

MC GINNIS & ASSOCIATES, INC.
COLUMBUS, OHIO (614) 431-1344

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

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Chris A. Bonacorsi,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1998CV01311
)	Judge Sinclair
Wheeling & Lake Erie Railway)	
Company, et al.,)	
)	
Defendants.)	

Deposition of Susan J. Kirkland, a witness herein,
called by the Plaintiff for examination under the statute, taken
before me, Sandra L. Krosner-Martin, Registered Professional
Reporter and Notary Public in and for the State of Ohio, by
agreement of counsel without notice or other legal formality, at
the offices of the Transportation Section, 37 West Broad Street,
Third Floor, Columbus, Ohio, on Monday, April 12, 1999,
beginning at 10:00 o'clock a.m. and concluding on the same day.

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1 APPEARANCES:

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10 (VIA TELEPHONE)

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S T I P U L A T I O N S

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It is stipulated by and among counsel for the respective parties herein that the deposition of Susan J. Kirkland, a witness herein, called by the Plaintiff for examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the examination, reading and signature of the said Susan J. Kirkland to the transcript of her deposition are expressly waived by counsel and the witness; said deposition to have the same force and effect as though signed by the said Susan J. Kirkland.

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P R O C E E D I N G S

- - -

Monday, April 12, 1999

Morning Session

- - -

MR. RUF: Kim, the court reporter has just arrived.

MS. WYSS: All right.

MR. RUF: Swear in the witness.

(Witness sworn.)

MS. WYSS: I could not hear that.

MR. RUF: Swear in the witness again.

(Witness sworn.)

MS. WYSS: Okay, I heard that.

MR. RUF: I am Mark Ruf. I would like to put on the record, before we get started, that this deposition is being taken pursuant to the Court's order of March 26th, 1999.

Do you agree, counsel?

MS. WYSS: Yes.

- - -

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1 SUSAN J. KIRKLAND

2 being first duly sworn, as prescribed by law, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. RUF:

6 Q. Could you please state your name and spell your name
7 for the record?

8 A. Susan, S-u-s-a-n, Kirkland, K-i-r-k-l-a-n-d.

9 Q. Who is your employer?

10 A. Ohio Rail Development Commission.

11 Q. Is the Ohio Rail Development Commission a division of
12 another administrative agency in Ohio?

13 A. Well --

14 MR. KLODELL: I am Alan Klodell, Susan Kirkland's
15 legal counsel. Legally it is governed under 4981 which is a
16 separate -- its own separate independent chapter.

17 BY MR. RUF:

18 Q. Is the Ohio Rail Commission affiliated with the Ohio
19 Department of Transportation?

20 A. Yes, sir.

21 Q. Is it a division of the Ohio Department of
22 Transportation?

23 A. Well --

24 MR. KLODELL: Legally it is not.

25 BY MR. KLODELL:

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1 Q. Do you know what administrative agencies in Ohio are
2 involved with the operation or regulation of railroads?

3 A. Yes, sir.

4 Q. Could you tell us what those are?

5 A. The Public Utilities Commission of Ohio, the Ohio
6 Department of Transportation, and the Ohio Rail Development
7 Commission.

8 Q. And how are each of those agencies or state
9 organizations involved with either the operation or regulation
10 of railroads?

11 A. The federal funds flow into the Department of
12 Transportation. The administrative activities are performed by
13 the Rail Commission and the Public Utilities Commission.

14 Q. What do you mean by "administrative activities"? What
15 type of activities are carried out by the Ohio Rail Commission?

16 A. Programmatic activities.

17 Q. Does that include upgrading the warning devices at
18 railroad crossings?

19 A. Yes, sir.

20 Q. What federal organizations or administrative agencies
21 are involved in the operation or regulation of railroads in the
22 State of Ohio?

23 A. The Federal Highway Administration and the Federal
24 Rail Administration.

25 Q. Do you work with those two federal organizations or

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1 agencies?

2 A. More so with the Federal Highway Administration.
3 Limited with the Federal Rail Administration.

4 Q. And how is the Federal Highway Administration involved
5 in the operation or regulation of railroads in the State of
6 Ohio?

