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**Date:** June 1, 2015

**Case:** In Re: Application of the National Railroad Passenger Corporation,  
Under 49 U.S.C. 24308(a) - Canadian National Railway Company



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BEFORE THE UNITED STATES  
SURFACE TRANSPORTATION BOARD

- - - - -x  
In the Matter of: :  
APPLICATION OF THE NATIONAL : Docket Number  
RAILROAD PASSENGER CORPORATION, : FD 35743  
UNDER 49 U.S.C. § 24308(a) - :  
CANADIAN NATIONAL RAILWAY COMPANY. :  
- - - - -x

DISCOVERY CONFERENCE

Washington, D.C.  
Monday, June 1, 2015

BEFORE :  
JOHN DRING, ADMINISTRATIVE LAW JUDGE

REPORTED BY: SARA A. WICK, RPR, CRR

1           The above-entitled matter came on for discovery  
2 conference on Monday, June 1, 2015, in Washington,  
3 D.C., at the offices of the Federal Energy  
4 Regulatory Commission, 888 First Street Northeast,  
5 Hearing Room 1, at 10:02 a.m., before JOHN DRING,  
6 ADMINISTRATIVE LAW JUDGE, when were present on  
7 behalf of the respective parties:

8

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-- continued --

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1 P R O C E E D I N G S

2 JUDGE DRING: We are on the record. Good  
3 morning, folks.

4 Today we will have oral arguments on  
5 motions to compel discovery in the Surface  
6 Transportation Board Docket Number FD 35743,  
7 application of the National Railroad Passenger  
8 Corporation under 49 U.S.C. Section 24308(a), to  
9 determine reasonable terms and compensation for  
10 Amtrak's use of Canadian National Railway Company  
11 facilities, including rail lines and services.

12 I have a seating chart here. I just want  
13 to make sure it's correct. Please enter your  
14 appearances.

15 MR. KALICK: Theodore Kalick, Canadian  
16 National Railway.

17 MR. LUDWIG: Matthew Ludwig, Harkins  
18 Cunningham, on behalf of CN.

19 MR. HIRSH: David Hirsh, Harkins  
20 Cunningham also, on behalf of Canadian National  
21 Railway.

22 MS. MORGAN: Linda Morgan on behalf of

1 Amtrak with Nossaman.

2 MR. NEUMAN: Reed Neuman, also with  
3 Nossaman, on behalf of Amtrak.

4 JUDGE DRING: Who over here is going to  
5 speak first?

6 Mr. Hirsh, since you're closest to me, I  
7 trust?

8 MR. HIRSH: You're right, your Honor.

9 JUDGE DRING: I would like you to begin by  
10 briefly telling me what issues remain in play here  
11 and, in addition, what you might say with regard to  
12 answering that directly.

13 Is there anything else that the Board has  
14 ordered produced that has not yet been produced?

15 MR. HIRSH: There are three items that I  
16 believe we agree, having met on Friday and conferred  
17 between the parties, there are three remaining  
18 issues.

19 The first has to do with the Motion to  
20 Compel Number 3, and that is revenue information  
21 from Amtrak's ridership and revenue database.

22 The second issue is a -- the second and

1 third issues relate to the Motion to Compel Number  
2 4. And first, I would say, is the host railroad  
3 issues log, and the other issue is the so-called  
4 quarterly dockets.

5 JUDGE DRING: All right. So there is  
6 nothing else that the Board ordered produced that  
7 has not been produced?

8 MR. HIRSH: Correct, your Honor.

9 JUDGE DRING: All right. Good. Well, I  
10 have my own thoughts on all this, which should come  
11 as no surprise to any of you. But Mr. Hirsh, why  
12 don't you just begin by telling me why you think  
13 these documents should be produced, without going  
14 into any great detail. You need not reproduce  
15 anything that's already in the record that I've  
16 seen. Just give me an overview of this, please.

17 MR. HIRSH: Your Honor, I wonder if it  
18 would be helpful or if the Court would permit, we  
19 have sort of an outline that shows both the  
20 movements that are at issue here, the lines that  
21 Canadian National runs over.

22 JUDGE DRING: All right.

1           MR. HIRSH: I think it might be useful for  
2 your Honor to sort of understand for a number of the  
3 issues the structure of those movements, where the  
4 stations are, and the measurement points. Is that  
5 something I could --

6           JUDGE DRING: Yes. Let me ask you, there  
7 is revenue information that you seek; is that  
8 correct?

9           MR. HIRSH: Yes.

10          JUDGE DRING: All right. Would it be  
11 helpful to you to have my thoughts on this before  
12 you take a lot of time explaining to me why you  
13 think you need it?

14          MR. HIRSH: Certainly, your Honor.

15          JUDGE DRING: You think perhaps? What  
16 we're trying to do here, what the Board is trying to  
17 determine is reasonable terms and compensation,  
18 which is a term of art apparently in your business.

19                 As I thought about this recently, I  
20 thought that there are several possible legal  
21 references that might inform that decision. The  
22 first two have virtual -- virtually no application

1 here, I think, common law and the statute of frauds.  
2 But corporate practice and the Uniform Commercial  
3 Code, at least to me, seems like that might inform  
4 the discussion a bit.

5 As to corporate practice, boards of  
6 directors are constrained in contracting practice by  
7 financial market reaction to corporate activity.  
8 And by the realization that if a corporation enters  
9 into what the shareholders consider unreasonable  
10 contractual terms, shareholders may well take action  
11 to correct the matter.

12 And I wrote this out over the weekend.  
13 Although this factor may influence the parties here  
14 because of the need to please funding sources, be  
15 they a broad public market or governmental entities,  
16 the UCC has the most obvious potential to influence  
17 contractual activities in this case. And the UCC,  
18 in interpreting contract terms that are arguably  
19 unclear, the courts frequently apply the common  
20 practice in the industry or in the ordinary course  
21 of business in settling controversies. The  
22 ordinary course of business within the context of

1 this case would involve a contract between two  
2 railroads neither of which is subsidized.

3           Parenthetically, do you have any subsidies  
4 from your federal government?

5           MR. HIRSH: No, your Honor.

6           JUDGE DRING: All right. The ordinary  
7 course of business within the context of this case  
8 would involve a contract between two railroads, as I  
9 said, neither of which is subsidized by a  
10 governmental entity.

11           Within the context of this consideration,  
12 I note that what Amtrak and CN would think of as  
13 ordinary course of business may well be two  
14 different things because of Amtrak's unique  
15 situation as a governmental entity.

