

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In Proceedings for the Reorganization of a Railroad

IN THE MATTER OF :

BOSTON AND MAINE CORPORATION :

Debtor :

No. 70-250-F

STENOGRAPHIC TRANSCRIPT OF HEARING

BEFORE FORD, SR. D.J., ON PETITION FOR ABANDONMENT.

T H I R D D A Y

Courtroom No. 2
Federal Building
Boston, Massachusetts
Wednesday, March 7, 1973

PETER W. CARR, SwornDirect Examination by Mr. Weinberg

- Q Will you state your name, address and occupation, please.
- A My name is Peter W. Carr and I am vice president and comptroller, Boston & Maine. I reside at 5 Phillips Road, Melrose, Massachusetts.
- Q And in your capacity as comptroller of the Boston & Maine Corporation, sir, do you have charge and custody of the books of financial accounts and records of the Corporation?
- A Yes, sir, I do.
- Q And did you have an account with Franconia Manufacturing Corporation of Lincoln, New Hampshire?
- A Yes. They were one of our customers.
- Q And will you tell us the status of that account?
- A The present status of that account is that it was turned over to our law department in approximately October of 1972, and in December of 1972 our law department advised me to write it off as uncollectable.
- Q What was the balance owing to the Boston & Maine Corporation by the Franconia Manufacturing Corporation?

MR. COLLINS: Objection, your Honor, on the ground of relevancy, unless he is going to put in ---

THE COURT: I will take it de bene. Go forward.

A The amount of the claim that Boston & Maine filed in the bankruptcy court was \$135,152.04.

Q And would you tell us how that debt arose, on what account?

MR. COLLINS: Same objection.

A The debt arose from transportation charges that were billed to Franconia Manufacturing Company prior to their ceasing of operations sometime in March of 1972. These were transportation charges for the delivery of cars of coal, I believe, principally.

MR. WEINBERG: I would like to introduce at this time for identification certified copies from the records of the Referee in Bankruptcy of the Franconia Manufacturing Company in the United States District Court for the District of New Hampshire. First, a listing of the schedule of debts of the debtor, particularly the debt owed to the Boston & Maine Corporation.

(Claims register marked
Petitioner's Exhibit No. 15
for Identification.)

MR. WEINBERG: Secondly, a certified
copy of the original petition for arrangement
under Section 322, filed by the debtor Franconia
Manufacturing Corporation in the same court.

(Petition for arrangement
marked Petitioner's
Exhibit No. 16 for
Identification.)

MR. WEINBERG: And thirdly, the abandonment
of said arrangement by the debtor filed in the
same court.

(Abandonment of arrangement
marked Petitioner's
Exhibit No. 17 for
Identification.)

Q And in the various exhibits that have been filed
for identification in this proceeding, were you
the B & M officer who supplied the other revenue
figures that appear on those exhibits in the
revenue accounts?

A Yes, sir, I was.

Q And what do the other figures under the revenue
account represent?

A The other revenue figures shown on the exhibits

previously introduced are the demurrage revenue billed against customers on the line involved for the periods shown on the previous exhibit.

Q And they were taken from the original books of account of the Boston & Maine Corporation?

A Yes, sir, they were.

Q And from the books of account of the Boston & Maine Corporation, Mr. Carr, did you prepare a condensed general balance sheet exhibit dated November 30, 1972?

A Yes, sir, I did.

Q And is this which I now hand you a copy of that exhibit which you prepared?

A Yes, sir, that's correct.

MR. WEINBERG: I would like to offer this for identification.

(Condensed general balance sheet marked Petitioner's Exhibit No. 18 for Identification.)

Q Did you also, from the books of account of the Corporation, prepare a comparative income statement for the five years ended December 31 in each of the years 1967 through 1971?

A Yes, sir, that's correct.

Q Will you tell us what the profit or loss to the Corporation was for each of those years?

A The year 1967, Boston & Maine indicated a net loss of \$3,417,000.

In 1968, the loss was \$3,702,000.

In 1969, the loss was \$6,063,000.

In 1970, the loss was \$14,243,000.

And in 1971, the loss was \$6,499,000.

Q Did you prepare an exhibit?

A Yes, sir, I did.

Q Is this which I now hand you the exhibit which you prepared showing the comparative income statement for the five years ending December 31, between 1967 and 1971?

A Yes, sir, that is the exhibit.

MR. WEINBERG: I would like to offer this for identification.

(Comparative income
statement marked
Petitioner's Exhibit
No. 19 for Identification.)

Q And from the books of account of the Corporation, Mr. Carr, did you also prepare a comparative income statement for the eleven months ending November 31, 1971 and 1972?

A Yes, sir, that's correct.

Q And what did your study of those periods indicate as the comparative profit and loss for those periods?

A The net loss for the eleven months ended November 30, 1972 was \$9,190,000.

The comparable loss for the year 1971 was \$5,886,000.

Q Did you prepare an exhibit?

A Yes, sir.

Q Is this which I now hand you the exhibit which you prepared?

A Yes, sir, that is the exhibit.

MR. WEINBERG: I would like to offer this in identification.

(Comparative income statement marked Petitioner's Exhibit No. 20 for Identification.)

MR. WEINBERG: I have concluded my examination of this witness.

Cross Examination by Mr. Collins

Q Mr. Carr, did you say that you were the vice president and comptroller, or is that one title or two titles?

A That is one title.

Q Is that the addition of the vice presidency --- does that represent a recent promotion to you?

A Actually, no. It is just a clarification of some titles on the B & M the last two weeks.

Q Am I to take from that title that you are the top ranking accounting officer in the organization?

A Yes, sir, and I was, prior to becoming a vice president,

Q In connection with the preparation of exhibits in this case, and in particular reference to the determination as to whether a profit or a loss have been incurred in the Lincoln branch over the past several years, were you asked by anyone at the railroad to determine the cost elements, which bills had actually been paid and which bills had not been paid?

A No, I was not.

Q So that in those cost elements the fact as to whether or not a bill was paid is not accounted

for; is that correct?

A Are you referring specifically to revenues?

Q I am referring specifically to the cost portions of the exhibits that went into the determination as to whether or not there was a profit or loss.

A I was not asked if the bills were paid.

Q You are on an accrual basis for accounting purposes; is that correct?

A That's correct.

Q So that you take a cost or you take a revenue into your system of accounting regardless of whether either was paid; is that correct?

A That is true, yes.

Q Will you tell me what your education and experience has been in accounting?

A I have been an accountant with the Boston & Maine since 1954.

Q What is your education in ^{the} field of accounting?

A I am a graduate of Bentley College. I do not have a degree. I have a certificate in accounting from Bentley College.

Q If you were the comptroller of a non-railroad industry and you and your chief executives were trying to determine whether or not to rehabilitate

a plant, would you not project the cost of rehabilitation over the life of the benefits, the improvements to the plant, in order to advise your chief executive as to whether or not in relation to the revenues the rehabilitation expenditure should be made?

A I'm not sure I understand your question. I will try to answer it as best I can.

In making a determination as to the economic feasibility of maintaining a branch line on a railroad?

Q No, I am talking about other than the railroad industry and I am talking about substantial improvements to a plant, and you are going to make a determination whether it is a wise business decision to make those improvements, you would consider the lifetime of the beneficial aspects of those improvements, write them off on a straight-line basis or some other basis over the period of that lifetime and advise the chief executive whether or not it was intelligent to rehabilitate, would you not?

A Exactly.

Q Am I correct, however, that Interstate Commerce

Commission accounting rules require that expenditures that are made in maintaining a way be taken as an expense in the year in which the expenditure is made, regardless of the lifetime of the improvement?

A That is substantially correct.

Q In your judgment as an accountant, is that Interstate Commerce Commission requirement that you take --- write off that expense in the year in which the expenditure is made necessary on an intelligent basis for determining whether or not you should make that expenditure?

A In some cases yes and in some cases no.

Q Are you aware of the extent of the cost studies made in this case?

A I have reviewed the exhibits submitted, yes.

Q And I am correct, am I not, that the exhibits submitted through Mr. Berkshire for projected maintenance of way expenses are predicated upon a rehabilitation of the Lincoln branch took as expenses consistent with ICC requirements the projected expenses in the year in which the expenditure would be made?

A That is my understanding.

Q From the studies that were made in this case relative to the costs of operating the Lincoln branch, are you able to make --- to draw any conclusion as to what the effect on the remaining portions of the Boston & Maine Railroad would be with respect to bearing the burden of overhead if this branch is abandoned?

A I don't believe any such study was made.

Q Are you familiar with the trustees plan of reorganization that has been entered in these proceedings generally, not in this particular case?

A Yes, I am.

Q Are you familiar with the segmentation study made in connection with that plan?

A Yes, sir, I am.

Q Did you participate in that segmentation study?

A I did.

Q Do you recall that in that segmentation study there was a table, Table No. 1, which showed the net contribution by the Massachusetts segment of \$627,000 more or less, and of the Maine segment of \$360,000 more or less, and in the next table, Table No. 2, being a pro forma predicated upon

the abandonment of branches proposed to be abandoned, the net contribution by the Massachusetts segment was reduced to \$553,000 and the net contribution by the Maine segment was reduced to \$335,000? Does that sound possible to you?

