guys
22 took?

23 A Well, the instruction, I think, was
24 anything over twenty minutes. And I can't remember.

1 I haven't looked at that for a long time. But if the
 2 locomotive was expected to not be used for say twenty
 3 minutes, then it was to be shut down to conserve fuel.
 4 Q And the locomotive in this case, I
 5 think you told me earlier that it was an EM model
 6 whose number is 6090?
 7 A Yes, sir.
 8 Q Do you know what type of locomotive
 9 that is? And I don't mean the manufacturer. You told
 10 me that. But what type of body style it is?
 11 A The model designation on that is a
 12 GP40-2.
 13 Q And when you were working for the
 14 railroad, you guys utilized those pieces of equipment?
 15 A The NS had several GP40-2's, and we
 16 also had a fairly large fleet of a similar model, the
 17 SD40-2, the difference being that the GP had four
 18 axles and the SD had six axles.
 19 Q Other than the number of axles, they
 20 both had the same body configuration?
 21 A Very similar, yes, sir.
 22 Q I don't mean to split hairs with you.
 23 When you say very similar, can you recall any
 24 differences?

1 Olekszyk. I'll spell it for you. O-L-E-K-S-Z-Y-K.
 2 A I might have misunderstood you. Did
 3 you ask me the plaintiff or the defendant?
 4 Q The defendant.
 5 A I'm sorry. I still had the plaintiff
 6 on my mind. I did look at Mr. Olekszyk's designation.
 7 Q Do you know him?
 8 A Yes, sir.
 9 Q And how do you know him?
 10 A I had professional dealings with him
 11 some years ago when he was at the FRA.
 12 Q And you were working for Norfolk
 13 Southern?
 14 A Yes, sir.
 15 Q Have you talked to him about this case?
 16 A No, sir, I have not.
 17 Q Do you have his designation there in
 18 front of you?
 19 A I'm looking for it right now.
 20 Q Okay. I'm just going to ask you a
 21 general question about it. I'm not going to go
 22 through his designation with you.
 23 A All right, sir. I have that.
 24 Q You got it?

1 A The big difference was that the GP was
 2 shorter than the SD. The SD had to be longer to
 3 accommodate the additional axles.
 4 And when you looked at either one of
 5 them from the side, if you had two of them together
 6 and looked at them, you could see that the SD had what
 7 everybody referred to as a front porch on it because
 8 of the longer frame.
 9 Q But they had the same access on both
 10 models?
 11 A Yes, sir, the same arrangement for the
 12 start switch and doors and so forth.
 13 Q All right. You said earlier that you
 14 had reviewed Mr. O'Brien's designation. Did you also
 15 tell me that you reviewed his report?
 16 A Yes, sir, I did see his report.
 17 Q Have you reviewed any of the other
 18 designations of the defendant?
 19 A Other than just briefly look through
 20 them, I didn't really look at anything in detail.
 21 Q Do you have those there with you?
 22 A Yes, sir.
 23 Q What I'd like you to do is look at the
 24 designation of this fellow named -- I think it's

1 A Yes, sir.
 2 Q Tell me, in your opinion as an expert
 3 in this case, what is the difference between your
 4 opinion and his opinion? Is he dealing with any
 5 different subject matter that you are not dealing
 6 with?
 7 A Well, he deals with the FRA's way of
 8 doing things internally, which, of course, I know from
 9 my experience that that's the way they did things.
 10 But I think we both had the same opinion as far as the
 11 door arrangement and fire extinguisher and that kind
 12 of thing.
 13 Q And as you look at his designation, can
 14 you tell whether or not his opinion is based on
 15 anything other than yours?
 16 As I say that, I'm looking here at the
 17 last paragraph of his designation. It looks like he's
 18 actually looked at some depositions, and you haven't.
 19 So, other than that, can you tell if you guys have
 20 relied on the same information?
 21 A Well, let's see. I don't believe I
 22 looked at the plaintiff's deposition for one thing.
 23 Q Right. He's also got the deposition of
 24 a couple witnesses, and I understand you haven't

1 looked at those either.
 2 A Yes, sir, that's correct.
 3 Q But other than that, has he referenced
 4 any kind of regulation or industry standard that you
 5 are either not aware of or that you didn't rely upon
 6 in formulating your opinions?
 7 A I don't see anything in here one way or
 8 the other that he might have looked at.
 9 Q Okay. Have you gone out to look at
 10 this locomotive, Mr. Honeycutt?
 11 A No, sir, I have not.
 12 Q Do you have any plans to do that?
 13 A Yes, sir. I hope to inspect it.
 14 Q When are you going to do that?
 15 A I believe the date is March the 24th.
 16 I don't have my calendar with me, but I think that's
 17 the date that we have talked about it would be
 18 available for inspection.
 19 Q Are you going up to Cumberland to look
 20 at it?
 21 A Yes, sir.
 22 MR. HOLLAND: He'll be there the same
 23 time you are going, Randy.
 24 MR. APPLETON: I know. I was getting