7 A. They are not. Their funds are used for programmatic
8 improvements.

9 Q. Do they have different programs through which federal
10 funds are used?

11 A. Yes, sir.

12 Q. Could you tell us the name of the programs through
13 which federal funds are used?

14 A. I believe that they are called -- Give me a second.
15 No, sir, I cannot tell you. No, sir.

16 Q. Do you know if there are different federal programs
17 for the use of federal funds for railroad crossings?

18 A. Yes, sir.

19 Q. But you do not know the name of those programs?

20 A. There are two of them. I don't know the names.

21 Q. For those two programs, would all federal funds used
22 in Ohio go through the Ohio Department of Transportation?

23 A. Yes, sir.

24 Q. Does the Ohio Department of Transportation have its
25 own accounting department?

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1 A. Yes, sir.

2 Q. Does the Federal Rail Commission have its own
3 accounting department?

4 A. I don't know.

5 Q. Could you tell us what your title is with the Ohio
6 Rail Commission?

7 A. Manager of the safety programs.

8 Q. What safety programs do you have at the Ohio Rail
9 Commission?

10 A. Do you want me to tell you all of them?

11 Q. Yes.

12 A. We have the Federal Warning Device Program. We have
13 the Service Reconstruction Program. We have the Consolidation
14 Program. We have the Profile Improvement Program. We have the
15 Corridor Improvement Program. I believe that's all inclusive.

16 Q. Is there more than one program at the Ohio Rail
17 Commission for upgrading the warning devices at railroad
18 crossings?

19 A. Yes, sir.

20 Q. How many programs are there?

21 A. Three.

22 Q. Could you identify those programs for us, please?

23 A. Federal Warning Device Program; Consolidation Program;
24 Corridor Program.

25 Q. What is the Federal Warning Device Program?

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1 A. It is a program that considers all crossings in the
2 state and prioritizes via a formula.

3 Q. Does that involve sending a diagnostic team out to the
4 railroad crossings?

5 A. Yes, sir.

6 Q. And is the Secretary of the Federal Highway
7 Administration responsible for that program?

8 A. I don't know. I couldn't say.

9 Q. Are you involved at all in the diagnostic surveys that
10 are performed under the Federal Warning Device Program?

11 A. My staff is.

12 Q. Are you personally involved with that?

13 A. No.

14 Q. So you don't have any personal knowledge as to the
15 diagnostic surveys that are performed in the State of Ohio at
16 certain railroad crossings?

17 A. In general, not. I mean I do a cursory on occasion.
18 I will take part but not on a regular basis.

19 Q. Do you have any personal knowledge of whether or not
20 any diagnostic surveys were performed at the Howe Road crossing
21 for the Wheeling & Lake Erie Railroad in Portage County,
22 Township Road 83, that is Brinfield Township, AAR-DOT No.
23 472661V?

24 MS. WYSS: I would place an objection on the record as
25 to questions regarding information which is protected from

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1 discovery and administered under 23 U.S.C. Section 409. I also
2 have an objection as to any questions relating to the upgrade at
3 this crossing which occurred after the subject accident.

4 Go ahead.

5 THE WITNESS: No, sir.

6 BY MR. RUF:

7 Q. From now on when I refer to the Howe Road crossing, it
8 is the crossing that I just identified in the previous question.
9 Okay.

10 A. Uh-huh.

11 Q. You need to give a verbal answer.

12 A. Yes, sir.

13 Q. Could you tell us what the Consolidation Program is?

14 A. It is a program that local governments are given
15 incentive to close redundant grade crossings, whereby in
16 exchange for the closure of a redundant crossing, uh, they are
17 given an improvement at another crossing of their choice.

18 Q. Does it involve anything other than the closing of
19 crossings?

20 A. It involves upgrades as incentives.

21 Q. Do you know if the Howe Road crossing was ever part of
22 the Consolidation Program?

23 A. I don't know.

24 Q. What is the Corridor Program?

25 A. It is a program where corridors are identified by an

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1 increase -- significant increase in rail traffic as a result of
2 the merger, Conrail merger.

3 Q. What do you mean by "corridors"?

4 A. Segment of rail identified in the Service
5 Transportation Board and analysis of the merger.

6 Q. Does that involve any type of analysis of warnings at
7 railroad motorist crossings?

8 A. Yes, sir.

9 Q. Does it involve upgrading the warning devices at --

10 A. Yes.

11 Q. -- railroad motorist crossings?

12 A. Yes.

13 Q. Do you know if the Howe Road crossing was ever
14 involved in the Corridor Program?

15 A. It was not.

16 Q. Could you tell us your duties as manager at the Ohio
17 Rail Development Commission?

18 A. I am responsible for the programs related to grade
19 crossing safety and the management of five individuals that
20 administer the programs.