A Yes. I can't speak for the numbers you are quoting, but there was an indication in the trustees plan of reorganization on this subject which stated that the abandoning of branch lines is not necessarily contributing to the overhead, and they indicated that the possible loss to other segments of the railroad of revenue involved a net, or net contribution involved in the abandonment of the line ---.

Q And the conclusion was that it was possible, was it not, that a branch could not be rendering a profit to the railroad and yet the abandonment of it would have such an adverse effect upon the net contribution of the Massachusetts segment, for example, that abandonment of it should not be advised?

A The plan said exactly that. It was the net contributory effect of the Massachusetts segment, principally.

Q Has there been, to your knowledge, any study made as to what would be the effect upon the net contribution of the Massachusetts and Maine segments to the railroad if this branch is abandoned?

A No. I previously stated I don't believe there has been any study.

Q Did you hear me ask Mr. Culliford if he knew of any branch on the Boston & Maine Railroad that could meet the test of covering all of its direct line expenses plus all off-line expenses as determined by the ICC 50 percent formula?

A Yes, I did.

Q And you heard the answer to that, that he knew of none other than perhaps the Berlin branch; is that correct?

A That's correct.

Q Do you know of any other than perhaps the Berlin branch?

A No, I don't.

Q Can you tell me whether or not the main line of the Boston & Maine Railroad that runs from Boston to Mechanicville, New York, could meet that test?

A No, I couldn't.

MR. COLLINS: No further questions;
thank you.

Cross Examination by Mr. Killkelley

Q Mr. Carr, for the record, will you state how long you have been comptroller for the railroad?

A I have been the comptroller since May of 1971.

Q Directing your attention to Exhibits 19 and 20 for Identification, the operating revenues of the railroad over the years that you have indicated on there, starting from 1967 up to the conclusion of 1972, the operating revenues indicate that the revenues had actually been increasing during those years; isn't that correct?

A Yes. They indicate an increase in each year.

Q However the net freight income has been decreasing?

A The net income.

Q This is primarily based upon rising costs, especially labor costs; isn't that true?

A That is substantially correct.

Q And there have not been many substantial increases in rates or rents reflected in those years; is that correct?

A Well, there have been increases in both rates and rents but not enough to offset the increases in expenses.

MR. KILLKELLEY: I have nothing further.

Redirect Examination by Mr. Weinberg

Q Mr. Carr, to what do you attribute the increase in revenue from 1967 of \$52 million to 1971 of \$64 million?

A To freight rate increases.

Q Do you know what the total of percentage of freight rate increases from 1967 to 1971 aggregates?

A No, I'm sorry, I don't, but they are substantial.

Q Do you know whether or not the carloads on the Boston & Maine have increased or decreased for the same period 1967 to 1971?

A I know that they have decreased.

Q Was it substantially?

A Yes, I would say so, yes.

Q Can you give a percentage?

A No, sir, I couldn't.

Q Since the petition filed in bankruptcy for the Boston & Maine Corporation, does the Boston &

Maine operate annually on a budget account?

A The answer to that is, currently, yes. I would say yes for the year 1973 and perhaps no for previous years.

Q And in any event when you filed your Exhibit No. 19, the comparative income statement for the five years, you took into consideration there, did you not, all the expenditures made in that year, whether it be for capital improvements which had a life of many years or capital improvements which had a very short life?

A Well, they would indicate those expenditures made in that year, that's correct.

Q So that when you showed a loss of \$6,499,000 in 1971, it included, did it not, all of the expenditures that you made for that year?

A That is correct.

Q And likewise in your comparative income statement of 1971 and 1972 in Exhibit No. 20, where you have concluded that for that period losses increased from \$5,886,000 to \$9,190,000, that also took into consideration all expenses that you paid out, regardless of whether it was for short-term capital improvements or any long-term

capital improvements?

A Correct.

MR. WEINBERG: That's all the questions I have.

That concludes the petitioner's case, your Honor.

I would like to move now for introduction into evidence of all the exhibits that have been marked for identification, 1 through 20.

MR. COLLINS: I would like to object to certain of those exhibits. May I state my objection and identify the exhibits and, briefly, my reasons for them?

THE COURT: Go ahead. Make it brief.

MR. COLLINS: In respect to Exhibit No. 2, I object to those estimates of values --- I object to the exhibit because the estimates of values of real estate have been stated to have been made without knowledge of the state of the title to the real estate.

I object to Exhibit No. 3 because certain of the maintenance of way and structures figures were furnished to the witness, Mr. Berkshire, by four other gentlemen, Messrs. Watts, Denio,

Mahoney and Canzano, none of whom testified, nor was their absence or inability to testify explained, and that is also true with respect to the transportation figures which came to Mr. Culliford from a Mr. Welch that appear on Exhibit No. 3.

I submit that these last two mentioned exhibits, in that they contain hearsay, are not admissible on the basis of their being business records because the inability of the declarant was not proved and because they were not prepared ante litem motans, that is, they were prepared while this petition was pending and that they are therefore not an exception to the hearsay rule.

I object to their exhibit which purports to be an extract from the minutes of the meeting of the trustees of September 28, 1972 because it has not been authenticated. The only witness who was put on to authenticate it admitted that he was not present at that meeting.

I object to Exhibit No. 13, being a memorandum to the trustees regarding the abandonment of the line from Concord to Lincoln

including the F & T branch in that neither of the parties who filed that memorandum, Messrs. Estey and Drake, have been put on as witnesses and that the exhibit itself abounds with conclusions, including even the legal opinions.

Thank you, your Honor.

MR. KILLKELLEY: Your Honor, I would join in the objections of State's counsel, and object to all exhibits and the introduction of all exhibits in that they were prepared for specific purposes by the witnesses and they are therefore not admissible under any rule of evidence, not being business records prepared in the ordinary course.

The best evidence is the testimony of the witnesses themselves and not instruments prepared by them.

THE COURT: Do you want to say something?

MR. WEINBERG: Yes.

As regards the objection to Exhibit No. 2, the salvage, and basis that they were estimates of real estate value without knowledge of title, I think the testimony of Mr. Kirk would show that he had no difficulty in the past in selling

property that had the same type of feasibility of title if any in railroad property.

On Exhibit No. 3, the statement of operations and the objection that they are hearsay, I think the testimony of both Mr. Berkshire and Mr. Culliford was that they both inspected the line, and in the case of Mr. Berkshire he actually conducted his own inspection of the line so that he confirmed in his own judgment the validity of both the actual expenses and the expenses that were detailed from the best available recollection of the witnesses, and then in the case of Mr. Culliford, he had only recently inspected the operation of trains on the line and he, took, from his own knowledge and expertise in the matter, confirmed the computations because that is all they were, computations submitted to him by his subordinate, Mr. Welch.

The minutes of the meetings of the trustees are objected to, I believe it is either Exhibit No. 12 or Exhibit No. 13, on the basis that they weren't authenticated by the trustees but only by the clerk of the corporation, and I submit that Mr. Wilson testified that it was his

duty to keep the records of the trustees meetings as approved by the trustees and he culled out from those records the minutes of the meeting and all matters that the trustees considered, and Exhibit No. 13, the memorandum submitted by Messrs. Estey and Drake, the direction of the Court of Appeals was simply that the trustees consider all the matters material to the abandonment of the line and this Court approve their conclusions and deliberations, and the fact that neither Mr. Estey nor Mr. Drake were present here to testify is not material to the case.

The trustees exercised their own independent judgment on the matters, either matters that were contained in the report of Messrs. Estey and Drake, which in turn had been submitted to them by their subordinates, including Messrs. Berkshire, Kirk, and all the others that had been here, and they may have also exercised their own independent judgment in coming to a conclusion that this line ought to be abandoned in the interests of the debtor's estate, without unduly affecting the public interest.

THE COURT; The motion will be taken

under advisement.

Go forward.

MR. COLLINS: I have, prior to going forward, a motion to dismiss this petition based upon the petitioner's failure to prove that the debtor's estate would be benefited and the opportunities for reorganization improved without adversely or unduly affecting the public interest, and I submit that motion to your Honor.

THE COURT: The motion is denied.

MR. KILLKELLEY: Your Honor, at the conclusion of the petitioner's case, Prescott Lumber moves to dismiss based on the fact that the petitioner has failed to prove by competent evidence that the entire line it seeks to abandon burdens its rail system.

There has been no evidence that the proposed abandonment has shown an operating loss over a considerable period of time. On the contrary the evidence is that there has been a profit.

There has been no evidence that the public interest will not be adversely affected by the abandonment of the entire line.

The petitioner has failed to show it has considered any alternatives to abandonment, and the petitioner has failed to prove facts on which the petition is based.

THE COURT: That is a motion to dismiss?

MR. KILLKELLEY: Yes, your Honor.

THE COURT: Denied.

MR. KILLKELLEY: Note my objection.

THE COURT: Go forward, please.

MR. KILLKELLEY: Mr. Anderson.

JOHN B. ANDERSON, Sworn

Direct Examination by Mr. Killkelley

Q Will you state your full name, please?

A John B. Anderson.

Q Your address?

A Pease Road, Meredith, New Hampshire.

Q And your occupation?

A President and treasurer of Prescott Lumber Company, Inc.

Q Will you state briefly the background of the Prescott Lumber Company, their business and how long it has been in business?

A Our main operation is located in Meredith, New

Hampshire. We have been in business since 1906, primarily as a retail building material supplier, and we also operate a construction company.

Q Has Prescott Lumber used the B & M Railroad?