1 show. Do you have them in front of you?
 2 A Yes, sir.
 3 Q And it may be a little bit difficult,
 4 but I'd like for you to describe what photograph you
 5 have in front of you, give me enough time to get it in
 6 front of me, and then I'm going to get you to tell me
 7 what you see in that photograph.
 8 MR. HOLLAND: Randy, can we take just a
 9 break so that I can get those in front of me
 10 as well?
 11 MR. APPLETON: Mr. Holland, I'm very
 12 busy. I don't know if I have time for that.
 13 Yes.
 14 MR. HOLLAND: Give me about 45 seconds.
 15 MR. APPLETON: No problem. I'm going
 16 to get a cup of coffee.
 17
 18 (A brief recess was taken.)
 19
 20 BY MR. APPLETON:
 21 Q Mr. Honeycutt, let me ask you some
 22 questions first of all to maybe simplify this thing.
 23 I have three photographs of a red sign or sticker. Do
 24 you have the photographs of that red sticker or sign?

1 ready to ask him why he didn't have enough
 2 influence to get that locomotive brought down
 3 to Richmond.
 4 THE WITNESS: Actually, I'd rather have
 5 it in Clifton Forge.
 6 MR. APPLETON: That would be okay with
 7 me too. I would rather have it there too,
 8 Mr. Honeycutt.
 9
 10 BY MR. APPLETON:
 11 Q The file that you gave me had some
 12 photographs in it?
 13 A Yes, sir.
 14 Q Do you know where they came from?
 15 A I don't know exactly -- I don't know
 16 where they were made or the specific locomotive
 17 number. I was told that these were representative of
 18 a GP40-2. And then there is one picture in there that
 19 I was told was made of the 6090 either the day of the
 20 accident or close to the time of the accident.
 21 Q Based on your experience, are these
 22 photographs representative of a GP40-2?
 23 A Yes, sir.
 24 Q I'd like for you to tell me what they

1 A Yes, sir, I do have.
 2 Q I can't read mine. Can you read yours?
 3 A The only thing I could read on the
 4 bottom of it was -- let's see. And I can't hardly
 5 read that. Do not hold engine start switch more than
 6 some minutes, it looks like -- or more than twenty
 7 seconds I believe is what it says.
 8 Q After you say that, I think I can read
 9 that.
 10 A I cannot read the other --
 11 Q Do you have any idea what else is on
 12 this particular sign?
 13 A It appears to be the instructions on
 14 how one would start the diesel engine after it had
 15 been shut down.
 16 Q Do you have any independent knowledge
 17 as to whether the content of this sticker or sign has
 18 any relevance to this case?
 19 A Without knowing exactly what it says, I
 20 can't tell you one way or the other.
 21 Q Right. So when we go look at the
 22 locomotive, we can read it and figure it out. But for
 23 my purposes of talking to you today, I don't need to
 24 ask you anything about this sticker because you have

1 already told me the only thing that you can read or
2 know about it, right?

3 A Yes, sir.

4 Q So let's put those off to the side, and
5 let's just go through the photographs kind of quickly.
6 Can you tell me what photograph you have in front of
7 you now?

8 A Well, hopefully, these are still in the
9 same order that they were copied, so maybe it will go
10 quicker.

11 Q There's no way mine are.

12 A The first one that I'm looking at is a
13 landscape format. In the upper left corner is a gauge
14 that has green and red colors on it, and to the right
15 of this picture is a valve that has a yellow handle on
16 it.

17 Q I see that, okay. And then it has --
18 it looks like there is a pipe that runs at roughly a
19 30-degree angle below the gauge down to what looks
20 like some type of a nipple connection?

21 A Yes, sir. It goes down to a flange
22 connection.

23 Q Okay. And can you tell me, I guess
24 based on your knowledge and training, what this

1 photograph?

2 A In this photograph, no, sir.

3 Q You have told me what you understand
4 about the case, but would this have been where
5 Mr. Holliday was standing? Or would he have been to
6 one side or the other of the photographer in this
7 picture? Do you have any way of knowing that?

8 A I have no way of knowing where he was
9 standing.

10 Q This would be generally what he would
11 have been looking at based on what you understand
12 happened?

13 A Yes, sir.

14 Q Okay.

15 MR. APPLETON: Ms. Court Reporter,
16 would you mind marking that as 1.

17
18 (Deposition Exhibit Number 1 was marked
19 and entered into the record.)

