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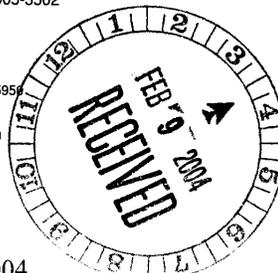
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February 9, 2004

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington DC 20423

ENTERED
Office of Proceedings

FEB 09 2004

Part of
Public Record

Re: Docket No. NOR 42083—Granite State Concrete Co., Inc. and
Milford Bennington Railroad Co., Inc. v. Boston and Maine Corp.
and Springfield Terminal Railway Co.

Dear Mr. Williams:

Please find enclosed for filing in the above captioned proceeding an original and ten copies of the verified reply of respondents Boston and Maine Corp. and Springfield Terminal Railway Company, together with the verified statement of Sydney B. Culliford. One additional copy of the package is enclosed. I would appreciate your receipt-stamping that copy and returning it to our legal assistant. Because neither the opening statement nor any of the verified statements exceeds nineteen pages in length, no electronic version has been included. See 49 C.F.R. § 1104.3(b)(1).

The verification of Robert Culliford is a facsimile; we will file the original as soon as we receive it. Please call me with any questions regarding this matter. Thanks for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric L. Hirschhorn".

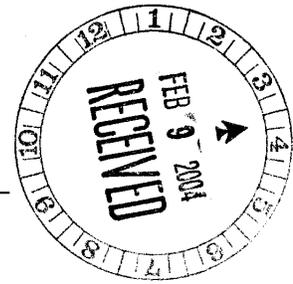
Eric L. Hirschhorn

Enclosures

cc: James E. Howard, Esq. (w/ encl.)

210039

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Docket No. NOR 42083

**GRANITE STATE CONCRETE, Inc. and
MILFORD BENNINGTON RAILROAD COMPANY, Inc.**

vs.

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**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**REPLY OF THE BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

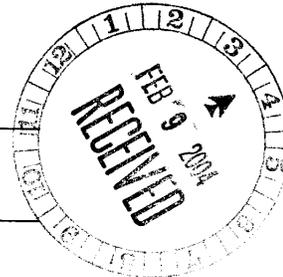
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Attorney for:
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Company

February 9, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083



**GRANITE STATE CONCRETE, Inc. and
MILFORD BENNINGTON RAILROAD COMPANY, Inc.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**REPLY OF THE BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

The Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") hereby reply to the Opening Statement filed on January 8, 2004 by Granite State Concrete Company, Inc. ("Granite State") and the Milford-Bennington Railroad Company, Inc. ("MBR")

I. INTRODUCTION

In their Opening Statement, Granite State and MBR attempt to portray Guilford as some evil empire intent on wreaking havoc upon their respective businesses. Apparently, Granite State and MBR believe that Guilford spends an inordinate amount of time looking for ways to make life difficult for them, and that the steps taken by Guilford in

response to MBR's blatant disregard for customary safety rules and practices was little more than a ruse to disguise some nefarious plot by Guilford to ruin Granite State and MBR. As detailed in its Opening Statement and below, however, the record in this proceeding clearly shows that Guilford's actions were not only justified, but also that Guilford's repeated willingness to adapt its operations to accommodate the needs of Granite State and MBR clearly shows that Guilford's principal—and only—concern is with safety.

II. ARGUMENT

1. MBR and Granite State have failed to show that they were utilizing the derail in accordance with their agreement and the applicable NORAC rules.

In their Opening Statement, Granite State and MBR invest a substantial amount of effort to evade the fact that MBR had agreed to maintain a derail device on its line to prevent both passenger and freight cars from inadvertently breaking free and traveling onto Guilford's property with little or no notice. To make their argument, Granite State and MBR rely principally upon the Verified Statements of Peter Leishman and Colin Pease to assert that on December 12, 2002 no discussion or agreement took place that would have obligated MBR to properly maintain the derail device in the derailing position at all times that a train was not passing over it. Of course, this argument essentially ignores the plain facts of this episode, which clearly show that such an agreement did exist, and that MBR was also obligated to maintain the derail device in the derailing position by the applicable NORAC rules.

It is important to point out that so far Granite State and MBR focus solely on the events of December 12, 2002 to support their argument that no agreement with regard to

the use of the derail device for both passenger and freight service existed. While there is a dispute about what actually took place on that date, it is telling that neither Mr. Leishman nor Mr. Pease address the agreement that existed before that date between Mr. Leishman and Erwin Towle of Guilford. Plainly, even if everything that Mr. Pease and Mr. Leishman say about their discussions with Mr. Zompa were correct—which Guilford has repeatedly denied—it would be irrelevant because an agreement actually existed before that date. As recounted by Mr. Towle in his deposition testimony, he had spoken with Mr. Leishman prior to December 12, 2002 and had informed Mr. Leishman of Guilford’s concerns not only with the storing of passenger cars on the MBR line, but also with the grade of the MBR line leading into Wilton. Deposition of Erwin R. Towle at page 22, Exhibit A to Guilford’s Opening Statement (“Towle Depo”). As a result of these concerns, Mr. Towle requested that a derail device be installed on MBR property for use in controlling both freight and passenger operations, a request with which Mr. Leishman agreed. *Id.* To date, Granite State and MBR have failed to address this agreement, instead focusing all of their energy to undermine Mr. Zompa’s credibility. Nevertheless, Mr. Towle’s unchallenged testimony is clear evidence that MBR had agreed to install a derail device on its property for use in both freight and passenger operations.

It is also significant to note Mr. Leishman’s initial arguments against using the derail device for both passenger and freight service, as those arguments did not make any reference to a purported agreement. Instead, Mr. Leishman’s initial reaction was to assert that he was not using the derail device for freight operations because it allegedly created a safety concern and the State of New Hampshire—the owner of the line on which MBR

operates—had objected to its use. June 26, 2003 and July 2, 2003 Verified Statements of Peter Leishman, Exhibits A and B hereto. Clearly, if Mr. Leishman had truly believed that he had agreed to use the derail device only for passenger operations, he would have relied upon that agreement when this issue first arose. That Mr. Leishman instead tried to justify not using the derail for both passenger and freight service by relying upon safety concerns and the concerns of the State is clear evidence that Mr. Leishman knew of his agreement with Guilford and was merely asserting the reasons why he did not believe he had to abide by it. Of course, had Mr. Leishman made these concerns known prior to in the six months prior to June 20, 2003, this entire issue may have been avoided, but his failure to apprise Guilford of a change to an important safety issue underscores MBR's willingness to ignore customary safety rules and practices, as well as its own agreements.

Granite State and MBR also employ the services of Susan Madigan to attempt to justify not using the derail device for both passenger and freight service, but a close reading of Ms. Madigan's testimony clearly shows that her analysis of the use of derail devices is simply wrong. Verified Statement of Susan Madigan in Support of Opening Statement of Granite State and MBR ("Madigan V.S."). More particularly, Ms. Madigan states that the bulletin issued by Guilford on December 12, 2002, "simply noted that the derail was being placed in service but did not modify any rules or special instructions, nor did it provide any information or guidance with respect to the use of the derail."

Madigan V.S. at 3. This analysis is plainly incorrect since the very definition of a bulletin order under the NORAC Rules is, "A publication used to notify employees of changes to rules, procedures, or other instructions affecting the movement of trains."

Clearly, the issuance of a bulletin order *does* modify operating rules or special

instructions, which Ms. Madigan seemed to realize earlier in her testimony when she stated, “The purpose of bulletin orders is to govern train movements, and bulletin orders are issued to modify operating rules, timetables, special instructions, etc.” Madigan V.S. at 3. Despite this recognition, Ms. Madigan does not attempt to explain why Guilford’s December 12, 2002 bulletin order did not have the same effect as every other bulletin order pursuant to the NORAC Rules, she simply states that it did not. Nevertheless, the bulletin issued by Guilford on December 12, 2002 is no different than other bulletins issued by other railroads, and the fact that it made no distinction between passenger and freight service is irrelevant to its applicability. Indeed the Massachusetts Bay Commuter Railroad has issued a similar bulletin on its lines where both passenger and freight service operate and even though this bulletin does not distinguish between passenger and freight service or dictate how the derail is to be used, it is understood that its use would be governed by the NORAC Rules and that both passenger and freight operations are controlled by it. Exhibit C hereto. Plainly, therefore, Ms. Madigan’s analysis of the effect of the bulletin issued by Guilford is simply wrong.¹

Ms. Madigan also attempts to assert that the NORAC Rules do not require that the derail be kept in the derailing position at all times, because the derail was not located at a “fouling point” on the MBR main line. Madigan V.S., at 4. Once again, Ms. Madigan is plainly wrong on this point as well, as the derail device was located at the point where the lines of Guilford and MBR converge, and any train traveling beyond that point would be

¹ Ms. Madigan also ignores NORAC Rule 1, which requires that all employees be notified of any changes to the physical characteristics of the line on which they operate, which notice is generally given by means of a bulletin. In this instance, MBR failed to issue any form of written notice to its crews, another instance of MBR’s failure to adhere to the NORAC Rules.

“fouling” the other railroad’s line. Verified Statement of Andrew Zompa in Support of Guilford’s Opening Statement, ¶ 2.

To further support their argument that the derail was only intended to be utilized for passenger operations, Granite State and MBR also rely on the Mr. Leishman’s determination that the derails provided by Guilford were not sufficient to derail freight cars traveling at speeds of greater than 4 miles per hour. Verified Statement of Peter Leishman in Support of Opening Statement of Granite State and MBR, at 14 (“Leishman V.S.”). Of course, Mr. Leishman fails to note that the Federal Railroad Administration (“FRA”) had approved the use of the derail provided by Guilford to separate the operations of the Wilton Scenic from the general railroad system. As a result, since the FRA believed that the derails provided by Guilford were sufficient to prevent the Wilton Scenic from entering onto Guilford’s line when it was operating passenger service—presumably at speeds of greater than 4 miles per hour—it is difficult to understand the point that Mr. Leishman is trying to make. Verified Statement of F. Colin Pease in support of Opening Statement of Granite State and MBR, page 15.

Granite State and MBR also rely upon the testimony of Gilbert M. Robert in an effort to establish that the separation of the operations of MBR and Guilford served no safety purpose. Verified Statement of Gilbert M. Robert in Support of Opening Statement of Granite State and MBR, at 2 (“Robert V.S.”). However, Mr. Robert fails to address the issues underlying Guilford’s decision to separate the operations of the two railroads, instead apparently assuming that MBR operates in accordance with customary safety rules and practices. As the record in this proceeding clearly shows, however, MBR has repeatedly ignored these very same rules when it suits the purposes of MBR to

do so. Indeed, no matter how sophisticated and professional Guilford's dispatching system may be, it is essentially useless if MBR does not adhere to established and customary safety rules and practices. Deposition of Larry L. Ferguson, at 48, Exhibit D hereto. Moreover, Mr. Robert also fails to acknowledge that the "absolute block" presently in place on the line and voluntarily developed by Guilford to accommodate MBR's operations, does not in any way hinder MBR's ability to serve Granite State, while also maintaining an important safeguard to prevent an accident on the line if MBR were to again ignore customary safety rules and practices. The same analysis also counters Ms. Madigan's testimony that NORAC Rule 93 is sufficient to protect against accidents on the line, for the simple reason that MBR cannot be expected to operate in accordance with these rules, as has been repeatedly shown by Guilford throughout this proceeding. Madigan V.S., at 6.

2. Granite State and MBR Have Failed to Show that Guilford's Actions Were Unreasonable.²

In an effort to show that Guilford's actions were unreasonable, Granite State and MBR rely upon the rail transportation policy to establish that a prohibition on the use of "absolute blocks" is by definition necessary to further that policy. Nevertheless, the record of this proceeding clearly shows that Guilford's actions have furthered important provisions of that policy. First, Granite State and MBR allege that regulation by the Board is necessary to prevent predatory practices and unlawful discrimination and to

² The Opening Statement of Granite State and MBR also incorporates *for the first time* allegations that Guilford has refused to provide rail service on reasonable request and has illegally caused a route to be closed. Opening Statement, at 13, 17. These allegations were not contained in the Formal Complaint filed by Granite State and MBR, and Guilford had no prior notice that they would raised, and these allegations should accordingly be stricken from the record. In any event, under either allegation, Granite State and MBR do not make their case, as shown in Guilford's Opening Statement and this Reply.

avoid undue concentrations of market power, an allegation that assumes that Guilford has engaged in these practices. *49 U.S.C. §10101(12)*. However, what the record clearly shows is that Guilford has not acted in a predatory or discriminatory manner, as Guilford's actions were in response to the realization that MBR did not adhere to customary safety rules and practices. Verified Statement of Sydney B. Culliford in Support of Opening Statement of Guilford, ¶ 14. Indeed, any analysis of discrimination must look to whether different circumstances justifying differential treatment. *Restricted Transit, Transcontinental Shipments of Oils*, 364 I.C.C. 94, 101 (1980) (the differences in transportation conditions justify as difference in treatment.), *Dept. of Public Service Regulation and Public Service Commission of the State of Montana v. Union Pacific RR Co.*, I.C.C. Docket No. 40913, served June 3, 1994, at unnumbered page 4. (showing of discrimination requires showing of substantially similar circumstances). In this instance, MBR has shown that it does not operate in the same manner as other railroads, and accordingly Guilford's different treatment of MBR is justified and reasonable. In addition, Granite State and MBR also misrepresent the extent of Guilford's market power, as truck competition clearly exists if rail service were to become "impracticable", as was apparently the case in this instance. Exhibit F to Guilford's Opening Statement. Hence, contrary to the repeated assertions by Granite State and MBR that truck competition does not exist, it clearly does and the failure of Granite State to take advantage of that option does not preclude a finding that Guilford does not have substantial market power in this instance.

Granite State and MBR also assert that regulation is necessary to allow demand for services to establish reasonable rates. *49 U.S.C. §10101(1)*. Of course, this analysis

effectively ignores the fact that the rates charged by MBR to Granite State are not the result of competition. Moreover, the fact that Granite State is MBR's only customer further affects the rates that MBR would charge, as MBR cannot risk alienating Granite State by charging competitive rates. *49 U.S.C. §10101(3)*. Also, once again the relationship between Granite State and MBR precludes MBR from earning additional revenue, as MBR is essentially at the mercy of Granite State. Furthermore, this provision seeks the development of a *safe* and efficient transportation system, which Guilford has furthered by developing a means to ensure that MBR operates safely, which it has not done in the past. Nor is regulation necessary to ensure the continuation of a sound rail transportation system with effective competition among rail carriers and other modes. *49 U.S.C. §§10101(4)(5)*. In this instance, Granite State and MBR developed their arrangement to effectively preclude truck competition altogether, which the parties admit on page 16 of their Opening Statement. Further, Guilford has in effect improved the transportation system by performing extensive track work to improve speeds on the line while also ensuring that safe operating practices are adhered to by MBR. It is also surprising for Granite State and MBR to allege that regulation is necessary to promote honest and efficient management of railroads, since the record in this proceeding clearly shows that MBR was being anything but honest in its operations prior to Guilford's efforts to improve the safety of operations on the line. *49 U.S.C. §10101(9)*. Likewise, it is difficult to understand how Granite State and MBR can claim that regulation is necessary to protect the public health and safety, as prior to Guilford's determination to separate the operations of the railroads, MBR was rarely complying with applicable and customary safety rules and practices. *49 U.S.C. §10101(8)*. In addition, regulation is not

necessary to encourage and promote energy conservation, since the issue in this proceeding is the movement of stone approximately three miles, with little difference between the energy consumed by trucks and by rail. *49 U.S.C. §10101(14)*. Indeed, Guilford's actions have been in complete compliance with the goal of the rail transportation policy to promote a safe working environment and protect the health and safety of the public. *49 U.S.C. §§10101(3), (8)*.

3. Guilford's Actions are not the result of some Nefarious Plot to destroy Granite State and MBR.

Notwithstanding the lack of any support in the record for a finding that Guilford's actions were driven by some hidden animus towards MBR, Granite State and MBR continue to make this allegation. Relying solely on the recollections of Mr. Pease and events that happened over eight years ago, Granite State and MBR attempt to portray Guilford's Chief Executive Officer—David Fink—as orchestrating Guilford's decision to separate the operations of the two railroads for purely personal reasons. While Mr. Pease may have some recollection of this animus, no one else deposed at the request of Granite State and MBR seem to have that same recollection. Indeed, Granite State and MBR asked several Guilford employees whether they had ever heard Mr. Fink say anything disparaging about MBR, and each employee asked answered in the negative. Depositions of Erwin R. Towle, at 43-44, Exhibit E hereto; Deposition of Sydney B. Culliford, at 77, Exhibit F hereto; Deposition of Thomas F. Steiniger at 64-66, Exhibit G hereto; Deposition of Larry L. Ferguson, at 46.

Furthermore, this theory also presupposes that Mr. Fink is involved with the railroad to such an extent that he controls the day to day operations, which is incorrect. More particularly, the president of Guilford is Mr. Steiniger, and he has day to day control of the railroads, while reporting to Mr. Fink on significant matters. Deposition of David A. Fink, at 6-7 Exhibit H hereto. Indeed, Mr. Fink was not even consulted prior to the decision to separate the operations of the two railroads, as this decision was made solely by Mr. Steiniger, Sydney Culliford and Robert Culliford. Steiniger Depo, at 20. Since Mr. Fink was not even involved with the decision to separate the operations of MBR and Guilford, it is difficult to understand how any unexplained animosity on his part could have affected that decision. Yet Granite State and MBR persist, with little support for their theory, apparently unwilling to acknowledge that Guilford is sincere when it says that the decision to separate the operations of Guilford and MBR was solely one of safety.

4. Granite State and MBR have not shown that they are entitled to damages.

Notwithstanding the fact that Granite State and MBR have not offered any convincing argument to support a finding that Guilford has acted unreasonably, neither party has made a showing that it is entitled to damages even if Guilford were found to be unreasonable. MBR for its part, simply asserts that it has lost significant revenue as a result of Guilford's actions, but makes no attempt to describe what its costs are of performing the service. Rather, MBR apparently expects to receive all of the revenue it alleges it would have generated absent a separation of the operations of the two railroads, without recognizing that it avoided costs by not making as many trips as it previously

had, and its demand for damages accordingly should be dismissed. Also, MBR relies upon the figures produced by Granite State to indicate that it has shipped 945 fewer carloads than in previous years, a figure which is inflated as discussed below.

Granite State, on the other hand makes several assertions in relation to its damage claim that are not appropriate or relevant. In the first instance, Granite State has yet to show that it has run out of product at its Milford facility, instead claiming that it is inevitable that they will do so. Moreover, Granite State also cannot point to one lost sale resulting from the decrease in carloads received at Milford, instead simply assuming that they will sell all of their product, with the further disclaimer that all product is usually—but not always—sold prior to the start of the next production season. Verified Statement of John G. MacClellan, III in support of Opening Statement of Granite State and MBR at 7. (“MacClellan V.S.”). Moreover, Granite State also attempts to inflate the number of carloads allegedly lost in 2003 by using an incorrect five year average to reach a lost carload amount of 945, while the actual five year average (from 1998 to 2003) indicates that this amount is actually 773 carloads. Culliford V.S., ¶ 4, Attachment A.

In addition, Granite State attempts to claim that it has the right to recover for decreased production of sand and 1” minus stone, as those products were produced in smaller quantities, which defies logic. First, 1” minus product and sand have traditionally been transported by truck to the plant in Milford, so the rail service issues could not have affected their production. In addition, Granite State appears to be saying that it has replaced the production lost at Milford with product from Lyndeborough, but continues to insist that it has lost sales, an unsupportable position.

At bottom, however, Granite State seeks to recover because it claims that its plant in Milford received fewer cars this year than in years before. However, this decrease in carloads cannot be placed solely at the feet of Guilford, as both Granite State and MBR have failed to take advantage of opportunities to transport more stone to Milford from Wilton. More particularly, as detailed in Guilford's Opening Statement, MBR failed to operate at all from September 18-19, 2003, despite the fact that Guilford had made an offer for MBR to operate beyond the 1:00 pm operating restriction because of a broken rail. Assuming that MBR had operated on those days—and had made its customary three round trips per day when no operations were in place, MBR would have delivered another 54 carloads to Milford. *Culliford V.S.*, ¶ 6. In addition, as of November 10, 2003 there was no operating restriction per se, as Guilford implemented a revised "absolute block" that—together with the increased operating speeds on the line—would have allowed MBR to make four round trips per day to Milford. *Id.*, *MaClellan V.S.* at 4. Rather than take advantage of this additional operating time, however, MBR failed to make four round trips on any of the days that it operated, and made up to three round trips on only two occasions. Verified Statement of Larry L. Ferguson in support of Guilford's Opening Statement, ¶ 3, Exhibit A. Given that MBR operated on 16 occasions prior to discontinuing operations, it could have made four round trips on each of those days, resulting in an additional 36 carloads per day being delivered to Granite State, for a total of 576 additional carloads. Instead, MBR only delivered 261 carloads, for a difference of 315 carloads that were not delivered for no reason. *Culliford V.S.*, ¶6.

Furthermore, MBR stopped operating on December 4, 2003, ostensibly because the Milford plant cannot operate when temperatures are below freezing. *MaClellan V.S.*,

at 2. However, MBR and Granite State apparently did not realize that December was a mild month, and there were at least 23 days during which temperatures were above-freezing and apparently allowing for some operations at Milford, but Granite State and MBR failed to take advantage of these additional days of warm weather. *Source:* www.underground.com/history/airport/kmht. Even assuming curtailed production due to shorter days and colder temperatures in the morning and evening, there is no reason why MBR and Granite State could not have conducted at least some operations on these days. Accordingly, presuming that two round trips with nine carloads apiece had been conducted, Granite State could have received an additional 414 carloads during this period. Culliford V.S., ¶ 6.

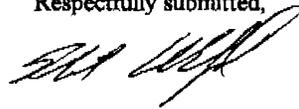
Clearly, then, if MBR and Granite State had desired to do so, each entity could have made up the shortfall in cars alleged to have been lost when Guilford separated the operations of Guilford and MBR. Indeed, by simply taking advantage of the increased speeds on the line, the discontinuance of an hourly operating restriction and the mild temperatures through December and early January, and Guilford's offer to permit MBR to operate on extended hours September 18-19, 2003, MBR could have delivered an additional 783 carloads for processing at Milford. Accordingly, in addition to all of the reasons why MBR and Granite State have failed to mitigate their damages, MBR and Granite State should not be permitted to recover any damages, as the amount of traffic that could have been transported by MBR to Granite State actually exceeds the proper five year average determined by Guilford to result in 773 fewer carloads in 2003 than other years.

As a final note, it is also difficult to understand Granite State's position that it has been harmed by Guilford's determination to separate the operations of Guilford and MBR, since Granite State's own exhibit clearly shows that on an income per ton basis, 2003 was the best year that Granite State has had since 1999. Accordingly, despite its protestations about having to acquire and truck stone at increased costs, the bottom line is that Granite State is more profitable than ever. MaClellan V.S., Exhibit 4. As a final note, Granite State also apparently achieved some savings as a result of decreased operations at Wilton, though the exact amount of these savings is not disclosed, other than an approximately \$50,000 savings in blasting costs. MaClellan V.S., at 10. Since these decreased costs provided a benefit to Granite State, it should clearly itemize those savings and should not recover those amounts.

III. CONCLUSION

For the foregoing reasons, Guilford respectfully requests that the Board find that Guilford was at all times acting reasonably, and that neither Granite State nor MBR is entitled to recover any damages.

Respectfully submitted,



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Attorney for:

Boston and Maine Corporation and
Springfield Terminal Railway
Company

February 9, 2004

Exhibit A

Verified Statement of Peter Leishman

My name is Peter Leishman and I am President of the Milford-Bennington Railroad. The Milford-Bennington is a small class 3 carrier that operates in Wilton and Milford New Hampshire. We employ two full time employees and two part time employees in addition to myself. The Milford-Bennington operates over track that is owned by the State of New Hampshire and leased by Milford-Bennington. The State owned portion was formerly owned by Boston & Maine Railroad until it was abandoned in the 1980's and sold to the state. While our operating rights extend considerably farther over the state owned line we actually operate our freight service from a stone quarry located at milepost 19 to milepost 16.36 in Wilton, New Hampshire where our line connects with a branch line owned by the Springfield Terminal Railroad, a subsidiary of Guilford Transportation Industries. From milepost 16.36 to milepost 11 Milford-Bennington has the right to operate over Guilford owned track under a trackage rights agreement ordered by the Interstate Commerce Commission and ultimately agreed to by Springfield Terminal on June 22, 1992. While our rights extend to milepost 11 we only operate to a stone processing plant owned by Granite State Concrete located at milepost 13.5 or approximately 3 miles of Guilford owned track.