A Yes, for years.

Q What is its location, its main plant, in relation to the railroad?

A It goes right in back of our facilities. We have a 500 foot siding.

Q And what has the Prescott Lumber's use of the railroad been in the past?

A Well, I have got records from 1971 and 1972. We had 103 cars in 1971 and 135 in 1972.

We have been able to double what we call the miscellaneous cars, which are items like insulation, where you have a choice of either going by truck or by rail.

Q What type of materials are used on the railroad by Prescott Lumber?

A Primarily lumber from western Canada and plywood from Washington and Oregon.

Q What area does Prescott Lumber serve?

A Well, basically the entire central part of New Hampshire. We actually do business in the entire

state but it is mostly between Laconia and Littleton, the central part of the state.

Q Is Prescott Lumber a major employer in the area?

A Yes, we are. We employ about 135 people.

Q Is Prescott Lumber involved in the actual construction of homes in the area?

A Yes. In the last eight years we have built about 900 houses.

Q What is the prospect of Prescott Lumber's use of the railroad in the future?

A Well, it has increased 30 percent in 1972 and I would think we would continue to increase, perhaps not as great a rate of percentage, but it would increase every year.

Our sales have increased every year. Our sales are tied to what comes in over the rails.

Q If the railroad abandoned the line north of Concord, what would be the effect upon Prescott Lumber Company?

A We would have to relocate a portion of the company to a rail head and also we handle materials into the area itself.

Q When you say relocate to a rail head, what do you

mean?

A We would have to build a yard in another location nearest the railroad facilities.

Q So if there were an abandonment north of Concord, you would have to build probably near Concord or another line close by?

A I would think we would have to go to the Canadian Pacific on the Connecticut River Valley because of what is happening --- we would think that that railroad would survive.

Q So you would go to another railroad line?

A Yes.

Q And what would be the cost of relocating the facility?

A Our cost, capital expenditure, would probably be \$150,000.

Q And would there be any increased cost because of the change in the method of transportation as a result of the abandonment of the line north of Concord?

A Yes. The cost of rehandling amounts to about 6.75 when it gets to the retail level, so for every thousand feet of lumber you handle, the cost to the consumer would increase about 6.75

which, on 135 cars, is \$41,000 per year.

Q And this cost would be passed on to the general public?

A Generally most costs are passed on, yes.

Q And you would do that?

A Yes.

MR. KILLKELLEY: All right.

Cross Examination by Mr. Weinberg

Q I show you Exhibit No. 4 in this case, and under Meredith there are figures of carloads in and out for each of those years. Does it show a decrease since 1962 from 281 cars received to 107 cars received in 1971?

A Yes.

Q And is that a true reflection of the traffic received by Prescott Lumber during this period?

A That wouldn't be entirely true of Prescott Lumber. There were other receivers.

Q Did your counsel show you this exhibit prior to your testimony here?

A No, sir.

Q How many carloads of lumber did Prescott Lumber Company receive in 1962?

A I can't answer that, sir.

Q Did you look at your records?

A I doubt our records --- I have only access ---
I have only owned the company since just about
that time.

Q All right, then. Has the reliance of Prescott
Lumber Company for rail transportation of its
lumber decreased substantially since you owned it?

A It has increased.

Q Have you got the figures to show it?

A No, sir, I haven't.

Q How many other shippers, forwarders or receivers
of rail freight exist in Meredith, New Hampshire,
aside from Prescott Lumber?

A Another lumber company, Lumbertown, and back in
those days they were handling feed, and that is
apparently where your differences of cars come.

Q Can you tell us what has been the record, since
you have owned the company, of Prescott Lumber
Company's reliance on the Boston & Maine?

A Our entire dimension back ten years ago came from
native sources, local sawmills, and plywood in
those days was not used so much. Native boards
were.

These mills have gone out of business over the last ten years, so practically everything we now handle in lumber and boards originates in western Canada, western United States or New Brunswick, Canada, so each year we have to go to sources further away to supply the market.

Q Do you have the figures to substantiate that you have increased your rail carloadings with B & M?

A 1971, 1972 I can.

Q From 103 to 135?

A Right.

Q And that is the only figure you have?

A That's right.

Q And you came here prepared to testify as to the effect of the B & M's abandonment and you never researched any figure before 1971?

A That's right.

Q Do you believe that you represent the principal rail customer of B & M at Meredith?

A Yes.

Q Do you believe that you always have represented the principal rail customer at Meredith of B & M?

A No. When the grain was coming in, they were

receiving more cars than Prescott.

Q Do you have the figures to indicate that your handling costs to take a carload of lumber at Concord and bring it up to Meredith would add \$6.75 per thousand feet of lumber?

A Yes. You can hire cars unloaded for about \$2.50 per thousand. Another \$2.50 would be your cost of moving it the 50 miles into Meredith.

Then if you figure the average markup of 35 percent, which is about the average markup on lumber at the retail level, you are at 6.75.

Q So that the total additional cost now that you say would come to you would only be \$5.00?

A That's right.

Q And 135 cars that you say you had in 1972 --- strike that. Our figure shows 107 total received at Meredith. You say that you received 103 of those 107 cars?

A According to our accounts payable ledger, that is what came.

Q And now you are saying your figures for 1972 show that you received 135 cars?

A That's right, sir.

Q So if you took 135 cars at --- how many thousand

feet of lumber do 135 cars contain?

A It will average 45,000 per car.

Q And you multiply 135 by 45, do you?

A It comes to \$304 per car and 135 cars. That is \$41,000.

Q You are now going to multiply by \$5 instead of \$6.50?

A Right.

Q \$5, so you say it is 1,000 feet contained in 135 cars would add a cost of \$304 per car, right?

A If you take our cost and not the cost to the consumer, just taking Prescott's cost, we would be adding an average of \$225 per car.

Q Can you tell us how you get the \$225 per car?

A 45,000, at an average of 45,000 board feet per car at \$5 a thousand.

Q That gives you what?

A \$225 per car.

Q Multiplying that by 135 cars?

A \$30,375.

Q Do you have any trucks of your own?

A Yes, sir.

Q So that if you use your own trucks --- you also have personnel working in and around Prescott

Lumber Company yards?

A Yes.

Q And could you also, during the course of their employment, in their regular duties, employ them to man these trucks to go to Concord and pick up the lumber without going to a contractor's expense?

A No. We contract a portion of it right now that comes in at a peak season. This is spread out over the year.

Q Twelve --- in a year's period, you approximately have ten cars a month; is that so?

A Yes, they don't come in that way. There are 13 cars so far this year. This is the lowest time of the year, January, February, and perhaps the bottom of the sales.

Q How many men do you estimate would be necessary to handle a boxcar of lumber in transshipping it into a truck?

A Two men at the car site plus driver and a tractor trailer and a driver.

Q What is the average weekly salary of these laborers you have in the yard?

A \$130.

Q How many men do you say you totally have to employ to do this yourself rather than go out and hire the contract labor?

A Let me see if I can clarify. We have our own employees that we put on boxcars when they arrive in the yard. If we get too many cars on hand, we then contract to unload them so that the demurrage doesn't go higher.

Q You just told the Court you estimate you would have to employ two men ---

A Per boxcar, you need two men.

Q Two men, and their job would be to do what?

A Unload the material out of the car.

Q Two men to unload, and what else?

A You have to have a forklift operator.

Q Do the men in your yard have the capability of operating a forklift truck now?

A Yes.

Q So one of the men in your yard could do that work?

A Not if it is 50 miles away.

Q If the man wasn't engaged in forklifting anything in the Prescott Lumber yard, he could be used at Concord to do the same thing?

A It is not practical to run back and forth.

Q But it could be done by one of your own men?

A Not from a practical standpoint.

Q And if one of the two men you hired to unload this freight car were experienced in operating a forklift truck, that would handle the forklift man, wouldn't it?

A This would depend on the number of cars that were there at the time. It would be impractical if you had five or six cars. If there were eight cars, the answer to your question is yes.

Q That is the only time you would have men down there is when the cars were in; isn't that right?

A Yes, but you might have five trucks in. If they are bunched together.

Q But you can control the time approximately at which you receive the car of freight?

A No, you can't. Boston & Maine sends it when they get them, they send them. We order them sometimes a month apart and they come coupled together.

Q Even more so you could affect a greater economy, then, if you did this work all at once. If you had five cars and put your men to work bringing

the lumber up?

A That's sounds good. Unfortunately my customers don't buy materials on that basis.

Q Do you own the real estate around your place at Meredith?

A Yes.

Q Couldn't you warehouse the lumber there?

A We keep almost half a million feet on hand all the time.

Q You could increase it. You keep it in the open, don't you?

A No. We keep it under a roof,

Q Your shed is fully occupied with lumber at the present time?

A It sure is.

Q What is the average wholesale cost to you of a carload of lumber?

A On today's market, about \$196 per thousand. It runs between there and 205.

Q So it costs \$196 per thousand feet; is that what you are saying?

A That's right.

Q And you are saying that you have 45 board feet in a car?

A 45,000 board feet in a car.

Q 45,000 board feet in a car. Will you tell us what the average carload of lumber is worth to you? That is, your cost?

A It runs between \$8,500 and \$9,000, depending upon how much footage is in the car. Another thing coming into the picture is the cars are getting larger and the lumber is getting thinner so we are getting more footage in a car.

Q What does the present transportation cost average in the transportation of this lumber?