16           Here, then, we need to consider primary  
17 motivational factors and operations, at least this  
18 is the way I view it. If CN receives no subsidies,  
19 you're most concerned with revenues. Amtrak,  
20 conversely, being heavily subsidized by the federal  
21 government, primarily is concerned with pleasing its  
22 Congressional Oversight Committee members -- that's

1 the way I see it -- who, in turn, are most concerned  
2 with providing reliable, on-time, and reasonably  
3 priced rail alternatives to other means of  
4 transportation to its constituents.

5 Therefore, at least to me it seems logical  
6 that the two parties would assign different values  
7 to ridership numbers and revenues. It's  
8 understandable that CN would be interested in  
9 Amtrak's revenues since that is one of the important  
10 components that parties to contracts in general use  
11 in determining reasonable terms and compensation.

12 I point this out because I think there may  
13 well be some cognitive dissidence at play, with no  
14 disrespect to anyone. It's just the world you live  
15 in. So then I see, perhaps, that CN and Amtrak's  
16 motivations are different.

17 It may help or may not, but reductio ad  
18 absurdum, CN would be happy to move for minimum  
19 tonnage of freight as long as the revenues from the  
20 tonnage met its financial targets.

21 In contrast, Amtrak had better concentrate  
22 on moving as many passengers as possible if its

1 executives don't want to be criticized by members of  
2 Congress to whose constituents it provides service.

3           Again, reductio ad absurdum, Amtrak might  
4 be better off selling services as cheaply as  
5 possible, as long as the last increment of downward  
6 pricing movement brings in additional passengers.

7 And note that Amtrak has yet to have an operational  
8 year in which it has turned a profit, something that  
9 would be impossible and horrifying in CN's world  
10 view.

11           Those are my, it turns out -- I hadn't  
12 intended on giving prepared remarks, but there they  
13 are. Please respond appropriately as you feel meets  
14 your client's needs.

15           MR. HIRSH: Your Honor, you've made very  
16 apt and correct observations, I think, about --  
17 there are some differences, obviously, between a  
18 company like CN, that is logically profit driven,  
19 and Amtrak, which has some public duties that are  
20 not specifically about earning revenues.

21           However, Amtrak is very concerned about  
22 earning revenues. It's actually in its statute that

1     formed Amtrak, one of the components it has to worry  
2     about.

3                   JUDGE DRING:   Please, let me interrupt you  
4     for a moment just to possibly apologize for being  
5     too cavalier with that.  But I understand that you  
6     are actually attempting to make profits.  It's  
7     simply that you haven't.  I understand that.

8                   Please continue.

9                   MR. HIRSH:   So in this case, the agreement  
10    at issue is the agreement, of course, that governs  
11    the relationship between Amtrak operating on  
12    Canadian National lines, and the issues revolve  
13    around compensation.  It is evident to everyone, I  
14    think, that in considering how -- what Amtrak will  
15    pay, particularly in one of the most contested  
16    issues, which is the incentives and penalties  
17    provision of our agreement -- and I know you're --  
18    I'm not sure.  I actually think you probably have  
19    not been supplied with the operating agreement in  
20    this case.

21                   JUDGE DRING:   No, I have not.

22                   MR. HIRSH:   Because I don't think it was

1 filed.

2 JUDGE DRING: No. I have your pleadings.

3 MR. HIRSH: Yes, exactly. Because of the  
4 nature of the way the pleadings cycle in this has  
5 gone, it was never filed. Both parties have the  
6 document.

7 But there's, you know, a statutory  
8 background that requires -- that allows Amtrak to  
9 contract with freight railroads. And if they don't  
10 reach agreement, it allows the STB to step in and  
11 make the terms. And that's what this is all about.

12 JUDGE DRING: I understand that. But that  
13 is all right, giving me the background for the  
14 record.

15 MR. HIRSH: Amtrak has been operating on a  
16 line since the '70s, and we've had many agreements  
17 over time. Right now -- and this is why I thought  
18 it might be helpful if I can show you the lines.

19 JUDGE DRING: Yes.

20 MR. HIRSH: If you want as well. This  
21 will help you see some of the complexity we're  
22 dealing with, especially when we get to issues like

1 incentives and penalties. What you see on the  
2 first -- first of all, you see the key. And this is  
3 to show you that some stations are measurement  
4 points. By a measurement point, I'm talking about a  
5 place where the agreements, incentives, and  
6 penalties measures the performance. And one of the  
7 issues here is where should those points be.

8           And you can see that there's a lot of  
9 choices. On the first service that you're looking  
10 at, which is CN's main line from Chicago to New  
11 Orleans, two Amtrak services run on that line. One  
12 is the sort of famous City of New Orleans, and the  
13 other is called the Illini/Saluki, which runs from  
14 Chicago to Carbondale. And you see that within what  
15 is called a service is more than one train number,  
16 and you see the same thing for the City of New  
17 Orleans.

18           And in this case, you see that the  
19 measurements are a couple of chosen points here. To  
20 us, one of the important questions is going to be  
21 where should these measurement points be. In  
22 arguing -- A, in arguing about the structure of the

1 incentives/penalties, whether it should be based  
2 something like as it is under the current agreement,  
3 which is based on -- and this gets complicated. I  
4 will try to keep it simple. It's based on a run  
5 time. Plus, it has adjustments for delays that are  
6 not considered CN's responsibility.

7 JUDGE DRING: All right.

8 MR. HIRSH: But there's other ways to  
9 measure this stuff. You can measure it with  
10 straight on-time performance without adjustments.  
11 There's lots of ways you could try to structure and  
12 measure performance.

13 So one question is the structure. The  
14 second question is, how much do you pay? Let's say  
15 you do well between segment A and B. Is that an  
16 important segment? Should you pay more if we do  
17 well because you earn more, Amtrak? Should we be  
18 penalized more because you've lost more revenue?

19 This is why we've said we want to be able  
20 to structure an incentive/penalty provision on equal  
21 footing with Amtrak, who has all these revenues in a  
22 database that's readily accessible and used on a

1 daily basis.

2 JUDGE DRING: All right.

3 MR. HIRSH: If you look at the next page,  
4 which shows the Texas Eagle and Lincoln, you will  
5 see something else that's remarkable. This is the  
6 full service for the Texas Eagle, for example. The  
7 red piece is CN's portion. The revenue that has  
8 been made available to us is for the entire Texas  
9 Eagle service. So we don't even have the revenue  
10 for our part of that service, much less the  
11 individual trains within it.

12 JUDGE DRING: So you don't -- what do you  
13 mean you don't have the revenue? The 21st Station  
14 and UD Tower, or what are you talking about?