21 BY MR. APPLETON:

22 Q Mr. Honeycutt, what do you have next?

23 A The next one that I have is made in
24 that same general area. It has the temperature gauge

1 photograph shows?

2 A Well, starting at the gauge we talked
3 about in the upper left, that's the water temperature
4 gauge that gives the water temperature in the cooling
5 system in the locomotive. Just below that is part of
6 the engine start switch. It has the lettering "Engine
7 Start" over on the right side of it.

8 Q Yes, sir, I see that.

9 A Then the large pipe at the top of the
10 picture there appears to be one of the water lines on
11 the diesel engine. It goes from the water pump over
12 to probably the lube oil cooler. And without looking
13 at the whole thing, I would not guarantee my
14 descriptions on these on where all the pipes go.

15 Q Right. And what I'm interested in is,
16 do you have any idea as to how this photograph or what
17 is depicted in this photograph fits into this case or
18 your understanding of what happened to Mr. Holliday?

19 A Well, this would show the engine start
20 switch that I assume he was back there to operate.
21 And, also, there is a gray structure in about the
22 bottom two-thirds of the picture. That would be the
23 cover over the air compressor drive shaft.

24 Q Is the drive shaft visible in this

1 in the center of the photo about a quarter of the way
2 from the top. Underneath that a full illustration of
3 the engine start switch assembly. To the left of that
4 is the locomotive load regulator.

5 Q Is that a circular -- looks like a
6 porthole?

7 A Yes, sir, that's correct.

8 Q Anything else that's depicted in this
9 photograph other than what you described for Exhibit 1
10 that would have any significance to this case or your
11 opinions?

12 A At this point, pretty much everything
13 we see there is what we had in the first photo.

14 Q The one thing I'm interested in,
15 Mr. Honeycutt, this photograph shows the engine start
16 switch, right?

17 A That's correct.

18 Q And to start the locomotive, do you
19 turn that toggle switch to the right it looks like
20 based on that arrow?

21 A Well, the process for starting the
22 engine, the switch would be moved to the left where it
23 says fuel prime.

24 Q Yes, I see that.

1 A And held there for several seconds to
2 prime the fuel system, and then it would be turned to
3 the right to crank the engine over with the starters.

4 Q Okay. So you prime it with the prime
5 setting. Then when you push it over to engine start,
6 that provides the ignition?

7 A That turns the starters just like the
8 starters on your automobile.

9 Q Right. And how do you know that the
10 fuel has been appropriately primed? Is there another
11 gauge, or do you see something on this gauge?

12 A You don't see it in this photograph,
13 but on the opposite side of the engine, there is a
14 sight glass. When the sight glass is full of fuel,
15 that's an indication that the system is charged and
16 ready to start.

17 Q So it's just like when I -- if I'm
18 starting my chainsaw, I pump the little bubble. Once
19 it fills up with fuel, that tells me I'm ready to go.

20 A Same effect, yes, sir.

21 Q How deep does this engine start switch
22 sit within the body of the locomotive? I'm interested
23 to know how far in Mr. Holliday or any other engineer
24 would have to reach to manipulate this control, if you

1 another.

2 Q That's in kind of a bluish color?

3 A Bluish metallic color, yes, sir.

4 Q Can you give me an orientation as to
5 where these devices would be in relation to the other
6 things that we talked about on Exhibits 1 and 2?

7 A If you look at Exhibit 1, you will see
8 the yellow-handle valve.

9 Q Yes.

10 A That yellow-handle valve also shows in
11 the lower left corner of this photo.

12 Q Okay. Now, when an engineer goes to
13 start the locomotive, to get access to this opening,
14 does he open one door or two doors on the model of
15 locomotive Mr. Holliday was operating at the time of
16 his injury?

17 A On this particular locomotive, there
18 are two doors.

19 Q Okay. So would two doors be opened to
20 see all of the equipment that's reflected in Exhibits
21 1 and 3?

22 A If you combine the things that you see
23 in 1 and 3, yes, it would take opening both doors, I
24 believe.

1 know.

2 A I don't know what the distance is.

3 Q Okay. When the door is shut --
4 whatever that porthole is to the left of this
5 photograph, does that stay open or does that close
6 with the door?

7 A That is behind the closed door.

8 Q Okay. So the depth of the opening
9 would be at least as wide as the setting that that
10 porthole is in?

11 A Yes, sir, that's correct.

12 Q Okay. All right.

13 MR. APPLETON: Ma'am, can we mark that
14 as Exhibit 2.

15
16 (Deposition Exhibit Number 2 was marked
17 and entered into the record.)