21 Q. Do you handle the administrative aspects for grade
22 crossing upgrades in the State of Ohio?

23 A. A portion of them.

24 Q. What portion?

25 A. The technical and engineering portion.

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1 Q. What aspects of the technical and engineering portion
2 do you handle?

3 A. Once a project is identified by the Public Utilities
4 Commission, my section is responsible for setting up the funds,
5 reviewing the plans, and processing the bills.

6 Q. So you are not involved at all in making the
7 determination as to what warning devices are going to be
8 installed at a crossing; is that correct? In other words, you
9 don't make the initial determination?

10 A. That's correct.

11 Q. Who makes the initial determination?

12 A. Public Utilities Commission.

13 Q. And then you just carry out the directive of the PUCO?

14 A. And the Federal Highway Administration.

15 Q. Does your job duty encompass writing checks and making
16 deposits of federal funds?

17 A. No, sir.

18 Q. Do the actual writing of checks and making deposits
19 occur through the ODOT accounting department?

20 A. To the best of my knowledge, yes, sir.

21 Q. Where is the ODOT accounting department located?

22 A. I don't know the exact room number. They are there at
23 the ODOT complex on West Broad.

24 Q. Is that in a different building than your location?

25 A. Yes, sir. Yes.

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1 Q. Could you give us the address of the building that you
2 work in?

3 A. 50 West Broad.

4 Q. Does the Ohio Department of Transportation handle the
5 receipt and distribution of all funds received and disbursed by
6 the Ohio Rail Commission?

7 A. Could you repeat that?

8 Q. Sure. Does the Ohio Department of Transportation
9 handle the receipt and distribution of all funds received and
10 disbursed by the Ohio Rail Commission?

11 MR. KLODELL: Answer to the best of your knowledge.

12 THE WITNESS: In relationship to the Safety Section,
13 yes.

14 BY MR. RUF:

15 Q. If federal funds would be used at a railroad crossing,
16 would they go through the Ohio Department of Transportation
17 accounting department?

18 A. Yes, sir.

19 Q. Would the Ohio Department of Transportation have
20 handled funds for the Buckeye Crossbuck Program?

21 A. Yes, sir.

22 Q. You did not personally transfer or receive any funds
23 for the Ohio Buckeye Crossbuck Program; is that correct?

24 A. Yes, sir.

25 Q. Your knowledge of funds spent at that location would

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1 come from other people who actually handle the funds; correct?

2 A. Yes, sir.

3 Q. So you did not personally receive or distribute any of
4 the funds spent at the Howe Road crossing; correct?

5 A. Yes, sir.

6 Q. Do you agree that the state minimum requirement for a
7 warning at a railroad crossing is a standard crossbuck?

8 A. Yes, sir.

9 Q. Do you agree that the standard crossbuck has been in
10 existence since 1883?

11 A. To the best of my knowledge, yes, sir.

12 Q. Do you agree that federal regulations may require more
13 warning devices depending on the nature of the crossing?

14 A. Could you repeat that?

15 Q. Sure. Do you agree that federal regulations may
16 require more warning devices depending on the nature of the
17 crossing?

18 A. I am not aware of the federal regulations saying that.

19 Q. Are you aware of whether or not the Secretary of the
20 Federal Highway Administration can make a determination as to
21 the type of warning necessary at a crossing after a diagnostic
22 team evaluates the crossing?

23 A. I am not aware that the secretary has a role in that.

24 Q. To your knowledge, did the Secretary of the Federal
25 Highway Administration have a role in Ohio's Buckeye Crossbuck

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1 Program?

2 A. Not to the best -- I don't know. I just don't know.

3 Q. Did you have any direct contact with the Secretary of
4 the Federal Highway Administration?

5 A. May I ask a clarification question?

6 Q. Sure.

7 A. When you say "secretary", do you mean the
8 administrator? There is the Secretary of Transportation and
9 then there is the administrators of the Federal Highway
10 Administration and the Federal Rail Administration. I am not
11 sure which you mean. Do you mean the Secretary of
12 Transportation or the administrator for the Federal Highway
13 Administration?