The Milford-Bennington serves one customer, Granite State Concrete. Our railroad shuttles stone loaded at Granite State's quarry located in Wilton, New Hampshire to their processing plant located in Milford. We operate three trains per day and move 27 cars of stone per day. In contrast Guilford operates over its track between milepost 13 and milepost 16.36 approximately 1 to 2 times per week. Granite State operates, in part, under permits issued by the town of Wilton under which Granite State agreed to move product by rail and not by truck and agreed to restrict quarry operations to daytime hours only between 6:30 am and 6:30pm, Monday through Friday. Granite State's restrictions are well known in the area as its rights have been well publicized over the years in local papers and they are a matter of public record. I believe that it is reasonable to assume that these restrictions are well known to the management of the Springfield Terminal Railroad and to Guilford's President, David Fink who lives in a neighboring town.

Guilford also operates over Milford-Bennington leased track between milepost 16.36 and approximately milepost 20. Guilford serves another quarry owned by a company called Pike industries. Milford-Bennington entered into a trackage rights agreement with Guilford on September 6, 1999 so that they could access the quarry to secure company ballast. Though the Guilford trackage rights agreement authorizing Milford Bennington to run over Guilford tracks restricts Milford-Bennington to running no larger than 10 car trains, Milford-Bennington did not set limits on Guilford operations over Milford-Bennington. The trackage rights agreement with Guilford expired in 2001 but Milford-Bennington has taken no action since 2001 to in any way restrict their operations and they have continued to use their rights.

The Milford-Bennington maintains its track to a very high standard. Since commencing operations in 1992 it has installed 105 lb rail between the Granite State Quarry and milepost 16.36 and 17.8 and renewed 100 percent of the defective ties in the rail line. We

operate conservatively and restrict my operating speeds to 25 mph though our track is capable of supporting speeds that are higher.

The Guilford owned track between milepost 16.36 and the Granite State processing facility at milepost 13.5 is in deplorable condition. The three miles utilized by Milford-Bennington are designated as excepted track and two of the three miles are restricted to 5 miles per hour. During the past ten years we have installed literally hundreds of ties, rails and gauge rods on the Guilford owned track in order to keep it safe enough to avoid derailing Milford-Bennington trains even at 5 mph. We cannot rely on Guilford to perform necessary work or even emergency work in a timely manner to protect my ability to meet my obligations to my customer.

Approximately 8 weeks ago employees of the Springfield Terminal Railway, I believe under the direction of Guilford President Mr. David Fink, insisted that a permanent derail device be installed on track operated by Milford-Bennington and leased from its owner the State of New Hampshire. The derail was installed without the approval of the property owner and was located at approximately milepost 16.38. At the time I did not want to "fight" Guilford, as I knew that this action would attract some form of retribution. I told the Guilford crew that it served absolutely no purpose other than one of harassment and that we would not use it.

A derail device is traditionally used in the rail industry to intentionally derail a car in the event it should roll out of a siding onto a main line track in order to protect operations on the main line track. Milford-Bennington has two sidings used to store cars for serving customers, one at Granite State's Quarry served by Milford-Bennington and one at Pike Industries served by Guilford. Both sidings are protected by derails and both derails are maintained and used to protect the main line.

On June 20, 2003 a team of Guilford managers again visited the location where the derail had been installed in Wilton. I was working in the area and went over to talk to them. Mr. Stuart Draper, who is a local business man and town of Wilton selectman, was also present. to join us as a witness. Guilford Vice President of Operations Culliford in the ensuing conversation ordered me to keep the derail closed at all times except when operating in the area. I refused on the grounds that the derail served no purpose, would seriously delay Milford-Bennington operations and that the derail could, in fact, create a safety problem. The original derail was installed at a location that could derail a train directly into a building adjacent to the tracks. After some further conversation in which I pointed out that derails already existed approximately 500 yards further down the Guilford owned track the Guilford managers left. Later that day I was informed that Guilford was now going to install another derail approximately 100 feet from the one on Milford-Bennington property but on Guilford property and that Milford-Bennington would not be permitted to run unless we agreed to maintain all derails in the closed position. A more detailed description of the above meeting is attached in the form of a verified statement witnessed by Mr. Draper.

After the encounter I telephoned Mr. Mark McKeon, Federal Railroad Administration Regional Administrator for Safety and reported what had happened. Mr. McKeon could not understand the purpose of the derail and agreed to look into the matter. I also telephoned the Office of Rail and Transit for the New Hampshire Department of Transportation who also agreed to get involved. They subsequently sent a letter to Guilford a copy of which is attached to this affidavit.

Later that day I was informed that Milford-Bennington would not be allowed to operate over Guilford track unless we agreed to use both derails that were now installed within about 100 feet of each other. I subsequently wrote a letter to Guilford's corporate counsel protesting but agreeing to use the derails. I was in a position where I had to agree or I would not be able to operate and serve my customer. By this time Guilford had refused to permit a Milford-Bennington train to operate over Guilford in accordance with our trackage rights agreement and my loaded train was sitting on Milford-Bennington track unable to move to the processing plant.

Finally, even though, I agreed under duress to Guilford's use the derails, Guilford changed the terms again and told me that they would only permit Milford-Bennington to operate between the hours of 1:00 am to 8:00 am. It is my firm belief that Guilford management including Mr. David Fink is fully aware of the operating restrictions placed on the Granite State quarry and knew that the terms they had set would shut down the quarry and would ultimately put the Milford-Bennington out of business.

Throughout the weekend of June 21-22 I again attempted to seek permission to operate over Guilford track during daylight hours and was refused permission by Guilford dispatchers. On Monday morning, June 23, 2003 we were able to operate one train to the Granite State processing plant arriving prior to 8:00 am but we were not able to return as the dispatchers refused me entry after 8:00 am.

The effect of these actions by Guilford will ultimately be to put my company out of business. Today our employees are idled. We are unable to serve Granite State which is experiencing serious difficulty and will be shut down very soon.

Milford-Bennington has operated in a sound and safe manner over our track and over Guilford track for approximately 11 years. We have done nothing to change our operations. I know of no other situation where Guilford has required the installation of a derail device on the main line on someone else's property on a main line track. Despite my attempts to resolve this issue amicably, despite efforts by the State of New Hampshire and despite the impact Guilford's actions are having on our customer, Guilford has refused to change its position. Guilford's actions are seriously harming the Milford-Bennington Railroad, its customer, Granite State Concrete and in a broader sense the public. I respectfully ask the STB to take whatever immediate action it can to enable the Milford-Bennington to fulfill its common carrier obligations and serve its customer.

If at any time any concerns are raised regarding the safety of our operations we would welcome a review by state or federal officials. We would welcome a detailed inspection

of our track and would also welcome a similar inspection of tracks owned by Guilford rail that are subject to the Milford –Bennington Trackage rights.

Exhibit B

Verified Statement of Peter Leishman

On Thursday, June 19, 2003 at approximately 11:00 AM I was in Wilton, New Hampshire when I met by chance with Mr. Syd Culliford, Vice President of Transportation and three others from Guilford Rail System. The four of them were inspecting a section of railroad that is owned by the State of New Hampshire but leased and operated by the Milford-Bennington. The area is near where Milford-Bennington tracks connect with tracks owned by Guilford Rail. The other Guilford representatives were Mr. Dick Miller, an employee who works for Mr. Culliford, Mr. Warren Bostwick, who I believe is a regional train master and Mr. Andy Zompa, Guilford's Director of Rules. Mr. Miller saw me near my truck and came over to tell me that Mr. Culliford wanted to see me. I was concerned over the fact that there were four people from Guilford there and immediately telephoned a friend, Mr. Stuart Draper and asked if he could join me. Mr. Draper is a local businessman in Wilton and the Chairman of the town's board of selectman. He came over immediately and the two of us approached the group from Guilford where they were standing near Milford-Bennington's tracks.

Mr. Culliford told me that they had come to Wilton to tell me that I was to insure that a derail device that had been ordered placed by Guilford in main line track owned by the State of New Hampshire and leased to me was to be kept locked in the closed position. The derail was located near where the Milford-Bennington connects to the Guilford Rail System. It became clear at the beginning of the conversation that the discussion was going to be confrontational as Mr. Culliford was not in any way asking me to do this, he was telling me.

A derail is a device used in the rail industry to intentionally derail a rail car. Derails are normally placed in track at the end of a siding so that a car is intentionally derailed before reaching a main track in the event its brakes release and it rolls unattended. It is highly unusual that a derail would be placed on a main line track. The Milford Bennington does have derails installed on the two sidings that are used to place empty cars, one of which is used by Guilford Rail.

I told Mr. Culliford that the derail he was referring to was ordered placed by Guilford on main line track owned by the State of New Hampshire and operated by the Milford Bennington. I told him that when the derail had been installed I told Guilford employees that I had no intention of using it, and that it would not make the area safer and that it made no sense putting it into the Milford-Bennington's main line. I pointed out that Milford-Bennington had operated in this area for 11 years without a derail being placed in its main line track and that the railroad had operated safely without incident. I also told Mr. Culliford that the derail had been placed on state owned property and that the State of New Hampshire had not authorized Guilford's actions and did not want the device in their track.

I asked Mr. Culliford if there were any other small or regional railroads that connected with the Guilford system where Guilford had required the installation of a derail on the main line. I also asked if there were any situations involving other carriers where

Guilford had required the installation of a derail on main line track or whether they had installed two derails within 500 feet of each other. Mr. Culliford said it didn't matter what the situation was with other carriers he was going to make sure that the derail was installed in Wilton and he was going to force Milford-Bennington to use it. I told him that it made no sense and that the only reason for putting a second derail in the main line within 500 feet of a derail that was already in place was to make Milford-Bennington's operation more difficult. I told him it served no safety purpose.

I also told Mr. Culliford that it would be more prudent for Guilford to avoid spending the money on installing another derail and to spend it fixing their track between Nashua and Wilton as the track is in deplorable condition.

Mr. Culliford became angry and told me that I would be hearing from them. I found the meeting confrontational and very threatening. There was no attempt on the part of Mr. Culliford to seek ways of operating efficiently and it was clear to me that the only purpose of the four visitors was to take actions that would make the operation of the Milford-Bennington railroad more difficult. What they were trying to force me to do would not in any way enhance safe rail operations but would make rail operations more difficult and costly.

The four from Guilford then left. After their departure I immediately telephoned Mr. Mark McKeon, the Federal Railroad Administration Regional Administrator for Safety and told him of my conversation with Mr. Culliford. I also telephoned Mr. Kit Morgan, Administrator for Rail and Transit at the New Hampshire Department of Transportation and told him of the incident.

At no time during the conversation did any representative from Guilford provide me with an explanation of why they wanted the derail used or what safety purpose it would serve. They did not offer any explanation other than they were ordering me to do what they wanted me to do.

VERIFICATION

STATE OF NEW HAMPSHIRE)
) ss:
COUNTY OF HILLSBOROUGH)

I, Peter R. Leishman, being duly sworn, depose and state that I am President of Milford-Bennington railroad Company, Inc. ("Milford-Bennington"); that I am authorized to sign the foregoing "Verified Statement" on behalf of Milford-Bennington, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me
This 2nd day of July, 2003
Margaret S Arn
MARGARET S. ARN, Notary Public
My Commission Expires June 8, 2006
My Commission Expires: _____



VERIFICATION

I, Stuart Draper, Being duly sworn, depose and state that I have examined all of the statements contained in the "Verified Statement" of Peter R. Leishman and that all such statements are true and correct to the best of my knowledge and belief.

Stuart Draper
Stuart Draper

Subscribed and sworn to before me
This 2nd day of July, 2003
Margaret S Arn
Notary Public
My Commission Expires: _____

MARGARET S. ARN, Notary Public
My Commission Expires June 8, 2006

Exhibit C



MBCR COMMUTER RAIL OPERATIONS (SOUTH)

SUMMARY DIVISION NOTICE NO. 1-S5

Effective 12:01 A.M., Wednesday, October 1, 2003:

THIS SUMMARY DIVISION NOTICE SUPERCEDES ALL PREVIOUSLY ISSUED DIVISION NOTICES, ALL OF WHICH MUST BE REMOVED FROM THE BULLETIN BOARDS. THIS NOTICE IS IN EFFECT FOR COMMUTER RAIL OPERATIONS IN THE TERRITORY DISPATCHED BY MBCR TRAIN DISPATCHERS ON THE SOUTH SIDE.

(a) PHYSICAL CHARACTERISTIC CHANGES

CHANGES IN PHYSICAL CHARACTERISTICS THAT HAVE OCCURRED SINCE THE LAST GENERAL ORDER WAS ISSUED WILL BE CARRIED IN THE DIVISION NOTICE UNTIL THEY ARE LISTED IN THE NEXT GENERAL ORDER:

***** DORCHESTER BRANCH**

MP 224.9 – SWITCH REMOVED FROM SERVICE 5/6/02
Trailing point (when operating west on No. 1 Track) hand operated switch, located at MP 224.9 formerly providing access to Rothstein's, removed from service.

***** FRANKLIN BRANCH**

MP 35.7 – DERAILS INSTALLED 3/18/02
Permanent derails installed on both sidings approximately 200 feet from trailing point (when operating west on single track) hand operated switch located at MP 35.7 providing access to St. Gobain Container, formerly Foster Forbes.

***** MIDDLEBORO MAIN LINE**

MP 21.85 – INDUSTRIAL TRACK LENGTHENED 10/28/02
Industrial Track at Washburn Candy (Trojan Recycling) MP 21.85 lengthened approximately 600 feet north.

MBCR SOUTH SUMMARY DIVISION NOTICE NO. 1-S5, CONTINUED:

(b) PROTECTING AGAINST PERSONAL INJURY

EMPLOYEES MUST **PROTECT AGAINST PERSONAL INJURY** AT THE LOCATIONS AND FOR REASONS GIVEN BELOW; ALSO, WHERE APPLICABLE, EMPLOYEES MUST ADVISE PASSENGERS TO USE CAUTION WHEN WALKING IN THESE AREAS:

***** DORCHESTER BRANCH**

1. SOUTH BAY AND HILL 9/1/01
Account ties distributed adjacent to No. 2 Track between South Bay and Hill and adjacent to Single Track at Hill, employees must use caution when working in this area.
2. FAIRMOUNT 4/18/03
employees must use caution when working in this area.
3. SOUTHAMPTON STREET YARD 8/1/03
Account track material distributed between S&I 3 and the Amtrak Runner, employees must use caution when working in this area.
4. SOUTHAMPTON STREET YARD 9/1/03
New track, designated S&I 4 approximately 700 (?) feet in length located between S&I 3 and the Amtrak Runner, in service. The east end and the west end of S&I 4 connects with S&I 3 by hand operated switches. Close clearance with signal bungalow exists on the east end of S&I 4. Employees must use caution when working in this area.

***** MIDDLEBORO MAIN LINE**

MP 2.3 7/1/00
Due to construction materials between Columbia Road OHBR MP 2.253 and Southeast Expressway OHBR MP 2.401, close clearance exists. Will not clear man on side of car.

***** CAPEWAY BRANCH**

COT AND MP 14 5/11/98
Account track material distributed adjacent to South Capeway and MP 14, employees must use caution when working in this area.

(c) TRAIN AND ENGINE CREWS & TRAIN DISPATCHERS AND BLOCK OPERATORS

In the application of that part of NORAC Operating Rule "T" which reads:
"EMPLOYEES MUST GIVE IMMEDIATE WRITTEN NOTICE OF CHANGE IN RESIDENCE OR TELEPHONE NUMBER TO A DESIGNATED OFFICER."

On the MBCR Commuter Rail, the "designated officer" for Train and Engine employees is the Manager – Transportation. The "designated officer" for Train Dispatchers and Block Operators is the Assistant Manager – Train Operations. This is required in addition to notifying Personnel or Crew Dispatcher's offices.

MBCR SOUTH SUMMARY DECISION NOTICE NO. 1-S5, CONTINUED:

**(d) COMMUTER RAIL TARIFF
OFFICES OPEN FOR SALE OF TICKETS:**

<u>Station</u>	<u>Monday through Friday</u>
Kingston	5:00 AM to 9:00 AM
Whitman	6:00 AM to 11:00 PM
Worcester	10:00 AM to 6:00 PM
Framingham	5:00 AM to 4:00 PM
West Natick	6:00 AM to 9:00 PM
Needham Center	6:15 AM to 5:30 PM
Needham Junction	6:00 AM to 11:00 AM
Hersey	6:30 AM to 8:30 PM
Highland	8:00 AM to 7:30 PM
Forge Park	5:00 AM to 11:45 AM
Franklin	5:00 AM to 10:30 AM
Norfolk	5:45 AM to 11:00 AM
Walpole	5:15 AM to 11:00 AM
Norwood Central	6:00 AM to 11:00 PM
South Attleboro	8:00 AM to 9:00 PM
Attleboro	5:00 AM to 12:00 NOON & 3:30 PM to 6:30 PM
Mansfield	5:00 AM to 11:00 AM
Sharon	5:30 AM to 10:30 AM
Stoughton	6:00 AM to 11:00 PM
Canton Junction	5:30 AM to 8:00 PM
Route 128	5:30 AM to 2:30 PM
Back Bay	5:45 AM to 9:30 PM
South Station	5:35 AM to 9:45 PM

Surcharge does not apply to interzone or family fares.

No Surcharge Saturday and Sunday until further notice.

7/27/92

(e) COMMUTER RAIL TARIFF

Add the following paragraph as paragraph a1 to Rule/Condition 10. Rights Reserved on page

No recreational motorized scooters/vehicles or equipment powered by a combustible fuel, i.e., gasoline, will be allowed to be transported.

(f) HOURS OF SERVICE

Employees must completely fill out their time slips including sections referencing hours of service. The total time on duty under the hours of service law and the time off duty prior to their trip must be indicated. These requirements are outlined in CFR Part 228.11.

MBCR SOUTH SUMMARY DIVISION NOTICE NO. 1-S5, CONTINUED:

**(g) 2003 NORAC OPERATING RULES CLASSES FOR MBCR
COMMUTER TRAIN AND ENGINE SERVICE EMPLOYEES**

In the application of Rule C, Train and Engine Service Employees must attend a class of instruction and pass an examination annually on the NORAC Operating Rules.

MBCR employees will be scheduled to attend specific classes by the Crew Dispatcher's Office. This does not relieve employees from attending a class within the calendar year.

Employees must bring their **UP TO DATE** copies of NORAC Operating Rules, EIGHTH EDITION, EFFECTIVE JANUARY 1, 2003, Commuter Timetable No. 1, current Bulletin Order and a pen or pencil with them when attending. The Crew Dispatcher's office will schedule all classes. Employees must mark off with the Crew Dispatcher prior to attending a class and mark back on when completing the class.

**(h) 2003 NORAC OPERATING RULES CLASSES FOR
MBCR ENGINEERING DEPARTMENT EMPLOYEES**

Engineering Department employees who are issued Form D Line 4's or Line 5's, obtain Foul Time or are in charge of Track Car movements must be qualified on the Operating Rules and Physical Characteristics of the territory involved. To remain qualified, Special Instruction C-S6 requires these employees to requalify on the Operating Rules and Physical Characteristics every year, by the last day of the calendar quarter in which their birthday occurs.

October NORAC classes for Engineering Dept. Employees are scheduled as follows:

LOCATION: MYSTIC JCT. CLASSROOM

Thursday, October 2, 2003	Tuesday, October 21, 2003
Tuesday, October 7, 2003	Thursday, October 23, 2003
Thursday, October 9, 2003	Tuesday, October 28, 2003
Tuesday, October 14, 2003	Thursday, October 30, 2003
Thursday, October 16, 2003	

(i) BOOKS AND INSTRUCTIONS IN EFFECT

- NORAC Operating Rules, Eighth Edition, effective January 1, 2003.
- MBCR Commuter Timetable No. 1, General Order No. 101, effective July 1, 2003.
- Amtrak Electrical Operating Instructions, (AMT-2), effective June 1, 1999.
- Air Brake and Train Handling Rules and Instructions, (MBCR-3), effective July 1, 2003.
- Customer Service Special Instructions, (MBCR-4), effective July 1, 2003.
- Safety Instructions for Transportation Employees, (MBCR-5), effective July 1, 2003.
- Roadway Worker Protection Manual revised July 1, 2003.
- MBCR Road Foreman Notices, effective July 1, 2003.
- MBCR MBTA Fare Collection and Remittance Manual, effective July 1, 2003.
- Commuter Rail Tariff, effective July 1, 2003.

K. E. Lydon
General Manager

Exhibit D

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BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF LARRY L. FERGUSON, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 11:57 a.m.

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2	DEPONENT	DIRECT	REDIRECT	CROSS	RECROSS
3	LARRY L. FERGUSON				
4	By Mr. Howard	4	51		
5	By Mr. Culliford		47	52	

EXHIBITS

12	EXHIBIT NO.	DESCRIPTION	PAGE NO.
13	1	Guilford Rail System Supplemental Bulletin Order No. 3-006H - In Effect 0001 Monday, June 23, 2003	40

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APPEARANCES:

JAMES E. HOWARD, ESQ.
JAMES E. HOWARD LLC
ONE THOMPSON SQUARE - SUITE 201
CHARLESTOWN, MA 02129
REPRESENTS GRANITE STATE CONCRETE
COMPANY, INC., and MILFORD BENNINGTON
RAILROAD COMPANY, INC.

ROBERT B. CULLIFORD, ESQ.
CORPORATE COUNSEL
GUILFORD RAIL SYSTEM
IRON HORSE PARK
NORTH BILLERICA, MA 01862-1692
REPRESENTS BOSTON AND MAINE CORPORATION
and SPRINGFIELD TERMINAL RAILWAY
COMPANY

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(Deposition of Larry L. Ferguson
commencing at 11:57 a.m.)

LARRY L. FERGUSON

A witness called on behalf of the
Granite State Concrete Company, Inc., and
Milford Bennington Railroad Company, Inc.,
first having been duly sworn, under oath,
deposes and says as follows:

DIRECT EXAMINATION

15 Q (By Mr. Howard) Mr. Ferguson, have you ever
16 been deposed before?

17 A Yes.

18 Q So you understand how this works. I ask
19 questions, and you answer them.

20 A Yes.

21 Q If you don't understand a question or if you
22 need clarification, please let me know.

23 A Yes.

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1 some maintenance whether they should be doing
2 it or not?
3 A Yes.
4 Q What's the safety problem?
5 A If a Milford-Bennington Railroad employee is
6 out there changing a bolt and he injured
7 himself on our property, we have a problem
8 with that.
9 Q Okay. Is there any operating safety problem;
10 is there any danger that a Guilford train
11 will be there at the same time?
12 A No.
13 Q That's because the dispatching system takes
14 care of that, right?
15 A That's correct.
16 Q Did you review any documents in order to
17 prepare for this deposition?
18 A Yes.
19 Q What did you review?
20 A The amount of round trips that was taken, I
21 guess, in 2002, I believe.
22 Q Round trips by Milford-Bennington?
23 A Yes, that's correct.

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1 Q Anything else?
2 A No.
3 Q Did you talk to anybody about the deposition?
4 A No.
5 Q Now, you indicated that you knew Dave Fink,
6 right?
7 A Yes.
8 Q Have you ever heard him or anyone else at
9 Guilford make any disparaging or negative
10 remarks about Milford-Bennington or Peter
11 Leishman or anybody else with
12 Milford-Bennington?
13 A No.
14 Q Never heard anything?
15 A No.
16 Q Not in 33 years or not in the last 11 years?
17 A I have my own faults, but no.
18 Q No one has ever been critical of them?
19 A No.
20 Q Were you here -- You were here, obviously, in
21 the early '90s when Milford-Bennington got
22 trackage rights on the Hillsboro branch?
23 A Yes, I was here.