A It costs a dollar to run a mile on tractor-trailer.

Q I am asking the rail charge.

A \$1.99 is the freight rate, \$1.99 per hundred, which is ---.

Q What is the average transportation charge to get a carload of lumber to you from the west?

A About \$1,500.

Q \$1,500?

A Right.

Q Do you want to check that? It seems high.

A Freight bills --- you deduct them from the --- the supplier's invoice. We pay the Boston & Maine, we take a copy of the Boston & Maine's

paid bill and send it to our supplier and they deduct it off their invoice.

Q I am asking you --- you said that the value and expense --- the value to you and what you pay delivered for a carload of lumber to you from the west is approximately \$8,500 to \$9,000?

A Correct.

Q You say included in that or in excess of that, which one is it, you have a \$1,500 transportation charge?

A Included in that is the freight.

Q Included in the \$9,000 cost to you is the \$1,500 transportation charge, and I ask you whether or not the \$1,500 is a valid figure, or do you want to correct it?

A That is the closest I can get.

Q It is reasonable?

A I believe it is reasonable.

Q So you think actually it is somewhat in the neighborhood of 10 percent for transportation?

A Yes.

Q All right. In handling a carload of lumber to a retailer or to any other person who relies on you for a supply of lumber, what is the labor

charge, would you say, which you put into a carload of lumber in distributing it?

A Due to the nature of our business, I don't believe I can give you a figure because we would sell a tremendous amount of lumber, one or two sticks at a time, and we would sell quite a few in whole or half carloads, so it is a real mixture.

Q You indicated when you were going to go from \$5 to unload a car to \$6.75 when you add your charges, that would be some indication of the overhead and labor charge and everything else you add on to the price of selling it?

A 35 percent is the average markup on dimension lumber.

Q So somewhere in distributing this cost to your retailers and other persons relying on you for lumber, you could take the 10 percent increase in cost --- take the 10 percent of the transportation charge and pass it on completely to your customer, can't you?

A We do at this time.

Q And so whatever percentage of increase was made necessary by trucking to Meredith from Concord could also be passed on?

A It would have to be.

Q And that wouldn't make you non-competitive, would it? If nobody else in the area was receiving direct rail transportation of lumber?

A That's true.

Q And therefore you wouldn't have to move anywhere, would you?

A Yes, because the logistics of handling as much as we do, it would be impossible to operate without the railroad.

Q Certainly the expense of distributing it to the customers of Prescott Lumber in the Meredith area would be much more marked if you relocated in the Connecticut River, to service those same customers, wouldn't it?

A I think you may be losing track of the fact that this is a recreational type of business area. We have to pack a year's business into about four months.

Q Your customers are located mostly in the Meredith area at the present time, aren't they?

A No, sir. They are located in an area within a 60 mile radius of Meredith.

Q How many miles is it from Meredith to the

Connecticut River where you project you would have to relocate in case the line was abandoned?

A About 60 miles.

Q So at the present time you are trucking lumber in distribution to retailers and other customers of the Prescott Lumber Company, aren't you?

A Say that again.

Q At the present time you are using trucks to distribute to the retail market, the lumber you receive by rail at Meredith?

A Im making retail deliveries, yes.

Q How much lumber do you receive by truck at the present time direct to you?

A Virtually none.

Q Do you receive no East Coast lumber at all from ports on the East Coast?

A We handle about a million feet of native pine that basically comes out of Woodsville, New Hampshire, and the balance of our material comes via car from western Canada.

Q Isn't it true that your decision of whether or not to get western lumber or southern lumber depends on the relative costs in the market of the prices of each of the lumbers?

A Really, no. It becomes a case of availability. In eastern Canada there isn't enough large mills to guarantee a source of lumber, a continual source of lumber, so we are forced to go west to get the volume.

As far as the south is concerned, they are in hopeless shape with an underproduction problem. They are oversold. We really are tied to the western part of Canada to get the bulk of the material.

MR. WEINBERG: I have no further questions.

Cross Examination by Mr. Collins

Q Mr. Anderson, when you say that any increase in transportation cost would be passed on to the consumer, who is it that consumes your product?

A Well, about 60 percent of it is the do-it-yourself type of customer, the fellow that puts an addition on his house or remodels it, and the other 40 percent goes into new house construction. That would be primarily small general contractors.

Q These are private homes?

A Private homes.

MR. COLLINS: No further questions.

MR. KILLKELLEY: I have no further questions.

THE COURT: Step down, please.

MR. COLLINS: Mr. Hale.

THE COURT: I understand it is two minutes of one. We will come back at quarter past two.

(Luncheon recess.)

AFTERNOON SESSIONWARREN K. HALE, SwornDirect Examination by Mr. Collins

- Q Will you please state your name?
- A Warren K. Hale.
- Q Where do you live, Mr. Hale?
- A Salem, New Hampshire.
- Q By whom are you employed?
- A Thomas K. Dyer, Inc.
- Q Where is Thomas K. Dyer's principal place of business?
- A 1762 Massachusetts Avenue, Lexington, Massachusetts.
- Q What is the nature of the business in which Thomas K. Dyer, Inc. is engaged?
- A We are consulting engineers specializing in transportation engineering.
- Q What was your employment prior to joining Thomas K. Dyer Company?
- A For 18 years I was employed by the Boston & Maine Corporation.
- Q In what capacities?
- A In various capacities in the engineering department such as structural designer, assistant engineer,

track supervisor, assistant division engineer and assistant general manager, engineering.

Q And did you have any experience in the transportation department as well as in the engineering department of the Boston & Maine Railroad?

A Yes, I spent six years in transportation.

Q In what capacities?

A As trainmaster for five months and the remaining five and a half years as assistant superintendent.

Q What were your duties as assistant superintendent?

A I assisted the superintendent who in turn had charge on a division level for all of the train and engine crews, the agencies, the yards and crew personnel, the people involved in the operation of the transportation end of the terminal.

Q In the course of your employment with Thomas K. Dyer, Inc., are you involved at all in transportation studies?

A Yes, we are.

Q Will you tell us the nature and extent of some of those studies?

A Approximately 50 percent of our work is still

with rail-oriented industries, either railroads or transits.

We have done a great deal of study work for both railroads and transit systems in all phases of carrier services, traffic studies and evaluations and so forth.

Q Does that involve as well the determination of costs and their relationship to revenue?

A Yes, it does.

Q For what public agencies have you conducted such studies?

A The Massachusetts Bay Transit Authority, Department of Transportation, Federal Railway Association, Commonwealth of Virginia, State of New Hampshire.

Q Were you personally involved in the determination of the relationships between revenues and costs on the Penn Central Railroad for the Massachusetts Bay Transportation Authority?

A It was a joint study for both the Massachusetts Bay Transit Authority and the Penn Central Transportation Company, who retained our firm to come up with a fully allocated cost for providing commuter service to the Commonwealth.

Q When you were with the Boston & Maine Railroad, were you a member of any cost study groups there?

A Yes. As a member of the senior staff, I was a member of the committee that evaluated potential branch line abandonment and a member of the real estate committee and the various cost control committees which the railroad had at that time.

Q Have you reviewed the exhibits offered by the Boston & Maine Railroad in this proceeding?

A Yes, I have.

Q Have you in turn made a study related to the operation of the Lincoln branch in terms of the relationship between revenues and costs?

A I have made a study as to the costs. I haven't made a determination of what the revenues might be. I made a determination of what revenues it would take to sustain costs.

Q That is to say, you made a study that consisted of the various costs which revenues would have to meet under various operation assumptions; is that correct?

A Yes.

Q Did you prepare a study in which you estimated the costs for the total Lincoln branch that would have to be met by freight revenues to meet short term cash expenses?

A Yes, I did.

Q In estimating the total costs which revenues would have to meet on a short term basis, what did you use for a figure for maintenance of way?

A I estimated it would amount to \$118,540 on an annual basis for a short term.

Q And what do you mean by a short term in that context?

A Well, that is a hard thing to determine precisely or exactly. It is a judgment decision, normally, by the carrier to determine the minimum amount of money to spend on any line to preserve a safe railroad.

In my estimation, this should go on a short term basis up to a year, perhaps even two. I would want to see it before I stated here that it would go two, but in my opinion it would go one.

Q What criteria did you use in arriving at a figure of \$118,540 for maintenance of way?

A This was based on a short term maintenance policy, installing 3,000 cross ties primarily between Plymouth and Lincoln and maintaining the line for local freight operations three days a week.

I must qualify it in that when I made the analysis, the line was covered with snow. The major difference between this estimate and the estimate the Boston & Maine has submitted in the installation of cross ties which were unable to be seen by me at the time.

However, I have predicated the 3,000 on the basis that two years ago I had estimated we could install 2,000 and safely maintain the railroad. Without seeing the line, I added an additional 1,000 ties.

I was further convinced in my own mind that that was proper because in the past two years the Boston & Maine actual expenditures in maintenance of way were considerably less than the figures I had.

Q You are aware that Mr. Berkshire testified not a tie had been laid in the meantime?

A No, I'm not, but I do know what the B & M submitted in their exhibits as to the total

maintenance of way cost of the two-year period inclusive.

Q When was the last time you actually did see the line?

A The last time I actually spot checked the line was in 1970. The last time I was actually over it on the high rail to see the entire length of the line was in 1967.

Q Of what elements is that figure of \$118,540 comprised?