15 MR. HIRSH: Here we're talking about the  
16 revenue that Amtrak earns from its ticket sales.

17 JUDGE DRING: You don't have the  
18 information?

19 MR. HIRSH: Right. But what Amtrak has  
20 said in its pleadings is we've given you enough  
21 revenue information. The revenue information that  
22 they've given us systematically covering the

1 discovery period -- it is only 29 months -- largely  
2 is this monthly data that is for the whole service.  
3 So we have the whole Texas Eagle service. We don't  
4 have a breakdown for our piece of it.

5 JUDGE DRING: I see.

6 MR. HIRSH: We don't have a breakdown for  
7 the trains, and we don't have a breakdown for  
8 individual segments, all of which is in that  
9 database.

10 JUDGE DRING: I see. Okay.

11 MR. HIRSH: I think in a nutshell, we see  
12 absolutely no reason that this information, which as  
13 I say, if there's any balancing that would go on  
14 here between the difficulty in production and the  
15 need, we don't see much to balance on the difficulty  
16 production side.

17 JUDGE DRING: So on this Chicago Union  
18 Station page, you only have measurement points  
19 between 21st Station and UD Tower? That's it? Is  
20 that what that says?

21 MR. HIRSH: Yes, because that's the only  
22 part of that whole service that CN serves. So for

1 the incentive/penalty provision to decide how much  
2 we earn when we do well on our part, it measures our  
3 little piece.

4 JUDGE DRING: Are you saying that you need  
5 the information with regard to the rest of the line?

6 MR. HIRSH: I'm saying the problem is, all  
7 they've given us is the whole line. We don't have  
8 it for our piece.

9 JUDGE DRING: All right. Okay.

10 MR. HIRSH: That's the kind of more  
11 specific segmented data that we're asking for, your  
12 Honor.

13 JUDGE DRING: You're not asking for much  
14 there, that small piece of the line, I wouldn't  
15 think.

16 MR. HIRSH: Well, the data is integrated  
17 in a database that also works with the ridership  
18 data that they have given us out of the very same --  
19 at least from our perspective, very same database.  
20 It's kept in a data warehouse, and they went through  
21 the trouble of producing all this ridership data,  
22 and it has the same kind of revenue data, but they

1 withheld that.

2           And they say they withheld it on the  
3 grounds that we don't need and they don't want to  
4 produce individual ticket pricing, pricing data.  
5 First of all, there's a protective order in this  
6 case, your Honor. We're not their competitor  
7 anyway, but with a protective order, that's not a  
8 basis for withholding anything anyway. And in any  
9 event --

10           JUDGE DRING: I agree with you entirely.  
11 We have protective orders in everything around here.  
12 We need one to go to the bathroom.

13           MR. HIRSH: We honestly don't see any  
14 basis for why this has been withheld, your Honor. I  
15 would like an opportunity to respond to whatever  
16 arguments that Amtrak might make as to why we should  
17 not be entitled to this.

18           JUDGE DRING: Ms. Morgan, what do you  
19 think about this? Are you the chief mouthpiece on  
20 that side of the table?

21           MS. MORGAN: Yes. I certainly appreciate  
22 the diagrams here and the discussion of the

1 structure and how revenues would be important to  
2 this case. Amtrak's position here is that we have  
3 turned over all of the data in the database, except  
4 for three fields that focus on ticket pricing  
5 information. We have provided 30 of these monthly  
6 and annual reports. We still feel that CN has not  
7 met the burden of explaining why individual ticket  
8 price information will get them the revenues, the  
9 aggregate revenues that they're looking for.

10 JUDGE DRING: Mr. Hirsh, you have  
11 aggregate revenue -- as you said, you have the  
12 aggregate revenue, but you can't break it out to say  
13 you have constraints or you've not met -- they've  
14 not met their on-time performance between Walnut  
15 Ridge and Little Rock, you have no idea how to  
16 assign value to that? Is that the problem?

17 MR. HIRSH: Yes. What they've given us  
18 is --

19 JUDGE DRING: You know how many folks run  
20 between those points --

21 MR. HIRSH: Right.

22 JUDGE DRING: -- but you have an aggregate

1 figure for the entire service, and you cannot assign  
2 any portion of that value to that particular part of  
3 the line?

4 MR. HIRSH: That's correct, your Honor.  
5 And what counsel is referring to, the reports do not  
6 allow us to do that. This issue about ticket  
7 pricing, it's one thing to tell us you don't need  
8 ticket pricing, and in a sense, we don't care about  
9 ticket pricing very much.

10 But if by withholding ticket pricing they  
11 mean you don't get anything in our revenue database  
12 outside of these monthly reports -- the annual  
13 reports are just the monthly reports annualized. It  
14 doesn't give you anything segmented that we need.  
15 If that's what they mean, the issue is not do we  
16 need ticket pricing. It's if that's the key to  
17 getting the revenue, we need the revenue.

18 JUDGE DRING: Ms. Morgan, is there any way  
19 -- having heard Mr. Hirsh's problem, is there any  
20 way that you could give him the revenue information  
21 that he needs without divulging ticket price  
22 information?

1 MS. MORGAN: Well, I would certainly go  
2 back and talk to my client about that. But again,  
3 the ticket pricing information, Amtrak does not see  
4 how that will get him what he's looking for in terms  
5 of segmenting revenue.

6 JUDGE DRING: What do you think,  
7 Mr. Hirsh?

8 MR. HIRSH: We know -- we have seen that  
9 Amtrak regularly generates exactly the kind of  
10 revenue data that I'm talking about. We've seen  
11 that in the production.

12 JUDGE DRING: All right. Look. What if  
13 I --

14 MR. HIRSH: So we know they can do it.

15 JUDGE DRING: What if I ordered Ms. Morgan  
16 to produce revenue information at each discrete  
17 point along the line, from one point to the next in  
18 series, without any ticket information?

19 MR. HIRSH: And by train? We would like  
20 it by train.

21 JUDGE DRING: Of course, by train.

22 MR. HIRSH: If we could get just

1 aggregated information as we've discussed, we're  
2 happy. We're not after Amtrak's theory of pricing  
3 its tickets.

4 JUDGE DRING: Ms. Morgan, what's wrong  
5 with that? You've said what you want to protect  
6 here is ticket pricing information.

7 MS. MORGAN: Yes.

8 JUDGE DRING: You don't have to divulge  
9 any ticket pricing information -- they already have  
10 the aggregate revenues. What's wrong with breaking  
11 them down for them point by point?