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1 Q Do you recall opposition by Guilford to those
2 trackage rights?
3 A No.
4 Q You don't recall?
5 A No.
6 Q You weren't involved in that?
7 A No.
8 Q That's all I have, Mr. Ferguson. Thank you.
9 A Thank you.
10
11 CROSS EXAMINATION
12 Q (By Mr. Culliford) Just a few questions, Mr.
13 Ferguson.
14 You testified earlier that you believe
15 the dispatching system in place by Guilford
16 is safe and works adequately on the Hillsboro
17 branch or any other line for commuter rail
18 and freight -- and other trains that operate
19 together?
20 A That is correct, yes.
21 Q Is that premised -- Is that belief premised
22 upon the fact that all of the railroads
23 involved are following standard operating

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1 procedures and its safety rules?
2 A Yes.
3 Q And if one railroad is not following the
4 standard operating procedures and safety
5 rules, would you still feel the same way
6 about your prior statement?
7 A No.
8 Q Okay. You testified previously about the --
9 (Phone interruption.)
10 MR. CULLIFORD: If we can go off the
11 record for one minute.
12 (Off the record at 12:59 p.m.)
13 (Back on the record at 1:00 p.m.)
14 Q You testified previously about the procedures
15 followed by Milford-Bennington before it
16 enters into the yard limits of Wilton.
17 Essentially, it's a verbal discussion?
18 A That's correct.
19 Q You don't have a dispatcher at Wilton Yard or
20 anyone monitoring Milford-Bennington visually
21 watching the trains coming in and out of
22 Wilton Yard, is that correct?
23 A That's correct.

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1 Q If Milford-Bennington did not contact the
 2 dispatcher, does that prevent them from -- in
 3 any way prevent them from going into Wilton
 4 Yard?
 5 A No.
 6 Q Okay. If a Guilford crew, maintenance-of-way
 7 crew were going to perform work on the track,
 8 how would they interact with the train
 9 operations managers under your control to
 10 take control of that track?
 11 A They would get permission, verbal permission
 12 from the train dispatcher, and he would allow
 13 them to be out there working on the track.
 14 Q In your experience, has a Guilford
 15 maintenance-of-way crew or any other railroad
 16 maintenance-of-way crew done work and not let
 17 anybody know they were doing it?
 18 A No.
 19 Q In your experience, would that be a
 20 reasonable approach to track maintenance?
 21 A As a trespasser, yes.
 22 MR. HOWARD: As a trespasser?
 23 Q How is that a reasonable approach to track

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1 customer on the branch to either run around
 2 cars or push cars up for switching later?
 3 A He does go to run around cars.
 4 Q And he would go up beyond Milepost 13?
 5 A That's correct.
 6 MR. CULLIFORD: That's all I have.
 7
 8 REDIRECT EXAMINATION
 9 Q (By Mr. Howard) Mr. Ferguson, if a train
 10 went beyond Milepost 13, wouldn't that be
 11 reflected on the train sheets?
 12 A Yes.
 13 Q Okay. So if the train sheet says that the
 14 train went to Milepost 13, that's as far as
 15 it went, right?
 16 A That's correct.
 17 Q Are you aware whether Milford-Bennington has
 18 ever failed to comply with your dispatching
 19 rules?
 20 A No.
 21 Q That's it. Thank you.
 22 MR. HOWARD: No further questions.
 23

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1 maintenance?
 2 A Reasonable approach to track maintenance.
 3 Q It is? Is it a reasonable approach to track
 4 maintenance for a maintenance crew to just go
 5 on a line without alerting the dispatcher of
 6 their presence to do maintenance?
 7 A No.
 8 Q To the best of your knowledge, have any
 9 Guilford dispatchers ever been contacted by
 10 anyone from Milford-Bennington requesting
 11 permission to maintain Guilford's property?
 12 A No.
 13 Q If we could go through just the operations on
 14 the branch real quick. Now, on the train
 15 sheets, you show NA-1 for the most part as
 16 the train operating -- Well, the last
 17 customer on the branch is --
 18 A I'm going to say, and I'm not sure, but I
 19 think it's Hendricks & Cable. I'm not sure,
 20 but I think it's Hendricks & Cable.
 21 Q In the course of their normal service on the
 22 branch, anywhere on the branch, does the
 23 switcher on occasion go beyond the last

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1 RE-CROSS EXAMINATION
 2 Q (By Mr. Culliford) If this is all done
 3 verbally, would you know if Milford-Bennington
 4 failed to comply with the dispatching rules,
 5 necessarily?
 6 A No.
 7 Q Okay. Thank you.
 8 MR. CULLIFORD: No other questions.
 9 (Whereupon the deposition of Larry L.
 10 Ferguson concluded at 1:04 p.m.)
 11
 12
 13
 14
 15
 16
 17
 18
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 22
 23

Exhibit E

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF ERWIN R. TOWLE, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
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Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 1:18 p.m.

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I N D E X

2	<u>DEPONENT</u>	<u>DIRECT</u>	<u>REDIRECT</u>	<u>CROSS</u>	<u>RECROSS</u>
3	ERWIN R. TOWLE				
4	By Mr. Howard	4	--		
5	By Mr. Culliford		46	--	
6					
7					
8	E X H I B I T S				
9	<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>		
10	1	Springfield Terminal Railway Supplemental Bulletin Order No. 3-012B in Effect Thursday, December 12, 2002	14		
11					
12	2	Guilford Rail System Supplemental Bulletin Order No. 3-006G in Effect 0700 Friday, June 20, 2003	23		
13					
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15	3	Memo - 7/15/03 to Robert Culliford from Erwin Towle	26		
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17	4	Letter - 7/16/03 to Mr. Peter R. Leishman from E.R. Towle	33		
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19	5	Verified Statement of Erwin R. Towle in Support of Motion to Dismiss and Reply of the Boston and Maine Corporation and the Springfield Terminal Railway Company	35		
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23					

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APPEARANCES:

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RAILROAD COMPANY, INC.

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REPRESENTS BOSTON AND MAINE CORPORATION
and SPRINGFIELD TERMINAL RAILWAY
COMPANY

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1
2
3 (Deposition of Erwin R. Towle
4 commencing at 1:18 p.m.)
5
6
7 ERWIN R. TOWLE
8 A witness called on behalf of the
9 Granite State Concrete Company, Inc., and
10 Milford Bennington Railroad Company, Inc.,
11 first having been duly sworn, under oath,
12 deposes and says as follows:
13
14 DIRECT EXAMINATION
15 Q (By Mr. Howard) Mr. Towle, if you have any
16 trouble understanding my questions or need
17 clarification, please let me know.
18 A Absolutely.
19 Q I understand you've recently retired from
20 Guilford?
21 A Yes, I did.
22 Q How many years were you employed here?
23 A About 34 and-a-half.

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1 Q Okay. But from June 20th on when the derail
2 was installed on Guilford property, it was
3 always used by Milford-Bennington, isn't that
4 right?
5 A As far as I know. I wasn't personally up
6 there to observe it; but as far as I know.
7 Q Okay. You're not aware of any failure by
8 Milford-Bennington to use the derail after
9 June 20th in accordance with the
10 instructions and the notices?
11 A No, I'm not.
12 Q So if the derail was in place on Guilford on
13 June 20th and it was, so far as you knew, was
14 being used, what purpose was served by the
15 limitation of the operating hours for
16 Milford-Bennington?
17 A Again, I was not the one making those
18 decisions. I was merely -- I was in the
19 process of retiring, and I did not make the
20 decision. I was following the instructions
21 given to me, but I believe that it was from a
22 safety standpoint to ensure that the crews
23 did not intermingle to make sure nothing

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1 in any way, and I have no knowledge of any of
2 the particulars.
3 Q At least were you aware that Guilford was
4 opposing Milford-Bennington's opportunity or
5 right to operate on the Guilford line?
6 A I believe that they were. I wasn't involved
7 in that. I really don't know.
8 Q Okay. Are you aware of anyone at Guilford
9 ever expressing any negative feelings or
10 animosity or dislike towards Mr. Leishman or
11 Milford-Bennington, generally?
12 A In my presence, I have heard nothing, nothing
13 derogatory about Mr. Leishman.
14 Q Do you talk to Dave Fink on a regular basis?
15 A No, I don't.
16 Q Nothing in your presence, nobody has ever
17 said a contrary word about Mr. Leishman or
18 Milford-Bennington?
19 A Well, I'm sure something might have been said
20 about this derail thing, and I don't recall
21 exactly; but, I mean, something had to have
22 been said of "What's he doing?", or something,
23 but I don't recall.

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1 would happen, but I don't know that for a
2 fact. I think that probably had a bearing on
3 it.
4 Q Okay. Were you aware of any problem that had
5 arisen previously of the crews intermingling
6 as you say?
7 A I don't.
8 Q The only problem that you were aware of or
9 anybody was aware of, I take it, was whether
10 or not the derail was being used properly,
11 right?
12 A As far as I know.
13 Q Forgive me. I don't recall whether I asked
14 you this, Mr. Towle. You were around in
15 1991, 1992 when Milford-Bennington first
16 started operating over Guilford, is that
17 right?
18 A Yes, I was.
19 Q And do you recall Guilford's actions in that
20 time frame to attempt to keep
21 Milford-Bennington off the Guilford line?
22 A I recall that there was some type of
23 litigation or whatever, but I wasn't involved

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1 Q Not to your knowledge?
2 A I don't recall anybody, personnel, about
3 Peter Leishman saying anything real
4 derogatory about him, personally.
5 Q So you think that the installment of the
6 derail on the Guilford property and the
7 imposition of the restrictions of the hours
8 of operation, that was -- that was all
9 exclusively related to safety rather than any
10 kind of animosity towards Leishman or
11 Milford-Bennington?
12 A I really do, and I think it removed -- by his
13 actions, removed the trust that some Guilford
14 people had.
15 Q His actions being what?
16 A Refusing to put the derail back on.
17 Q I mean -- Well, is it fair to say that had he
18 put the derail back on, none of the
19 restrictions on the operating hours would
20 have ever been implemented?
21 A Well, I certainly can't say that for sure,
22 but I think it's a fairly safe assumption
23 that had he followed all the safety rules and

Exhibit F

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF SYDNEY B. CULLIFORD, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Monday,
November 3, 2003 at 1:40 p.m.

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I N D E X

1				
2	DEPONENT	DIRECT	REDIRECT	CROSS
3				RECROSS
4	SYDNEY B. CULLIFORD			
5	By Mr. Howard	4	--	
6	By Mr. Culliford		82	--
7				
8	E X H I B I T S			
9	EXHIBIT NO.	DESCRIPTION	PAGE NO.	
10	1	Verified Statement of Sydney B. Culliford	18	
11	2	Verified Statement of Sydney B. Culliford in Support of Motion to Dismiss and Reply of the Boston and Maine Corporation and The Springfield Terminal Railway Company	38	
12	3	Invoice - 6/30/03 to Mr. Richard Miller from Peter R. Leishman	67	
13	4	Guilford Rail System Supplemental Bulletin Order No. 3-006G - In Effect 0700 Friday, June 20, 2003	78	
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REPRESENTS BOSTON AND MAINE CORPORATION
and SPRINGFIELD TERMINAL RAILWAY
COMPANY

Vol. 1 - 4

1

2

3 (Deposition of Sydney B. Culliford

4 commencing at 1:40 p.m.)

5

6

7 SYDNEY B. CULLIFORD

8 A witness called on behalf of the

9 Granite State Concrete Company, Inc., and

10 Milford Bennington Railroad Company, Inc.,

11 first having been duly sworn, under oath,

12 deposes and says as follows:

13

14 DIRECT EXAMINATION

15 Q (By Mr. Howard) Mr. Culliford, you're

16 employed by Guilford, I take it?

17 A That's correct.

18 Q What's your position?

19 A Vice President of Transportation.

20 Q How long have you held that position?

21 A With Guilford, 20 some odd years.

22 Q And before that, with Boston and Maine?

23 A That's correct.

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1 A Not really, not very much.
 2 Q You don't recall that Guilford opposed
 3 Milford-Bennington's attempt to buy the land?
 4 A I can honestly say, no, I was not involved
 5 with it.
 6 Q Do you know Peter or John MacLellan?
 7 A No.
 8 Q Never met them?
 9 A Nope.
 10 Q Have you ever heard anyone at Guilford,
 11 including Dave Fink, speak about
 12 Milford-Bennington or Peter Leishman or
 13 Granite State or the MacLellans?
 14 A No.
 15 Q Not one word?
 16 A No.
 17 Q Never any derogatory comments about Mr.
 18 Leishman or Milford-Bennington?
 19 A I haven't heard any. I haven't been
 20 involved.
 21 Q You've never been sitting around in Mr.
 22 Fink's corner office with some of the staff
 23 and heard him say anything about

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1 Q And that's the one, as I understand it, that
 2 was moved to the north end of the Wilton
 3 Yard, correct?
 4 A That's correct.
 5 Q Now, when that derail -- how long was the
 6 derail at the south end on the main line, do
 7 you know, the main track?
 8 A I don't know how long it's been there.
 9 Q Are you aware of any bulletin governing the
 10 derail when it was there?
 11 A Well, it was on the side track to my
 12 knowledge.
 13 Q Well, this says main track. Are you sure
 14 there are not two derails there, one on the
 15 side track and one on the main track?
 16 A The one that -- I'm not aware of the one --
 17 There was one derail on the main track south
 18 of Wilton, that's correct.
 19 Q Okay. And you're not aware of any bulletin
 20 that related to that?
 21 A Not that I'm aware of.
 22 Q Are you aware of what the operating practice
 23 was before that derail was moved; in other

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1 Milford-Bennington or Peter Leishman?
 2 A Not to my knowledge.
 3 Q You can't recall anything?
 4 A Nope.
 5 MR. HOWARD: Could you mark that one,
 6 please?
 7 (Whereupon the Stenographer marked as
 8 Exhibit No. 4 - Guilford Rail System -
 9 Supplemental Bulletin Order No. 3-006G - In
 10 Effect 0700 Friday, June 20, 2003.)
 11 Q Mr. Culliford, the document that has been
 12 marked Exhibit 4 is another Supplemental
 13 Bulletin Order dated June 20, 2003. Have you
 14 seen that before? (Indicating)
 15 A Yes, I have.
 16 Q Okay. Now, this relates, as I understand it,
 17 to a derail on the main track at the south
 18 end of the Wilton run around. Are you
 19 familiar with that location?
 20 A Yes, I am.
 21 Q And have you ever been out there to see the
 22 derail when it was there?
 23 A No, but I know it's there or was there.

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1 words, did Guilford trains passing by there
 2 open and close the derail, or did
 3 Milford-Bennington trains open and close the
 4 derail?
 5 A That's what I expect them to do, that's
 6 correct.
 7 Q Do you know for a fact what they did?
 8 A No, I don't. No.
 9 Q Is there any record that Guilford keeps that
 10 would indicate whether trains stopped there
 11 to open and close the derail?
 12 A No, not to my knowledge, there would be
 13 anything there.
 14 Q Well, if a Milford-Bennington train went
 15 through there and left the derail in an
 16 opened position and a Guilford train came to
 17 it in an opened position, would that be
 18 reported?
 19 A That should be reported, that's correct.
 20 Q Do you have any record of that?
 21 A I don't have any record of that.
 22 Q Never heard of anything one way or the other?
 23 A No.

Exhibit G

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF THOMAS F. STEINIGER, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Monday,
November 3, 2003, at 9:52 a.m.

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I N D E X

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2	DEPONENT	DIRECT	REDIRECT	CROSS
3	THOMAS F. STEINIGER			
4	By Mr. Howard	4	85	
5	By Mr. Culliford		73	--
6				
7				
8				
9				
10	E X H I B I T S			
11	EXHIBIT NO.	DESCRIPTION	PAGE NO.	
12	1	Verified Statement of Thomas F. Steiniger in Support of Motion to Dismiss and Reply to Petition for Relief	4	
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Vol. 1 - 2

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REPRESENTS BOSTON AND MAINE CORPORATION
and SPRINGFIELD TERMINAL RAILWAY
COMPANY

Vol. 1 - 4

1
2
3 (Deposition of Thomas F. Steiniger
4 commencing at 9:52 a.m.)
5
6 The following exhibit was premarked
7 per Attorney Howard:
8
9 (Whereupon the Stenographer marked as
10 Exhibit No. 1 - Verified Statement of Thomas
11 F. Steiniger in Support of Motion to Dismiss
12 and Reply to Petition for Relief.)
13
14 THOMAS F. STEINIGER
15 A witness called on behalf of the
16 Granite State Concrete Company, Inc., and
17 Milford Bennington Railroad Company, Inc.,
18 first having been duly sworn, under oath,
19 deposes and says as follows:
20
21 DIRECT EXAMINATION
22 Q (By Mr. Howard) Mr. Steiniger, would you
23 please tell me your position with Guilford?

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1 A My position with Guilford is President.
 2 Q How long have you held that position?
 3 A For approximately the past five years.
 4 Q How long have you been employed by Guilford?
 5 A Approximately 15 years.
 6 Q And what was your position prior to becoming
 7 President?
 8 A Senior Vice President of Marketing and Sales.
 9 Q Now, in your position as President, to whom
 10 do you report?
 11 A I report to Mr. David Fink.
 12 Q And that would be -- There are two David
 13 Finks in the organization, correct?
 14 A This is Mr. David Fink, President of Guilford
 15 Transportation, Inc.
 16 Q Okay. And is he an officer of Guilford
 17 Transportation Industries?
 18 A He's the President of Guilford Transportation,
 19 Inc.
 20 Q Okay. Which is the parent of Springfield
 21 Terminal, is that correct?
 22 A And he's CEO of Boston and Maine and
 23 Springfield Terminal, Chief Executive

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1 A I talk to Mr. Fink off and on every day.
 2 Q Okay. And are there others generally
 3 involved in conversations that you have with
 4 Mr. Fink?
 5 A At times, yes.
 6 Q Okay. Who else might be involved in those
 7 conversations?
 8 A Perhaps Roland Theriault who is Vice
 9 President of Real Estate.
 10 Q Is Mr. Culliford ever a part of your
 11 conversations with Mr. Fink?
 12 A From time to time, he is.
 13 Q Do you generally call Mr. Fink, or does he
 14 generally call you?
 15 A It works both ways.
 16 Q Okay. And what's your understanding with him
 17 or your method of operating with him; do you
 18 keep him advised of everything that's
 19 happening on the railroad?
 20 A I keep him advised of pertinent situations on
 21 the railroad, obviously, not everything
 22 because the railroad is operating 24 hours a
 23 day, 7 days a week. There's a lot of things

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1 Officer.
 2 Q Now, do you have people who report directly
 3 to you?
 4 A Yes, I do.
 5 Q Who are they?
 6 A Basically, the Vice Presidents of the
 7 railroad.
 8 Q Mr. Culliford?
 9 A Syd Culliford; Jim Patterson, who is Vice
 10 President of Mechanical and Engineering; Rob
 11 Culliford, who is Vice President and General
 12 Counsel of Law; Phil Kingman, who is Senior
 13 Vice President of Marketing and Sales,
 14 K-I-N-G-M-A-N. I'm trying to recall. I
 15 think I named them all.
 16 Q Okay.
 17 A We have -- Excuse me. We have Tim McNulty,
 18 who is Vice President of Labor Relations.
 19 Bill Law (phonetic), too, yeah; and, of
 20 course, Mr. Eric Lawler, L-A-W-L-E-R, who is
 21 Vice President of Finance.
 22 Q Now, as a general matter, Mr. Steiniger, how
 23 often do you talk to Mr. Fink?

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1 that take place that, obviously, we just move
 2 on, and I handle those myself.
 3 Q Okay. Do you have any idea, an estimate of
 4 how much time Mr. Fink spends on railroad
 5 matters?
 6 A I doubt -- I don't know if I could estimate
 7 the time. Quite frankly, he's pretty well
 8 tied up with the his own operations with
 9 regards to the airlines.
 10 Q But you talk to him on a daily basis, right?
 11 A I do.
 12 Q Okay. Have you reviewed any documents in
 13 preparation for this deposition today?
 14 A Yes, I have.
 15 Q What documents?
 16 A I've looked at a couple of the
 17 interrogatories. Basically, that's my
 18 verified statement.
 19 Q Did you talk to Mr. Fink about this
 20 deposition?
 21 A I told him I was going into a deposition.
 22 Q Okay. Did you talk about the substance of
 23 the deposition at all?

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1 A Not really.
 2 Q He didn't ask you what you anticipated or
 3 what you thought it was all about?
 4 A Well, I think from a standpoint of where we
 5 are with regards to the subject matter, he's
 6 aware of the subject matter.
 7 Q I'm going to hand you a document that's been
 8 marked as Exhibit 1, and it's a verified
 9 statement that you submitted in this case.
 10 Do you recognize that Mr. Steiniger?
 11 (Indicating)
 12 A I do.
 13 Q All right. That's your statement, correct?
 14 A That's correct.
 15 Q Now, could you turn to the second page of
 16 that document, please, and I would like you
 17 to take a look at Paragraph 4 at the top of
 18 the page where you say that Guilford was
 19 contacted by Colin Pease concerning passenger
 20 service. Did you have any direct
 21 conversations with Mr. Pease?
 22 A No. Mr. Pease talked to Mr. Culliford, Rob
 23 Culliford.

Vol. 1 - 10

1 Q And how do you know that?
 2 A I know that because I was informed by Rob
 3 Culliford of the discussions that were taking
 4 place during this period of time.
 5 Q Okay. So that you never talked to Mr. Pease
 6 about passenger service?
 7 A No, not personally, I have not.
 8 THE WITNESS: Excuse me one second.
 9 (Off the record at 9:59 a.m.)
 10 (Back on the record at 10:01 a.m.)
 11 Q Mr. Steiniger, the second sentence of
 12 Paragraph 4 says that, "-- Mr. Pease and MBR
 13 also agreed to Guilford's request that a
 14 derail device be installed on MBR property to
 15 prevent passenger and/or freight cars from
 16 inadvertently intruding onto Guilford's
 17 property --." Do you see that?
 18 A Yes, I do.
 19 Q Now, your statement there, I take it, is
 20 based upon information provided to you by Mr.
 21 Rob Culliford?
 22 A That's correct.
 23 Q Okay. So you don't have any direct knowledge

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1 as to whether there was an agreement or what
 2 the agreement was, is that right?
 3 A Well, my direct knowledge would be from my
 4 discussion with Rob Culliford that he had had
 5 the discussion with Colin Pease, and Colin
 6 had agreed to the request that a derail
 7 device be installed.
 8 Now, that's -- In fact, that's a
 9 continuation of this whole issue.
 10 Q Okay. But, again, you had no conversation
 11 with Mr. Pease?
 12 A I had no conversation with Colin Pease.
 13 Q Now, in Paragraph 5, you say that, "Guilford
 14 was contacted by Granite State on several
 15 occasions to discuss the possibility of
 16 Guilford providing service directly to its
 17 processing facility." Do you see that?
 18 A I do.
 19 Q When you refer to processing facility, what
 20 are you talking about there?
 21 A I'm talking about Granite State's operation.
 22 Q Which processing facility are you talking
 23 about, Milford?

Vol. 1 - 12

1 A The facility at Milford, correct.
 2 Q Now, who contacted Guilford on behalf of
 3 Granite State?
 4 A We had a call from Mr. MacLellan who
 5 contacted us from Granite State, and that's
 6 both MacLellans.
 7 Q Peter MacLellan?
 8 A I understand Peter as well as John.
 9 Q Well, did you talk to either of them?
 10 A I attempted to return John's message. I did
 11 not, and I had asked Rob to return it for me
 12 which he subsequently was able to contact
 13 John.
 14 Q And did you -- You didn't talk to John
 15 MacLellan. Did you talk to Peter MacLellan?
 16 A No, I did not. Peter MacLellan talked to
 17 Dave Fink. This is David Fink, my Executive
 18 Vice President.
 19 Q Does he report directly to you?
 20 A He reports directly to me as well.
 21 Q Now, -- Okay. So you -- Paragraph 5 is not
 22 based on direct conversations that you had
 23 but rather conversations that Rob Culliford

Vol. 1 - 13

1 and, if I can say, young, David Fink had?
 2 A That's correct.
 3 Q So as was the case with Paragraph 4, you
 4 don't have any direct personal knowledge of
 5 any of the statements in Paragraph 5, is that
 6 right?
 7 A My knowledge came through, in this case,
 8 discussions both with Rob Culliford and David
 9 Fink.
 10 Q Now, is your understanding based on those
 11 conversations with Mr. Culliford and Mr. Fink
 12 that Granite State was asking Guilford to
 13 provide service directly?
 14 A Yes, I do.
 15 Q And what -- Do you have any understanding of
 16 any response that was given to Granite State?
 17 A Yes, I do, because when that was discussed,
 18 we said the one thing that we wanted to make
 19 clear that this was a safety issue. It
 20 wasn't a case of trying to replace the MBR in
 21 serving Granite State.
 22 Q This is what Mr. Culliford and Mr. Fink told
 23 you they said to Granite State?