A Of the same elements incorporated in the Boston & Maine's pro forma: roadway maintenance, bridges, trestles and culverts, ties, rails ---

Q Excuse me, would you give me a figure for each of those?

A Roadway maintenance, \$6,930.

Bridges, trestles and culverts, \$1,650.

Ties, \$24,000.

Rail, \$615.

Other track material, \$1,165.

Track laying and surfacing, \$39,930.

Fences, snow sheds and signs, \$360.

Signals and interlocking, \$15,400.

Removing snow and ice, \$7,215.

Grade crossings expense, \$2,475.

And in addition I assumed \$3,300 for leased vehicle and \$15,500 for fringe benefits, totaling \$18,540.

Q Continuing with your estimate of the costs on the line, what did you use for a figure for maintenance of equipment?

A The identical figure as ---

MR. WEINBERG: Objection, your Honor.

I don't think he is qualified in transportation.

I am objecting.

THE COURT: Unless he has some experience with transportation. Have you?

THE WITNESS: I had six years in transportation.

THE COURT: Where?

THE WITNESS: Boston & Maine Corporation.

THE COURT: What did it consist of?

MR. COLLINS: Let me withdraw the question and rephrase it.

Q Where did you get your figure for maintenance of equipment?

A It is the identical figure that the Boston & Maine

submitted in the pro forma Exhibit No. 10.

THE COURT: Somebody submitted it to you?

MR. COLLINS: It is Exhibit No. 10,
your Honor.

THE WITNESS: It is Boston & Maine's
figure that they submitted in their pro forma.

THE COURT: In here? Exhibit No. 10
here?

THE WITNESS: Yes.

MR. WEINBERG: I will withdraw it,
then.

THE WITNESS: I didn't change it at all.
I used their figure.

THE COURT: Is that one of the documents
you wanted to exclude from the evidence?

MR. COLLINS: No, your Honor.

THE COURT: Your objections in that
regard at the conclusion of the petitioner's
case are overruled and the documents are admitted
in evidence. They were not documents made in the
ordinary course of business, as we understand,
under the Shop Book rule, but they were introduced
and they were on what the witness based his
testimony.

Go forward.

MR. KILLKELLEY: Note Prescott Lumber's objection.

THE COURT: Same ruling with respect to you. Go forward.

(Petitioner's Exhibits
Nos. 1 through 20
received into evidence.)

(Discussion off the record.)

Q What figure did you extract from Exhibit No. 10 for maintenance of way?

A None for maintenance of way.

Q Sorry, maintenance of equipment.

A \$17,622.

(Discussion off the record.)

Q What figure did you extract from B & M's Exhibit No. 10 for transportation?

A \$75,376.

Q And what figure did you extract for car hire?

A \$8,228.

Q And that gave you what for a total for on the line costs?

A \$219,766.

Q Did you add anything to that figure for off line costs?

A Yes, I did.

Q What figure did you add to that?

A I added a calculated per diem cost of \$5,500 which in my opinion represents two-thirds of the car hire on the line for off line. In other words, between Concord and its gateway, as being a reasonable figure.

Q What is your rationale for choosing the fraction of two-thirds?

A I estimated that would be on the conservatively high side for just per diem alone from Concord to the gateway. No other costs are included in my calculation but the per diem.

Q No other off line costs are included in your calculation?

A Correct.

Q What is the rationale for not including any other off line costs?

A The same rationale I used for all of this is that in my opinion the primary problem here is the preservation of the cash assets of the debtor's estate. Per diem is definitely a cash item.

Some of the other beyond-line costs are traditionally used in the formula to come up

with a beyond-line cost in cases submitted to commissions and so forth and represent costs that aren't necessarily cash, or at least a short-term cash cost.

The other costs involved in that formula often take a combination of several things to have happened. For instance, if enough branch lines are abandoned and enough business is lost because of those, you might be able to reduce a freight train from point A to point B and save those cash costs.

In this instant case I don't think you will reduce a freight train between Concord and any of the gateways. Therefore I don't think you can make a cash savings, so that is the general rationale.

Q Given that, what was your total estimated cost on the Lincoln branch, short-term cash basis?

A \$225,266.

Q Did you make a deduction from that cost in order to arrive at the figure which revenues would have to meet?

A I deducted the identical figures that the Boston & Maine included in their pro forma Exhibit No. 10

for rents and other income.

Q What figure was that?

A \$10,480.

Q And what did that figure give you as a net freight revenue required to meet short-term cash expenses?

A \$214,786.

Q Did you from there go on to make a study with respect to the Lincoln branch to determine what freight revenues would be required to meet expenses, including the rehabilitation expenses alleged to be necessary by the railroad?

A Yes, I did.

Q What did you use in that study for a figure?

A For maintenance of way, I used the identical figure that the B & M pro forma Exhibit No. 10 used for the five year average cost of those rehabilitation expenses, which were \$158,036 per year.

Q And what did you use for a figure for maintenance of equipment in that study?

A The identical figure that the B & M used in their pro forma Exhibit No. 10 of \$17,622.

Q What did you use for transportation cost in the study?

A Similarly, the B & M figure of \$75,376.

Q And for car hire?

A \$17,311, which also is the B & M's figure.

Q That gave you a total on the line cost of what?

A \$268,345.

Q To that did you add a car hire figure for the rentals that were to be paid for the use of cars while they were off the line?

A Between Concord and the gateway, yes, which is the same basis that I used previously of two-thirds of the per diem on the line as a per diem between Concord and the gateway.

Q And what figure did you arrive at for the off line per diem cost?

A \$11,600.

Q Did you add any other beyond the line cost?

A No, I did not.

Q And is it fair to assume that that is upon the same rationale as your not having had it in the first place?

A Yes.

Q That gave you what total estimated costs?

A \$279,945.

Q And from that did you deduct a figure for rents and

other income?

A The same Boston & Maine figure of \$10,480 representing the rents and other income.

Q What did that give you as a total freight revenue required to meet expenses, including the allegedly necessary rehabilitation costs?

A \$269,465.

Q Then did you make a study to determine what revenues would be required to meet cash expenditures in the short-term if the line were terminated at Plymouth, New Hampshire?

A Yes, I did.

Q And what did you use for a figure for maintenance of way in that study?

A \$64,271 as the short-term cash cost of maintenance of way.

Q How did you arrive at that figure?

A The criteria I assumed was it would only require 1,000 cross ties to be installed between Concord and Plymouth and the maintenance would be that required for a triweekly local freight operation.

Q In making that assumption that it would require 1,000 ties between Concord and Plymouth as against 3,000 --- between Concord and Lincoln ---

is there implicit in that a judgment on your part with respect to the relative conditions of those portions of the line?

A Yes, sir, for the same reason as I stated before. I was unable to actually make an inspection of the cross ties condition because of the snow cover.

Q But based upon your prior association with the railroad and your earlier inspections, do you have an opinion of the relative condition of the line between Concord and Plymouth versus Plymouth to Lincoln?

A Yes. The Concord to Plymouth segment was maintained at a much higher level longer than the Plymouth to Lincoln merely because of the passenger service that existed on the Concord to Plymouth segment.

As such, it was a high speed passenger service and the cross tie condition was maintained in a very good state until the passenger service was abandoned.

That was not the case from Plymouth to Lincoln, where there was a local freight operation for a good many years.

Q Will you tell me the elements of which that figure

of \$64,271 for maintenance of way is comprised?

A Yes, sir. Roadway maintenance, \$4,643.

Bridge, trestles and culverts, \$1,105.

Cross ties, \$8,000.

Rail, \$412.

Other track material, \$781.

Track laying and surfacing, \$19,683.

Fences, snow sheds and signals and
signs, \$241.

Signals and interlocking, \$10,318.

Snow removal, \$4,834.

Grade crossings, \$1,658.

And leased vehicles, \$2,211.

Fringes, \$10,385.

Making a grand total of \$64,271.

Q And where did you get the figure that you have
used for maintenance of equipment?

A From the Boston & Maine pro forma Exhibit No. 12
of \$13,415.

Q What figure did you use for transportation?

A The Boston & Maine's pro forma figure in Exhibit
No. 12, \$33,659.

Q And what figure did you use for car hire on line?

A Similarly, the same Boston & Maine figure of

A \$7,787.

Q What did that give you for a total underlying cost?

A \$119,132.

Q To that figure did you add a figure for off line car hire?

A Yes, I did, on the same basis, the same criteria I utilized before of two-thirds of the on line per diem for the per diem between Concord and the gateway.

Q And that gave you a total cost on the bridge if it were terminated at Plymouth in the short term of what?

A \$124,349.

Q From that did you deduct a figure for rent and other income?

A Yes, the same amount as Boston & Maine Exhibit No. 12 indicated for rents and other income of \$10,468.

Q Then did you continue to make a study of the freight revenues that would be required to meet cash expenses, including the rehabilitation program alleged to be necessary by the railroad if the branch were terminated at Plymouth?