12 MS. MORGAN: Well, again --

13 JUDGE DRING: I'm asking you, what's wrong  
14 with that? It's all well and good --

15 MS. MORGAN: There's nothing wrong with  
16 it.

17 JUDGE DRING: -- to refer to your client.  
18 But how long have you represented your client?

19 MS. MORGAN: A couple years now.

20 JUDGE DRING: How long?

21 MS. MORGAN: Since 2011.

22 JUDGE DRING: 2011. So here we are,

1 three, four years later. I think you should have  
2 enough grasp of your client's interest to be able to  
3 at least, on this broad a basis, tell me what's near  
4 and dear to your client's pocketbook and heart.

5 MS. MORGAN: Uh-huh.

6 JUDGE DRING: I'm not asking for anything  
7 that, to me, seems to be fairly complicated. I'm  
8 merely saying, if we can protect your ticket pricing  
9 information, can you provide discrete revenue  
10 information from station to station? I don't think  
11 that's unreasonable.

12 MS. MORGAN: I understand.

13 JUDGE DRING: I'm not, incidentally, going  
14 to drag this thing out. You guys apparently are  
15 used to dealing with the Board where your frame of  
16 references -- my life in comparison is like a mayfly  
17 and you're a Galapagos tortoise. I can't comprehend  
18 it, and I'm not going to deal with it. We're going  
19 to settle this quickly.

20 All right. What else?

21 MS. MORGAN: If I might, the Texas Eagle  
22 is the main example you're using?

1           MR. HIRSH: It's an example, but we have  
2 the issue for every one of our services. We want  
3 individual segments. We have individual trains.

4           JUDGE DRING: I hope that Ms. Morgan is  
5 asking you only for clarification.

6           MR. HIRSH: So do I.

7           JUDGE DRING: Because if she's not, we're  
8 going to have a problem here.

9           MS. MORGAN: I'm asking for clarification,  
10 yes.

11          JUDGE DRING: That's very good. I like  
12 clarification. That's very nice.

13          Please clarify that for Ms. Morgan as best  
14 you can.

15          MR. HIRSH: For each of the services, the  
16 six services, we're looking for the data. We would  
17 like to get it by day, by segment, and by train.

18          Is there anything else? That's basically  
19 it. And we know that this can be produced, because  
20 we've seen it.

21          MR. LUDWIG: By station.

22          MR. HIRSH: Yeah, and by segment. I guess

1 we should be more specific about what a segment is.

2 By station and/or measurable point.

3 JUDGE DRING: Is there a difference  
4 between a segment and a station?

5 MR. HIRSH: "Segment" is a more generic  
6 term.

7 JUDGE DRING: Station is a point.  
8 Segment, to me, seems like it's what's between two  
9 stations.

10 MR. HIRSH: And that's one of the issues  
11 about them that concerns me if they don't just  
12 produce it as they use it, because they have  
13 tremendous flexibility clearly in this database to  
14 say okay, I want to look at one station to station  
15 or I want to look at from this measurement point to  
16 this measurement point. We would like to have the  
17 same flexibility. So a little bit concerns me if  
18 they're going to have to play with the data or they  
19 intend to have to restructure the data in some way  
20 to limit that.

21 JUDGE DRING: How do you think it would be  
22 most useful to receive the information? Can you

1 help Ms. Morgan with that? Can you help me with  
2 that?

3 MR. HIRSH: I think if it's produced to us  
4 in its native format, we don't need them to do  
5 anything to it. We can then -- should be able to  
6 manipulate it the way that they manipulate it.

7 JUDGE DRING: Can you provide, Ms. Morgan,  
8 native format without ticket pricing information?

9 MS. MORGAN: Again, I want to make sure  
10 that I'm agreeing to something that can be done.

11 JUDGE DRING: All right.

12 MS. MORGAN: So I have to go back and  
13 check into that.

14 JUDGE DRING: All right. That seems  
15 reasonable to me.

16 Mr. Hirsh, what happens if Ms. Morgan  
17 comes back and says we can't separate this?

18 MR. HIRSH: Your Honor, honestly --

19 JUDGE DRING: I would not be real happy  
20 with that.

21 MR. HIRSH: Your Honor, I really don't  
22 understand the concern about individual ticket

1 pricing. We're not a competitor. There's a  
2 protective order. It would be so easy to just give  
3 us this.

4 JUDGE DRING: Look, I agree with you.

5 How about this, Ms. Morgan: You provide  
6 the information without the ticket pricing  
7 information if you can segregate it out. If you  
8 can't segregate it out, the common law rule of  
9 tough, just give it all to him. How's that sound?

10 MS. MORGAN: If that's your order, then --

11 JUDGE DRING: That's just about where I'm  
12 going with this. I agree with him. Protective  
13 orders are pretty sacrosanct around here. I don't  
14 know how it is in your business.

15 MS. MORGAN: I understand.

16 JUDGE DRING: All right. What else?

17 MR. HIRSH: The next issue I would like to  
18 take up, I guess, is the host railroad issues log.  
19 We're now moving into motion to compel number 4.

20 JUDGE DRING: Go ahead.

21 MR. HIRSH: When we were reviewing  
22 Amtrak's document production, we identified a

1 document called a host railroad issue log that  
2 hadn't been produced by Amtrak. It was referenced  
3 in a document that we included as Exhibit 3 to  
4 motion to compel number 4. The plan of attack --

5 JUDGE DRING: Just a second, please. All  
6 right, go ahead.

7 MR. HIRSH: It was referenced in a  
8 document that we attached as Exhibit 3 to our motion  
9 to compel. And the specific reference states "send  
10 updated host railroad issues log out." There's also  
11 other references that talk about a host railroad  
12 invoice administration issue log, and it's not clear  
13 to us, but Amtrak suggested it's the same document.  
14 We sought to find out more about the contents of the  
15 log in discussions with Amtrak, and in a meeting --

16 JUDGE DRING: You did?

17 MR. HIRSH: Yes, sir. In a meeting  
18 November 2014, Amtrak agreed to locate the log and  
19 advise us of its contents and whether or not they  
20 would voluntarily produce it. At a December 18  
21 discovery conference, they told us their  
22 investigation was continuing. On February 10 and

1 what I can only describe as an abrupt departure from  
2 the prior cooperation we had enjoyed, Amtrak advised  
3 us it would not produce the log, would not describe  
4 the log further or at all, and they would not  
5 produce any other documents. They said they will  
6 not pursue further production on these topics.