14 Q. Did you have direct contact with either one of those
15 organizations?

16 A. No, I did not.

17 Q. Were you responsible for carrying out the Ohio
18 Crossbuck Program?

19 A. It was -- I was one of many people.

20 Q. Who else was involved in carrying out the Ohio
21 Crossbuck Program?

22 A. At that time, the administrators for my agency, uh, at
23 that time we were within ODOT. We were called the Rail
24 Division. So the administrator would have been at that time
25 Administrator Molitoris, uh, and then after her it would have

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1 been Administrator Holfinger, were very instrumental. There
2 were different staff people, a number of different staff people
3 involved at that time. Some are deceased, retired.

4 Q. Are those people your supervisors?

5 A. Yes, sir.

6 Q. Are they still with the Ohio Rail Commission?

7 A. Jeff Holfinger. My other boss is deceased. And
8 Jolene Molitoris is now head of the Federal Rail Administration.

9 Q. Is the Ohio Rail Commission involved in installing
10 lights and gates at railroad crossings?

11 A. Yes, sir. From a technical and engineering
12 standpoint, yes.

13 Q. At what types of crossings are lights and gates
14 installed?

15 A. Both passive crossings and crossings with flashing
16 lights.

17 Q. By "passive crossings", you mean a crossing with no
18 lights or gates or active warning devices; correct?

19 A. Yes, sir. Yes.

20 Q. And that is to be distinguished from a crossing with
21 active warning devices which involve flashing lights and gates
22 which come down to warning motorists?

23 A. Yes, sir.

24 Q. What types of crossings are lights and gates installed
25 at?

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1 A. That is just what you asked me. Passive crossings and
2 crossing with flashing lights.

3 Q. Are they installed at dangerous and hazardous grade
4 crossings?

5 MS. WYSS: Objection.

6 MR. KLODELL: You can answer the question.

7 THE WITNESS: That is a judgment call.

8 BY MR. RUF:

9 Q. Are you familiar with the ratings for the crossings in
10 the State of Ohio?

11 A. I am familiar, yes.

12 Q. Is the evaluation of the hazardousness or
13 dangerousness of a crossing part of your duty as the manager at
14 the Ohio Rail Development Commission?

15 A. No.

16 Q. Whose responsibility would that be?

17 A. Public Utilities Commission.

18 Q. The Public Utilities Commission performs the ratings
19 of the dangerousness or hazardousness of a crossing in the State
20 of Ohio?

21 A. Yes, sir. Yes.

22 Q. You are not involved with that in any way?

23 A. No, sir.

24 Q. Do you agree that there were no active warning devices
25 at the Howe Road crossing until after April 29th of '97?

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1 A. I don't have personal knowledge.

2 Q. Would you have personal knowledge of the type of
3 warning device present at the Howe Road crossing on July 13,
4 1996 when Chris Bonacorsi was in an accident with a train?

5 A. No, sir.

6 Q. Do you have any knowledge of how many accidents have
7 occurred at the Howe Road crossing?

8 A. No, sir.

9 Q. Do you know if a safety evaluation was done by a
10 diagnostic team of the Howe Road crossing at any time?

11 A. Only because you showed me.

12 Q. To your knowledge, when was the first diagnostic team
13 evaluation performed?

14 A. Unless I look at that (indicating), I can't.

15 Q. Go ahead and look at this (indicating).

16 A. April 29th of '97.

17 Q. To your knowledge, was there a diagnostic team
18 evaluation done prior to July 13, 1996, which was the date of
19 Chris Bonacorsi's accident?

20 A. I have no knowledge.

21 Q. So to your knowledge, the only diagnostic team
22 evaluation was performed after Chris Bonacorsi's accident of
23 July 13, 1996?

24 MS. WYSS: Objection. I think she already testified
25 that she didn't have knowledge of that other than a document

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1 that you just showed here.

2 Go ahead.

3 THE WITNESS: Could you say it again?

4 MR. RUF: Could you please read back the question?

5 (Record read back as requested.)