- A Yes, I did. That is the one we just ---.
- Q I am talking about including the rehabilitation program for a line terminating at Plymouth.
- A I think what is bothering me, I didn't give you a total of the short term cash, Concord to Plymouth.
- Q Thank you. Give me that figure if you will before I proceed to your next study.
- A \$113,881.
- Q And that represented the freight revenue required to meet cash expenditures in the short run on the line terminating at Plymouth; is that correct?
- A Yes, sir.
- Q Now, you continued with your studies to determine the revenues necessary to meet the expenses attributable to a line terminating at Plymouth, assuming the rehabilitation program alleged to be necessary by the railroad; is that correct?
- A Yes, sir.
- Q What did you use for a maintenance of way figure in that study?
- A The identical figure the Boston & Maine used in their Exhibit No. 6, \$107,941.
- Q What did you use for maintenance of equipment?

A Similarly the B & M figure in Exhibit No. 6,
\$13,415.

Q And for transportation?

A Similarly, the Boston & Maine figure in Exhibit
No. 6, \$33,659.

Q And for car hire?

A The B & M figure of \$7,787.

Q What did that give you for a total on line cost?

A \$162,802.

Q To that did you add a figure for off line per diem?

A Yes, I did, \$5,217, which represents two-thirds
of the on line per diem cost as the per diem cash
effect of transporting the cars from Concord to
the gateway.

Q And that is based upon the same rationale you
explained in connection with your first study?

A Yes.

Q That gave you a total estimated cost of what?

A \$168,019.

Q And from that did you make a deduction for
rents and other income?

A Yes, I subtracted the identical B & M figure
as shown in Exhibit No. 6 of \$10,468.

Q And what did that give you for the net figure of

operating revenue required to meet cash expenditures on the line terminating in Plymouth, assuming the rehabilitation program alleged to be necessary?

A \$157,551.

Q Then did you make a study of the revenues that would be necessary to defray costs predicated upon a termination of the line at Lakeport, New Hampshire?

A Yes, sir.

Q Was that study a study of revenues necessary to meet expenditures, assuming the rehabilitation program alleged to be necessary by the railroad?

A Yes, it was.

Q What figure did you use for maintenance of way in that study?

A The Boston & Maine figure in their Exhibit No. 11 of \$64,313.

Q What did you use for maintenance of equipment?

A Similarly, the B & M figure of \$7,557.

Q What did you use for transportation expense?

A \$26,862.

Q And for car hire?

A \$4,024, which also were the Boston & Maine figures.

Q As it was the transportation figure; is that correct?

A Yes.

Q Then did you add a figure for beyond the line car ---

A We added a figure of \$2,696 which represents two-thirds of the on line car hire as shown in the B & M exhibit.

Q And that two-thirds is based on the same rationale you explained with respect to Study No. 1, and you added no other off line costs?

A No, sir.

Q And that is based upon the same explanation you gave us in connection with Study No. 1?

A That's correct.

Q And that gave you a total cost for a line terminating at Lakeport for how many dollars?

A \$105,452.

Q And from that did you make a deduction for rents and other income?

A Yes, \$3,955, which was the B & M's Exhibit No. 11.

Q And that gave you what for a total revenue necessary to meet cash expenses, including the rehabilitation program for a line terminating at Lakeport?

A \$101,497.

Q Did you conduct a study similar to the last described study predicated upon a termination of the line at Meredith, New Hampshire?

A Yes, I did.

Q And that was a study of revenue required to meet the cash expenditures, including a rehabilitation figure for such a line; is that correct?

A That is correct.

Q What did you use for a maintenance of way figure and where did you get it?

A I used a figure of \$81,340, which is a straight line proportion comparing the mileage at Meredith to the mileage at Lakeport and Plymouth based on the B & M estimates in their pro forma exhibits.

Q And that is ---

A In other words, based on the B & M exhibits of maintenance of way expenses to Lakeport, it comes out to approximately \$1,960 a mile, as does their estimate for maintenance of way required for Plymouth, so I used the \$1,960 per mile for the 37.7 miles, Concord to Meredith.

Q What did you use for a figure for maintenance of equipment?

A I used \$10,000, which is a comparison between the Boston & Maine exhibit to Lakeport of \$7,557 and their maintenance of equipment estimate to Plymouth of \$13,415.

Based on a mileage pro rate, it would be \$9,851, or, to be conservative, I said \$10,000.

Q And what did you use for a figure for transportation?

A Similarly, I used \$30,000. The Boston & Maine's transportation estimate to Lakeport, \$26,862; to Plymouth it was \$33,657. This I assumed to be conservatively high at \$30,000.

THE COURT: Why did you use these? For what purpose? We have a plethora of testimony on these figures for the last half an hour.

What was he using them for?

MR. COLLINS: He is taking the figures that the Boston & Maine Railroad supplied for certain items and then some of his own figures where he disagrees with the railroad's figures for maintenance of way.

He is taking a smaller figure for off the line costs because, as he has testified, in his opinion he should add only the per diem.

He comes out then with a figure, a

breakeven figure that is somewhat less than the railroad's, and we expect that we will have some testimony from shippers that would indicate that the railroad can meet these breakeven figures, so I am asking this witness in a very --- I am asking him in a specific way for answers to the general question: Where is the breakeven point on this line?

Q I believe you were just explaining the transportation cost. Did you then add a car hire cost?

A Yes, sir. I estimated car hire for service to Meredith would be \$6,584.

Q And that gave you a total on-line cost of what figure?

A \$127,924.

Q And car hire beyond the line?

A Two-thirds of the car hire on the line, which was \$4,411.

Q That gave you a total cost under the foregoing assumptions of what figure?

A \$133,335.

Q And from that did you deduct a figure for rent and other income?

A I subtracted the rents and other income that the Boston & Maine had testified in their exhibits as \$3,955, which is between Concord and Lakeport. I had no detailed breakdown to know what it was between Lakeport and Meredith, so I used the lesser figure.

Q And that gave you what figure for a total freight revenue required to meet cash expenditures, including the B & M's allegedly necessary rehabilitation expense?

A \$128,380.

Q And that is for a line terminating at Meredith?

A Yes, sir.

MR. COLLINS: I have no further questions of this witness.

Cross Examination by Mr. Weinberg

Q Mr. Hale, in your experience in transportation, did I understand you to say that prior to your going with T. K. Dyer, Inc., you were a trainmaster on the B & M for five months; is that so?

A That is correct.

Q And during that time as trainmaster for a five-

month period, what were your duties, as trainmaster for the five months?

A I don't remember the specific duties. Generally the duty of a trainmaster on the B & M is to supervise the train and engine crews, yard crews, agents, yard clerks, et cetera.

Q And as assistant superintendent with the Boston & Maine for five years, which was the only other transportation experience you had prior to going to T. K. Dyer, did your duties ever consist of computing per diem costs?

A Yes, sir.

Q And did you ever engage in any studies for abandonment as assistant superintendent?

A Yes, sir.

Q What studies did you engage in?

A Wait a minute.

Q As assistant superintendent.

A I'm not sure if it was as assistant superintendent, I'm not sure.

Q Do you want to leave it you have some doubt as to whether or not you ever did participate, as assistant superintendent of transportation, in any cost study of an abandonment proceeding? Do

you want to leave it you probably never did, as assistant superintendent of transportation, participate in any cost studies for abandonment proceedings?

A No, I didn't say that. I said I don't recall whether I did as assistant superintendent. I definitely recall I did as assistant general manager.

Q Of engineering?

A Of engineering.

Q You can't recall any abandonment study in which you participated in relation to transportation costs; is that so? Now, as regards maintenance of way, your last inspection of this track from which you have drawn the conclusion that you have drawn was in 1967; is that true?

A No, that is not true.

Q Your last high rail inspection was in 1967?

A My last high rail inspection.

Q And that was the inspection that Mr. Berkshire testified was the manner in which he confirmed the conclusions of his subordinates in arriving at his conclusion as to what rehabilitative maintenance of this line would entail?

A I don't know; I didn't hear it.

Q The high rail check is a far more reliable check as to the costs and to the replacements of ties and other track materials that would be necessary in a given line, rather than any spot check?

A Yes. I think I testified to that. I qualified it to the effect that I couldn't see the tie condition.

Q So that any difference in the testimony between you and Mr. Berkshire, relying on the number of ties required to be replaced in order to keep this line in safe operation in the immediate future, the testimony from you would be less reliable to that extent in the fact that you did not conduct a high rail inspection in the immediate past?

A I'm not sure I would agree with that. I was here on this witness stand two years ago and testified to a figure that I thought the B & M could maintain for the short term at that time, and the B & M testified that they didn't think they could maintain the railroad at the level I suggested. They thought they needed twice the level I recommended, and yet they went out

and did maintain it for half the level I recommended, or only a quarter of what they said was absolutely necessary.

Q The fact remains that at this hearing there can be more reliability placed on a high rail inspection rather than a spot check inspection as the basis for determining the fact as to what degree of rehabilitative maintenance is necessary on the line at this time; isn't that so?

A On my high rail inspection, yes. You are asking me if I testified as to his high rail inspection.

MR. WEINBERG: Will you read back the last question to the witness?

(Question read.)

A Yes, that's right.

Q And also, Mr. Witness, a greater degree of reliability can be placed, can it not, on the standard rehabilitative maintenance necessary to keep this line in safe operation from a staff of persons who are daily conversant with the condition of the line; isn't that so?

A Not in my opinion, predicated again on the fact that it has occurred in the last two years.

Q That isn't responsive to my question. Would you,

as an engineering authority, place more reliability on the opinion of somebody who had a staff reporting to him, which staff was daily conversant with the problems and the status of maintenance and the conditions of the track on which he was considering the degree of rehabilitative maintenance was necessary?

A Normally, yes.