7 JUDGE DRING: All right. You say -- I  
8 have here, my clerk very kindly boiled a lot of this  
9 down for me, but it says here CN says there remains  
10 good reason to believe the financial issues  
11 addressed in the log involve disputes regarding  
12 delays and delay attribution.

13 Is that correct?

14 MR. HIRSH: It's correct, because our  
15 problem is that this is a very suggestive piece.  
16 Yet, Amtrak has even refused to describe it for us.  
17 So we are left in a situation, your Honor, where we  
18 had hoped they would describe it, they had told us  
19 they would, but they didn't do that.

20 JUDGE DRING: Ms. Morgan, what do you  
21 think? Can you give us a description of this log?

22 MS. MORGAN: David and I have talked about

1 the log, and I have described the log. I have a log  
2 here that covers all the issues.

3 JUDGE DRING: Are financial issues  
4 addressed in the log that involve disputes regarding  
5 delays and delay attribution?

6 MS. MORGAN: The logs that I have seen --

7 JUDGE DRING: Can you give me a yes or no  
8 on that?

9 MS. MORGAN: They are invoicing issues,  
10 specific invoicing issues that have to do with  
11 issues other than delay-related matters. And I have  
12 a couple of copies here.

13 JUDGE DRING: Are these disputes?

14 MS. MORGAN: Yes, these are disputes with  
15 other railroads about invoicing issues of all sorts.

16 JUDGE DRING: About invoicing issues of  
17 all sorts. Does "issues of all sorts" include  
18 delays or delay attribution?

19 MS. MORGAN: I have seen nothing like that  
20 so far, no. Now, have we done a thorough search --

21 JUDGE DRING: "So far" means what? How  
22 many logs are there?

1 MS. MORGAN: I don't know. We have not  
2 done a comprehensive search of how many there are.  
3 We have done a search of, you know, what we have  
4 been able to -- I have been able to locate. And I  
5 have looked at them and reviewed them in terms of  
6 the subject matter.

7 JUDGE DRING: Give me an idea, please, how  
8 many logs there might be. What's the possible  
9 universe of this? What are these logs?

10 MS. MORGAN: These were kept by a woman  
11 who is no longer at Amtrak, and so she was there  
12 for, perhaps, five years. I'm not certain of that.

13 JUDGE DRING: Is this all she did for five  
14 years?

15 MS. MORGAN: No. She was a part of the  
16 invoicing department at Amtrak.

17 JUDGE DRING: All right.

18 MS. MORGAN: And anything related to  
19 delay, we have already done a comprehensive search  
20 of delay coding-related documents and have produced  
21 about 10,000 of them.

22 JUDGE DRING: Would they have -- and I

1 think not, but would they have included delay  
2 discussions in the logs? You don't know, do you,  
3 because you haven't reviewed them all? Did somebody  
4 else review them? Would someone else know the  
5 answer to that question?

6 MS. MORGAN: Someone else might, yes. But  
7 we did a comprehensive collection of delay  
8 coding-related documents through search terms and  
9 custodians.

10 JUDGE DRING: All right. But that did or  
11 did not include all the logs? Did or did not  
12 include all of the logs?

13 MS. MORGAN: According to what David is  
14 saying, it did not.

15 JUDGE DRING: How would he know? You did  
16 the search; right?

17 MS. MORGAN: Yes. But again, we did a  
18 reasonable, comprehensive search of delay coding  
19 documents.

20 JUDGE DRING: "Reasonable" is a term --

21 MS. MORGAN: Pursuant to the joint  
22 discovery protocol that we have in place.

1 JUDGE DRING: All right. Mr. Hirsh?

2 MR. HIRSH: If I may, these were  
3 apparently found and are related to a person who was  
4 not put on their custodial list. So the searches  
5 that counsel has referred to did not cover her.

6 JUDGE DRING: Yep, I'm beginning to  
7 understand this.

8 MR. HIRSH: Further, the notion that this  
9 is invoice and, therefore, don't worry, it's just a  
10 mistake in adding numbers or something, I think it  
11 seems unlikely, given her boss. Her boss was the  
12 custodian, and it's in one of his pieces that we saw  
13 a reference to this. And her boss, whose title was  
14 senior officer, host railroad, invoice  
15 administration, the fact he was designated as  
16 custodian, I think, tells you something about the  
17 relevance of the documents in that department. And  
18 indeed, he was specifically identified as a  
19 contributor to response to interrogatory 18, which  
20 was data relating to Amtrak trains and on-time  
21 performance. And with respect to interrogatory 23,  
22 he was identified as one of the seven Amtrak

1 employees who primarily review or consider potential  
2 changes to or corrections to conductor delay data or  
3 relief items related to billing for purposes of our  
4 operating agreement.

5 So this is one of his people, and this is  
6 in her file, and it wasn't covered by their search.

7 JUDGE DRING: All right. Well -- go  
8 ahead, please.

9 MS. MORGAN: Just to elaborate further on  
10 these logs, they cover all of the railroads with  
11 whom -- with which Amtrak has a contract.

12 JUDGE DRING: I understand that.

13 MS. MORGAN: The other railroad issues are  
14 not generally relevant in this case. They're  
15 specific areas in which the Board ruled that other  
16 railroad material would come in, delay coding in  
17 particular.

18 JUDGE DRING: All right.

19 MS. MORGAN: So there is a lot in these  
20 logs that has nothing to do with CN or with delays.

21 JUDGE DRING: Well, I can well appreciate  
22 that. That doesn't surprise me. All that means is

1 if Mr. Hirsh and his people get their hands on these  
2 logs, they're going to spend a lot of time being  
3 bored with stuff that doesn't concern them. But if  
4 they did through this and find something that  
5 pertains to these issues, they will be at least  
6 interested. I don't know if they would be pleased  
7 or not, because I don't know if it supports their  
8 position. Just because there is a large body of  
9 documents that have to be gone through doesn't mean  
10 there's nothing important.

11 How many documents do you think we're  
12 talking about? Is there a burden issue here? This  
13 is not a leading question. I'm just asking. I  
14 don't know if you've picked up on the way I do  
15 things yet. This is not a leading question.

16 MS. MORGAN: It's a question I need to  
17 answer, is the way I see it. I don't know how many  
18 documents. I do know that looking at what I have in  
19 front of me, there is a lot here that, in my view,  
20 is not relevant to this case.

21 JUDGE DRING: I understand that.

22 MS. MORGAN: So the balancing here, in my

1 view, has to do with the likely value that will  
2 emanate from these documents relative to the burden  
3 of searching for them and producing them.