6 THE WITNESS: Yes, sir.

7 BY MR. RUF:

8 Q. Was the Howe Road crossing part of a study done on the
9 effectiveness of the Buckeye crossbuck?

10 A. Yes, sir.

11 MR. RUF: Would you mark that as Exhibit A
12 (indicating)?

13 - - -
14 Thereupon, Exhibit A was marked
15 for purposes of identification.

16 - - -

17 BY MR. RUF:

18 Q. I'm handing you what has been marked as Exhibit A.
19 Are you familiar with that document (indicating)?

20 A. Yes, sir.

21 Q. Have you seen that document before today?

22 A. Yes, sir.

23 Q. Could you please identify what Exhibit A is?

24 A. It is a brochure for the Buckeye Crossbuck Program.

25 Q. And who is the -- What department is the brochure

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1 distributed by?

2 A. At that time, ODOT Rail Division. At the time that it
3 was produced, ODOT Rail Commission.

4 Q. Does somebody else distribute the document now?

5 A. Both ODOT and the Rail Commission.

6 MS. WYSS: Let me interject. Mark, what exhibit was
7 this? Is this the one -- Was this to our summary judgment
8 motion? I don't think we're talking about the same thing.

9 MR. RUF: Exhibit A.

10 MS. WYSS: It was Exhibit A to our motion?

11 MR. RUF: Yes, to one of them.

12 MS. WYSS: Okay. Go ahead.

13 BY MR. RUF:

14 Q. Do you know what the purpose of Exhibit A is? Is it
15 to explain the Buckeye Crossbuck Program?

16 A. It is an educational document.

17 Q. Do you agree that according to Exhibit A the standard
18 crossbuck has been in existence since 1883?

19 A. Yes.

20 Q. And do you agree that according to Exhibit A the
21 Buckeye crossbuck is the first revision of the standard
22 crossbuck since 1883?

23 A. Yes.

24 Q. Could you explain what the difference is between a
25 standard crossbuck and a Buckeye crossbuck?

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1 A. A Buckeye crossbuck uses red on white lettering and
2 uses a three-panel shield with the word "yield" on it.

3 Q. So the three-panel shield with the word "yield" on it
4 is installed in addition to the standard crossbuck, installed on
5 the standard crossbuck?

6 A. Yes, sir.

7 Q. Is a Buckeye crossbuck an active or passive warning
8 device?

9 A. Passive.

10 Q. Was the purpose of the Buckeye crossbuck study to
11 determine if the Buckeye crossbuck is more effective at reducing
12 motorist-train collisions than the standard crossbuck?

13 A. Yes, sir.

14 Q. Was that an experimental study?

15 A. Yes, sir.

16 Q. So it was a study to determine whether a Buckeye
17 crossbuck is an upgrade from the standard crossbuck that has
18 been used since 1883?

19 A. No, sir.

20 Q. Prior to the study, was there any data that the
21 Buckeye crossbuck was more effective at reducing accidents than
22 the standard crossbuck?

23 A. No, sir.

24 Q. The purpose of this study was to make that
25 determination; correct?

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1 A. The purpose of the study was to determine if one sign
2 was more effective than the other.

3 MR. RUF: Could you mark that (indicating)?

4 - - -

5 Thereupon, Exhibit B was marked
6 for purposes of identification.

7 - - -

8 MR. RUF: Kim, I have had Exhibit B marked. It's
9 Agreement No. 7294 of February 23, 1993.

10 MS. WYSS: All right.

11 BY MR. RUF:

12 Q. I am handing you what has been marked as Exhibit B
13 (indicating).

14 MS. WYSS: Mark, that was the Exhibit B to our motion?

15 MR. RUF: Correct.

16 MS. WYSS: Okay.

17 BY MR. RUF:

18 Q. Are you familiar with that document (indicating)?

19 A. Yes.

20 Q. Have you seen that document before today?

21 A. Yes.

22 Q. Do you agree that the Buckeye Crossbuck Program was
23 implemented pursuant to the agreement marked as Exhibit B?

24 A. One moment. I agree with the exception of the second
25 paragraph of Section IV which specified a due date that was

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1 impossible to be met due to complications within the government,
2 uh, uncontrollable by the railroad.

3 Q. So the Buckeye Crossbuck Program was implemented
4 pursuant to Exhibit B except for Section Roman numeral IV,
5 Paragraph 2?