Vol. 1 - 15

1 whatever reason between the time we moved on;
 2 but from the standpoint of replacing someone,
 3 we said, no, we weren't doing that. There
 4 was a safety concern that we had, and that's
 5 why we were -- that's why we were doing what
 6 we were doing with regards to the adjustment.
 7 Q Now, in Paragraph 6, you say that, "Once
 8 Guilford became aware of the permitting
 9 restrictions on Granite State's excavating
 10 operation, Guilford did offer to provide
 11 service to Granite State until its safety
 12 concerns with MBR were fully addressed, an
 13 offer that was declined."
 14 When did Guilford become aware of the
 15 permitting restrictions on Granite State's
 16 excavating operation?
 17 A I'm not sure of the exact time. I know this
 18 was in discussion with Rob Culliford that
 19 became -- well, at least it was brought to
 20 our attention that there was some permitting
 21 restrictions on the excavating site, and I
 22 assume they were put on by the City of
 23 Wilton. Up to that time, certainly, I wasn't

Vol. 1 - 14

1 A Yeah. That was a part of our discussion, and
 2 that's the reply that was given back to the
 3 MacLellans.
 4 Q Okay. So the essence of the replies, as it
 5 was reported to you, is that Guilford did not
 6 want to serve Granite State directly?
 7 A Our reply was that we were -- The reason and
 8 the purpose of this was a safety situation.
 9 The MacLellans, as I understand it, had asked
 10 us to see if they would serve them directly.
 11 Now, as we noted here, the fact is we
 12 had to address a safety concern. That was
 13 the purpose of doing what we were doing, and
 14 we wanted to make it clear that we were not
 15 trying to replace the MBR as far as the
 16 serving carrier knowing that that's the
 17 operation that they had.
 18 Q Okay. So to the extent that Granite State
 19 asked you to provide service, you said, no,
 20 you wouldn't provide service?
 21 A We said, no, we would not provide service at
 22 the time. Where we would provide service, if
 23 they needed us, if there was a window for

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1 aware of any restrictions.
 2 Q So any knowledge on your part was imparted by
 3 Mr. Rob Culliford?
 4 A That's what I understand, and that's exactly
 5 where we moved forward.
 6 Q And the time that you became aware of this
 7 was when, as best you can recall?
 8 A In the June, July time frame.
 9 Q Of 2003?
 10 A That's correct.
 11 Q You never had any discussions with Mr. Fink
 12 or others at Guilford in which they indicated
 13 that Granite State had restrictions on its
 14 operations at Wilton?
 15 A No.
 16 Q After you became aware of the restrictions,
 17 did you have any conversations with Mr. Fink
 18 or others at Guilford in which they indicated
 19 that they had been aware of the restrictions
 20 prior to that time?
 21 A No, I did not.
 22 Q Now, when you say that Guilford did offer to
 23 provide service, who made that offer?

Vol. 1 - 17

1 A That was offered by Rob Culliford to the best
2 of my knowledge.
3 Q Okay. When was that offer made, do you know?
4 A I can't give you the exact time. It was all
5 within the same time frame of what was taking
6 place here.
7 Q Did he tell you who he made the offer to?
8 A I know it was to MacLellan.
9 Q Which MacLellan?
10 A I assume it was John MacLellan.
11 Q Directly?
12 A Yes.
13 Q And did Mr. Culliford tell you what John
14 MacLellan's response was?
15 A I believe the response that came back was
16 that, basically, they were going to carry
17 this forward in connection with the Surface
18 Transportation Board and that, apparently,
19 that was not their interest.
20 Q And this is, again, based on a report from
21 Rob Culliford?
22 A That's correct.
23 Q Was there any explanation as to why Granite

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1 A I do.
2 Q Now, you refer to it as a new operating
3 window. Was there an operating window prior
4 to that time?
5 A The original operating window went back to
6 the time frame from 12:00 to 8:00 a.m.
7 Q And when was that in place?
8 A That, basically, was in place back in -- I
9 want to say after the occurrence of the
10 derail event, somewhere in June, late June.
11 Q Now, how would a change from 12:00 a.m. to
12 8:00 a.m. to 4:00 a.m. to 1:00 p.m. further
13 facilitate service to Granite State?
14 A From the standpoint that, apparently, Granite
15 State had brought to our attention that they
16 were operating only between 6:30 a.m. and
17 6:30 p.m., I assume, due to the restrictions
18 at Wilton. Therefore, we thought the --
19 allowing the time between 4:00 a.m. to 1:00
20 p.m. would give them the time frame in which
21 to operate.
22 Q Now, were you involved in the decision to
23 limit their operations from 12:00 a.m. to

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1 State apparently declined your offer to
2 provide service when earlier you say that
3 they had asked you to provide service?
4 A I do not know.
5 Q Did you ask that question of anybody?
6 A The only thing that -- I did not, no. I'm
7 just assuming that when it came back was the
8 fact that they rejected it. They did not
9 want to move forward with us servicing their
10 facility. I think the fact is they were
11 going to move forward with whatever avenue
12 that was open to them.
13 Q Did Mr. Culliford tell you when his
14 conversation with John MacLellan occurred in
15 which Guilford was offering to provide
16 service?
17 A I can't tell you the exact date, no.
18 Q Now, in Paragraph 7, you say that, "To
19 further facilitate service to Granite State,
20 on July 11, 2003 Guilford informed counsel
21 for MBR that a new operating window--from
22 4 a.m. to 1 p.m.--would be implemented." Do
23 you see that?

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1 8:00 a.m.?
2 A Yes, I was.
3 Q And you say that occurred in June of 2003?
4 A Yes, that's correct.
5 Q Okay. Who else, if anyone, was involved in
6 the decision to restrict those operations?
7 A Rob Culliford and Syd Culliford, the Vice
8 President of Transportation.
9 Q No one else?
10 A No.
11 Q Did you talk to Mr. Fink about it?
12 A I let him know what was happening.
13 Q You let him know that you had decided -- Did
14 you make the ultimate decision?
15 A I did.
16 Q Was it a recommendation from somebody?
17 A Basically, it was a consensus between Rob
18 Culliford, Sydney and myself.
19 Q Okay. And you reached that consensus, and
20 then did you call Dave Fink to talk about it?
21 A What we had done, no, basically, I had
22 already told him to move in the field because
23 this had occurred, and we would -- I was

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1 looking for some way to make sure that there
 2 was an absolute block with regards to the
 3 railroad between MBR and ourselves so that we
 4 would not have two railroads on the property
 5 at the same time on. The only way we could
 6 assure ourselves of the absolute block was to
 7 put a time frame in which one railroad would
 8 operate and, at that time, we would not be on
 9 the railroad.

10 Q Okay. But the question was: When you
 11 decided to impose the 12:00 a.m. to 8:00 a.m.
 12 window, did you then call Mr. Fink and talk
 13 to him about it?

14 A I mentioned to him what it was going to be,
 15 yes.

16 Q And what was his response?

17 A Basically, he had little or no response.
 18 "That's fine." That's my decision to make.

19 Q So you didn't ask him for permission, and he
 20 didn't direct you, is that what you're
 21 saying?

22 A That's correct.

23 Q Did he think it was a good idea?

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1 would you have imposed the same restrictions
 2 on the MBR operations?

3 A I think we would have sat down and looked to
 4 see if we could make some accommodations
 5 which we eventually did. In fact, when it
 6 came to our attention that they had
 7 difficulties because of this Wilton
 8 restriction, that they could not get in the
 9 turns that they thought was necessary, I
 10 thought by modifying and making accommodation
 11 to operate then between 4:00 a.m. and 1:00
 12 p.m. would be a modification that would
 13 accommodate their needs.

14 Q Okay. Were you aware that Milford-Bennington
 15 didn't operate, generally, between the hours
 16 of midnight and 8:00 a.m.?

17 A No. No, I was not.

18 Q You had no idea when they operated?

19 A I will say this: I assume that they were
 20 operating mainly during the day.

21 Q Okay. Was that -- Were their hours of
 22 operation something you discussed with Mr.
 23 Culliford or anybody else?

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1 A He thought it was definitely a good idea to
 2 have an absolute block, safetywise.

3 Q At that time, that Granite
 4 State was concerned about its operations at
 5 Wilton, were you aware of
 6 the fact that the Town of Ayer, Vermont, would you have
 7 been aware of the fact that the Town of Ayer, Vermont, would you have
 8 been aware of the fact that the Town of Ayer, Vermont, would you have
 9 been aware of the fact that the Town of Ayer, Vermont, would you have
 10 been aware of the fact that the Town of Ayer, Vermont, would you have
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 21 been aware of the fact that the Town of Ayer, Vermont, would you have
 22 been aware of the fact that the Town of Ayer, Vermont, would you have
 23 been aware of the fact that the Town of Ayer, Vermont, would you have

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1 A Prior to that time, not really. My concern
 2 was to find a block time that would allow
 3 them hours to operate on the railroad and to
 4 be absolutely separate from ourselves.

5 Q Okay. But you understood, I take it, that
 6 that would be a difficult time for them to be
 7 operating, didn't you?

8 MR. CULLIFORD: Objection. Can you
 9 rephrase that? You're asking him sort of a
 10 subjective -- I don't understand what you're
 11 asking him.

12 MR. HOWARD: Well, I'll ask it again.

13 Q When you decided on a 12:00 a.m. to 8:00 a.m.
 14 window, you understood, did you not, that
 15 that would make it difficult for
 16 Milford-Bennington to operate?

17 A No. I don't think so. I don't think so.

18 Q Did you care, at that time, whether it would
 19 be difficult for them to operate?

20 A I think my major concern was the safety. My
 21 major concern was safety, and the safety
 22 situation I was looking for is to make sure
 23 that the absolute block existed. The fact

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1 that the time between 12:00 and 8:00 was a
 2 blocked time for them; and beyond that
 3 allowed us access to our railroad whether it
 4 was for operations or whether it was for
 5 inspection and maintenance, allowed us the
 6 necessary time.
 7 Q Are you familiar with the Guilford operations
 8 on the Hillsboro branch between Milepost 13
 9 and the end of the line?
 10 A I believe so.
 11 Q In June of this year, what, generally, were
 12 those operations?
 13 A From a standpoint of servicing which
 14 customers?
 15 Q Well, let's start with the customers between
 16 13 and the end of the line, how many Guilford
 17 customers are there?
 18 A Well, if I back up to the customers between
 19 Milepost 13 and 16 and taking a look at those
 20 customers alone, there's Suburban Propane;
 21 there's Hendricks Wire & Cable.
 22 Q And how many --
 23 A And then we have, of course, beyond that

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1 Quinn's Quarry?
 2 A Quinn's.
 3 Q To go to Quinn's, you operated at night, is
 4 that correct?
 5 A We had operated at some time during the
 6 evenings. Yes, there were some times we
 7 operated at night simply to make sure that we
 8 had the necessary ballasts for the Nepra job.
 9 Q Well, you operated at night, I take it, so
 10 that you wouldn't be in the same -- in the
 11 way of the Milford-Bennington operations
 12 during the daylight hours, right?
 13 A I don't believe that was the choice. The
 14 choice happened to fall on us at the time to
 15 make that type of operation for the move;
 16 and, obviously, if it fell in the slot that
 17 accommodated both carriers, then I would see
 18 where there would be no problem, and that's
 19 probably the way it was accommodated.
 20 Q Okay. So as --
 21 A I say that because I'm not, every day,
 22 looking at what the operations are with
 23 regards to that particular line.

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1 Quinn's Quarry.
 2 Q And that's the location that's on
 3 Milford-Bennington that you serve with
 4 trackage rights?
 5 A That's correct.
 6 Q How many trains a week, generally, were being
 7 sent to provide service to Hendricks or
 8 Suburban Propane?
 9 A One to two trains per week.
 10 Q And what time of the day would those trains
 11 generally operate, do you know?
 12 A Well, they normally operate during the
 13 daylight hours. Although when we were moving
 14 stone out of Quinn's Quarry for the Nepra
 15 Project, we had started different hours in
 16 order to service that particular account.
 17 Q Different hours being what hours?
 18 A Well, we started later in order to try and
 19 make sure that we cleared for both lines and
 20 also to make sure that we got the empties and
 21 the loads out simply because it was quite a
 22 movement.
 23 Q So, in other words, just to go to -- Is it

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1 Q So, as far as you know, were the operations
 2 on that line conducted in an efficient and
 3 safe manner when you had both Guilford trains
 4 and Milford-Bennington trains there?
 5 A Obviously, from a standpoint that when we
 6 operated up there, everything occurred, and
 7 there was no incident that I'm aware of.
 8 Q Now, when the decision was made to go to a
 9 new operating window from 4:00 a.m. to 1:00
 10 p.m., who made that decision?
 11 A I made that decision in connection with
 12 consensus with Rob Culliford and Syd
 13 Culliford, Vice President of Transportation.
 14 Q Did you talk to anybody else about that
 15 before the decision was made?
 16 A No, I did not.
 17 Q Did everybody agree that that was the
 18 appropriate new operating window?
 19 A Yes. Yeah. Yes, they did.
 20 Q Did you talk to Mr. Fink before that decision
 21 was made?
 22 A No, I don't recall talking to Mr. Fink before
 23 that decision.

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1 Q Did you talk to him afterwards?
 2 A Yes, I did.
 3 Q What did he say?
 4 A He just said, "Keep me advised."
 5 Q And, at that time, he didn't tell you about
 6 the restrictions at the Granite State Quarry
 7 in Wilton?
 8 A No. Mr. Fink never did mention to me about
 9 any restrictions at the quarry at Wilton.
 10 Q When the new operating window, 4:00 a.m. to
 11 1:00 p.m., was put into effect, you were then
 12 aware, I take it, of the restrictions on
 13 Granite State at Wilton, correct?
 14 A Yes.
 15 Q And you were aware, I take it, that they
 16 could operate only Monday through Friday from
 17 6:30 a.m. to 6:30 p.m.?
 18 A You know, I'm not sure of that because my
 19 understanding is, at least in talking to past
 20 operating people, that for some reason, they
 21 have operated on a weekend. I don't know if
 22 it's something special.
 23 Q Well, do you have an understanding of what

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1 A I would think, though, that Milford-Bennington
 2 would have been advised of the accommodating
 3 window change, though, at the time we did it.
 4 Q Now, my question is: Did you consult with
 5 them to find out whether 4:00 a.m. to 1:00
 6 p.m. was adequate for their purposes?
 7 A I did not.
 8 Q And you don't know anybody else at Guilford
 9 who did, right?
 10 A I'm not aware of them.
 11 Q So, basically, you made a judgment as to what
 12 you thought would be satisfactory to
 13 Milford-Bennington, right?
 14 A I made a judgment based on the fact that, in
 15 my belief, that if they had to operate
 16 between a certain window that this
 17 accommodation would allow them to do that;
 18 and, at the same time, it would put into
 19 effect what we need, and that is the absolute
 20 block on time of keeping this railroad
 21 separated.
 22 Q In Paragraph 8, Mr. Steiniger, you say, "For
 23 a number of years Guilford had been operating

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1 the restrictions are at Wilton?
 2 A The only understanding I had is my
 3 understanding is from 6:30 to a.m. to 6:30
 4 p.m. That's the knowledge I have that's come
 5 through my people.
 6 Q Okay. And how did you think that 4:00 a.m.
 7 to 1:00 p.m. would permit Milford-Bennington
 8 to provide the service that it wanted to
 9 provide to Granite State?
 10 A Because I believe that -- and I mentioned
 11 this before with preloading their train and
 12 moving it forward so that they're in position
 13 for the first run. I thought the timing from
 14 4:00 a.m. to 1:00 p.m. would probably
 15 accommodate their needs.
 16 Q Did you consult with anybody for
 17 Milford-Bennington before you made that
 18 conclusion?
 19 A I did not, no.
 20 Q Did anybody at your direction consult with
 21 Milford-Bennington?
 22 A Not to the best of my knowledge.
 23 Q So it was basically --

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1 under the impression that the operations of
 2 the MBR were being conducted safely and
 3 responsibly."
 4 Now, do you have any basis to believe
 5 to the contrary?
 6 A I do.
 7 Q And what would that be?
 8 A That basis would be going back to the
 9 incident with regards to the derail and the
 10 fact that the MBR did not live up to the
 11 rules and regulations regarding the derail.
 12 Q This is the June 19th conversation?
 13 A That's correct.
 14 Q Okay. Other than that, is there anything
 15 that would give you any reason to believe
 16 that Milford-Bennington was not operating
 17 safely and responsibly?
 18 A Yes. I believe the track record that the MBR
 19 has with regards to, at least the publications
 20 I've read and the notoriety they've received,
 21 I believe that brings to bear some light as
 22 to whether they were operating safely and
 23 responsibly.

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1 Q What are you referring to?
 2 A Well, I'm referring to, for instance, the
 3 situation they had moving up to Lyndeborough
 4 with the Wilton Scenic, and the Chairman of
 5 the Conservation Commission and their
 6 involvement which I read in the paper that
 7 they, obviously, had difficulties with
 8 regards to the way they brush-cut,
 9 difficulties with regards to possible
 10 contamination of wetlands. I think some of
 11 the things that they were involved with,
 12 according to the press that I read, would
 13 lead one to believe that they're not
 14 operating safely and responsibly.
 15 Q So, is there any other press report or any
 16 other knowledge that you have that would lead
 17 you to that conclusion?
 18 A Well, I think that, and I think the fact is
 19 that going back over a number of years ago,
 20 they had an incident with regard to the small
 21 mechanical carts operating on your railroad.
 22 I think things like that in which you have a
 23 situation that you allow people to come on

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1 your railroad, that gives me a lot of angst;
 2 it certainly does.
 3 Q Now, the incident or the event, whatever it
 4 is that you're referring to about brush
 5 cutting and that sort of thing, when did that
 6 occur?
 7 A As I recall, the article is back in July in
 8 the Union Leader. I don't know the exact
 9 date.
 10 Q July of what year, 2003?
 11 A 2003.
 12 Q Okay. And do you know anything about that
 13 other than what you read in the paper?
 14 A Basically, what I read in the paper.
 15 Q Basically or entirely?
 16 A Entirely.
 17 Q Okay. And these carts that you're talking
 18 about, what's your basis of information
 19 there?
 20 A That is also back in the press going back
 21 sometime ago.
 22 Q So, in July of this year, you had formed --
 23 is it fair to say you had formed an opinion

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1 that Milford-Bennington was not conducting
 2 its operations safely and responsibly?
 3 A I think that -- I think if I go back to what
 4 instigated this occurrence is back to the
 5 fact that our Vice President of Operations
 6 was on the railroad and, obviously, observed
 7 where the derail was not being utilized
 8 properly. I think, without question, that
 9 gave us a lot of concern. It gave me a lot
 10 of concern.
 11 Q Well, I'm trying to find out the basis for
 12 your statement in Paragraph 8 and where you
 13 say that Guilford was under the impression
 14 that Milford-Bennington was operating safely
 15 and responsibly, and you're telling me that
 16 an event on June 19th of 2003 changed your
 17 view?
 18 A I think the fact is that, as I mentioned to
 19 you earlier, there was incidents with regards
 20 to whether it's the gas cart incident, the
 21 situation with regards to the derail incident
 22 back in June is the one that concerned me
 23 most of all because the fact that Peter did

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1 not want to abide by the regulations of the
 2 derail and flagrantly would violate that
 3 would indicate to me that if he's willing to
 4 do that, what other unsafe acts would we have
 5 to confront with Peter.
 6 Q Okay.
 7 A All right. That's a --
 8 Q Other than newspaper reports, you don't have
 9 any specific instances of alleged unsafe acts
 10 that occurred prior to June 19th, 2003,
 11 correct?
 12 A No. Up until that period of time, I thought,
 13 reasonably, he was operating under normal
 14 rules and procedures.
 15 Q Now, in Paragraph 9, you say that, "It was
 16 not until the MBR and Mr. Draper approached
 17 Guilford with a proposal to operate passenger
 18 service that Guilford began to look closely
 19 at the operation of the MBR, --." Do you see
 20 that?
 21 A That's correct.
 22 Q When did Guilford begin to look closely at
 23 the operation of MBR?

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1 A I would say from a standpoint that I received
2 a letter from Mr. Draper proposing the scenic
3 passenger business. I think when that
4 occurred, we looked at the fact that mixing
5 passengers with freight, especially two
6 freight railroads, just added to a possible
7 problem with regards to safety; and with that
8 concern, we took a look and said, "Let's go
9 up and take a look at this."

10 I sat with our Vice President of
11 Operation, Syd Culliford, to discuss this;
12 and, certainly, one of the things that came
13 out of this is when you're not only mixing
14 passenger and freight, but you're talking
15 about an area that has a severe grade.
16 That's when we took the action with regards
17 to putting a derail up there on the MBR in
18 order to help facilitate what we feel is at
19 least a partial fail-safe stop.

20 Q Okay. Let's put this in context in terms of
21 time.

22 You were approached by Mr. Draper, I
23 take it, sometime in 2002?

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1 somewhat on Guilford and, therefore,
2 apparently between Colin Pease and Mr.
3 Draper, they decided to not come down on
4 Guilford, yes.

5 Q So you understood, at some point, that the
6 passenger operations would not be on
7 Guilford, correct?

8 A That's correct.

9 Q Okay. Now, when did Guilford begin to look
10 closely at the operations of
11 Milford-Bennington?

12 A When we go back to the time that we
13 approached the situation where there was
14 going to be, and I'm just talking about the
15 scenic railroad being in effect even on the
16 MBR property back in, I guess then it was in
17 December of 2002, and I sent the Vice
18 President of Transportation up there to take
19 a look, let's see what we're going to do, and
20 the fact was that that's when we decided to
21 place a derail on the MBR in which Colin
22 Pease was advised and said he was in favor of
23 it as well as Peter Leishman.

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1 A That's correct.

2 Q Okay. And, at some point, did it not become
3 clear that Mr. Draper's passenger service
4 would not be operating on Guilford but rather
5 only on Milford-Bennington?

6 A It wasn't at the time that I received the
7 letter. In fact, I received the letter from
8 Mr. Fink. The letter actually went to Mr.
9 Fink, and he had given it to me since it was
10 my responsibility.

11 Q Okay. And at some point, was it not clear
12 that Milford-Bennington -- excuse me -- that
13 the Wilton scenic passenger operation would
14 not be operating on Guilford?

15 A Yeah, at some time subsequent to that.

16 Q Okay. When did that happen?

17 A Again, just going through the events, it
18 wasn't made known until later from Mr. Pease
19 to Mr. Rob Culliford that they decided that
20 they were not going to come down on Guilford.

21 Prior to that, the nature of the
22 letter and so forth was to the extent that
23 they were going to -- they wanted to operate

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1 So, to the best of my knowledge,
2 that's how that particular incident took
3 place; and, of course, the derail was there
4 in order to put in a fail-safe operation
5 whether it's for the passenger operation or
6 any of the stone cars rolling loose.

7 Q Let me try again. What did Guilford do, if
8 anything, to look closely at the operations
9 of Milford-Bennington given the approach by
10 Mr. Draper to run passenger trains?

11 A As I said, we looked at this particular
12 operation in December.

13 Q What did you look at?

14 A The Vice President of Operation had already
15 taken a look at this particular situation
16 and, in December, decided that the best place
17 to put the derail would be in a location on
18 the MBR in order to make sure that there's a
19 fail-safe stop in case we got equipment,
20 whether it's passenger cars or whether it's
21 hopper cars rolling loose from the MBR.