4 JUDGE DRING: Yeah, burden has never --  
5 incidentally, as you've probably already figured  
6 out, it's not something I've ever been impressed  
7 with, I guess being in this building for too long.  
8 We deal with massive, massive document distributions  
9 in these cases.

10 Ms. Morgan, since you can't really tell me  
11 with any degree of certainty what these logs  
12 contain, Mr. Hirsh says there's reason to believe  
13 there are financial issues addressed in them, I  
14 really see no reason why -- again, because we have a  
15 protective order, I can't really see a reason why  
16 you shouldn't give them to him. I really don't.

17 MS. MORGAN: Well --

18 JUDGE DRING: As far as you're concerned,  
19 your only issue should be burden. And you are a big  
20 company. You guys are as big as anything we've got  
21 in this building. I mean, I ordered the production  
22 of 100,000 Form K-1s in three days, and they were

1 produced. People can do this. That's why you have  
2 payrolls for this. That's why you have employees.  
3 I'm not concerned about the burden.

4 But I have to say that Mr. Hirsh seems to  
5 feel strongly about getting these documents. I  
6 don't think he's trying to harass you. If he's  
7 willing to go through a ton of documents that may  
8 not concern him to find something, put him to work.  
9 I see very little on the down side for you in  
10 producing these documents. I really don't; I just  
11 don't.

12 MS. MORGAN: As I said, I think it's --  
13 Amtrak's view is at some point, you know, discovery  
14 has to end.

15 JUDGE DRING: It will end. Oh, believe  
16 me. I've got your discovery. It is definitely  
17 going to end. Discovery here takes six months. You  
18 guys have been at it a year and a half.

19 MS. MORGAN: More than that, yeah.

20 JUDGE DRING: It is going to end. I  
21 promise you.

22 Off the record.

1 (Discussion off the record.)

2 MS. MORGAN: Because the more you produce,  
3 the more, then, there's an issue of further  
4 production.

5 JUDGE DRING: Yeah, all right. Mr. Hirsh,  
6 you, perhaps, also have picked up on some of what I  
7 will tolerate and what I won't. You've been at this  
8 for over a year and a half. You should have by now  
9 asked these people for information that you need.  
10 You say that the log has certain things you're  
11 looking for. You know, if these logs contain  
12 information useful for you within the context of the  
13 arguments you've put forth in your contractual  
14 negotiations, well and good. If they suggest  
15 something else, I think it's a little late in the  
16 game. I really do.

17 MR. HIRSH: Your Honor, based on -- before  
18 communications got shut off, we were working well  
19 together. Communication got shut off in that  
20 February 10th letter.

21 Subsequently, in pleadings, we pursued  
22 several more items in motion to compel number 4. In

1 their response, they finally gave us some of the  
2 information about some of these items. Based on  
3 that, we dropped several other requests, because  
4 we're not looking to extend this, and we made clear  
5 this is it for the discovery prior to our initial  
6 filings. We both recognize there could be new  
7 discovery --

8 JUDGE DRING: You recognize right now that  
9 if you get the logs, this is it?

10 MR. HIRSH: Linda, it is not our intention  
11 to seek further discovery prior to our initial  
12 filings. We both understand that there may be more  
13 discovery post initial filings.

14 JUDGE DRING: Do you feel better now,  
15 Ms. Morgan?

16 MS. MORGAN: I feel a little better.

17 JUDGE DRING: A little better? That's  
18 good. We're going in the right direction. All  
19 right.

20 MR. HIRSH: There's one other issue, then,  
21 your Honor.

22 JUDGE DRING: Go ahead.

1                   MR. HIRSH: That's the so-called quarterly  
2 dockets. It's also the subject of motion to compel  
3 number 4. At our December 18 discovery conference,  
4 we advised CN that we had seen reference to a  
5 centrally maintained record known as these dockets  
6 and that based on an example -- in this case, we did  
7 have an example -- they appear to be responsive to  
8 our discovery requests. Specifically, we have found  
9 something called the spring 2011 docket 3. We think  
10 the numbering refers to the quarter. Amtrak's on a  
11 physical quarter. So quarter 3 is spring. And it  
12 had information about potential PRT -- that's the  
13 pure run time adjustments that I mentioned.

14                   JUDGE DRING: Yes.

15                   MR. HIRSH: Kind of a basis for setting up  
16 schedules. And it had information about operational  
17 issues concerning services on our lines. It's not  
18 specific just to our lines. It does have other  
19 information about other railroads, but it had stuff  
20 directly on our lines. And this is responsive to  
21 our request for production 21 and clearly relevant  
22 to the proceeding.

1           We later identified a second docket that  
2           was produced by Amtrak that's not in the record, but  
3           we looked at that, and that also had specific  
4           information. I can give you or I can give Amtrak  
5           the ATK, the identifying Bates number, if that's  
6           useful. But it was fall 2010 docket 1. It's  
7           actually outside the production timing that we've  
8           limited this to. All of the production here is  
9           limited to like 29 months. So we're talking about  
10          probably, I think, 11 dockets, a total of 11 of  
11          these quarterly dockets.

12                 So we have, obviously, been pursuing this.  
13          We followed up and asked Amtrak to produce these.  
14          We reiterated our request several times, and when  
15          they refused to do so, we put this in our motion to  
16          compel.

17                 Amtrak has generally said little or  
18          nothing about relevance on this because I think it's  
19          plain on its face -- we've seen this document -- it  
20          has relevant stuff. I don't think there's really  
21          any serious burden argument, unless it's something  
22          about these that Amtrak is going to tell us about.

1 I think it's 11 documents. And by the way, these  
2 are short. The two that we have, one is five pages,  
3 and the other is two pages.

4 So again, we see this as kind of a  
5 no-brainer. Just give it to us, and let's move on.

6 JUDGE DRING: What's the problem,  
7 Ms. Morgan?

8 MS. MORGAN: Again, I think these dockets,  
9 by way of explanation, these dockets are documents  
10 that are kept by a woman in scheduling at Amtrak.  
11 This is her running list of issues that come up.  
12 For the most part, these issues never go anywhere  
13 beyond this running list that she keeps.

14 JUDGE DRING: What do you mean, they never  
15 go anywhere?

16 MS. MORGAN: People will talk to her about  
17 scheduling ideas, or she will have a scheduling  
18 idea. But they don't get formalized into a request.  
19 They don't get formalized into additional action.  
20 And so it's basically a running list of thoughts  
21 about scheduling.