6 MS. WYSS: I think we need to make a clarification
7 there, Mark, because you're stating that generally the Buckeye
8 Crossbuck Program was implemented pursuant to that agreement
9 when that agreement refers specifically to the Wheeling & Lake
10 Erie Railway Company. There were other railroads involved.
11 BY MR. RUF:

12 Q. Do you agree that the Buckeye Crossbuck Program with
13 respect to the Wheeling & Lake Erie Railroad Company was carried
14 out pursuant to the terms of the agreement marked as Exhibit B
15 except for Page 4, Section Roman numeral IV, Paragraph 2?

16 A. Yes, sir.

17 Q. To your knowledge, were there any other agreements
18 that were involved in carrying out the Buckeye Crossbuck Program
19 with respect to the Wheeling & Lake Erie Railway Company?

20 A. To the best of my knowledge, no, there were not.

21 Q. Do you agree that according to the agreement the date
22 of the agreement was February 23, 1993? Look at Page 1.

23 A. Page 1?

24 Q. Yes.

25 A. Yes, sir.

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1 Q. And do you agree that the parties to the agreement are
2 the Director of Transportation, which is the State of Ohio, and
3 the Wheeling & Lake Erie Railway Company?

4 A. Yes, sir.

5 Q. Do you agree that no federal organization or agency is
6 a party to the agreement marked as Exhibit B?

7 A. Yes, I would agree.

8 Q. Do you agree that in the Ohio Buckeye crossbuck study,
9 Buckeye crossbucks were to replace certain standard crossbucks
10 throughout the state?

11 A. Yes, sir.

12 Q. And do you agree that the determination as to which
13 crossbucks were going to be replaced was done by using the
14 AAR-DOT numbers for each railroad crossing?

15 A. Yes, sir.

16 Q. Were the AAR-DOT numbers for each crossing in the
17 State of Ohio in existence prior to the agreement marked as
18 Exhibit B?

19 A. Yes, sir.

20 Q. Do you know how long the AAR-DOT numbers have been
21 assigned to crossings in the State of Ohio?

22 A. To the best of my knowledge, since the early 1970s.

23 Q. And do you agree that under the Ohio Buckeye crossbuck
24 study, all standard crossbucks were replaced because some of the
25 crossbucks had lost their reflective characteristics?

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1 A. No, sir.

2 Q. Why were all the standard crossbucks replaced in this
3 study?

4 A. There were elements in the standard crossbuck and the
5 Buckeye Crossbuck Program that were not present on the
6 traditional standard.

7 Q. What elements were present?

8 A. Reflectorized tape on all four sides of the post along
9 with the back of the crossbuck blades.

10 Q. Do you know who made the determination as to what type
11 of standard crossbucks were going to be installed under the Ohio
12 Buckeye Crossbuck Program?

13 A. It was a collective decision by the Federal Highway
14 Administration and ODOT.

15 Q. Do you know if -- Do you have any personal knowledge
16 as to how that decision was made?

17 A. Yes, but I mean we are talking several years ago, so
18 my memory is not too great on it. But yes, I was a part of the
19 process.

20 Q. What personal knowledge do you have about the
21 determination as to what type of standard crossbucks were going
22 to be used in the Buckeye Crossbuck Program?

23 A. I was a part of the planning process for the program,
24 uh, so I was present in meetings that set up the procedures.

25 Q. Were you involved at all in determining the exact type

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1 of standard crossbuck to be used in the study?

2 A. Yes.

3 Q. How were you involved in that decision?

4 A. I don't know what more I can say. The same thing that
5 I said to the last question. I was involved in the meetings
6 that established the parameters of the program.

7 Q. Was it your determination as to what type of standard
8 crossbuck to use?

9 A. Was it my personal determination?

10 Q. Yes.

11 A. No.

12 Q. Do you know whether any evaluative studies were done
13 on the type of crossbuck to be used in the Buckeye Crossbuck
14 Program?

15 A. Could you repeat it?

16 Q. Sure.

17 MR. RUF: Could you read back the question, please?

18 (Record read back as requested.)

19 THE WITNESS: Yes, there were many evaluations done.

20 BY MR. RUF:

21 Q. Was there ever an evaluation to compare the standard
22 crossbuck with the standard crossbuck to be used in the Buckeye
23 Crossbuck Program? That was not a clear question. Let me reask
24 that.