Q And you have no such staff advising you of the condition of this line?

A No.

Q And are you familiar with Mr. Watts, John Watts?

A Yes.

Q Was he an employee of yours when you were chief engineer of the Boston & Maine?

A Yes, he was.

Q Is he a competent track man in the engineering department?

A He was when he worked for me.

Q And with some years of experience, he would be that much more qualified?

A I would assume so.

Q So that if it was testified that the chief engineer of the Boston & Maine relied on the

testimony --- strike that --- relied on the information supplied to him by Mr. Watts as to the standards of maintenance theretofore applied on the line and the standards that in his opinion should be necessary to apply in the immediate future, you would rely more on that than you would on information not based on any such daily conversant familiarity with the line?

A You have lost me. Will you restate it simpler, please?

Q So that if somebody with the qualifications on reliability of Mr. Watts was able to supply information to a witness for the B & M on which he based his opinion as to the standard of maintenance required on the line, that would be a more reliable opinion, would it not, than one that did not have such a formative basis in reaching an opinion?

MR. COLLINS: May I object on the cumulative ---

THE COURT: You may ask him that question. You have asked him a lot of questions and he may answer that question. I see nothing wrong with it.

A Normally what you are suggesting is true,
Mr. Weinberg.

Q And similarly you are familiar with Mr. Terrill
and Mr. Boyd?

A Yes, sir.

Q And they were employees of yours when you were
chief engineer of the railroad?

A Yes, sir.

Q Are they competent in bridges and structures?

A They were when they worked for me.

Q Since the time --- when did you leave the employ
of the B & M?

A December 31, 1967.

Q So in the six years since then, constantly working
with the B & M problems, they would have acquired
even more competence and familiarity with the
various lines of the B & M?

A I would assume so.

Q So then again, wouldn't a conclusion drawn by a
chief engineer, based on his own study and also
supported by information and opinion of Mr. Tirrell
and Mr. Boyd, who were daily conversant with the
bridges and structures problems of the railroad,
be entitled to more reliability than one that was

not so supported?

A I have every confidence in the personnel of the Boston and Maine engineering department, so much confidence, Mr. Weinberg, that I think that they can find the way to maintain the Lincoln line in the same manner they did for the past two years.

Q My question was, was testimony supported by their information entitled to greater weight than testimony that didn't have such support?

A Normally I would agree.

Q In fact that would be all the time?

A No, not all the time.

THE COURT: You have to have some information to base an opinion upon, without question. That is perfectly obvious, isn't it? One without information or competency can't properly express any opinion.

Q Also, sir, when you were on the B & M senior staff, you were on there only as representative of the maintenance of way department?

A Yes.

Q You were never on a senior staff of the Boston & Maine representing any degree of competency in transportation, were you?

A I was on the senior staff only when I was in the

engineering department, yes, sir.

Q What you have done, as far as I can follow, and correct me if I am wrong, you have taken our Exhibit No. 10 for the whole line, have you not?

A I think I testified to that. Yes, sir.

Q Are you ready for the next question?

A Sure.

Q You have taken our Exhibit No. 10 and made your own calculations of the maintenance of way figure, is that so in the first instance?

A Yes, sir. I did in one instance and in the other instance I used the identical B & M figure.

Q And you have a roadway maintenance of \$69,930; is that so?

A Not for Concord to Lincoln on the short term cash basis. Is that what your question is?

Q What is the first calculation that you made for Mr. Collins?

A The first calculation I made was the short term cash expenses for Concord to Lincoln including the F and T branch.

Q Was that supposed to include the required rehabilitative maintenance to which B & M witnesses testified?

A No, it was not.

Q In other words, you were using the same standard of maintenance that the B & M has been employing for the past three or four years without any rehabilitative maintenance expenses projected?

A It was more than they had done for the last three years. The last three years was considerably less than what I allocated for the annual maintenance of way cost.

Q All right. So that in Exhibit No. 9 --- do you have a copy of Exhibit No. 9?

A No, I don't. Maybe I do. I don't have the number.

Q Let me give you a copy of Exhibit No. 9. Under the item for the year August 1st, 1970 to July 31, 1971 they have a maintenance of way expense of \$57,043; is that right?

A That's correct.

Q And the next annual period they had a maintenance of way of \$36,349?

A Yes, sir.

Q What was your final maintenance of way cost?

A I estimated in the short term it was \$118,540, some three times as much on the short term, and in the long term I used the identical figure that the B & M submitted in their exhibit.

Q Let's take one thing at a time. You took a short term figure that B & M would be required to make to keep the line in safe operation for a short term, and what was that short term?

A Well, I said in my opinion it would last --- it could last for at least one year. Beyond one year, I would want to re-evaluate the line in the meantime. It might go for two. In my opinion it would go for one calendar year.

Q And on what standard of information do you rely, sir, that that expenditure of \$118,000 for one year's period would keep this line in safe operation for that short term period?

A By the same standard the Boston & Maine apparently used themselves in maintaining it in 1970, 1971 and 1972. I am sure the B & M is maintaining a safe railroad. They spend only one-third to one-half as much as I am suggesting they should spend.

Q But if there were testimony in the record that in the opinion of the witnesses for the B & M and the --- and definite information on which they relied to base that opinion that the line could no longer be operated safely without immediately undertaking the full program of rehabilitative maintenance, do you think that that opinion, based on the supporting information supplied to him by Messrs. Terrill, Boyd and Watts, was entitled to greater reliability than yours that \$118,000 would continue the line in safe operation for a short term?

A You have lost me again on your question, but I think what you are trying to ask is, isn't their submission of their estimate of the cost to maintain the line, shouldn't it bear more weight than mine.

That is just exactly what I am taking exception to, your Honor. They testified to that two years ago.

Q Now, even in your limited experience in transportation, you know there are expenses in yards, don't you?

A Yes, sir.

Q You know that to handle a freight car beyond line still accrues expense to a railroad, doesn't it?

A Yes, sir.

Q And yet you are unwilling, in your calculations, to give any recognition to that expense to the railroad in calculating the cost of operating the Concord to Lincoln line?

A No, I am not unwilling. I am saying it is not a cash savings in this instant case, whether or not the Lincoln line is operating or not.

I am saying you can't reduce a freight train. I am saying you can't reduce the general manager's job.

These are all --- a portion of the cost should be allocated to all the system. You take one segment of the system and eliminate it, you can't make the commensurate cash savings immediately to these other costs.

Q You admit that the Commission traditionally allows and recognizes that there would be saving as a result of abandonment in beyond-line costs?

A And with a going concern I feel strongly there should be such an allocation.

Q The railroad is a going concern, isn't it? It is

operating?

A I think they are more concerned about the preservation of the cash assets than they are in the long term benefits.

Q Let's leave what the railroad is more interested in. Isn't it a fact that whether there is a railroad reorganization or a railroad that is not in reorganization, that railroad is going to experience costs in handling a freight car beyond the line which they are considering for abandonment?

A Yes, sir.

Q And those are going to be yard costs, aren't they?

A Yes.

Q And those are going to be switching costs beyond the line, aren't they?

A Not necessarily savings, but costs. Yes, sir.

Q So there are many categories of costs. What other costs do you contemplate a railroad experiences beyond the line in any traffic handling on a line which they are studying, aside from the yard costs beyond the line and aside from switching costs beyond the line? How about crews? Isn't it likely, given either one or a number of abandonments, crews beyond the line can be saved?

A They are a cost, I don't think they can be saved.

Q Certainly given the degree of successive abandonments, your costs beyond the line in the aggregate for the entire system will decrease, too, wouldn't it?

A I wasn't asked to analyze it.

Q It is true as a general rule?

A Normally it follows.

Q But you weren't willing to give any costs except for some reason two-thirds of the per diem costs?

A Only because I personally feel that is all the cash cost. There is only about five cars per day we are talking about. Whether these five cars operated between Concord and the gateway or not, I don't think you can make a cash saving.

Q But you certainly didn't take into account any of the costs that you admit accrue to a railroad beyond-line?

A No, I did not, other than a per diem.

Q And what you have done further in your study is just make proportions? You have adopted all the railroad's figures except for those categories in which you reduced the maintenance of way costs

based on a short term consideration; isn't that so?

A That is correct, only between Plymouth and Lincoln. Short of that, I took the B & M's 100 percent.

Q Is there some reason that greater reliability can be placed on the transportation department's figures than our engineering department's figures?

A Yes. In my opinion.

Q You are just challenging --- what is your experience in transportation?

A Six years.

Q And yet you have adopted their figures completely?

A Because I agree with them. I didn't agree with maintenance of way figures.

Q What experience did you have, Mr. Hale, with per diem costs in any of your railroad experience?

A In the entire six years in the transportation department, I was involved with per diem costs to the railroad. That is the primary responsibility of a supervisory officer in the transportation department, to minimize the per diem cost to the carrier. It is a day by day decision every day.

Q Did you ever hear of anybody taking two-thirds

of per diem cost as a basis of establishing off line costs?

A Yes. In fact I have heard of taking much less than that. I have done it myself.

Q Have you ever seen it done in an abandonment study before?

A Not to a commission.

Q To any Federal Court?

A I have never been involved in a Federal Court prior to this.

Q Now, your conclusions, then, sir, are what, that for a short term period all that it would be necessary for the railroad to earn in freight revenues would be \$118,540; that is what you want to leave with the Court, is that right?