22 JUDGE DRING: Okay.

1 MS. MORGAN: And it covers all of the  
2 railroads again in the network in which -- with all  
3 of the railroads that Amtrak interacts with. And  
4 our view is that the relevance of these documents,  
5 again, is marginal at best. Whatever scheduling  
6 issues that CN and Amtrak have are brought to CN's  
7 attention. If they're not brought to CN's  
8 attention, then it's because they haven't risen to  
9 the level of an issue.

10 JUDGE DRING: Okay.

11 MS. MORGAN: And they're not just two  
12 pages. I have one that's four here. It's a  
13 question of, again, the relevance here. At some  
14 point are we to produce every single document that  
15 could possibly have something in it that might be  
16 helpful in the case.

17 JUDGE DRING: No, there is no "some point"  
18 past today. There is no some point, I promise you.

19 MS. MORGAN: I'm trying to explain.

20 JUDGE DRING: I'm telling you that there  
21 will not be, as you suggest, a "some point" that you  
22 will have to produce all this other stuff. You're

1 not going to do it. You're not.

2 Mr. Hirsh, Ms. Morgan has expressed a  
3 serious consideration as to relevance. How do you  
4 respond to that?

5 MR. HIRSH: The kinds of items we've seen  
6 in this go directly to, as Ms. Morgan says herself,  
7 issues of is the schedule appropriate, should  
8 adjustments be made to the schedule. The schedule,  
9 of course, is critical in how you measure  
10 performance. If you want to find out if PRT, again  
11 the pure run time, is the building block of the  
12 schedule -- it's not the only element of it, but  
13 it's a major part. It's basically the time that it  
14 would take Amtrak to ordinarily run over a line with  
15 no interference from the carrier.

16 JUDGE DRING: Let me interrupt. Let me  
17 ask you, we've got 29 months of these things, I  
18 guess.

19 MR. HIRSH: 11 quarters, I think, we're  
20 talking about.

21 JUDGE DRING: What about the beginning of  
22 it? You take the first quarter, and there are

1 annotations with regard to problems. The problems  
2 never amount to anything. They never go anywhere.  
3 They take care of themselves.

4 What do you expect to find, Mr. Hirsh?

5 MR. HIRSH: The fact that -- Ms. Morgan's  
6 idea that only important things are contained in  
7 those, of course, is something that remains to be  
8 tested. We would be very interested in finding  
9 something that says -- and we see things about PRT  
10 in there that says, for example, PRT is really  
11 insufficient for this movement, and then it becomes  
12 a no action item. That's of great concern to us.

13 JUDGE DRING: Amtrak doesn't want to do  
14 anything. The other people, they just --

15 MR. HIRSH: Because they don't view it in  
16 their interest. So yes, they don't raise it with  
17 us. Somebody says there's operating problems on  
18 that line, and you know what, they're not CN's  
19 fault. And we come to Amtrak and say to them  
20 separately you know, guys, this isn't our fault and  
21 you should give us relief for it, and they say no.  
22 And here they have in their files something that

1 basically admits it was a problem and it wasn't our  
2 fault.

3 JUDGE DRING: Ms. Morgan, I have to tell  
4 you, I think as within the standard of relevance  
5 generally and what's been applied so far in this  
6 case, I think this is relevant, and there's no  
7 burden here. It's a very minimal burden. So I want  
8 you to produce it.

9 What else?

10 MR. HIRSH: Your Honor, I believe that  
11 exhausts it, unless Amtrak has something else.

12 JUDGE DRING: Let me get your response to  
13 this. Ms. Morgan, there will be no further  
14 discovery requests from your side of the table; is  
15 that correct? You will not have any more discovery  
16 requests in this case; is that correct?

17 MS. MORGAN: Before the filing of our  
18 opening submissions?

19 JUDGE DRING: Yes.

20 MS. MORGAN: No.

21 JUDGE DRING: And you, Mr. Hirsh?

22 MR. HIRSH: That's correct, your Honor.

1                   JUDGE DRING: So there will be none of  
2 this. We're not going to come back here and do this  
3 again.

4                   What we are going to do now is get a  
5 hard-and-fast date on when these documents will be  
6 produced. This is not going to be one of these  
7 things that I order you to produce it and it comes  
8 some day. It's going to come on a date certain.

9                   All right. We've got three. We've got  
10 the revenue data. I'm used to fairly short  
11 turnarounds on these, but I will listen to whatever  
12 you have to say, Ms. Morgan, about how difficult  
13 this will be for you. How soon can you get that  
14 information to the other parties, to CN?

15                  MS. MORGAN: You're talking about on the  
16 first item?

17                  JUDGE DRING: Let's go through all three  
18 of them. What are the difficulties, what are the  
19 potentials for your compliance?

20                  MS. MORGAN: We will have to -- with  
21 respect to ridership, the ridership and revenue  
22 issue, that will mean some new type of production,

1 some additional aggregation that we will have to do.

2 I don't know how long that takes.

3 JUDGE DRING: Additional aggregation?

4 MS. MORGAN: He's looking for some very  
5 specific deaggregation, disaggregation of the  
6 revenues.

7 JUDGE DRING: That's not what you said to  
8 me.

9 MR. HIRSH: No, I would like the native  
10 database, and we can do our own aggregation. I  
11 understand that it may be that his Honor was going  
12 to permit you to try to take out the ticket pricing  
13 and still give us workable data to use, and that  
14 might take time, I understand. It would not take  
15 time to just give us the database. That should be  
16 fast, if you gave us just native.

17 MS. MORGAN: You're talking about the  
18 native database, and if we're going to take out the  
19 ticket prices -- see, this is why I think there's a  
20 bit of a disconnect -- that's what we've already  
21 done.

22 MR. HIRSH: And you left us nothing.

1 There's nothing in it.

2 MS. MORGAN: It's what's in the database.

3 MR. HIRSH: You see the problem. She says  
4 I'm taking out this little piece. The little piece  
5 took out everything.

6 JUDGE DRING: I don't normally allow  
7 parties to interact like this. It's through me.  
8 Let's leave that in place. I don't want you guys  
9 bickering.

10 MR. HIRSH: Your Honor, my understanding  
11 is you were going to permit them to try to see if  
12 they could produce essentially the workable database  
13 without that ticket pricing. But if they were  
14 unable to do that, they should give us the full  
15 native with the ticket pricing so it works and it's  
16 there.

17 JUDGE DRING: Yes. Ms. Morgan, please  
18 comment on that, because that's what I want.

19 MS. MORGAN: So the argument about  
20 relevance as it relates to ticket pricing is no  
21 longer a valid argument is what I'm hearing here.  
22 Our argument is that we --

1           JUDGE DRING: No, that's not it at all. I  
2           said the relevance to -- well, he doesn't need your  
3           ticket pricing; is that what you're saying?