25 Was there ever an evaluation done to determine whether

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1 the standard crossbuck used in the Buckeye Crossbuck Program was
2 more effective at reducing motorist-train accidents than the
3 standard crossbucks that have been used throughout the State of
4 Ohio since 1883?

5 A. There was no formal study done. However, there was
6 consideration given to the inconsistencies that existed in the
7 field with the traditional crossbuck and the need for the
8 project to consistently evaluate a standard to a Buckeye.

9 Q. Were all the standard crossbucks changed so that you
10 would have a reliable control group?

11 A. Yes.

12 Q. And that was the purpose of changing the standard
13 crossbucks?

14 A. Yes.

15 Q. Do you agree that, according to the agreement marked
16 as Exhibit B, the State made the determination as to whether an
17 upgraded Buckeye crossbuck was installed or a standard crossbuck
18 was installed at a particular crossing?

19 A. Yes. Yes, I do.

20 Q. And the determination of what type of crossbuck to be
21 installed at a crossing was made by using the preexisting
22 AAR-DOT numbers?

23 A. Yes, sir.

24 Q. And crossings with an even AAR-DOT number were
25 replaced with a Buckeye crossbuck?

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1 A. Correct.

2 Q. And crossings with an odd AAR-DOT number were replaced
3 with standard crossbucks?

4 A. Correct.

5 Q. Do you agree that the Howe Road crossing has an odd
6 AAR-DOT number?

7 A. Yes.

8 Q. Do you know when the standard crossbuck was installed
9 at the Howe Road crossing pursuant to the Buckeye Crossbuck
10 Program?

11 A. I do not.

12 Q. You were not personally involved in any payments made
13 for the standard crossbuck installed at the Howe Road crossing,
14 were you?

15 A. My staff would have been. But personally, no.
16 Personally, no.

17 Q. Do you agree that pursuant to the terms of the
18 agreement, the determination as to whether a standard or Buckeye
19 crossbuck being installed at a crossing was not done based on an
20 evaluation by a diagnostic team for each crossing?

21 A. Correct.

22 Q. It was just a random determination based on the
23 AAR-DOT numbers; correct?

24 A. Correct.

25 Q. Do you agree that the determination as to whether to

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1 install a Buckeye crossbuck or a standard crossbuck was not done
2 based on federal regulations?

3 A. I can't say that. We had an agreement with Federal
4 Highway Administration, a signed agreement as far as how the
5 project would be administered. So that was part of the program.

6 Q. Do you agree that according to Exhibit B payments were
7 made by the State of Ohio to the railroad?

8 A. Yes.

9 Q. And you never personally handled any of Ohio payments
10 to the Wheeling & Lake Erie Railroad, did you?

11 A. To the best of my knowledge, I did not. You know,
12 there's periodically times when a staff member will be off where
13 I would have to assume some duties. To the best of my
14 knowledge, I did not.

15 Q. Do you agree that under the agreement a standard
16 crossbuck costs \$135.91?

17 A. Yes, sir.

18 Q. And do you agree that a Buckeye crossbuck costs
19 \$268.50?

20 A. Did you say \$268.50?

21 Q. Yes.

22 A. Yes. Provided it is a single track location, that is
23 correct.

24 Q. Do you agree that pursuant to the terms of the
25 agreement, marked as Exhibit B, the railroad assumed legal

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1 liability for any claims resulting from installation of a
2 standard crossbuck?

3 A. Yes.

4 Q. And do you agree that pursuant to the agreement,
5 marked as Exhibit B, the State assumed legal liability for any
6 claims resulting from installation of a Buckeye crossbuck?

7 A. Yes.

8 Q. And at the Howe Road crossing, a standard crossbuck
9 was installed; correct?

10 A. To the best of my knowledge, yes.

11 Q. So that pursuant to the terms of the agreement, any
12 legal liability for the installation of the standard crossbuck
13 would be assumed by the railroad; correct?

14 A. To the best of my knowledge, yes.

15 Q. Do you know if the Howe Road crossing was involved in
16 the Federal Grade Crossing Protection Program before Chris
17 Bonacorsi's accident of July 13, 1996?

18 A. I am not aware.

19 MR. RUF: Thank you. That is all I have at this time.

20 MS. WYSS: I just want to follow-up briefly with a
21 couple of questions.

22

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23

EXAMINATION

24 BY MS. WYSS:

25 Q. Susan, were you a part of drafting the agreement

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1 between the Wheeling & Lake Erie Railway Company and the Ohio
2 Rail Development Commission that we have referred to?