18
19 BY MR. APPLETON:

20 Q Mr. Honeycutt, what photograph do you
21 have next?

22 A The next one is in a portrait
23 orientation, and it has a device down at the bottom
24 that says crankcase at one position and low water at

1 Q Okay.

2 MR. HOLLAND: Where did we get Exhibit
3 3?

4 MR. APPLETON: I have no idea.

5 MR. HOLLAND: Well, you just said
6 Exhibit 1 and 3.

7 MR. APPLETON: Oh, I'm sorry. We
8 haven't marked Exhibit 3 yet. Ma'am, could
9 you mark the photograph Mr. Honeycutt has in
10 front of him now Exhibit 3.

11
12 (Deposition Exhibit Number 3 was marked
13 and entered into the record.)

14
15 BY MR. APPLETON:

16 Q Mr. Honeycutt, the low water and the
17 crankcase mechanisms, could you describe those to me?

18 A Yeah. That device is also known as the
19 engine protector. The crankcase -- both the crankcase
20 and the low water are buttons that would pop out.

21 If there were excessive pressure in the
22 engine crankcase, the lower button would pop out. If
23 there was low water that would shut the engine down,
24 the button would pop out at the top. Normally, these

1 buttons have to be in for the engine to continue to
2 run.

3 My experience has been that, in
4 starting an engine, that's one of the things that I
5 would expect whoever is starting the engine to look at
6 to be sure that both the low water button and the
7 crankcase button are in in the proper set position.

8 Q Now, as you look at Exhibit 3 -- and I
9 may have misunderstood what you told me a second ago
10 but you just said that there is a glass that fills
11 with fuel as the engineer primes the engine?

12 A Yes, sir, that's correct.

13 Q Would that be anywhere close to what is
14 shown in Exhibit 3?

15 A You don't see it in this picture. It's
16 on the opposite side of the engine. But as I
17 remember, you can see it when you are standing and if
18 you look across to the opposite side of the diesel
19 engine.

20 Q So it's all the way on the other side
21 of the body?

22 A The other side of the engine block,
23 yes, sir.

24 Q Okay. Is there an access door on that

1 A The next picture I have is a photograph
2 that's also in the portrait orientation. And the
3 lower right corner -- the lower right hand of the
4 picture shows the fire extinguisher mounted on the
5 door.

6 Q Okay. And that also shows the switches
7 that we were just talking about, the low water and the
8 crankcase warning buttons?

9 A Yes, sir, that's correct.

10 Q All right. So based on your --

11 MR. APPLETON: Let's mark this as
12 Exhibit 4, please.

13
14 (Deposition Exhibit Number 4 was marked
15 and entered into the record.)
16

17 BY MR. APPLETON:

18 Q Mr. Honeycutt, based on your review of
19 Exhibit 4, can you now give me an estimate as to how
20 high the low water or the crankcase buttons are?

21 A Well, again, it's been a while since I
22 have been on one. I don't ever remember measuring one
23 of them, but it seems to me like the engine protector
24 was about at waist level on most of them.

1 side that you can open to get to it if you need to?

2 A Yes, sir.

3 Q But it's filled from the prime switch
4 that we talked about earlier?

5 A That's correct. It's filled from that.
6 And, also, of course, when the engine starts and runs
7 under its own power, that sight glass will stay full
8 of fuel.

9 Q Do you have any idea how high the
10 engine start switch or this low water and crankcase
11 warning switches are?

12 A No, sir, not off the top of my head.

13 Q Okay. What do you have next?

14 A I have another -- I ended up with three
15 more pictures of the red label, four pictures this
16 time. I don't know how that happened.

17 Q We don't need to talk about that red
18 label anymore I don't think unless you can read it off
19 the other copy that you have.

20 A No. They are all pretty well the same,
21 at least the ones I have.

22 Q Yeah. Let's not waste any time on
23 those. Other than the red label, what else do you
24 have?

1 Q Okay. And how tall are you?

2 A I'm six two.

3 Q All right. In looking at that Exhibit
4 4, can you also give me an estimate as to how deep
5 within the body of the locomotive the low water and
6 the crankcase buttons are?

7 A Just as an estimate, it looks to be
8 about six to eight inches, maybe.

9 Q And is that roughly how deep in the
10 start switch would have been, or is that set in deeper
11 than these?

12 A As I remember, the start switch is a
13 little bit deeper than the engine protector itself.

14 Q Okay. Do you remember whether or not
15 there is a sill at the bottom of the opening to this
16 equipment?

17 A Yes. As I remember, and I think it
18 shows in Exhibit 4 there, there is a -- underneath the
19 doors there is a part of the locomotive car body
20 that's fixed, I guess is the best way to describe it.