4           MS. MORGAN: Yes, and he said he doesn't  
5           need it.

6           JUDGE DRING: He doesn't need your ticket  
7           pricing, but he needs the revenue data in a usable  
8           format. Give that to him, and if you can't  
9           segregate it out, give him the whole thing. All  
10          right?

11          MS. MORGAN: (Nodded head.)

12          JUDGE DRING: You run a railroad, you  
13          guys. How long would it take? Do you have data  
14          that's similar to this?

15          MR. HIRSH: Yes, your Honor.

16          JUDGE DRING: What's a reasonable time  
17          frame for separating this out?

18          MR. HIRSH: I don't know how long it would  
19          take them to separate it. I don't know if it's  
20          separable. I can tell you, without separating it  
21          out, we could do it in a week or two.

22          JUDGE DRING: That's if they can't

1 separate it. All right. So that suggests we give  
2 them some time to fiddle with it, doesn't it?

3 MR. HIRSH: If your Honor thinks it's  
4 important they be given that opportunity, yes.

5 JUDGE DRING: All right. Well, let's give  
6 you two weeks to try to separate out the pricing.  
7 If you can't do it, you have to give up at the end  
8 of two weeks. Give up and surrender the entire  
9 native format database to this guy. All right?

10 MS. MORGAN: (Nodded head.)

11 JUDGE DRING: How's that sound, Mr. Hirsh?

12 MR. HIRSH: Entirely reasonable, your  
13 Honor.

14 MS. MORGAN: May I add one question to  
15 this for clarification?

16 JUDGE DRING: Yes.

17 MS. MORGAN: These monthly and annual  
18 reports which we produced and which I understand CN  
19 does not view as adequate in terms of the  
20 segmentation that they're looking for in terms of  
21 revenues, if we were to be able to take that data  
22 and further isolate the revenues per segment, that

1 would get you what you're looking for; right?

2 MR. HIRSH: Your Honor, for my part, I  
3 really think we should move on. I think this issue  
4 has been talked about.

5 JUDGE DRING: Just answer what she said.  
6 I tend to agree with you, but I want -- this is the  
7 way I'm going to end it. You tell me what you think  
8 of that, and then we will move on.

9 MR. HIRSH: What we would like is our own  
10 manipulatable database.

11 JUDGE DRING: That's what you're going to  
12 get; that's what you're going to get. You know,  
13 that's what we do around here, too. We have  
14 databases, too, no surprise, and the entire  
15 database -- this is a requirement in virtually all  
16 the cases -- they have to be manipulatable by the  
17 party seeking the discovery. This is not  
18 extraordinary. All right.

19 All right. So let's look at the calendar.  
20 We're here at June 1st. Close of business June  
21 15th, Ms. Morgan will either -- how long will it  
22 take you, Ms. Morgan, if you can't separate out --

1 Mr. Hirsh, I think, said two weeks to get the  
2 database.

3 What I hear here, I will give you until  
4 the 15th to determine whether you can take ticket  
5 pricing out. If you can't do that, I will give you  
6 until the 29th to give the entire database to him.  
7 Okay?

8 MS. MORGAN: Yes.

9 JUDGE DRING: Now, the log. How long is  
10 it going to take to get the logs, Ms. Morgan? You  
11 know where they are.

12 MS. MORGAN: I think I can commit to get  
13 something by the end of this week -- no, a full  
14 week. So today is Monday. By next Monday.

15 JUDGE DRING: Okay. Logs by the 8th.

16 Quarterly dockets, Ms. Morgan, how long  
17 will it take you to do that? Do you know where they  
18 are located? Yes? No? The quarterly dockets.  
19 There are nine of them?

20 MS. MORGAN: Well, that number, I'm not  
21 sure where that number comes from.

22 MR. HIRSH: If they're quarterly, there's

1 11 quarters that are covered by our period. Whether  
2 or not there's other iterations of those, I can't  
3 say, but we know they're very short.

4 JUDGE DRING: Tell me that; tell me that.  
5 Don't talk to her; you don't talk to him. Talk to  
6 me.

7 MR. HIRSH: What I had said was our  
8 discovery period, given the time, it seems to cover  
9 11 quarters. If, in fact, these are quarterly, that  
10 implies 11. We know they seem to run between two  
11 and five pages each. That would imply -- obviously,  
12 five pages, there may be others that are longer --  
13 under 100 pages. There could be other iterations.  
14 I don't know that.

15 JUDGE DRING: But you don't care about  
16 that?

17 MR. HIRSH: If it was, in fact, burdensome  
18 to produce other iterations --

19 JUDGE DRING: How are we going to know?  
20 She will say it's burdensome, and we will have to  
21 meet back here again.

22 MR. HIRSH: Your Honor, I'm fine. If it

1 can be determined what is the final before the  
2 quarter -- before they start the next quarter, we  
3 will accept that.

4 MS. MORGAN: So quarterly reports?

5 JUDGE DRING: Yes. That's all he wants.  
6 That's all he's going to get.

7 MS. MORGAN: So if I could have until --  
8 just because the same people will be involved.

9 JUDGE DRING: All right.

10 MS. MORGAN: -- until the middle of next  
11 week, so June 8th for the logs, and Wednesday or  
12 Thursday, the 10th or 11th.

13 JUDGE DRING: I'm feeling in a very  
14 generous mood. Let's make it the 11th.

15 All right. Mr. Hirsh. You have these  
16 dates. If Ms. Morgan misses a date, I want you to  
17 let me know right away. This is meant only for  
18 entertainment value. I'm not suggesting anything is  
19 going to happen in this docket.

20 MR. HIRSH: What is the most appropriate  
21 way of informing you?

22 JUDGE DRING: Contact Mr. Kirby. After

1 we're finished here, Mr. Kirby has brought a case  
2 that might entertain you as to what sanctions look  
3 like in my world for failure to comply with an  
4 order.

5 I will reduce this to writing and get it  
6 out for you so in the unlikely event Ms. Morgan  
7 wants to take an interlocutory appeal, she has  
8 something to use. But it's my opinion at this  
9 point, if I didn't want to write anything, we have a  
10 full record. We have the court reporter. We have  
11 the record. I can sustain anything I want to  
12 sustain, which is whatever I have to say.

13 Anything else? Thank you very much. I  
14 hope never to see you folks again.

15 (Whereupon, at 11:01 a.m., the discovery  
16 conference was concluded.)

17

18

19

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21

22

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