3 A. Yes.

4 Q. Are you aware of the legal liability which were being
5 assumed as a part of that agreement?

6 MR. KLODELL: Answer to the best of your knowledge.

7 THE WITNESS: To a degree.

8 BY MS. WYSS:

9 Q. Do you have knowledge as to what specific liabilities
10 were covered by that agreement or were attempted to be covered
11 by that agreement?

12 MR. RUF: Objection. The document speaks for itself.

13 MS. WYSS: Go ahead.

14 THE WITNESS: Again, I would have to say to a degree.

15 BY MS. WYSS:

16 Q. What were those liabilities, to your knowledge?

17 MR. RUF: Objection.

18 MS. WYSS: You can answer.

19 MR. KLODELL: You're allowed to look at the document.

20 THE WITNESS: I believe the intent of the agreement
21 was to relieve the railroad of liability in relationship to the
22 project.

23 MR. RUF: Objection; move to strike.

24 BY MS. WYSS:

25 Q. And Susan, because you are the manager of grade

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1 crossing safety programs, I assume that the Ohio Buckeye
2 Crossbuck Program was a safety program?

3 A. Yes.

4 Q. And as a part of that program, you have testified that
5 you were involved in making the decision about the crossbucks
6 that would be involved in the program; that you were also
7 involved in the agreements that were drafted; that you worked
8 with members of the Federal Highway Administration as a part of
9 that; is that correct?

10 MR. RUF: Objection; leading.

11 THE WITNESS: Yes.

12 MS. WYSS: This is cross-examination.

13 MR. RUF: She is your witness.

14 MS. WYSS: Not for this deposition she is not.

15 Go ahead, Susan.

16 THE WITNESS: Yes. Yes.

17 BY MS. WYSS:

18 Q. And the funds that are referred to in the agreement
19 between the railroad and the State of Ohio were paid from the
20 State of Ohio to the railroad eventually. But the question that
21 I want to ask you is: Where did those funds originate?

22 MR. RUF: Objection.

23 THE WITNESS: Federal Highway Administration.

24 BY MS. WYSS:

25 Q. And were the crossbucks and the Buckeye Crossbucks

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1 Program 100 percent federally funded?

2 MR. RUF: Objection.

3 THE WITNESS: Yes.

4 MR. KLODELL: You can answer.

5 THE WITNESS: Yes.

6 BY MS. WYSS:

7 Q. And again, was the Federal Highway Administration
8 involved in making the determination as to whether or not this
9 would be a federally funded program?

10 MR. RUF: Objection.

11 THE WITNESS: Yes.

12 BY MS. WYSS:

13 Q. And in order to receive the federal funding which was
14 a part of this program, federal regulations would have been
15 followed; correct?

16 MR. RUF: Objection.

17 THE WITNESS: Yes.

18 MS. WYSS: That's all the questions I have.

19 MR. RUF: I have no additional questions.

20 MR. KLODELL: Mark, I believe you said that you want
21 copies of the documents from the file?

22 MR. RUF: Yes.

23 MR. KLODELL: All right.

24 MR. RUF: What do you want to do about signature? Are
25 you willing to waive it?

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1 MR. KLODELL: We discussed that earlier about waiving
2 signature.

3 Susan, do you want to review the deposition before
4 it's certified?

5 THE WITNESS: I don't think there is a need.

6 MR. KLODELL: It is solely up to you if you are
7 comfortable.

8 MR. RUF: I would rather that you waive it because I
9 have to use this transcript by this Friday.

10 THE WITNESS: I feel that the answers were short
11 enough. I am not uncomfortable.

12 MR. KLODELL: Okay.

13 MR. RUF: Kim, is there anything else you want to
14 state for the record?

15 MS. WYSS: I would just like to order a copy of the
16 transcript as soon as possible. I assume the exhibits will be
17 attached to the transcript since I am not there.

18 MR. RUF: Yes.

19 MS. WYSS: Thank you.

20 (Signature waived.)

21 - - -

22 (Thereupon, the deposition was concluded at

23 11:05 o'clock a.m. on Monday, April 12, 1999.)

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25