22 Q Okay. So the steps that you took were to
23 decide to put a derail device on the line, is

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1 that --
 2 A That's correct.
 3 Q Did you take any other steps to look closely
 4 at the operations of Milford-Bennington?
 5 A Such as?
 6 Q I'm just trying to understand what your
 7 testimony is here in Paragraph 9.
 8 A I think the fact of taking a look at putting
 9 in the derail, the fact that there's a
 10 bulletin that was issued for the derail, the
 11 fact that we felt that that derail would
 12 protect us, the fact that our people have
 13 always been advised what's taken place
 14 through our operating Vice President. I
 15 think those were proper steps.
 16 Q Okay. And other than installing the derail,
 17 was there anything else that Guilford did
 18 prior to June 19th, 2003?
 19 A If I understand, -- I'm trying to understand
 20 your question. I'm thinking is there
 21 something in light of which -- maybe I'm
 22 missing your question.
 23 Q Is there any -- You told me, I think, that in

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1 correct?
 2 A At some point, yes.
 3 Q Okay. Now, isn't it -- Isn't it correct that
 4 Guilford, as a general matter, does not want
 5 passenger operations on its lines if
 6 possible?
 7 A No, I don't think that's correct at all.
 8 Q What is the Guilford policy with respect to
 9 passenger operations on its line?
 10 A I think the fact is that there's areas in
 11 which we operate, as you know, today, a
 12 passenger operation called the Downeaster
 13 between Portland and Plaistow. We look at
 14 the fact that when you mix passenger with
 15 freight, you bring into a situation
 16 altogether new formula with regards to
 17 safety. It's a situation in which we look at
 18 the safety operation between freight and
 19 passenger that would be something that you
 20 might say you've raised to a new level. At
 21 any time that you're operating passengers,
 22 there's always another level added on top of
 23 the freight safety situation without

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1 looking closely at the operations of
 2 Milford-Bennington, you decided in December
 3 of 2002 to install the derail, and I'm asking
 4 you: Were there any other steps that you
 5 took to look closely at Milford-Bennington
 6 between December of 2002 and June of 2003?
 7 A I think that, quite frankly, prior to that
 8 time, as I mentioned, we looked at the MBR
 9 that we thought reasonably was operating
 10 their railroad; and when this particular
 11 situation -- really, where the focus came on
 12 in looking at the MBR was the -- when they
 13 had indicated an interest, Draper had, of
 14 putting in the passenger rail up there.
 15 That's what led us to take a look.
 16 Q Okay. That's what I'm trying to understand.
 17 Now, in Paragraph 9, you also say
 18 that, "-- Guilford had substantial concerns
 19 with instituting scenic tours on what were
 20 previously freight-only lines."
 21 And we agree that, I think, at some
 22 point, Guilford understood that the passenger
 23 operation would not be on Guilford lines,

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1 question, altogether new parameters.
 2 Q Okay. But what is the Guilford policy, if
 3 there is one, with respect to passenger
 4 operations on its lines; do you welcome
 5 those; do you discourage those; are you
 6 neutral?
 7 A I think -- I think, without question, you
 8 have to look at every case, and you have --
 9 and you're going to have to weigh every case.
 10 Why do I say that is simply because we've
 11 looked at other passenger operations on our
 12 line, especially in the past looking at
 13 possibly running from Manchester to Lowell.
 14 We've looked at operations in which they've
 15 been suggested.
 16 Q Now, you're not suggesting a minute ago, were
 17 you, that Guilford welcomed Amtrak on the
 18 line between Portland and Plaistow, right?
 19 A I've just indicated -- I think I answered
 20 your question. You said, "What do we do?"
 21 We operate with passengers on the line; but
 22 when we do so, we recognize the fact that
 23 operating at any time with passengers and

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1 freight combined, you bring in a set of
 2 safety parameters that have to be considered
 3 quite differently, and it's very difficult.
 4 Q Now, other than the Amtrak service that you
 5 just mentioned and to the extent that there
 6 may be MBTA trains that run on Guilford
 7 lines, are there any other passenger
 8 operations on the Guilford System?
 9 A The only other one that they operate in which
 10 we operated were trackage rights and where we
 11 would be in connection with would be on the
 12 Connecticut river line.
 13 Q And that's a line that you don't own,
 14 correct?
 15 A That's correct.
 16 Q And you don't have any ability to restrict
 17 passenger operations because you don't own
 18 it, correct?
 19 A No, but that's not the nature of my answer.
 20 Q Okay. I'm just trying to follow up. If you
 21 could -- Well, it's not your decision as to
 22 whether passenger trains operate on the
 23 Connecticut river line, right?

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1 A No, that's correct.
 2 Q So there are no other -- there are no
 3 passenger operations on Guilford other than
 4 Amtrak and the MBTA, is that right?
 5 A That's correct.
 6 Q Were you aware, Mr. Steiniger, that Mr.
 7 Draper requested the ability to store
 8 passenger equipment on Guilford track in the
 9 Wilton Yard, and he wasn't requesting the
 10 ability to operate over Guilford's lines
 11 other than to store his cars there?
 12 A My understanding was that was part of it,
 13 that's correct.
 14 Q Okay. But did you understand also that he
 15 wasn't asking to run trains beyond Wilton
 16 Yard?
 17 A You meaning, initially?
 18 Q Any time?
 19 A See, I'm not sure of that. The letter that
 20 he instituted and sent to Mr. Fink and
 21 forwarded it to me for my handling had
 22 indicated that he was very much involved in
 23 looking at establishing this Wilton Scenic

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1 Railroad and would probably look in the
 2 future, and I assume the future with regards
 3 to how the operations could be fairly opened.
 4 Q Okay. But, as of last year when the subject
 5 came up, all he was asking for was the
 6 ability to store cars on the track in Wilton
 7 Yard, correct?
 8 A That's correct.
 9 Q Okay. Now, Paragraph 10 of your statement
 10 indicates that, "Mr. Pease also contacted
 11 Guilford with a request to participate in
 12 development of an operating plan that would
 13 encompass the operations of Guilford, the MBR
 14 and the passenger service on the MBR's lines,
 15 a proposal that seemed reasonable to Guilford
 16 at the time."
 17 When was this contact by Mr. Pease?
 18 A This was in the spring of 2003.
 19 Q Okay. And did he contact you?
 20 A No, he did not. He contacted Mr. Rob
 21 Culliford.
 22 Q Did you ever talk to Mr. Pease about this?
 23 A No, I did not.

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1 Q Okay. So what you know about this is based
 2 on what Rob Culliford told you?
 3 A That's correct.
 4 Q Now, isn't it correct that, at some point in
 5 the spring 2003, Guilford had -- Guilford
 6 decided that it wasn't necessary to have an
 7 operating plan because you didn't have any
 8 immediate plans to operate on the
 9 Milford-Bennington line?
 10 A As I understood the conversation between Mr.
 11 Pease and Mr. Culliford was that we, too,
 12 thought that was a reasonable request on the
 13 part of Mr. Pease to look at the development
 14 of an operating plan, but the immediate use
 15 of that particular quarry and bringing that
 16 stone wasn't right there in the necessary
 17 future. I think perhaps from that standpoint
 18 going through with a plan of that nature,
 19 whether it made any difference or not
 20 depended upon whether we were going to
 21 operate from the quarry.
 22 Q And in June of 2003, you had made the
 23 decision that it was your view, I take it,

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1 that Guilford trains would not be going to
 2 the quarry in the foreseeable future,
 3 correct?
 4 A For the time being, yes. Why I say that is
 5 because, at any given time, there could be
 6 orders coming up since the relationship
 7 between the ownership of Quinn's has changed
 8 to a new owner, could be -- could be
 9 differences especially in regards to any
 10 request on demand, for instance, of a ballast
 11 move.
 12 Q Okay. But in June of 2003, I take it that
 13 there was no prospect of immediate --
 14 A Immediate prospect.
 15 Q And one of the reasons being that Guilford
 16 hadn't paid the bills for the ballast, is
 17 that correct?
 18 A I don't -- I don't know, as far as paying the
 19 bills for the ballast, that that had anything
 20 to do with regards to making a request for
 21 additional ballast moves out of that quarry.
 22 Q Okay. Well, whatever the reason, there was
 23 no need, in June of 2003, for any kind of

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1 to install the derail?
 2 A That's correct.
 3 Q Were you also involved in the issuance of
 4 this bulletin?
 5 A Well the issuance of the bulletin would be
 6 handled by the Vice President of
 7 Transportation and the people that work for
 8 him.
 9 Q Okay. So you don't get involved in the
 10 issuance of those?
 11 A No, I do not.
 12 Q Okay. Now, do you recall why the derail was
 13 placed on the Milford-Bennington line as
 14 opposed to the Guilford line?
 15 A The reason for that is that it would allow
 16 another derail, obviously, placed which we
 17 felt in an area that would be -- and under
 18 the advice of our Vice President of
 19 Transportation and Engineering that that area
 20 that would be the best area for a fail-safe
 21 operation especially regarding the grades.
 22 Q So are you familiar with the physical layout
 23 at the point in Wilton where the Guilford

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1 operating plan to coordinate Guilford trains,
 2 Milford-Bennington trains and Wilton Scenic
 3 trains on that line, right?
 4 A For that particular time.
 5 Q Okay.
 6 MR. HOWARD: Let's go off the record
 7 for a second, please.
 8 (Whereupon an off-the-record
 9 discussion took place.)
 10 Q Mr. Steiniger, I'm handing you a document
 11 that has been marked Exhibit Towle No. 1, and
 12 it was used last week with Mr. Towle's
 13 deposition. It's a supplemental bulletin
 14 order. Are you familiar with that?
 15 (Indicating)
 16 A Yes, I am.
 17 Q Okay. And this, I take it, is the bulletin
 18 that was issued at about the time that the
 19 derail was placed on the Milford-Bennington
 20 line in December of 2002?
 21 A That's correct.
 22 Q Okay. Now, were you involved in the decision
 23 to -- I think you said it was your decision

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1 line meets the Milford-Bennington?
 2 A I have seen this.
 3 Q Okay. Am I correct that there's a street
 4 that basically divides the ownership of the
 5 two lines?
 6 A That's correct.
 7 Q Okay. And where does -- Do you know which
 8 side of the street the ownership divides?
 9 A I'm trying to recall. I can't recall at this
 10 time.
 11 Q Okay. But it's just a -- It's a two-lane
 12 street that divides the properties,
 13 basically, correct?
 14 A That's correct.
 15 Q And why was the derail on the
 16 Milford-Bennington side better than putting
 17 it on the Guilford side?
 18 A I believe the fact is by putting it on the
 19 Milford-Bennington side, we said that this
 20 would also take care of catching any of the
 21 passenger equipment as well as any of the
 22 hopper cars coming down, and it was a double
 23 way of -- it was a way of making the

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1 fail-safe situation by putting it ahead on
2 the MBR.
3 In view of the fact that the MBR was
4 hosting the Wilton Scenic and in view of the
5 fact that that situation availed itself, I
6 thought it was a proper place as well to put
7 the derail device.
8 Q Okay. But it could have been put on the
9 Guilford line across the road, and would it
10 have made any difference in terms of safety
11 or its use?
12 A I think from the standpoint of the fact that
13 the utilization was, again, being used by
14 both the Wilton Scenic and the MBR, I think
15 the fact of putting it on their side was a
16 proper positioning.
17 Q In terms of its effectiveness as a safety
18 device, would it have made any difference
19 putting it 50 feet down the line further on
20 the Guilford property?
21 A I believe it was important to place it where
22 it was at the time, and I say that because,
23 again, the fact is it's on MBR property.

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1 It's also a situation with regards where
2 you've got both the Wilton Scenic and the MBR
3 train operations involved. I believe, in
4 that case, it should be placed on that
5 property.
6 Q Okay. Well, the purpose of the derail was to
7 protect Guilford property and Guilford
8 employees, correct?
9 A It's to protect everyone.
10 Q Okay. And would the protection have been any
11 less effective if the derail had been put on
12 the Guilford property across the street?
13 A I think the fact is we have a derail on our
14 property that was somewhat more distant. The
15 fact is this was another way of ensuring the
16 safety of both their people, their operations
17 and our operations.
18 Q Well, I'm trying to get you to answer my
19 question but, apparently, you don't want to.
20 The question still is: From the effectiveness
21 in terms of safety, would it make any
22 difference if the derail was placed where it
23 was on Milford-Bennington as opposed to

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1 across the street where the existing derail
2 is located right now?
3 A I think from a standpoint of how we looked at
4 it, it was just as effective by placing it on
5 the MBR, and I told you my reasons why it was
6 placed on the MBR.
7 Q Okay. So, safetywise, the effectiveness was
8 the same whether it was on one side of the
9 road or the other, is that what you're
10 saying?
11 A Well, you know, the effectiveness of the
12 derail device is dependent upon the fact that
13 it's properly used. Obviously, you could
14 place it anywhere on the property; and if
15 it's not properly used or the fact is the
16 rules are violated, it makes no difference,
17 then you've got an unsafe situation whether
18 it's a derail device or not.
19 Q Let's assume that the rules are followed, and
20 I think you're agreeing with me, finally,
21 that in terms of the effectiveness of the
22 derail, it wouldn't have made any difference
23 which side of the road it was on, correct?

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1 A See, I guess from a standpoint of how I look
2 at it, the effectiveness is it should be on
3 their property simply because you have now
4 the institution of another service, and that
5 service now, in connection with both the
6 passenger and the freight operations, would
7 indicate that the derail should be properly
8 placed on their own property. I think that's
9 where it stands.
10 Q Well, properly -- I understand what you're
11 saying. The question is: The effectiveness
12 as a safety device, is there any difference
13 between the safety that would be brought by
14 the proper use of a derail on the
15 Milford-Bennington side of the road versus
16 the Guilford side of the road?
17 A I think the fact knowing that we have a
18 derail device on our side of the property to
19 begin with and the installation of this
20 derail device on the MBR, I think, ensures
21 that much more safety if they're properly
22 used.
23 Q The bulletin in front of you indicates

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1 clearly that the derail is on the
2 Milford-Bennington line, and this was issued,
3 I take it, to Guilford employees, correct?
4 A It was issued to Guilford employees, that's
5 correct. And, also, my understanding is it's
6 also issued that MBR is aware of it as well.
7 Q Okay. Now, is it --
8 A Can you excuse me for a minute?
9 (Break takes place at 10:52 a.m.)
10 (Back on the record at 10:56 a.m.)
11 MR. HOWARD: Is there a question
12 pending?
13 (Whereupon the Stenographer read back
14 the last question and answer.)
15 Q Now, is it your view that this bulletin that
16 we're looking at is a valid order for
17 Milford-Bennington trains?
18 A That's correct.
19 Q Even though it's issued by Guilford and it
20 applies to a derail on Milford-Bennington
21 property?
22 A It applies for both carriers operating
23 through that territory.

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1 Q Now, suppose Milford-Bennington issued a
2 bulletin that said that any Guilford trains
3 going to the quarry on your trackage rights
4 had to stop at Milepost 14 and get further
5 instructions, would that bulletin be
6 something that Guilford would have to abide
7 by?
8 A I assume it would be.
9 Q Okay. If Milford-Bennington issues bulletins
10 of that nature, can we expect then that
11 Guilford will abide by those?
12 A I would say from a standpoint, and I'm not
13 the operating person, but I would assume if
14 they're going to issue bulletins, obviously,
15 those are bulletins for the safety of the
16 operation, and we would abide by them just
17 like they would abide by ours.
18 Q Okay. We talked a little bit about the
19 operating window and the times that were set
20 for Milford-Bennington operations. Do you
21 know, Mr. Steiniger, are there any other
22 situations in the Guilford System where
23 operations are separated that way?

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1 A From a standpoint of the windows themselves?
2 Q Well, the windows, I take it, as you
3 described it, as I understand it, is an
4 absolute block so that during the given
5 hours, only Milford-Bennington can be on the
6 track, and Guilford won't be on the track,
7 correct?
8 A That's correct.
9 Q And that's the norm around the system,
10 though, is it?
11 A No, it isn't.
12 Q The norm is that trains of different
13 railroads, generally, can operate at the same
14 time subject to dispatching orders, correct?
15 A That's correct. And, as you know, that
16 action was taken simply because of violating
17 the derail regulations and looking upon this
18 as a very unsafe operation.
19 Q Okay. So this is the only situation on the
20 Guilford System where there's such an
21 absolute block operating window device,
22 right?
23 A It's the only place that we ran into an

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1 operation that we felt got into an unsafe
2 situation that we felt that we needed to
3 protect everyone.
4 Q It's the only instance on the system,
5 correct?
6 A It's the only one that I'm aware of.
7 Q Okay. Do you recall, during the course of
8 this case, Milford-Bennington suggesting that
9 to the extent that the parties disagreed over
10 safety practices and that sort of thing that
11 the Federal Railroad Administration be asked
12 to review the situation and provide some
13 guidance?
14 A That was suggested at the mediation.
15 Q Well, do you recall that --
16 A I recall a comment being made at the
17 mediation. Is that what you're referring to?
18 Q No. I'm just asking you if you recall
19 earlier in this case whether
20 Milford-Bennington made that suggestion?
21 A I recall the request being made at the
22 mediation meeting we had last week.
23 Q And you weren't aware of that prior to that

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1 time?
 2 A It doesn't register with me.
 3 Q Okay. Well, do you have any views as to
 4 whether or not it would be appropriate for
 5 the FRA to review the situation and provide
 6 guidance?
 7 A Yeah. I think I expressed those views before
 8 at the mediation meeting. I just didn't
 9 think that was necessary.
 10 Q Why is that?
 11 A Because I feel from a standpoint that the
 12 ownership of the railroad -- that reviewing
 13 any of the safety standards in that we
 14 already lived with under the FRA regulations,
 15 we're more than willing and able to control
 16 our own operation, especially with somebody
 17 operating over our own line.
 18 Q Well, you would agree, I take it, that there
 19 is a disagreement between the parties as to
 20 whether there is a need for the derail,
 21 whether the operating window is appropriate
 22 as a safety issue; wouldn't you agree that
 23 there is a dispute?

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1 A Yeah, obviously.
 2 Q Okay. And don't you think that that
 3 dispute -- that some light might be shed on
 4 that dispute and how to resolve it by asking
 5 the FRA to get involved?
 6 A No, I don't think so.
 7 Q And why is that?
 8 A I just don't think it's the proper body. I
 9 don't see any reason why the FRA would be
 10 involved in this particular type of dispute.
 11 Q Well, they certainly have expertise with
 12 respect to railroad safety, correct?
 13 A That's their area of administration, yes.
 14 Q And you're saying that this is a safety
 15 issue, correct?
 16 A That's correct.
 17 Q And why then wouldn't it be appropriate for
 18 the FRA to review this?
 19 A Because I just don't believe, in this
 20 particular instance, the FRA is the
 21 particular body that should review it.
 22 Q Why not?
 23 A Why not?

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1 Q Yes.
 2 A Because I believe that the FRA, in some
 3 instances, especially with regards to the
 4 makeup of Region 1, can be a biased body.
 5 Q You think the FRA is biased against Guilford?
 6 A I think so.
 7 Q And if it reviewed this situation, that it
 8 would come up with a biased report or
 9 recommendation?
 10 A It's possible.
 11 Q And that's the reason that the FRA shouldn't
 12 be involved here?
 13 A I believe that's correct.
 14 Q Now, you've been with Guilford for 15 years,
 15 you said, I think. Do you recall in the
 16 early 1990s when Milford-Bennington filed a
 17 feeder-line application seeking to acquire
 18 ownership of a line over which it now has
 19 trackage rights?
 20 A Very sketchily. The reason I say that is
 21 because I didn't always have direct
 22 involvement with the Milford-Bennington back
 23 then.

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1 Q Okay. Were you ever in meetings or
 2 discussions when that situation came up?
 3 A I'm not sure. I'm not sure.
 4 Q Do you have a recollection of Guilford's
 5 position with respect to Milford-Bennington's
 6 attempts to operate on the Guilford line?
 7 A Again, I really didn't -- I really didn't
 8 become that involved with the
 9 Milford-Bennington. That was handled by
 10 Colin Pease for the most part.
 11 Q Okay. But were you aware that Guilford
 12 opposed Milford-Bennington's attempt to
 13 acquire the line or to operate on the line?
 14 A I was aware, yes.
 15 Q Okay. And did you ever talk to Mr. Fink
 16 about that?
 17 A No, I did not.
 18 Q Okay. Do you have any recollections in
 19 conversations with Mr. Fink of him making
 20 comments about Mr. Leishman or
 21 Milford-Bennington?
 22 A The only comments that I recall Mr. Fink
 23 making is, on occasion, that he felt that

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1 Peter Leishman and Milford-Bennington was
2 running an unsafe operation.
3 Q And when were those comments made?
4 A Especially just since this last situation
5 with regards to the derail event.
6 Q Okay. But there were some comments to that
7 effect prior to that time?
8 A I think from a standpoint of the publication
9 of the gas cart event.
10 Q When was that, do you recall?
11 A A number of years ago.
12 Q So Mr. Fink indicated that he thought Mr.
13 Leishman was running an unsafe operation?
14 A Yes.
15 Q Did he say anything more specifically?
16 A No. "It's possible if he keeps running that
17 particular operation unsafe, we're going to
18 get somebody killed."
19 Q That's what Mr. Fink said?
20 A That's correct.
21 Q Did he say anything about Mr. Leishman,
22 personally?
23 A Not that I'm aware of.

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1 correct?
2 A That's correct.
3 Q Okay. And who made that decision?
4 A I made that decision in connection with
5 sitting together with Rob Culliford and Syd
6 Culliford.
7 Q Anybody else?
8 A No.
9 Q Did you -- You didn't review that with Mr.
10 Fink before that decision was made?
11 A No, I did not.
12 Q Did you tell him about it after?
13 A Yes, I did.
14 Q What was his reaction?
15 A "It's your call."
16 Q Why was that decision made? What was the
17 reason?
18 A Well, the reason was made to help try to
19 accommodate this situation with regards to
20 the request and, obviously, from last week
21 when we sat down and discussed, as you know,
22 trying to accommodate Granite State, MBR and
23 ourselves. The one thing it does is still

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1 Q Are you aware whether Mr. Fink liked Mr.
2 Leishman?
3 A I'm not aware of Mr. Fink's personal feelings
4 with regards to Mr. Leishman, like or
5 dislike.
6 Q You never heard anything from him to the
7 affect that would lead you to believe that he
8 didn't like Mr. Leishman?
9 A I don't know of anything on a personal like
10 or dislike basis. I think that all I heard
11 from Mr. Fink is very passion about safety,
12 and he feels that perhaps Mr. Leishman is not
13 running a safe operation.
14 Q Okay. And that feeling, as you said, I think
15 goes back a number of years to this cart
16 incident?
17 A That's correct.
18 Q Just bear with me. I think I'm almost done.
19 Mr. Steiniger, it's my understanding,
20 as of November 10th of this year, next
21 Monday, Guilford has decided that there no
22 longer will be any operating window
23 restrictions on Milford-Bennington, is that

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1 allows us to have an absolute block which is
2 a safety situation.
3 Q Okay. But without any restrictions on the
4 hours of operation for Milford-Bennington, I
5 take it you're recognizing that the earlier
6 operating windows were adversely impacting on
7 their operations, right?
8 A I'm recognizing that that's what they have
9 alleged, and I would say all I am trying to
10 do is accommodate; and accommodating this is
11 saying, fine, we'll go back, and we'll take a
12 look at this from a standpoint of putting up
13 with no windows and, yet, at the same time,
14 be able to put the absolute block on; and
15 from that standpoint, that will take care of
16 what I feel is the most serious safety
17 situation.
18 Q Well, as of November 10th, without any
19 operating window restrictions on
20 Milford-Bennington, I take it the operations
21 will go back to where they were prior to June
22 19th in terms of control of the track by the
23 dispatcher?