21 Q So do you have to step over that car
22 body to get that -- I'm going to call it a flange. Is
23 that a fair characterization?

24 A Well, I guess we both understand it. I

1 don't know exactly what the proper term is for it,
2 but --

3 Q Okay. Let's call it a sill. Do you
4 have to step over that to operate the equipment that
5 we have been discussing in the other photographs?

6 A No, sir. Everything is arranged so
7 that a person can stand on the running board and
8 operate the start switch and the other stuff.

9 Q Okay. So you operate that equipment
10 from the exterior of the locomotive body?

11 A Yes, sir.

12 Q The fire extinguisher that's in Exhibit
13 4, is that generally the size and type that you recall
14 being mounted on this model of locomotive when you
15 were working for Norfolk Southern?

16 A Yes, sir. That's typical of the fire
17 extinguisher I have seen I think on just about every
18 railroad.

19 Q Can you give me an idea as to what size
20 it is or how many gallons it is or how tall it is,
21 whatever is easier for you?

22 A Well, I don't know the exact
23 measurements. It appears to be about probably two and
24 a half feet tall all together.

1 extinguisher weighs?

2 A No, sir. I have picked them up, but I
3 don't have any idea how much they weigh. I have
4 picked them up and used similar fire extinguishers.

5 Q Okay. Then I'm going to ask you a
6 similar question. Do you have any idea how much the
7 door weighs?

8 A No, sir, I don't.

9 Q You see on Exhibit 4 the hinges that
10 are between the door and I'm going to call it the side
11 jamb?

12 A All right, sir.

13 Q Is that the way that the door is
14 typically affixed to this model of locomotive based on
15 your experience?

16 A Yes, sir.

17 Q Have you ever seen a locomotive of this
18 model that had any mechanism in it to prevent that
19 door from unexpectedly closing?

20 A No, sir, I have not.

21 Q Do you recall anybody else being
22 injured because of a door like this unexpectedly
23 closing on them?

24 A No, sir.

1 Q When the locomotive comes from General
2 Motors, is that the way that the extinguisher is
3 mounted on the unit?

4 A Yes, sir.

5 Q Have you ever seen them mounted inside
6 the door on the floor?

7 A I don't ever remember seeing one like
8 that, no, sir.

9 Q So all of them that you have seen, to
10 the best of your recollection, have been on the door?

11 A Yes, sir.

12 Q This may be a tough question for you to
13 answer. Do you have any idea how many of these
14 locomotives you have inspected or worked on throughout
15 your railroad career?

16 A Well, it's been a bunch of them is
17 about the best I can tell you.

18 Q Yeah. Would it be more than a hundred?

19 A I'm sure it would.

20 Q More than a thousand?

21 A I suspect so.

22 Q More than ten thousand?

23 A I don't know that.

24 Q Okay. Got any idea how much that

1 Q Okay. Exhibit 4. One other question
2 about Exhibit 4, Mr. Honeycutt. Do you have any idea
3 if the door was open in that manner, or I'll say that
4 orientation, when Mr. Holliday was injured? In other
5 words, was it flat up against the body of the
6 locomotive?

7 A I don't know that I have seen anything
8 that described how he had opened the doors or in what
9 position he left them.

10 Q Is the fire extinguisher, based on your
11 recollection and experience, always mounted on the
12 right-side door as you face the locomotive as it is in
13 this case?

14 A Yes, sir.

15 Q All right. I have another photograph
16 that's essentially -- oh, that's a copy of that one.
17 What is your next photograph, Mr. Honeycutt?

18 A The next one I have is a picture made
19 looking down the walkway towards the end of the
20 locomotive, and there is a gentleman over in the left
21 lower corner that has on a green jacket or vest or
22 something.

23 Q Okay.

24 MR. APPLETON: Let's mark that as

1 Exhibit 5, please.

2
3 (Deposition Exhibit Number 5 was marked
4 and entered into the record.)

5
6 BY MR. APPLETON:

7 Q Mr. Honeycutt, are these doors open in
8 a manner that you understand would have been open --
9 opened in a manner similar to the way they would have
10 been when Mr. Holliday was injured?

11 A Well, again, I don't know how he had
12 opened the doors. But I would say if I were starting
13 the locomotive, I would have opened the doors and left
14 them in this position as I started -- operated the
15 start switch on the locomotive.

16 Q Okay. And the opening that is shown in
17 this photograph is what we have been looking at on the
18 other pictures?

19 A Yes, sir.

20 Q All the equipment that you and I have
21 talked about is in the opening between those two
22 doors?

23 A Yes, sir, that's correct.

24 Q You don't know when these photographs

1 about the one that says a locomotive will be in a safe
2 and suitable condition.