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1 A That's correct.
 2 Q Okay. So the dispatcher then will decide
 3 when Milford-Bennington trains or Guilford
 4 trains can be in that area of the track?
 5 A That's correct.
 6 Q Okay. And that's a safe separation in your
 7 view?
 8 A In my view, it is because it will maintain
 9 what we had said before and that was to make
 10 sure that there's a distinctive block that
 11 when Milford-Bennington is on the railroad,
 12 we will not be; and when we're on the
 13 railroad, they will not be; and by having
 14 that distinction, which is a very very
 15 important distinction, the fact is we'll make
 16 sure that there's a fail-safe, and that's the
 17 only fail-safe way I know to make sure that
 18 this particular operation is separated.
 19 Q Have you discussed with anyone or formed any
 20 views as to how or what time during the day
 21 Guilford trains or Guilford work crews are
 22 going to be on that line after November 10th?
 23 A No, not necessarily. I have talked to Rob

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1 Q Well, prior to June 19th of 2003, do you know
 2 whether there were times when
 3 Milford-Bennington trains and Guilford trains
 4 were actually between Milepost 13 and the end
 5 of the track at the same time?
 6 A I couldn't say without going back and
 7 checking the records.
 8 Q Is there an ability for both companies to
 9 have trains there at the same time? In other
 10 words, is there a passing sign or some
 11 physical way that that could be accommodated?
 12 A I do not -- It's very clear. The whole
 13 purpose of putting the block restriction on
 14 is to make sure that you do not have both
 15 parties out there at the same time.
 16 Q Well, what I'm asking is whether there was
 17 ever a time when both parties were there
 18 between Milepost 13 and the end of the line
 19 at the same time?
 20 A And I said I can't answer that because I'm
 21 not sure unless I go back and check the
 22 records.
 23 Q Okay. Well, do you know the physical layout

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1 and Syd Cullford as well, and I think from a
 2 standpoint of what we're trying to do is
 3 accommodate both Granite State and MBR, and
 4 that's how I look at it, and I think that
 5 accommodation could be made.
 6 Q Well, have you changed or have you considered
 7 changing schedules of Guilford trains so that
 8 they will be running between, say, 6:30 a.m.
 9 and 6:30 p.m.?
 10 A Well, from a standpoint of how we run our
 11 trains and some of those are on demand, I
 12 think the fact is it's controlled by the
 13 dispatcher. It just provides the fact that
 14 if we recognize that they're going to be out
 15 there between 6:30 a.m. or 6:30 p.m. on a
 16 given day that we don't have anything; we
 17 will not be out there.
 18 However, the adverse would be true if
 19 we had to get out there to do something or
 20 run a train, and we can put the block, but it
 21 will allow, I think, what I think is very
 22 accommodating as far as the free flow of
 23 Granite State moves.

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1 of that section of the line?
 2 A Somewhat.
 3 Q Okay.
 4 A Obviously, not being an operating person, I'm
 5 not that cognizant of all the operations.
 6 Q So all I'm getting at, I guess, is it's
 7 possible, I take it, that even before June
 8 19th of this year, when the dispatcher was
 9 controlling operations, there was never a
 10 time when a Guilford train and a
 11 Milford-Bennington train were both between
 12 Milepost 13 and 16.36?
 13 A And I'm saying I can't tell you that without
 14 checking the records.
 15 Q Okay. But it's possible, right?
 16 A I don't know. Again, I'd have to check the
 17 records.
 18 Q What records would those be?
 19 A I would go back to the, basically, Vice
 20 President of Operations and ask him to check
 21 the train sheets.
 22 Q Okay. Have you ever heard Mr. Fink or anyone
 23 else at Guilford talk about the MacLellans,

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1 the owners of Granite State?
 2 A Not that I'm aware of.
 3 Q Do you have any indication or any information
 4 one way or the other as to attitudes of Mr.
 5 Fink or others towards the MacLellans?
 6 A No, I do not.
 7 Q Okay. That's all I have. Thank you, Mr.
 8 Steiniger.
 9 MR. CULLIFORD: I have a few questions
 10 for you if I could. Do you want to take a
 11 break?
 12 THE WITNESS: No. I'm fine.
 13
 14 CROSS EXAMINATION
 15 Q (By Mr. Culliford) Now, at the beginning of
 16 your testimony, you spoke of conversations
 17 with Mr. Fink, essentially, on a daily basis.
 18 Are all those conversations you discussing
 19 the railroad with Mr. Fink, or do you discuss
 20 other non-railroad matters such as a horse
 21 playing or --
 22 A Quite frankly, it's probably the multitudes
 23 of my discussions with Mr. Fink does not

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1 revolve around the railroad. Quite a bit of
 2 the discussions will take anyplace from
 3 airline operations, the industrial
 4 development site with regards to North Point,
 5 especially of late, North Point has really
 6 been probably the hottest issue.
 7 Q As well as possibly the Catholic Church?
 8 A I wasn't going to bring that up, Rob; but,
 9 usually, religion is discussed, and quite a
 10 bit of time is spent on that at times.
 11 Q So, essentially, you do talk about
 12 non-railroad operations quite a bit?
 13 A Very much so. Very much so.
 14 Q Okay. Now, you also -- First of all, if we
 15 could clarify. You are the President of the
 16 railroad. As far as your day-to-day
 17 responsibilities, do you become intimately
 18 involved in the operations of the
 19 Transportation Department, the Law
 20 Department, or are you kept apprised of
 21 the --
 22 A I'm kept apprised. Obviously, with the
 23 overall administrative duties of all

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1 departments, basically, I rely upon the Vice
 2 Presidents to keep me apprised of the
 3 developments in their own areas.
 4 Q So the people -- When it comes to the
 5 operations on the line, people with actual
 6 knowledge of that report to you?
 7 A That's correct.
 8 Q Okay. You also discussed issues with
 9 concerns of Milford-Bennington, safetywise,
 10 as to how they operated their railroad prior
 11 to June of 2003. To the best of your
 12 knowledge, were those incidents directly
 13 affecting Guilford or such as the -- would
 14 those incidents occur on the border of
 15 Guilford/Milford-Bennington property, or was
 16 Guilford involved in any way or requested to
 17 be involved in any way with the gas carts?
 18 A No. It was, basically, of course, that was
 19 on the Milford-Bennington property, not our
 20 property.
 21 Q Okay. Now, --
 22 A The same way with regards to the situation on
 23 the -- there are problems with the line going

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1 up to Lyndeborough and the Conservation
 2 Commission.
 3 Q Now, you discussed in your verified statement
 4 that steps were taken to look closely at the
 5 operations. You did not take those steps
 6 yourself, but you ordered Mr. Culliford,
 7 Sydney Culliford, to be involved?
 8 A That's correct.
 9 Q So the actual examination was performed by
 10 Sydney Culliford?
 11 A By Syd Culliford, that's correct.
 12 Q Not by yourself?
 13 A That's correct.
 14 Q Okay. Now, you also talked about Guilford's
 15 overall policy with regard to passenger
 16 service. To the best of your knowledge, when
 17 Guilford responded to Mr. Draper, did
 18 Guilford say that it would not allow
 19 passenger service on its property?
 20 A No. In fact, when that letter was submitted
 21 to me by Mr. Fink to handle is when, of
 22 course, I sat down with Rob Culliford and Syd
 23 Culliford and discussed this in general about

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1 what we needed to do and how we would look at
 2 this and how it could be accommodated, if it
 3 could be accommodated and did that with
 4 quite -- in fact, with quite a bit of study.
 5 Q And did Guilford ever receive a response from
 6 Mr. Draper for its request for more
 7 information?
 8 A No, we did not.
 9 Q To the best of your knowledge, when the
 10 Wilton Scenic was not only requesting to
 11 store rail cars on Guilford property, but
 12 they're also looking to use -- to load
 13 passengers on Guilford property, is that
 14 correct?
 15 A That was my understanding initially.
 16 Q Now, as far as you recall, when Mr. Pease
 17 contacted Guilford in the spring of 2003 to
 18 discuss this operating plan, at that point,
 19 had Guilford foreclosed the possibility of
 20 operating to the Quinn Quarry forever?
 21 A No. In fact, I think that's something that
 22 you discussed with me, and I said the
 23 probability of any time a marketing situation

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1 Q And that's not possible if the derail is
 2 crossing the road?
 3 A That's correct.
 4 Q So that's a safety concern?
 5 A There is a safety concern.
 6 Q Now, as far as Milford-Bennington -- You
 7 talked about if Milford-Bennington were to
 8 issue a bulletin saying that Guilford had to
 9 do something on its property, would Guilford
 10 treat that bulletin differently if Guilford
 11 never agreed to perform the task that
 12 Milford-Bennington had bulletined?
 13 A No. Obviously, we would follow the bulletin
 14 order.
 15 Q If Milford-Bennington arbitrarily said
 16 Guilford cannot move past Milepost 14, would
 17 Guilford challenge that rule of the bulletin?
 18 A Quite frankly, I think that's something -- I
 19 would not challenge that. I mean, this is
 20 something that they put on their own
 21 property, and it's something that we live and
 22 abide by simply because it's their bulletin.
 23 Q Okay. Now, --

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1 would raise its head and come up, and it very
 2 possibly could at any time that we keep
 3 ourselves open.
 4 Q Okay. Now, you also discussed the placement
 5 of the derail on the Milford-Bennington
 6 property. To the best of your knowledge, is
 7 that where Mr. Leishman agreed to place the
 8 derail?
 9 A That's correct.
 10 Q So there was no real further discussion of
 11 placing it on Guilford property?
 12 A No.
 13 Q To the best of your knowledge, also, if the
 14 derail were placed on Guilford property,
 15 would any cars traveling from the north to
 16 the south have to go across the crossing?
 17 A That's correct. They would cross the street.
 18 Q And if the derail were on the Guilford
 19 property, there's the possibility that cars
 20 would be -- could break free and pass a
 21 public grade crossing?
 22 A Yeah. They actually would come across a
 23 two-lane road.

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1 A And that's according to their timetable and
 2 their rules, not necessarily NORAC.
 3 Q Now, you also testified that the
 4 Milford-Bennington is the only railroad on
 5 the Guilford System that is presently subject
 6 to an operating window or a positive block.
 7 Why is that?
 8 A Because it's the only one that we've been
 9 involved with with regards to the unsafe
 10 situation that took place with not following
 11 the rules and regulations on the derail.
 12 Q Okay. You've never experienced similar
 13 problems?
 14 A I have not experienced with our -- any
 15 similar problems.
 16 Q Okay. Now, you also discussed whether FRA
 17 involvement would be appropriate in this
 18 matter. Do you recall, in relation to the
 19 Nepra Project, whether you requested comments
 20 or input from FRA regarding Guilford safety
 21 practices?
 22 A Yes, we did.
 23 Q To a great extent, FRA was not willing to --

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1 Was FRA willing to comment above and beyond
2 simple compliance with the track safety
3 standards?
4 A No. In fact, it's actually what their
5 statement --
6 Q So, in this instance where this is not a
7 track safety -- an FRA standard compliance
8 issue but rather a Guilford imposed safety
9 regulation that is above and beyond the track
10 safety standards or other FRA rules, is it
11 your experience that FRA be willing to
12 comment on that?
13 A I would think they would.
14 Q Is that another reason why FRA would not be
15 appropriate to be involved in this?
16 A I believe so.
17 Q Okay. Now, you also testified that you
18 believe the new operating window plan will be
19 safe. Is that statement premised among the
20 fact that everyone will follow -- that each
21 railroad will follow all applicable safety
22 and operating rules?
23 A Correct.

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1 morning that goes to the question of helping
2 new customers on the branch.
3 MR. CULLIFORD: But you asked how many
4 trains go up there.
5 MR. HOWARD: Between 13 and 16.36.
6 MR. CULLIFORD: Well, you have to let
7 me get to the point. I think what we talked
8 about the other day with Larry and with Andy
9 is that the customers above Milepost 13 are
10 somewhat irrelevant because the switcher has
11 to be go out beyond either the stored cars or
12 the one around it, so --
13 MR. HOWARD: Fair enough.
14 MR. CULLIFORD: The more customers,
15 the more business, the more on the line.
16 MR. HOWARD: Okay. If you're taking
17 about operations beyond Milepost 13, I have
18 no problem. Go ahead.
19 MR. CULLIFORD: Well, that's the
20 premise that the switcher would have to go
21 beyond Milepost 13.
22 MR. HOWARD: We'll see what the
23 answers are. I bet I know.

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1 Q Just a couple more questions if I could.
2 You testified that prior to becoming
3 President of the railroad, you were Senior
4 Vice President of Marketing and Sales?
5 A That's correct.
6 Q In that position, did you have the
7 opportunity to identify or work with
8 potential customers on the Hillsboro branch
9 and not simply Milepost 13 to Milepost 16.36,
10 the entire line?
11 A That's correct.
12 Q In your opinion, from your time in marketing
13 to the time today, are there additional
14 opportunities for Guilford to develop
15 business on this line?
16 A Yes, there are.
17 MR. HOWARD: I'm going to object to
18 this. I don't understand. We're way beyond
19 the scope of the deposition or any of his
20 testimony.
21 MR. CULLIFORD: Why?
22 MR. HOWARD: Well, there's nothing
23 that I heard of or seen here or heard this

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1 Q Could you identify what some of those
2 opportunities might be?
3 A Well, one of them would be, I guess, Peter
4 Leishman has been talking to our Marketing
5 Department about a scrap move coming from
6 Greenfield is one of the operations.
7 Q Okay.
8 A And the other thing is, presently, our Senior
9 Vice President of Industrial Development, who
10 also reports to me, by the way, I didn't want
11 to leave him out, he's right now in
12 discussions with Hendricks Wire and Cable
13 about a 42-acre parcel of land possibly could
14 be developed for industrial development. So
15 there's areas that we're looking at up and
16 down the entire Hillsboro branch, and it
17 hasn't been that many years ago, or even
18 General Motors had looked at part of that
19 branch to locate a distribution warehouse.
20 Q Okay.
21 MR. CULLIFORD: That's it.
22 MR. HOWARD: I have a few more to
23 follow up on Mr. Culliford's questions.

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REDIRECT EXAMINATION

1
2 Q (By Mr. Howard) Is it not correct that one
3 of the conditions that Guilford suggested
4 when Mr. Draper wanted to use some Guilford
5 track for his passenger service was a
6 \$75 million liability insurance policy?
7 A That's correct.
8 Q Okay. Do you understand what it would cost
9 to place a policy, to buy a policy like that?
10 A I would assume that probably it would be
11 expensive. On the other hand, failure to
12 have the proper liability to cover instances
13 on passenger business would be fatal to both
14 parties.
15 Q But you understood at the time that the
16 \$75 million policy was imposed as a condition
17 that it would basically make it impossible
18 for Mr. Draper to use Guilford property,
19 right?
20 A No, counselor, I never understood it that way
21 at all. What I understood it was, and it's
22 no different than we looked at any potential
23 passenger operation, they were going to make

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1 Q Okay. Well, you didn't respond to Mr.
2 Draper's letter, anyway, right; Mr. Culliford
3 did, correct?
4 A Mr. Culliford had drawn up the letter for me,
5 that's correct.
6 Q Is it your understanding that Mr. Culliford
7 had been talking with Mr. Pease, and Mr.
8 Pease made it clear that there would be no
9 attempt to do a deal with Guilford to use its
10 property?
11 A Subsequently.
12 Q Subsequent to when?
13 A Subsequent to after it had gone through,
14 obviously, I assume the understanding of
15 getting the information back and forth. It
16 still begs to question I've never received an
17 official response from Stuart Draper
18 regarding that letter.
19 Q But you understood what the position was,
20 correct?
21 A Well, that's assuming that Colin Pease is
22 representing Stuart Draper or Peter Leishman.
23 Q Well, it also assumes that Rob Culliford is

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1 sure that we had the maximum insurance in
2 order to cover liability problems. Now, --
3 Q Well, that makes it relatively clear that
4 there won't be any new passenger operations
5 on Guilford, correct?
6 A I couldn't say that. I don't think anyone
7 could say that.
8 Q All right. I guess that -- Well, we
9 established earlier that the only passenger
10 operations at this point are Amtrak and the
11 MBTA, correct?
12 A Yes.
13 Q Okay. You also said that there was no
14 response from Mr. Draper to your statement to
15 him of circumstances under which you would
16 deal with him. It is a fact, is it not, that
17 Mr. Pease communicated a response so that
18 Guilford understood where Mr. Draper was?
19 A I received no written response from Mr.
20 Draper regarding the proposal and, of course,
21 our letter to Mr. Draper, and I'm not -- I'm
22 not aware of -- because Colin Pease certainly
23 has not called me.

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1 telling you what is being told to him, right?
2 A No question.
3 Q Now, you also answered a question or two
4 about the Guilford bulletin, and my question
5 to you about whether if MBR issued a bulletin
6 directing Guilford to take certain actions at
7 Milepost 14, and I'm not -- I thought I
8 understood your answer earlier, but I'm not
9 sure I understand your answer now.
10 A Did you say at Milepost 14?
11 Q Yes?
12 A So now you're talking about on our property?
13 Q Correct.
14 A So maybe that's where the misunderstanding
15 takes place.
16 You're not talking about them issuing
17 a bulletin on their property, state-owned
18 property?
19 Q It would be the mirror image of the bulletin
20 that talks about the derail on the
21 Milford-Bennington property. This is a
22 bulletin by Milford-Bennington that says any
23 Guilford train going to the quarry on the MBR

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1 line shall stop at Milepost 14 and get
 2 further instructions from Milford-Bennington.
 3 Now, would that be something that Guilford
 4 would follow, and your answer to me was, yes,
 5 yes, it would. Do you want to qualify that
 6 or change that?
 7 A Well, the only thing I want to change is
 8 depending upon -- you're talking about them
 9 putting a restriction on our line, correct?
 10 Q Yes.
 11 A And, quite frankly, I don't believe they
 12 could do that, but I don't know. I don't
 13 have enough knowledge on the operational side
 14 to tell you that they could issue a bulletin
 15 on our railroad. Okay. I just don't know.
 16 Q Okay.
 17 A Now, if you're saying -- my understanding
 18 was, and perhaps I misunderstood you, that
 19 the bulletin that they would be issuing would
 20 be a bulletin on their railroad.
 21 Q Well, let's -- I'm trying to ask a question
 22 that is similar to the bulletin that Guilford
 23 issued that affects a derail device on

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1 people.
 2 Q Okay.
 3 A I was trying to accommodate your question if
 4 it was on their line and if they had a
 5 situation, obviously, we would adhere to what
 6 their timetable or what their bulletins were.
 7 Q That was not the question, but you've now
 8 addressed it. Thank you.
 9 MR. HOWARD: I have nothing further.
 10 MR. CULLIFORD: Nothing further.
 11 (Whereupon the deposition of Thomas F.
 12 Steiniger concluded at 11:33 a.m.)
 13
 14
 15
 16
 17
 18
 19
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 21
 22
 23

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1 Milford-Bennington property. Suppose the
 2 Milford-Bennington bulletin says that there
 3 will be a -- there is a derail, but there was
 4 a derail device, as I understand it, at the
 5 south end of the Wilton Yard on Guilford
 6 property, right?
 7 A That's correct.
 8 Q Okay. And suppose Milford-Bennington issued
 9 a bulletin with regard to the use of that
 10 derail device on Guilford property. Now, is
 11 that something that Guilford would abide by?
 12 A I'm not sure. The reason I say I'm not sure
 13 is because what becomes involved here is the
 14 NORAC rules that apply for our railroad and,
 15 obviously, for MBR when they operate over our
 16 railroad; but other than that when they
 17 operate on their railroad, they do not
 18 operate under NORAC is my understanding but
 19 their own set of rules and regulations.
 20 Therefore, if it emanates from them from a
 21 different source, I'm not really sure.
 22 That's something I'd have to consult both
 23 with legal counsel and our transportation

CERTIFICATE **Vol. 1 - 92**

1
 2
 3 I, THOMAS F. STEINIGER, do
 4 hereby certify that I have read the foregoing
 5 transcript of my testimony and further certify
 6 that said transcript is a true and accurate
 7 record of said testimony and signed under the
 8 pains and penalties of perjury.
 9
 10 Dated this ____ day of
 11 _____ 2003.
 12
 13
 14 _____
 15 THOMAS F. STEINIGER
 16
 17
 18
 19
 20
 21
 22
 23
 24

C E R T I F I C A T E

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I, Simonne J. Elwood, R.P.R. and a Notary Public within and for the Commonwealth of Massachusetts, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that heretofore, to wit, on the 3rd day of November 2003, personally appeared before me Thomas F. Steiniger, at the office of the Guilford Rail System, Iron Horse Park, North Billerica, Massachusetts, in the aforecaptioned cause pending before the Surface Transportation Board, Commonwealth of Massachusetts; that the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon and while said witness was under oath, the within deposition was taken down by me in shorthand at the time and place herein named and was thereafter reduced to computer transcription under my supervision. I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this ____ day of _____, 2003.

Simonne J. Elwood REGISTERED PROFESSIONAL REPORTER

My Commission Expires: February 14, 2008

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- Page No. ___ Line No. ___ Correction _____

ERRATA SHEET

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Date of Deposition: November 3, 2003
Case Name: Granite State Concrete Company, Inc., et al vs. Boston and Maine Corporation, et al - Finance Docket No. 34381
Deponent's Name: Thomas F. Steiniger

I, the undersigned, do hereby certify that I have read the foregoing deposition transcript and that to the best of my knowledge, said deposition transcript is true and accurate (with the exceptions of the following changes listed below):

THOMAS F .STEINIGER
Dated _____

- Page No. ___ Line No. ___ Correction _____

Word Index

Thomas F. Steiniger

November 3, 2003

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November 3, 2003

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Exhibit H

Vol. 1 - 5

- 1 Q Okay. And that would be Springfield
2 Terminal?
3 A Boston and Maine, Maine Central and President
4 of Pan Am.
5 Q And how long have you been the Chief
6 Executive Officer of the Railroads?
7 A I don't know. 20 years, 15 years, something
8 like that.
9 Q You were the President of Railroads at some
10 point as well, is that not correct?
11 A Yes, I was.
12 Q When did you stop being President, do you
13 recall?
14 A Maybe six, eight years ago.
15 Q Is that when Mr. Steiniger took over?
16 A Yes, yes.
17 Q Now, are you on the Board of Directors of the
18 railroads?
19 A You set them up, and it hasn't changed, Jim,
20 yes.
21 Q How about Guilford?
22 A You set that one up, too, and it hasn't
23 changed.

Vol. 1 - 7

- 1 Q Now, are there any decisions concerning the
2 railroad that you review before they can be
3 implemented, any types of decisions?
4 A Financial decisions, I would certainly do
5 that, operating decisions or taking care of
6 the rail division.
7 Q Mr. Steiniger doesn't consult with you on
8 operating decisions?
9 A I'm sure there's been times. I just don't
10 remember any specific time; but if there's
11 money to be spent, we discuss that, things of
12 that nature.
13 Q Are there any -- Do you have any written
14 rules or any rules that govern the
15 relationship between you and Mr. Steiniger as
16 far as who makes decisions on what issues?
17 A Not that I know of.
18 Q But you are the highest ranking officer of
19 the railroads, I take it, as the CEO, is that
20 right?
21 A Yes.
22 Q And ultimate decision-making authority rests
23 with you, I take it?

Vol. 1 - 6

- 1 Q Now, Mr. Steiniger, as I understand it, is
2 President of each of the railroads, is that
3 right?
4 A That's correct.
5 Q Does he report to you?
6 A Yes, he does.
7 Q What's the nature of the relationship in
8 terms of reporting or decision making?
9 A Basically, financial matters, overall, and
10 Tom runs the railroad, and I run the holding
11 company.
12 Q Well, do you talk to him about railroad
13 issues?
14 A I talk to him once a day, but it's basically
15 if there any problems or anything of that
16 nature.
17 Q Is there a regular time when you talk?
18 A Usually, in the morning, not a regular time,
19 no.
20 Q By telephone or in person?
21 A Telephone.
22 Q Do you communicate with him by e-mail at all?
23 A No.

Vol. 1 - 8

- 1 A Financial. The operations are run on the
2 railroad. As President of Pan Am, it takes
3 great -- a vast majority of my time. Also,
4 the lumber division we have up in
5 Mattawamkeag and so forth, and I talk to him
6 on an every day or every other day.
7 Q How much time do you spend on railroad
8 matters as a percentage of your working time?
9 A Maybe one percent, two percent.
10 Q And how much time is spent on Pan Am then?
11 A Probably 95 and lumber the rest.
12 Q Now, do you talk -- In addition to Mr.
13 Steiniger, do you talk directly with other
14 people at the railroad?
15 A I have but not on a regular basis.
16 Q Okay. How about Mr. Culliford, Syd
17 Culliford?
18 A I talk to Syd but not on a regular basis.
19 Q How about the dispatcher's office, do you
20 talk with them?
21 A I haven't. I can't remember when.
22 Q Not for awhile?
23 A No, no.

Vol. 1 - 9

1 Q Do you have staff meetings with the railroad?
 2 A No.
 3 Q You don't attend staff meetings?
 4 A No.
 5 Q Okay. Well, is it fair to say that you're
 6 generally knowledgeable about what's
 7 happening on a day-to-day basis of the
 8 railroads?
 9 A Not really. It's from a financial standpoint
 10 is my main concern.
 11 Q Now, do you know Peter Leishman?
 12 A I know who he is.
 13 Q And he once worked for Guilford, is that
 14 correct?
 15 A Not to my knowledge.
 16 Q He never worked for Guilford?
 17 A Not to my knowledge. He could have, and I
 18 didn't know it, but I don't know, no.
 19 Q You were never aware of Peter Leishman
 20 working for Guilford?
 21 A Not to my recollection.
 22 Q When I say Guilford, I'm talking about the
 23 railroads, not the --

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1 trackage rights over Guilford in order to
 2 provide service to Granite State between
 3 Wilton and Milford?
 4 A I recall that they had to do something of
 5 that sort, but that's been 15, 16 -- I'm sure
 6 they did. I just don't have any --
 7 Q You don't recall any conversations that you
 8 were involved in concerning their request for
 9 trackage rights?
 10 A No.
 11 Q So I take it you wouldn't remember refusing
 12 to grant trackage rights, or do you?
 13 A No. I think, 15, 16, 17 years ago, I
 14 honestly don't recall what went on then, but
 15 whatever.
 16 Q Okay. Do you remember Milford-Bennington
 17 filing a feeder line application at the ICC
 18 in 1990 requesting an order requiring
 19 Guilford to sell the line between Wilton and
 20 Milford?
 21 A I don't recall that, specifically. I know
 22 there was a -- there was a legal department
 23 or who had it, but I don't recall exactly

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1 A I don't know that. I don't know that. If he
 2 did, it's possible, but I don't recall that.
 3 Q Are you aware that Mr. Leishman got involved
 4 in starting up the Milford-Bennington
 5 Railroad?
 6 A I understand that's what went on back in, I
 7 don't know, 15 years ago.
 8 Q And are you -- Are you familiar with Granite
 9 State Concrete Company?
 10 A I know who they are.
 11 Q Do you know the owners, the MacLellans?
 12 A No.
 13 Q You've never met any of them?
 14 A Not to my recollection. I don't know them.
 15 Q Do you recall in the late 1980s Granite State
 16 and Milford-Bennington trying to start up
 17 rail service to Granite State's quarry in
 18 Wilton, New Hampshire?
 19 A Do I remember in the 1980s?
 20 Q 1989 or so?
 21 A I don't know. I don't recall. I'm sure they
 22 could have, but I don't recall that.
 23 Q And do you recall Milford-Bennington seeking

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1 what it was, no.
 2 Q Do you remember that Granite State was
 3 supporting the feeder line application?
 4 A No, I don't. I don't recall that, no.
 5 Q Are you aware that the New Hampshire
 6 Department of Transportation was in support
 7 of the application?
 8 A No, I don't.
 9 Q Do you recall Guilford opposing the feeder
 10 line application?
 11 A Specifically, no. I'm sure we did, but I
 12 don't recall that.
 13 Q Okay. If you did, do you know why?
 14 A No.
 15 Q Do you remember Guilford agreeing to grant
 16 trackage rights to Milford-Bennington in
 17 1992?
 18 A I don't recall, specifically. They have
 19 trackage rights, but I don't know when or
 20 where it was.
 21 Q Were you involved in any decision to grant
 22 trackage rights to Milford-Bennington?
 23 A I'm sure I was, but I don't recall. We did

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1 trackage rights and deals back in those days.
 2 It was nothing unusual. I don't recall,
 3 specifically, trackage rights with them.
 4 They have it, so it had to be, but my memory
 5 doesn't -- anymore than one other railroad.
 6 Q Do you have any recollection talking to Mr.
 7 Mellon (phonetic) about granting trackage
 8 rights to Milford-Bennington?
 9 A No.
 10 Q Do you have any recollection that Mr. Mellon
 11 (phonetic) and Mr. Leishman talked about
 12 trackage rights in 1992?
 13 A I don't recall that.
 14 Q Okay. Let's ask another one. How about a
 15 derailment in 1992 involving a
 16 Milford-Bennington train in the Wilton yard
 17 on the Guilford track; do you recall that?
 18 A You're serious?
 19 Q I'm serious, yes.
 20 A I have derailments, my God, I don't know
 21 how -- No, I don't recall whether he had a
 22 derailment in Wilton. I don't recall that --
 23 Q Do you recall --

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1 occasion.
 2 Q Do you have any recollection in the mid-'90s
 3 of purchasing some rail cars that had been
 4 leased to Milford-Bennington?
 5 A Yes, I recall we bought some hopper cars.
 6 Q Okay. Who did you buy those from?
 7 A I don't really know.
 8 Q Do you have any recollection of asking
 9 Milford-Bennington to return those cars or to
 10 turn them over to Guilford?
 11 A If they had them, that could happen. I don't
 12 recall talking to anybody on the
 13 Milford-Bennington or requesting anything of
 14 that nature.
 15 Q Do you recall why Guilford bought the cars?
 16 A I think probably it was a financial
 17 arrangement. We just bought 50 hoppers here
 18 a couple of weeks ago. It was a good
 19 investment. That's all I have to say about
 20 it. It's a financial deal.
 21 Q Did you know when you bought the cars that
 22 they were being used by Milford-Bennington?
 23 A I am sure we did, or we should have.

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1 A -- 13, 14 years ago.
 2 Q It's actually 11.
 3 A Okay. Let's make it ten if that makes you
 4 feel better. I'm an old man. My memory
 5 isn't quite as sharp as a young man.
 6 Q Do you recall going, personally, to the
 7 derailment site?
 8 A No.
 9 Q Did you ordinarily go to derailments when it
 10 was somebody else's train; in other words,
 11 not a Guilford train but --
 12 A Yeah. We had a MBTA derailment that it was a
 13 MBTA train. I recall going to that, and I've
 14 been to so many derailments in 50 years. I,
 15 quite frankly, don't have any idea. I could
 16 have gone there. I just don't recall being
 17 at the derailment. There's been such a
 18 plethora and multitude of derailments in my
 19 career.
 20 Q Okay. How about in 1993, do you remember
 21 asking the ICC to terminate
 22 Milford-Bennington's trackage rights?
 23 A No, but I could have. I don't recall the

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1 Q Do you recall Guilford suing
 2 Milford-Bennington in connection with those
 3 cars?
 4 A I knew there was a suit back then, but I
 5 don't know what happened or anything, but
 6 there was a suit.
 7 Q Okay. Do you have any recollection of asking
 8 Mr. Leishman to come to your office to
 9 discuss that lawsuit?
 10 A No.
 11 Q Do you have a recollection of offering to buy
 12 Milford-Bennington in order to resolve the
 13 lawsuit?
 14 A Buy the Milford-Bennington?
 15 Q Yes.
 16 A I don't know who owns the Milford-Bennington
 17 let alone buying it. There's three miles of
 18 track. Not to my knowledge.
 19 Q Now, do you have any recollection in 1995 of
 20 learning of an accident on the
 21 Milford-Bennington line concerning a private
 22 track car?
 23 A Yes, I do.

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1 Q Okay. And what do you recall of that?

2 A I recall that they were using track cars, and

3 there was a very very serious injury where an

4 individual had to be Medivac down to Boston,

5 to Mass. General. I think they're very

6 unsafe. I don't believe they belong on the

7 railroad, and I'm just totally against them.

8 Q Okay. How did you find out about that

9 accident, do you remember?

10 A I think it was on the radio. I mean, it was

11 quite a stir that they had there, and I don't

12 recall, specifically, whether it was on the

13 radio or I learned about it when I got to

14 where I was going. I'm not sure of that.

15 MR. HOWARD: I'm going to ask the

16 reporter to mark this document as Exhibit 1,

17 please.

18 (Whereupon the Stenographer marked as

19 Exhibit No. 1 - Letter - 10/11/95 to Charles

20 P. O'Leary, Jr. From David A. Fink with

21 Attachment.)

22 Q Mr. Fink, the document that's been marked as

23 Exhibit 1 consists of three pages. The first

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1 two appear to be a letter from you to Charles

2 O'Leary, the Commissioner of Transportation

3 of New Hampshire. Do you recall writing this

4 letter? (Indicating)

5 A No, I don't, but it has my signature, so I

6 did, but I don't recall the letter. Give me

7 a minute, and I'll read it.

8 Q Okay. Take a look at it.

9 A (Reviewing document) It has to do with

10 safety of the track car.

11 Q Okay. Do you see in the first line of that

12 letter, you refer to recent news stories?

13 A Uh-huh.

14 Q Is that the source of your information for

15 writing this?

16 A Evidently, it was.

17 Q Okay. Do you recall any other source?

18 A As I say, whether it was radio, I don't

19 recall that.

20 Q Okay. Now, in the first paragraph, in the

21 middle there, it says: The practice of the

22 Milford Bennington Railroad in permitting the

23 use of these vehicles represents a serious

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1 hazard to public safety. Do you see that?

2 A Yes, I do.

3 Q Do you know whether Milford-Bennington

4 permitted the use of these on their line or

5 had a practice of permitting the use?

6 A Do I recall? I don't know. It was on their

7 railroad, I believe, wasn't it?

8 Q It was, but the question is whether you know

9 that they had a practice of permitting these

10 vehicles on their line?

11 A I don't. I don't recall that. I don't know

12 that. But if you have a serious injury that

13 someone has to be Medivac and you're

14 operating on that railroad, that's a serious

15 safety situation.

16 Q Absolutely.

17 A And if it was on my railroad, I would

18 certainly know who was there and what they

19 were doing as a good safety practice, I

20 guess.

21 Q Okay. I was just asking whether you knew

22 whether they had a practice of permitting,

23 and I think the answer was, no, you don't

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1 know for sure?

2 A I don't know what they're permitting or not

3 permitting.

4 Q Okay. Now, in the second paragraph, the last

5 sentence, there's a reference to

6 "-- apparently interfering with local police

7 in their investigation --." Do you see that?

8 A I see "property and apparently interfering,"

9 yes, I see that.

10 Q Do you know -- Do you have any basis to know

11 whether Milford-Bennington was interfering

12 with the police?

13 A Eight years ago, I don't recall that, no.

14 Q Do you have any knowledge as to who the

15 management of the Milford-Bennington is?

16 A No.

17 Q So you don't have any understanding, one way

18 or the other, that the management is only

19 Peter Leishman?

20 A Since I left the railroad, I don't have any,

21 you know, --

22 Q I'm saying in 1995?

23 A I would imagine. I have no idea who owned it

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1 or who did what. I just think it's a very
 2 unsafe act. That was the purpose of it.
 3 Q Now, turning if you would, please, to the
 4 third page of that Exhibit 1, and there's a
 5 letter from Mr. Marshall of the New Hampshire
 6 Department of Transportation to you. Do you
 7 have any recollection of receiving it?
 8 A No.
 9 Q Do you have any doubt that you did receive it
 10 at the time?
 11 A I'm sure I did if it was addressed to me, I
 12 would imagine.
 13 Q Do you see in the second paragraph where he
 14 says in the second sentence that
 15 Milford-Bennington does not allow motorcars
 16 on the line as a matter of policy?
 17 A No, I don't see where that is.
 18 Q Second paragraph, second sentence.
 19 A Last such use of line was --
 20 Q One second.
 21 A It says, "The last such use of line was more
 22 than two years ago, which was an inspection
 23 --."

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1 Q All right. It's the third sentence.
 2 A Third sentence you're looking at now?
 3 Q Yes. Go back to the second sentence.
 4 A "The last such use of the line was more than
 5 two years ago, which was an inspection tour
 6 that included state and railroad personnel."
 7 Q Well, in my Paragraph 2, the second sentence
 8 says, "The Milford-Bennington Railroad does
 9 not allow motorcars on the line as a matter
 10 of policy." Do you see that?
 11 A I thought that was still the first sentence.
 12 Q Okay. I'm sorry. I think it's the second.
 13 But do you see that?
 14 A Yes.
 15 Q Now. Do you have any basis to disagree with
 16 that?
 17 A No.
 18 Q Okay. The third paragraph of that letter,
 19 the first sentence, Mr. Marshall says he's
 20 not aware that the railroads has interfered
 21 with local police in investigating the
 22 incident. Do you have any basis to disagree
 23 with that?

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1 A That's what he said. I don't recall the
 2 letter, and that's -- I think it's an
 3 opinion. I don't know whether it's fact, but
 4 it's there. That's what it says in the
 5 letter.
 6 Q Okay. But do you have any basis to know --
 7 to disagree, to have some belief that the
 8 railroad did interfere with the police
 9 investigation?
 10 A Eight years ago, no. I just don't recall
 11 anything.
 12 MR. HOWARD: Mark that, please, as
 13 Exhibit 2.
 14 (Whereupon the Stenographer marked as
 15 Exhibit No. 2 - Letters to the Editor.)
 16 Q Exhibit 2 is a copy of a portion of The
 17 Milford Cabinet and Wilton Journal from
 18 October 18, 1995.
 19 A Uh-huh.
 20 Q And there appears to be a letter to the
 21 editor that you wrote there. Do you have a
 22 recollection of that?
 23 A I don't have a recollection of the letter,

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1 but it says I wrote it, so I'm sure I did.
 2 Q Why did you write this to the paper, do you
 3 recall?
 4 A I would say safety. I think that would have
 5 been my motive. The same as you asked me
 6 about the track car. I don't think the
 7 railroad business is a very unforgiving
 8 business, and I've been in it long enough.
 9 Fatalities, things of this nature, it's not
 10 something that's taken lightly. So I would
 11 imagine that's what prompted it.
 12 Q Okay. But you had already written a week
 13 previously to the Department of
 14 Transportation in New Hampshire to make the
 15 same point, right?
 16 A Evidently, the dates -- that one is dated
 17 October the 11th, and this is October the
 18 18th. That's seven days. That's a week.
 19 Q Okay. So why write to the paper after you
 20 had already raised the issue with the New
 21 Hampshire DOT?
 22 A I think if you would talk to my colleagues,
 23 when it comes to safety, I'm a fanatic; and

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1 as we say every day, we don't do anything
 2 illegal, immoral or dishonest, and we do it
 3 safely. And that's probably what motivated
 4 me as far as I can recall.
 5 Q Well, did you ever try to contact
 6 Milford-Bennington or Mr. Leishman to talk
 7 about this?
 8 A Not to my recollection.
 9 Q Well, if safety was your concern, wouldn't it
 10 have made sense to go directly to
 11 Milford-Bennington?
 12 A Not in my opinion.
 13 Q Why not?
 14 A I felt that you're either safe, or you should
 15 learn to be safe. I had no reason to go to
 16 the state after I wrote the state, and I put
 17 this letter and let my feelings be known,
 18 evidently.
 19 Q Did you write the letter to the paper after
 20 you got Mr. Marshall's response to your
 21 letter?
 22 A I don't -- I don't recall that. I could
 23 have. I couldn't have. I just don't

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1 remember that.
 2 Q Now, there are some references in the letter
 3 to the paper to the management of
 4 Milford-Bennington and its President, several
 5 references to the President. You knew, I
 6 take it, at that time when you were writing
 7 this letter, that the President was Mr.
 8 Leishman, correct?
 9 A I don't know what his title was. I have no
 10 idea, but he was on the engine. I thought he
 11 was a conductor, and then he had the other
 12 derailment. I didn't honestly know what the
 13 status, who the board members were, whether
 14 he came under the FRA, whether he -- I don't
 15 know.
 16 Q Well, when you refer to -- When you refer to
 17 the Milford-Bennington President in this
 18 letter, to whom were you referring?
 19 A The President, whoever that might be. They
 20 may refer to me as the President of the
 21 Boston & Maine, and I held the position, so
 22 it would have been me at the time.
 23 Q And you're telling me that you didn't know at

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1 this time that Mr. Leishman was the
 2 President?
 3 A I didn't know whether Mr. Leishman was
 4 President, General Manager or what the thing
 5 was. Whoever was the President, I don't
 6 know. I don't know who owns it.
 7 Q Well, in writing this letter and also the one
 8 to the New Hampshire DOT, were you intending
 9 to hold Mr. Leishman responsible for what had
 10 happened?
 11 A I wasn't intending on holding anyone
 12 responsible. When I write these letters, and
 13 I wrote several others, it was safety. I
 14 don't want to see anybody hurt, injured or
 15 maimed. I don't think anybody does; and if
 16 bringing this awareness to the people will
 17 save someone's life or anything of that
 18 nature, it makes sense to do it.
 19 Q Do you have any recollection that the car
 20 that was -- the track car that was involved
 21 in this accident was purchased from Maine
 22 Central?
 23 A No idea. No idea. I would -- I don't have

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1 any idea.
 2 Q Did Guilford, at one time, own track cars?
 3 A I got rid of every one of them. You were our
 4 chief counsel, I think, at the Board
 5 meetings; and if you look back, you could
 6 refresh your memory. I got rid of every one
 7 of them while you were my chief counsel.
 8 Q And who did you sell them to?
 9 A Scrappies. They cut them apart. That's what
 10 I was told, and that's -- I take that as a
 11 fact.
 12 Q Okay. Now, let's move up to a more recent
 13 time frame and see if your memory is better.
 14 A Well, we'll try.
 15 Q Did you become aware in late 2002 that there
 16 were plans to start passenger service on the
 17 Milford-Bennington line?
 18 A 2002?
 19 Q Yes.
 20 A Yeah, I knew that because I read it someplace
 21 or heard it on the radio that they were
 22 running steam tours or something of that
 23 nature.

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1 Q And what do you recall -- what do you recall
2 you heard or read?
3 A I don't. I know that that was happening.
4 They were going to do something up there.
5 MR. HOWARD: Let's mark this, please,
6 as Exhibit 3.
7 (Whereupon the Stenographer marked as
8 Exhibit No. 3 - Letter - 10/28/02 to Mr.
9 David Fink from Stuart S. Draper.)
10 Q Mr. Fink, the document that's been marked as
11 Exhibit 3 is a letter dated -- it looks like
12 October 28, 2002 from Stuart Draper to you.
13 Do you have a recollection of receiving this?
14 (Indicating)
15 A Not specifically. There was a letter
16 regarding the railroad, and I think I sent it
17 on to the railroad, but that's all. I don't
18 get involved in that. Was there a reply to
19 it? I don't recall it.
20 Q I'm not aware of a reply from you, but let me
21 ask you this: 61 Christian Hill Road,
22 Amherst, is that your residence?
23 A That's my home residence, that's correct.

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1 Q And you have no recollection of sending any
2 response to Mr. Draper?
3 A No. I would take this as anything that comes
4 regarding railroad and send it down to Tom
5 Steiniger or counsel or whoever. I don't get
6 involved in that.
7 Q And when you sent it to whomever you sent it,
8 did you give them any instructions or advice?
9 A No. No, I wouldn't. It's a railroad matter.
10 They take care of the railroad matters and
11 operating, I would imagine.
12 Q And you didn't express any views one way or
13 the other about passenger service possibly on
14 a line that connected with Guilford?
15 A No. You mean in regard to this letter?
16 Q Well, with regard to this letter,
17 specifically, you had no concern about
18 passenger service?
19 A Oh, I have concern on passenger service
20 whether it's the T. I met with David Gun
21 (phonetic), President of Amtrak, here two
22 days ago, and I think it's safety. It's
23 peoples' lives and so forth. That's my

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1 concern if that's what you're looking at.
2 Q Well, that's what I was trying to find out.
3 Guilford has certain passenger service on its
4 lines, correct?
5 A Yes.
6 Q And MBTA operations in certain places, is
7 that right?
8 A And Amtrak, both.
9 Q And that's -- The Amtrak was not something
10 that Guilford agreed to at the outset, is
11 that correct?
12 A Well, did we agree to it? I think we
13 negotiated for it and, in fact, Guilford runs
14 the best Amtrak service. That's why I was
15 down seeing the President. Safest most
16 on-time performance of any Amtrak train in
17 the United States. We take great pride in
18 that.
19 Q Are there any other passenger operations on
20 Guilford other than the MBTA and Amtrak?
21 A No. Basically, that's it.
22 Q Okay. Is there any policy concerning
23 passenger operation as to whether to permit

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1 it or not permit it on Guilford lines?
2 A Policy, no, not to my knowledge unless Tom
3 has a policy on it.
4 Q Well, your preference, I take it, would be
5 not to have passenger service on your line?
6 A No, I don't think that's correct. I think
7 what is correct that it's done safely, and we
8 don't jeopardize our corporations with a
9 passenger problem, derailment of this type of
10 thing. It's a fiduciary responsibility.
11 Whether it's a passenger train or a circus
12 train, that's another example.
13 Q Okay. Now, at some point in December of
14 2002, did you become aware that there were
15 two passenger cars that were delivered to the
16 Milford-Bennington line?
17 A I could have. I don't recall that.
18 Passenger cars? What type of passenger cars?
19 Q I think they were Bud cars.
20 A Self-propelled? The ones that they're
21 telling me they use up there at Wilton to
22 Bennington?
23 Q Correct.

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1 A I didn't know until afterwards. I just don't
2 get into the day-to-day operations.
3 Q Okay. The question is: At some point in
4 December, did you become aware that two cars
5 had been delivered to Milford-Bennington?
6 A I could have. I just don't -- It didn't make
7 any impact with me.
8 Q Now, do you -- Are you aware that -- Well,
9 let me back up. Excuse me.
10 You know Colin Pease, correct?
11 A Yes.
12 Q Who is he?
13 A Colin Pease is a former disgruntled employee
14 that works for, I guess, the
15 Milford-Bennington according to what I
16 understand.
17 Q Are you aware that he has been working with
18 Mr. Draper to help him start passenger
19 service on the Milford-Bennington line?
20 A I wasn't aware of that. I was aware that he
21 was working for the Milford-Bennington. I
22 didn't know on this particular case is what I
23 was told.

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1 Q You had no awareness that he was working with
2 Mr. Draper on the passenger service?
3 A No. Specifically, no.
4 Q Do you recall that Mr. Pease testified in a
5 deposition in 2002 in a case involving
6 Guilford and a Richard Flier, F-L-I-E-R, Neil
7 Farmer?
8 A I know he gave a deposition. Other than
9 that, I don't.
10 Q Did you ever look at the transcript of that
11 deposition?
12 A No.
13 Q Did anybody ever tell you what it said; what
14 his testimony was?
15 A Specifically, I'm sure they did. I just
16 don't recall it.
17 Q Did somebody tell you that Mr. Pease made
18 unflattering or derogatory comments about
19 you?
20 A Not specifically. I feel badly if he did.
21 You know, Colin had been a friend of mine for
22 many many years, but he has gone through such
23 traumatic stress in his life when he decided

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1 to go into business for himself. We left on
2 very fine terms, and he's got personal
3 problems himself, and I just don't know why
4 he'd do that if he did it.
5 Q But you're telling me you're not aware of any
6 comments in this deposition that I refer to
7 that might be construed to be unflattering
8 towards you?
9 A A lot of people give unflattering commentary
10 to me, Jim. I do enough depositions. I
11 don't remember. I had three depositions last
12 week; and, you know, to go back and try and,
13 specifically, no, I just -- I just think -- I
14 wish Colin all the best. I gave him four
15 months' salary, did all the other things, and
16 I have no ill will towards Colin.
17 Q Well, I'm still trying to understand exactly
18 what you know about his deposition testimony.
19 A I don't. Is that case involved in this, or
20 is it --
21 Q No. I'm trying to understand whether you
22 have any information concerning his testimony
23 in that deposition?

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1 A No. I think Colin told the truth as far as I
2 was concerned.
3 Q Okay. So if I -- if I asked you whether you
4 were unhappy or angry with Mr. Pease in
5 December of 2002, your answer would be no?
6 A I think he was disgruntled is the way we
7 looked at it. Unhappy with him, no. Colin
8 and I -- I've known him too many years to be
9 unhappy or disgruntled. I wish him the best
10 of everything.
11 MR. HOWARD: Let me mark that, please,
12 if you would as Exhibit No. 4.
13 (Whereupon the Stenographer marked as
14 Exhibit No. 4 - Verified Statement of John R.
15 Nadolny in Support of Surreply of the Boston
16 and Maine Corporation and The Springfield
17 Terminal Railway Company.)
18 Q The document that's been marked as Exhibit 4
19 is a verified statement by John Nadolny that
20 was submitted in this case. Have you ever
21 seen that, Mr. Fink? (Indicating)
22 A No.
23 Q Have you ever talked to Mr. Nadolny about

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1 this verified statement?
 2 A I knew he gave a verified statement as I
 3 mentioned previously today.
 4 Q Did you ask him to do this or prepare it?
 5 A No.
 6 Q Did you talk to him about it?
 7 A No. As I said, he filled it out. John's
 8 handling our case with the former -- so he is
 9 the one that said we had a disgruntled
 10 employee and so forth, and that's my
 11 understanding.
 12 Q So you never talked to Mr. Nadolny or
 13 reviewed his verified statement with him?
 14 MR. CULLIFORD: If I could just object
 15 for a second. I think you're probably going
 16 to be getting into some areas that will be
 17 subject to attorney/client privilege.
 18 MR. HOWARD: I'm asking whether they
 19 ever talked. I'm not asking what they talked
 20 about.
 21 A We talk every day. As I said, I knew he made
 22 a verified statement. I said previously, I
 23 didn't read it. What's in there? No.