3 Of course, I remember one of the things
4 he talked about was the reporting requirements, which
5 I did not look at and consider. That was something
6 that I did not critique or look at at all.

7 Q Right. And what I'm actually getting
8 to, Mr. Honeycutt, is whether there is a difference
9 between you and Mr. O'Brien as to the applicable
10 federal regulations.

11 And if not, then I'm not going to go
12 into what the differences are in your application of
13 those regulations. But do you happen to have a copy
14 of his report there with you?

15 A Yes, sir. I think it's in here
16 someplace.

17 Q I can read to you what the regs are,
18 but I think it would be quicker and easier if you had
19 it in front of you and you could just take a look at
20 it.

21 MR. HOLLAND: I tell you what. Can I
22 jump in here? While he is looking for that,
23 can I take a break? I'll be back in about 45
24 seconds.

1 were taken?

2 A No, I do not.

3 Q You didn't ask for them to be taken?

4 A No, sir.

5 Q Do you think that you require any other
6 photographs of any different orientation to assist you
7 in your evaluation of this situation?

8 A Well, I would like to look at the 3090
9 and then decide from there what else I might need.

10 Q Look at the 30 -- you mean look at this
11 particular locomotive?

12 A Yes, sir. Did I turn the numbers
13 around on that?

14 Q Even if you did, I understand what you
15 are saying. Mr. Honeycutt, did you get a chance to
16 review Mr. O'Brien's report?

17 A Yes, sir.

18 Q Do you agree with his findings?

19 A No, sir.

20 Q Do you agree with his recitation of the
21 applicable federal regulations concerning the
22 condition of locomotives?

23 A It's been some time since I looked at
24 what he said, but, as I recall, he generally talked

1 MR. APPLETON: Okay.

2
3 (A brief recess was taken.)

4
5 BY MR. APPLETON:

6 Q Mr. Honeycutt, I'm going to kind of
7 focus my questions, first of all, on these
8 regulations, and then I'm going to go back and talk
9 about the application of the regulations to the case.

10 I'm not going to ask you about that
11 reporting regulation because you told me that you
12 don't really recall that right now.

13 A Well, I did not study that or consider
14 that as part of my duties in this.

15 Q Right. And I'm not going to ask you
16 anything about that. I don't quarrel with that.

17 Mr. O'Brien does have a part of his
18 report that says that the locomotive safety standards
19 prohibit the use of a locomotive that is not in proper
20 condition and safe to operate without unnecessary
21 peril to life or limb.

22 Do you agree that that's an applicable
23 recitation of a portion of the locomotive safety
24 standards?

1 A Yes, sir. It appears to be a quote
 2 from the safety standards.
 3 Q Okay. And you agree that that
 4 regulation would apply to the locomotive in this case?
 5 A Well, it --
 6 MR. HOLLAND: Object to the leading.
 7 Go ahead.
 8 THE WITNESS: This regulation applies
 9 to all locomotives in service.
 10
 11 BY MR. APPLETON:
 12 Q Right. Now, let me ask you,
 13 Mr. Honeycutt, what is going to be easier for you. I
 14 want to talk to you about the differences that you and
 15 Mr. O'Brien have on these regulations.
 16 Would it be easier for me to go through
 17 all of the regulations first to make sure they are
 18 applicable and then talk about the differences, or do
 19 you want to talk about the differences between you and
 20 Mr. O'Brien as we deal with each section?
 21 A Let's just go through the regs first
 22 and whether we agree they are applicable or not, I
 23 guess.
 24 Q Okay. Mr. O'Brien has a portion of his

1 A Based on the information I have seen, I
 2 believe that the locomotive was in a safe and suitable
 3 condition for use and that it was in compliance with
 4 the applicable federal regulations.
 5 Q And that is because you do not take
 6 issue with the failure of the railroad to have any
 7 kind of mechanism that would prevent the unexpected
 8 opening of the door -- I mean, not opening, closing of
 9 the door?
 10 A Yes, sir, that's correct.
 11 Q And you also believe -- as far as the
 12 drive shaft, do you believe that the drive shaft
 13 should have had a cover?
 14 A The indications are that the drive
 15 shaft did have a cover over it, a guard over it.
 16 Q What indications are those?
 17 A Based on the pictures that we looked at
 18 in the exhibit there that --
 19 Q Golly. I told you I wasn't going to
 20 ask you any more about the photographs. Tell me real
 21 quick which photograph shows the cover of the drive
 22 shaft.
 23 A Let's see. It's shown, I believe, in
 24 Exhibit 1 to start with.