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1 Q You didn't talk to him about it?
 2 A Not specifically. Not to my recollection,
 3 no.
 4 Q Okay. Just take a look at the second page of
 5 that, please, Paragraph 4 and the third
 6 sentence. Mr. Nadolny says, "Mr. Pease's
 7 deposition testimony contains derogatory
 8 statements about Mr. Fink, --." Do you see
 9 that?
 10 A Yeah.
 11 Q Do you disagree with that?
 12 A Including allegations that I'm verbally
 13 confrontational with Mr. Pease while the two
 14 discuss Mr. Pease's decision to resign.
 15 That's not so. I don't have any problem with
 16 that. If that's -- So be it. Mr. Fink made
 17 accusations against Mr. Pease and statements
 18 about others of a derogatory -- I don't know
 19 what that is, but everybody has an opinion,
 20 Jim.
 21 Q Well, do you have any basis --
 22 A Everybody says things that, you know, I'd
 23 have to read this, and I'd have to talk to

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1 somebody. Colin says things. I say things.
 2 I don't recall. I have no problem with that.
 3 Q Now, going back to December of 2002, do you
 4 have any recollection of talking with anybody
 5 about the passenger cars that had been
 6 delivered to the Milford-Bennington line?
 7 A Not to my recollection.
 8 Q You never talked to Mr. Steiniger about it?
 9 A Not to my recollection. I could have. I
 10 just don't -- We talk about many things, but
 11 I don't recall that.
 12 Q How about Syd Culliford?
 13 A No, I don't think so, not to my recollection.
 14 Q Do you know Andrew Zompa?
 15 A No. Who is he?
 16 Q Have you ever heard of him?
 17 A No.
 18 Q Never heard the name?
 19 A Who is Andrew Zompa?
 20 Q That's all right. If you don't know, you
 21 don't know.
 22 A Well, could you -- Who is he? Should I know?
 23 MR. CULLIFORD: No.

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1 Q No. I don't know.
 2 A Okay. Well, if you don't know, I don't know.
 3 Q I get to ask the questions today.
 4 A That's good. Then I get to give the answers.
 5 That's right. And I gave it.
 6 Q Absolutely.
 7 A And I gave it. Okay.
 8 Q Do you have any recollection on approximately
 9 December 12th of 2002 talking with anybody
 10 about the installation of a derail on the
 11 Milford-Bennington line?
 12 A I don't recall that.
 13 Q You didn't direct anybody to install a
 14 derail?
 15 A I don't recall. I wouldn't tell anybody to
 16 put a derail. No, not to my memory.
 17 Q You didn't tell anybody that it needed to be
 18 installed, and you were going to drive by and
 19 check to see if it was there?
 20 A Not to my recollection.
 21 Q You know where the Milford-Bennington line
 22 is, I take it?
 23 A Oh, yes.

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1 Q Do you know where it connects with the
2 Guilford line?
3 A Not specifically, but I know the general
4 area, I would think.
5 Q Have you been in that area in the last year
6 or so?
7 A No. I know I've gone across Wilton but not
8 in that area, no. I had no reason to be.
9 Q So you have no recollection whatsoever about
10 any conversation concerning the installation
11 of a derail in December of 2002 on the
12 Milford-Bennington line?
13 A Uh-uh.
14 Q You had no conversation with anybody at that
15 time about it?
16 A Not to my recollection, no.
17 Q Nobody reported to you that they put in a
18 derail?
19 A I don't think so. Let me say this: You
20 know, a year ago, I just don't recall. I
21 don't know why they would be telling me
22 something like that; even putting it up at
23 the paper mills.

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1 Q Do you think there was any reason for safety
2 purposes to put a derail between the line of
3 Guilford and the line of Milford-Bennington?
4 A I don't know. I'd have to go up and look at
5 it to see what the circumstance is.
6 Q Would the presence of two passenger cars on
7 the Milford-Bennington line be a sufficient
8 reason in your mind to install a derail?
9 A I would say so. There was loaded passenger,
10 you know, handling the public; but as long as
11 you had it covered and so forth, that makes
12 sense, yeah.
13 Q If the two cars are simply sitting there for
14 the winter, in your mind, it's a safety
15 purpose to put a derail?
16 A I don't know what the grades are and the
17 gradients and what the rest of it is; but
18 from a safety standpoint, I have no problem
19 putting a derailment anyplace. I think a
20 derail is something that avoids someone
21 getting hurt. So I would certainly concur
22 with that.
23 Q Okay. After December of 2002 and prior to

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1 June of this year, do you have any
2 recollection of the derail that I was just
3 speaking of; being told or learning that that
4 derail was not being used for freight
5 operations?
6 A I have a recollection the date or the time
7 frame that one of our managers went out
8 there, and there was a question as to why it
9 was on or why it wasn't on or something.
10 Q Okay. How did you learn that, do you know?
11 A No. Someone told me, I'm sure.
12 Q And what was your reaction?
13 A I don't -- I don't know whether I had a
14 reaction.
15 Q Do you recall when you heard this?
16 A No.
17 Q Did you -- When you heard it, did you tell
18 whoever reported this to do anything?
19 A Not to my recollection.
20 Q So it was just information that you didn't do
21 anything with?
22 A I don't know whether it was information or
23 when the Surface Board hearings that they

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1 were holding down there and, you know, they
2 were being conducted. I just don't recall.
3 Q Do you have any recollection of around June
4 20th of this year of Guilford restricting the
5 hours during which Milford-Bennington could
6 operate on the Guilford line?
7 A I knew they had done that. The dates or
8 anything, I'm not certain of.
9 Q And how did you -- How did you learn that
10 that had been done?
11 A I don't even recall. I'm sure it was through
12 conversation or somebody telling me as far as
13 I recall on that.
14 Q Did anybody ask you before that was done
15 whether it should be done?
16 A No, no.
17 Q And you didn't tell anybody to do it?
18 A No.
19 Q Whose idea was it to restrict the hours of
20 operations, do you know?
21 A I have no idea. Probably the Operating
22 Department or someone down there. I don't
23 know. It could have been the safety manager.

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1 Q And you say you don't recall who told you
2 this?
3 A No.
4 Q Well, would it have been Mr. Steiniger?
5 A It could have been. I just don't recall who
6 did.
7 Q Do you talk to others on a regular basis on
8 the railroad?
9 A No, no.
10 Q Do you have any recollection or information
11 as to what the normal operating hours of
12 Milford-Bennington have been over the last
13 ten years prior to June of this year?
14 A No. I think they call and go down the track
15 and do what they do and go home.
16 Q Whenever they want to?
17 A I don't recall. I never got into that.
18 Q Have you -- Are you familiar with the Granite
19 State quarry in Wilton?
20 A No.
21 Q Never seen it?
22 A In Wilton? No, I don't believe so. I've
23 seen the -- I don't know which -- I saw the

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1 Quinn Quarry, but that -- I don't know the
2 other quarry.
3 Q Do you know anything about the permitting
4 restrictions that relate to the Wilton
5 Quarry?
6 A No.
7 Q You're not aware that they're limited to 6:30
8 a.m. to 6:30 p.m. in terms of their
9 operation?
10 A I mean, who does that? Who limits them?
11 Q By the town?
12 A No. Interstate Commerce. I always
13 thought -- in fact, you, in a couple of
14 cases, had restrictive hours. I thought
15 under the Interstate Commerce clause that
16 they have difficulty in doing that. I don't
17 know that.
18 Q I'm asking about operations of the quarry,
19 crushing stone at the quarry?
20 A I don't anything about the quarry.
21 Q You're not aware of any permitting
22 restrictions limiting their hours of
23 operations?

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1 A No.
2 Q You don't have any recollection talking about
3 those restrictions with Mr. Pease or Mr.
4 Coffin (phonetic)?
5 A No.
6 Q Are you familiar with the stone business,
7 generally?
8 A I've spent a great deal of time in the stone
9 business.
10 Q And is it your impression that operations of
11 a quarry at night in terms of loading trains
12 and unloading trains would be difficult?
13 A No. All of our quarries, and we had some 14
14 of them with Ashland, there was never any
15 questions about that.
16 Q Do you have lighting at those quarries?
17 A Yes, indeed.
18 Q It would be difficult without lighting, would
19 it not?
20 A We had some, but it would be much much better
21 with lighting, I would say, yes.
22 Q Did you know that the restriction on the
23 hours of operation that I referred to

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1 restricted Milford-Bennington to the hours of
2 12:00 a.m. to 8:00 a.m., were you aware of
3 that?
4 A The railroad or the quarry?
5 Q The railroad. We're back on the railroad.
6 A Okay. There was a limitation, but I don't
7 know what it was.
8 Q You don't know what the hours were?
9 A No.
10 Q Well, knowing the -- if I told you that the
11 quarry at Wilton didn't have lights, do you
12 think it would be difficult to serve them if
13 you had to operate between 12:00 a.m. and
14 8:00 a.m.?
15 MR. CULLIFORD: Objection. He's never
16 seen the quarry.
17 MR. HOWARD: I said if the quarry
18 didn't have lights, --
19 A We serve -- Wait a minute. Wait a minute.
20 We serve coal mines and various other things
21 at night with no lights. I think it would be
22 beneficial to have lights; but if you didn't,
23 that's why you have the trainman's lantern,

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1 and the book of rules and the safety
 2 instructions to do it safely. It would
 3 depend on the topography. It would depend on
 4 the customer, a plethora of things that you
 5 would have to take into consideration.
 6 Q Okay. Did you become aware in July of this
 7 year that the operating hours for
 8 Milford-Bennington were changed to 4:00 a.m.
 9 to 1:00 p.m.?
 10 A No. I think I found that out when the
 11 Surface Transportation Board came up or got
 12 involved in it, and then I saw that.
 13 Q Then you weren't involved in any discussions
 14 concerning changing the hours?
 15 A No.
 16 Q Nobody asked you?
 17 A No, that's the railroad.
 18 Q Nobody asked you whether that was something
 19 that should be done?
 20 A No.
 21 Q Do you have any idea why the hours were
 22 changed?
 23 A Which hours, the rail hours?

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1 Q Rail hours from 12:00 to 8:00 a.m. to 4:00 to
 2 1:00 p.m.?
 3 A No. I guess it was an operating situation.
 4 I don't get involved in that.
 5 Q Are you aware that, as of Monday of this
 6 week, there are no restrictions on the hours
 7 that Milford-Bennington can operate?
 8 A No.
 9 Q Nobody asked you whether that was an
 10 appropriate step to take?
 11 A No.
 12 Q Are you familiar with the trackage rights
 13 agreement between Guilford and
 14 Milford-Bennington?
 15 A No.
 16 Q Let me show you the agreement, and I just
 17 have one copy. I'm not going to mark it as
 18 an exhibit. I would like you to take a look
 19 at the underlined language on Page 4, please.
 20 (Indicating)
 21 A (Reviewing document)
 22 Q It says that it's Guilford's intention to
 23 install welded rail for about a five-mile

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1 stretch of the line over which
 2 Milford-Bennington has rights.
 3 Did you ever take any action to
 4 install the welded rail?
 5 A I don't know.
 6 Q Did you ever ask anybody to budget for it or
 7 plan for it?
 8 A Not to my recollection. I wouldn't get
 9 involved in that. It would be in the capital
 10 budget once a year, and that's done by the
 11 railroad folks.
 12 Q Well, this was in 1992.
 13 A Well, it wasn't in the capital budget, so I
 14 wouldn't have any idea of putting welded rail
 15 up there.
 16 Q Who puts the capital budget together?
 17 A Well, the Engineering Department along with
 18 the operating group, and they take it to the
 19 financial people, put it together once a
 20 year. You remember. We had those business
 21 meetings. You were involved in that, Jim.
 22 Gee, whiz. We haven't changed.
 23 Q My recollection is not so good on this.

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1 A Well, you can understand we're both getting
 2 older. My God, I should have retired two
 3 years ago. Can you imagine?
 4 Q All right. But you don't have any
 5 recollection that you, as the President and
 6 Chief Executive Officer, ever said you better
 7 budget or plan for this capital expenditure?
 8 A No, I don't recall seeing this at all. It
 9 could have happened. I just don't have any
 10 idea.
 11 Q Do you know somebody by the name of Jim
 12 Quinn?
 13 A Jim Quinn? I know a bunch of Quinns.
 14 Q Do you know Jim Quinn?
 15 A I know a Jim Quinn in Philadelphia. I know
 16 Jack Quinn in Philadelphia. I know Tommy
 17 Quinn in Philadelphia. They lived two doors
 18 from me.
 19 Q Do you know any Quinns in this area?
 20 A Yeah, but I don't think his name was Jim.
 21 Tom. I thought his name was Tom Quinn.
 22 Q Who is Tom Quinn?
 23 A Tom Quinn works for Quinn Concrete or

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1 somebody as far as I know.
 2 Q Okay. Do you know whether he knows Mr.
 3 Leishman?
 4 A I don't know.
 5 Q Okay. Have you talked to Tom Quinn recently?
 6 A No. I haven't seen him. I think they sold
 7 their business awhile back to somebody. I
 8 might have seen him on the green or something
 9 at a time, but I don't know.
 10 Q Well, have you seen him within the last six
 11 months?
 12 A I could have. I just don't recall seeing
 13 him.
 14 Q Do you have any recollection of telling Mr.
 15 Quinn that you were making life miserable for
 16 Milford-Bennington?
 17 A No.
 18 Q Any recollection of telling him that you
 19 didn't like Peter Leishman or the MacLellans?
 20 A No.
 21 Q Have you ever asked anybody for information
 22 concerning Milford-Bennington or Mr.
 23 Leishman?

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1 A Not to my knowledge.
 2 Q Did you ever ask anybody to investigate Mr.
 3 Leishman or Milford-Bennington?
 4 A No, not to my -- Not that I recall, no.
 5 Q Have you ever made any comments to anyone to
 6 the effect that you dislike Mr. Leishman or
 7 you believe that he wasn't qualified to run
 8 Milford-Bennington?
 9 A I could have made a comment that he wasn't
 10 qualified to run after that gas car where the
 11 severe personal injury was. I don't know
 12 that, though, but it could have been.
 13 Q And who would you have made that comment to
 14 if you did?
 15 A I have no idea.
 16 Q And is that the only time that you have any
 17 recollection of making comments?
 18 A I would say.
 19 Q Never any comments like that to Mr. Pease?
 20 A Not to my recollection. I know there's a
 21 couple of letters that Mr. Pease made
 22 comments on regarding Mr. Leishman, but it
 23 wasn't me.

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1 Q What are your views of Mr. Leishman?
 2 A I have no view of Mr. Leishman. I don't
 3 really know Mr. Leishman. I've been in his
 4 company maybe twice, just, you know.
 5 Q What are your views of Milford-Bennington?
 6 A I don't have any views on Milford-Bennington
 7 other than, you know, --
 8 Q Well, you would admit, I think, that there
 9 were a number of items of litigation over the
 10 years between Guilford and
 11 Milford-Bennington, right?
 12 A Litigation in regard to?
 13 Q In regard to the feeder-line applications,
 14 trackage rights?
 15 A Could have.
 16 Q Cars?
 17 A It's normal business. It keeps you and Rob
 18 in business here. Nothing personal. We do
 19 it all the time.
 20 Q So all of this litigation was, in your mind,
 21 just normal business?
 22 A I would say, yes.
 23 Q And you don't have any view that

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1 Milford-Bennington has been a source of
 2 irritation over the years for Guilford?
 3 A No. You know, I guess you better take it in
 4 context. I don't know how long
 5 Milford-Bennington is or how big they are.
 6 We've had 1,500 miles on our railroad. Tom
 7 Steiniger runs that, and I've never heard
 8 anything that would have led me to believe
 9 there was feelings or whatever with
 10 Milford-Bennington.
 11 I can't remember ever talking about
 12 the Milford-Bennington. I mean, it doesn't
 13 have a heck of a lot to do with our business.
 14 Q How about the MacLellans, do you have any
 15 views towards them?
 16 A No. I don't know them.
 17 Q Okay. And do you --
 18 A Was that the gentleman that started screaming
 19 and cursing with the surfboard? Was that Mr.
 20 MacLellan? I've never met him, but I got
 21 word back on that.
 22 Q I'm not sure what you're referring to.
 23 A Well, the day that we had the arbitration, I

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1 got a call. I think it was maybe from Tom
 2 Steiniger that somebody went in, and the
 3 arbitrator was there, and somebody started
 4 screaming and yelling and cursing, and I
 5 said, "Well, that's certainly not
 6 gentlemanly," and I guess the railroad got a
 7 letter back the next day or something from
 8 the arbitrator. He was shocked and dismayed
 9 from my understanding.
 10 Q Now, you understand that you're testifying
 11 under oath here today, right?
 12 A I do.
 13 Q Are there any answers that you've given that
 14 you would like to reconsider or change?
 15 A No.
 16 Q That's all I have.
 17 A Very good. Thank you.
 18 MR. CULLIFORD: One quick question.
 19
 20 CROSS EXAMINATION
 21 Q (By Mr. Culliford) Just at the beginning of
 22 your testimony, you talked about your role as
 23 President of GTI, CEO of the railroads and

CERTIFICATE

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1
 2
 3 I, DAVID FINK, do hereby
 4 certify that I have read the foregoing transcript
 5 of my testimony and further certify that said
 6 transcript is a true and accurate record of said
 7 testimony and signed under the pains and
 8 penalties of perjury.
 9
 10 Dated this ____ day of
 11 _____ 2003.
 12
 13
 14 _____
 15 DAVID A. FINK
 16
 17
 18
 19
 20
 21
 22
 23
 24

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1 President of Pan Am.
 2 A That's right.
 3 Q In your role with GTI, were you involved with
 4 a project called North Point?
 5 A Yes.
 6 Q Does that take up a lot of your time?
 7 A Great deal of time.
 8 Q And in your role as President of Pan Am, do
 9 you travel frequently?
 10 A Frequently, yeah.
 11 Q And where are you based?
 12 A I'm based here at Pease at 14 Aviation Ave.
 13 is my office.
 14 Q Do you maintain an office in North Billerica?
 15 A No.
 16 Q When was the last time you maintained an
 17 office there?
 18 A Several years ago. I don't have any.
 19 Q That's it.
 20 A Thank you.
 21 (Whereupon the deposition of David A.
 22 Fink concluded at 1:52 p.m.)
 23

CERTIFICATE

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1
 2
 3 I, Simonne J. Elwood, R.P.R. and
 4 a Notary Public within and for the Commonwealth
 5 of Massachusetts, duly commissioned, qualified
 6 and authorized to administer oaths and to take
 7 and certify depositions, do hereby certify that
 8 heretofore, to wit, on the 14th day of November
 9 2003, personally appeared before me David A.
 10 Fink, at the office of Pan Am Services, 62 Durham
 11 Street, Portsmouth, New Hampshire, in the
 12 aforecaptioned cause pending before the Surface
 13 Transportation Board, Commonwealth of
 14 Massachusetts; that the witness was by me duly
 15 sworn to testify to the truth, the whole truth
 16 and nothing but the truth; that thereupon and
 17 while said witness was under oath, the within
 18 deposition was taken down by me in shorthand at
 19 the time and place herein named and was
 20 thereafter reduced to computer transcription
 21 under my supervision. I further certify that I
 22 am not interested in the event of the action.
 23
 24 IN WITNESS WHEREOF, I have
 hereunto subscribed my hand and affixed my seal
 of office this ____ day of _____,
 2003.

 Simonne J. Elwood
 REGISTERED PROFESSIONAL REPORTER
 My Commission Expires: February 14, 2008

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ERRATA SHEET

Date of Deposition: November 14, 2003

Case Name: Granite State Concrete Company, Inc., et al vs. Boston and Maine Corporation, et al - Finance Docket No. 34381

Deponent's Name: David A. Fink

I, the undersigned, do hereby certify that I have read the foregoing deposition transcript and that to the best of my knowledge, said deposition transcript is true and accurate (with the exceptions of the following changes listed below):

DAVID A. FINK

Dated _____

- Page No. __ Line No. __ Correction _____
- Page No. __ Line No. __ Correction _____
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE, Inc. and
MILFORD BENNINGTON RAILROAD COMPANY, Inc.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF SYDNEY B. CULLIFORD IN SUPPORT OF
THE REPLY OF BOSTON AND MAINE CORPORATION AND SPRINGFIELD
TERMINAL RAILWAY COMPANY TO OPENING STATEMENT OF GRANITE
STATE CONCRETE COMPANY, INC. AND MILFORD-BENNINGTON
RAILROAD COMPANY, INC.**

Sydney B. Culliford deposes and states as follows:

1. I am the Vice President of Transportation for the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") and I make this verified statement in support of Guilford's Reply to the Opening Statement of Granite State Concrete Company, Inc. ("Granite State") and Milford-Bennington Railroad Company, Inc. ("MBR").
 2. In their Opening Statement, Granite State and MBR purport to use a five year average to identify the number of carloads that were lost as a result of Guilford's alleged actions in this matter.
-

3. Since Granite State and MBR begin their analysis of this five year average in 1999, it does not accurately reflect the actual five years of carloads shipped by MBR.

4. To more accurately reflect a full five year period, Guilford conducted an average from 1998 to 2003, and determined that MBR actually shipped 773 fewer cars that it had averaged over the previous five years. This average is reflected in the spreadsheet attached hereto as Attachment A.

5. Using past operating practices of MBR and Granite State as a guide, Guilford also determined that MBR could have transported an additional 783 carloads in 2003 if it had taken advantage of the increased operating speeds on the line between Wilton and Milford to operate up to four round trips per day; had continued to operate in December of 2003 when temperatures were above freezing, and had operated on September 18-19, 2003.

6. The methodology used by Guilford to reach this figure is as follows: Had MBR taken advantage of Guilford's offer to operate without restrictions on September 18-19, 2003, it would have transported an additional 54 carloads to Milford (three round trips per day with nine car trains). Second, had MBR operated up to four round trips per day between November 10, 2003 and December 4, 2003, it would have transported an additional 315 carloads to Milford. Finally, had MBR continued to operate on those days in December, 2003 when temperatures were above freezing, MBR could have transported an additional 414 carloads by only making two round trips per day.

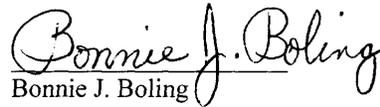
Milford & Bennington Carloads by Month
1998 to 2003

	2003	2002	2001	2000	1999	1998	5 YEAR AVERAGE ('98-'02)	2003 VS 5 YEAR
JAN	0	36	0	153	0	21	DNR	NA
FEB	0	0	0	0	0	0	DNR	NA
MAR	0	0	0	333	0	0	DNR	NA
APR	401	252	279	423	245	357	311	90
MAY	486	609	357	270	483	357	415	71
JUN	360	470	279	405	462	315	386	(26)
JUL	225	520	407	522	252	476	435	(210)
AUG	216	350	459	540	546	371	453	(237)
SEP	225	328	387	522	385	147	354	(129)
OCT	261	441	405	423	363	483	423	(162)
NOV	279	369	358	324	279	327	331	(52)
DEC	54	0	324	180	124	231	172	(118)
TOTAL	2,507	3,375	3,255	4,095	3,139	3,085	3,280	(773)

CERTIFICATE OF SERVICE

I hereby certify tht the foregoing documents were served on February 9, 2004 by federal express overnight delivery, postage prepaid upon counsel for Granite State Concrete Company, Inc. and Milford-Bennington Railroad Company, Inc. to the following address:

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Bonnie J. Boling