1 report that indicates that there's a portion of the
 2 locomotive safety standards that requires all systems
 3 and components in a locomotive to be free of
 4 conditions that endanger the safety of the crew, the
 5 locomotive, or train.
 6 Do you agree that that's a portion of
 7 the locomotive safety standards?
 8 A Yes, sir.
 9 Q Do you agree that would be applicable
 10 to the locomotive in this case?
 11 A Yes, sir.
 12 Q All right. And then I think finally
 13 Mr. O'Brien recites a portion of the locomotive safety
 14 standards that require guards on exposed moving parts
 15 or mechanisms. Do you agree that's also a portion of
 16 the locomotive safety standards?
 17 A Yes, sir, that's correct.
 18 Q And that would be applicable to the
 19 locomotive in this case?
 20 A Yes, sir.
 21 Q Okay. Now, do you believe that any of
 22 those regulations that we just talked about were
 23 violated by the condition of the locomotive in
 24 connection with Mr. Holliday's injuries?

1 Q All right. Let me get Exhibit 1 in
 2 front of me real quick. All right. Mr. Honeycutt,
 3 I'm looking at Exhibit 1. Can you describe for me
 4 where the cover of that drive shaft is shown in this
 5 photograph?
 6 A Yes, sir. This cover would be shown in
 7 the -- the pipe that we talked about earlier that's
 8 inclined at say a 30-degree angle?
 9 Q Yes.
 10 A The gray structure behind that would be
 11 the cover over the air compressor drive shaft.
 12 Q Okay. It looks like -- well, okay. I
 13 understand what you are saying. If Mr. Honeycutt --
 14 if Mr. Holliday testified at deposition that the drive
 15 shaft was visible to him as he stood at that engine
 16 compartment door and was starting that locomotive,
 17 would that be inconsistent with what is shown in
 18 Exhibit 1?
 19 A Well, I don't see the air compressor
 20 drive shaft in this photograph.
 21 Q Right. And if Mr. Holliday said that
 22 he saw it, would that be different than what is shown
 23 in this photograph?
 24 A Well, I don't know --

1 Q If you could see the drive shaft when
2 you stood at the engine compartment door and were
3 starting the locomotive, would that be a violation of
4 the federal regulation that we discussed earlier that
5 discusses covering moving parts or mechanisms?

6 A Based on the way that I have seen the
7 regulation interpreted since about 1966 or '67, it
8 would not be a violation of that regulation.

9 Q Okay. So it's your opinion that that
10 drive shaft does not require a guard?

11 A Well, it has a guard over it.

12 Q I thought you said it doesn't have a
13 guard.

14 A If this structure that we see in
15 Exhibit 1 were missing, then it would be in violation.
16 But if the structure is in place on the locomotive,
17 then I would say it's in compliance with the
18 regulation.

19 Q Let me go at it one more different way,
20 Mr. Honeycutt. If an engineer could visualize the
21 drive shaft of the locomotive when he is starting the
22 locomotive at this start station, would that be an
23 indication that the drive shaft cover was not
24 appropriately affixed to the locomotive?

1 clear. Mr. Honeycutt has spoken to me.

2 MR. APPLETON: Right. And I don't want
3 to get into what you and he talked about. I
4 may be entitled to do that, but I just don't
5 want to.

6 I was interested in knowing whether
7 anybody else had given him any other factual
8 information about the case, and he's answered
9 that. And I would assume that if he does
10 consult with somebody else that you guys
11 would supplement. So I'm good.

12 BY MR. APPLETON:

13 Q Mr. Honeycutt, other than what you and
14 I have discussed about your differences of opinion
15 with Mr. O'Brien as to the duty to prevent the doors
16 from unexpectedly closing on the engine compartment
17 access and the appropriateness of the cover of the
18 drive shaft on the locomotive, did you take any issue
19 with any of the other opinions that Mr. O'Brien
20 recited in his report that you can recall off the top
21 of your head?

22 A Those were the general areas that I
23 looked at, and I don't recall anything else in there

1 MR. HOLLAND: Object to the form.

2 BY MR. APPLETON:

3 Q Can you answer that question,
4 Mr. Honeycutt?

5 A Just because one can see the drive
6 shaft doesn't mean it's a violation of the regulation.

7 Q And that's what I'm trying to get to.
8 If the drive shaft cover is appropriately on the
9 locomotive, can you still see the drive shaft?

10 A As I remember, there is some -- if you
11 get in certain locations, you can see the drive shaft
12 even though there is a cover over it.

13 Q Okay. Mr. Honeycutt, have you
14 discussed this case with anybody else?

15 A No, sir.

16 Q Do you have any plans to? I'm not so
17 much concerned about Mr. Holland's people, but do you
18 have any plans to discuss this with any of the other
19 people that have been identified as experts or
20 eyewitnesses to this incident?

21 A I don't have any plans to do that, no,
22 sir.

23 MR. HOLLAND: Randy, I want to make it

1 that was --

2 Q Okay.

3 MR. HOLLAND: I'm sorry, I missed the
4 end of his answer. Miss Court Reporter,
5 could you read that back to me, please.

6 (The court reporter read the requested
7 portion of the record.)

8 MR. APPLETON: Are you okay,
9 Mr. Holland?

10 MR. HOLLAND: Yeah. Mr. Honeycutt, did
11 he cut you off?

12 THE WITNESS: Yeah, but I have lost
13 track of what I was going to say now.

14 MR. APPLETON: I apologize for cutting
15 you off. I didn't mean to. Let me ask it
16 again.

17 BY MR. APPLETON:

18 Q Mr. Honeycutt, other than the
19 differences that you had with Mr. O'Brien on whether
20 or not there should be a mechanism to prevent the
21 engine compartment doors from unexpectedly closing and
22

1 the appropriateness of the cover on the drive shaft on
2 the locomotive, do you recall having any differences
3 with any of his other opinions just off the top of
4 your head?

5 A Off the top of my head, I do not.

6 Q Those were the two things you were
7 looking at in this case as far as trying to assess
8 whether or not this locomotive complied with the
9 applicable federal statutes, right?

10 A Yes, sir.

11 Q Okay. I asked you this before, but I
12 just want to be sure. All the opinions that you have,
13 Mr. Honeycutt, are reflected in the defendant's expert
14 designation or we have discussed them here today,
15 right?

16 A Yes, sir. And that's, of course,
17 condition on looking at the actual locomotive.

18 Q Yes, sir. That's fair. As of today,
19 those are the two sources or the two descriptions of
20 your opinion, which are accurate?

21 A Yes, sir.

22 MR. APPLETON: Okay. Mr. Honeycutt, I
23 appreciate your time and courtesy. I don't
24 have any other questions. Mr. Holland may.

1 exhibit to Mr. Holliday's deposition -- and again I
2 want you to assume that this is a photograph of the
3 locomotive that was involved in Mr. Holliday's claimed
4 injury.

5 Can you look at that photograph,
6 Mr. Honeycutt, and tell me whether or not that drive
7 shaft has a cover on it?

8 A I do have the photograph here, and it
9 does have a cover on it in this picture.

10 Q All right.

11 MR. HOLLAND: Madam Court Reporter,
12 would you mark that whatever the next exhibit
13 is, please.

14
15 (Deposition Exhibit Number 6 was marked
16 and entered into the record.)

17
18 MR. HOLLAND: I don't have anything
19 else.

20 MR. APPLETON: I don't either.
21 (12:10 p.m.)

22 FURTHER THE DEPONENT SAITH NOT.
23
24

1 MR. HOLLAND: Yeah, I do.

2
3 EXAMINATION

4
5 BY MR. HOLLAND:

6 Q Mr. Honeycutt, do you agree with any of
7 Mr. O'Brien's opinions in his report?

8 A No, sir.

9 MR. HOLLAND: That's all I have.

10 MR. APPLETON: What do you want to do
11 about signature?

12 THE WITNESS: I would like to sign it,
13 if I could.

14 MR. APPLETON: Okay. You have the
15 right to do that.

16 MR. HOLLAND: Read and sign then. Let
17 me -- if I can, let me go back. Randy, would
18 you mind if I went back and asked him one
19 additional question?

20 MR. APPLETON: No. Go ahead.
21

22 BY MR. HOLLAND:

23 Q Mr. Honeycutt, the photograph that I
24 provided to you yesterday that was actually made an

1 C E R T I F I C A T E

2 COMMONWEALTH OF VIRGINIA
3 CITY OF ROANOKE

4 I, Patricia J. Jensen, RPR, Notary Public in
5 and for the Commonwealth of Virginia, at Large, do
6 hereby certify that the deposition of WILLIAM E.
7 HONEYCUTT was by me reduced to machine shorthand in
8 the presence of the witness, afterwards transcribed by
9 me by means of computer, and that to the best of my
10 ability the foregoing is a true and correct transcript
11 of the deposition so given as aforesaid.

12 I further certify that this deposition was
13 taken at the time and place specified in the foregoing
14 caption.

15 I further certify that I am not a relative,
16 counsel or attorney for either party, or otherwise
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 at Roanoke, Virginia, on the 18th day of March 2010.
20

21
22
23 PATRICIA J. JENSEN, RPR
24 NOTARY PUBLIC #166415