A I don't think so, Mr. Weinberg. Restate the question, please.

Q What is the conclusion you are trying to leave with the Court in regards to the testimony of the entire line, Concord to Lincoln, including the Franklin and Tilton branch?

A According to my estimate, it would require freight revenues of \$214,786 to sustain the cash costs to maintain the physical plant and equipment and

provide the transportation.

Q And that is based on the costs that you have determined are necessary in this short term to keep the line in safe operation?

A The costs that I have estimated together with the costs used by the railroad.

Q Can you tell us what the railroad says would be necessary for the first year, including rehabilitative maintenance, to break even on this line?

MR. COLLINS: I believe those figures are already in, your Honor.

MR. WEINBERG: He must have ---

Q You did use that as a reference, comparing yours, didn't you?

A Yes.

Q So what is the figure you compared it with?

A I compared it with an average five year cost of \$158,036.

Q I don't understand. You are saying that the costs ---

A Maybe I didn't understand your question.

Q You are saying that the entire cost which freight revenue would have to meet to break even on the operation of this line on the short term was

\$214,786; is that right?

A That is correct, sir.

Q And you are saying that the railroad, for the same period, using a rehabilitative maintenance standard, would require how much freight revenue to break even?

A Oh. Based on their figures --- they didn't prepare it in the same format so I can't tell you without making a calculation.

Q Do you think the difference is \$100,000 from ---

A I think it is more than \$100,000.

THE COURT: We will have a ten-minute recess.

(Brief recess.)

Q The last question I asked you before the recess, Mr. Hale, was, how did your \$214,786 cost to run this line, at which point revenue would have to be equal to it to allow the railroad to break even in its operation, differ from that to which the railroad's witness testified?

A It differed in the amount and it differed in the manner in which both costs were prepared.

Q In regard to amount, I show you Exhibit No. 10

and direct your attention to total expense average for the five years, and that figure is \$315,148?

A That is correct, sir.

Q Would that be the comparable difference between your breakeven point for the short term and the average breakeven point for the short term of the railroad's figure?

A Yes, except that their basis of preparation was a little different from mine.

Q What are the other results that you projected for the benefit of this Court?

A Well, another cash expense, including the Boston & Maine's rehabilitation cost for their maintenance of way for the entire Concord to Lincoln segment that I prepared was \$269,465. That is the one, really, that compares with the Boston & Maine's exhibit that you just showed me.

I made two estimates for Concord to Lincoln. One was on the short term, one year plus or minus, basis.

Q So the \$269,465 is your opinion as to the average cost to the Boston & Maine to rehabilitate this line and maintain it in a safe operating condition over the next five years?

A Yes, on a cash basis.

Q On a cash basis?

A The average cost has to be followed.

Q What you have done in the shorter operation to Plymouth and Lakeport is substantially on the same method, except you have proportioned it in accordance with our exhibits in each case, the respective exhibits to Plymouth and to Lakeport?

A Yes, sir, plus ---

Q And it differs in the difference between maintenance of way expense and the beyond-line costs?

A Yes, sir.

Q In which you refused to recognize anything beyond two-thirds of the per diem?

A As a cash saving, correct.

MR. WEINBERG: I have no further questions of this witness, your Honor.

Cross Examination by Mr. Killkelley

- Q In all of your studies, Mr. Hale, you have included the Franklin Falls branch; correct?
- A That is correct.
- Q And Meredith is north of Lakeport; is that correct?
- A Yes, sir.
- Q For the record, how far north is it in terms of miles?
- A About eight and two-thirds miles.

MR. KILLKELLEY: I have nothing further.

Redirect Examination by Mr. Collins

- Q Can you tell me how many total years you have had in the engineering department of the Boston & Maine Railroad?
- A Twelve.
- Q How many years did the principal ---
- THE COURT: He testified to all this.
- Q How many years did the principal of Thomas K. Dyer Company have in the engineering department of the Boston & Maine Railroad?
- A Eighteen.
- Q Has he been over your estimates of maintenance of

way expenses?

A Yes, he has.

Q And does he agree substantially with your figures?

A I think he does.

Q And did you, in the course of your employment with the Boston & Maine Railroad, inspect this branch many times?

A Yes, sir.

Q And did Mr. Dyer?

A Yes, sir.

Q And do you know how long Mr. Berkshire, the present chief engineer, has been on the property?

A I think it is less than two years. I don't know precisely.

MR. COLLINS: I have no further questions, thank you.

MR. WEINBERG: No questions.

THE COURT: Next witness. You may step down.

MR. COLLINS: Mr. Calvin Brown, please.

CALVIN BROWN, Sworn

Direct Examination by Mr. Collins

Q Would you please state your name?

A Calvin Brown.

Q And your home address, please?

A Mountain View Drive, Tilton, New Hampshire.

Q By whom are you employed?

A The Arwood Corporation.

Q And will you tell me in what capacity you are employed by the Arwood Corporation?

A Plant engineer.

Q What does the Arwood Corporation do?

A Manufacturing investment castings.

Q What are investment castings?

A They are precision castings manufactured through the lost wax process.

Q And what are your duties as plant manager?

A I am plant engineer. My duties are to maintain the facilities and the building.

THE COURT: Where is the corporation?

THE WITNESS: In Northfield, New Hampshire.

Q Is that located on or near the Lincoln branch of the Boston & Maine Railroad?

A Yes, it is.

Q And do you ship or receive commodities at your plant over the lines of the Boston & Maine Railroad?

A Yes.

Q What is it that you ship or receive?

A We receive our prime material, our raw materials, which is basically the sand.

Q You receive carloads of sand at what point on the branch, of the Lincoln branch?

A During the summer we receive them at Franklin Falls, and during the winter when the Franklin Falls spur is closed, we receive them at Tilton.

Q How many carloads do you receive at each of those locations during the course of a year?

A About approximately 30.

Q At which location?

A At both.

Q That is a total of 30?

A Yes, sir.

Q How much of that 30 is at each point?

A I would say 20 at Franklin Falls and 10 at Tilton.

Q Do you project that you will be receiving more or

less than that in the future?

A I would project at least as many.

Q Do you ship or receive any other commodities at either or those points?

A No. Basically the various types of sand.

Q Where does that sand come from?

A I'm not sure where it is.

Q Do you know whether or not it originates at a point beyond the Boston & Maine Railroad?

A I believe it does. I'm not sure.

Q Do you know what your total rail costs for the past year have been in connection with the shipments received at your plants?

A Yes. I don't have the cost for the rail services. I have the cost for the unloading at the different facilities.

Q The cost of unloading or the cost at those points?

A The cost of unloading from those points at our plant.

Q What is that cost?

A During 1971, it was \$6,535.56, and in 1972 it was \$8,347.56.

Q How is that relevant to your need for rail transportation?

A If the line were to terminate at Concord, we would incur approximately three times the expense of unloading the bags and bringing them to our plant.

Q How do you determine that?

A We asked the contractor that handles the unloading of the cars and the storage and the delivery to our plant from the railroad.

Q What effect would that have upon your profits or your gross expenses?

A Well, we would --- it would increase our expenses and decrease our profits.

Q Unless you could pass that on to the consumer; is that correct?

A That's true.

Q Do you know whether you could or could not pass that on to the consumers?

A The market today is extremely competitive with foreign industries and I'm not sure --- we would probably absorb most of that.

Q What is your margin of profit now, if you know?

A I don't know, but it is not very much.

Q How many employees do you have?

A We have 250. We are operating at a break-even

point right now.

MR. COLLINS: I have no further questions, thank you.

Cross Examination by Mr. Weinberg

- Q Your total cost of unloading in 1971 was ---
and that was on 30 cars --- it was 6,535; right?
- A Right.
- Q And how much did that average to a car?
- A It is approximately \$4 a ton.
- Q 6,000, and 30 cars, that is approximately \$200
a car; right?
- A About that.
- Q \$200 a car, and what is the cost to you of the
carload of sand?
- A I'm not sure. I don't know what it is.
- Q You don't know what the proportion of the cost
of unloading bears to the total value of the
product, do you?
- A Of the shipment? No.
- Q And you are saying also that you don't know how
much the additional cost would be to unload the
sand on trucks at Concord and deliver it to you
at Northfield?

A The price quoted to me ---

Q You don't know yourself?

A No, we haven't done it.

Q Who quoted you the price, and do you have a writing on it?

A Yes. It was M. A. Crowley.

Q It is some figure that was quoted?

A Yes.

Q All you can say is it is three times his price?

A He quoted me the figures per ton at different points for unloading it.

Q And you don't know what proportion of this cost, what percentage of the total unit cost --- for instances, let's say you sell --- you use the sand in your manufacturing process; right?

A Yes.

Q And this \$200 a car is your total cost of unloading; right?

A Right.

Q Even if you give credence to the figure given to you by this contractor, it would be \$600 a car; right? Three times?

A At Concord.

Q \$600 a car, and you use this sand in your

manufacturing process and you don't know how much that is going to add to the cost of any unit you produce, do you? The \$600 of additional cost per carload, you have no idea what it will add to your cost of distributing your product; right?

A Not per unit.

Q Would a labor increase be of more serious import to your company than any cost encompassed within this \$200 per car cost? Let me put it another way: Supposing the 5.5 percent increase which is talked about as a standard for labor negotiations at the present time was in effect, that cost would be far in excess, would it not, of your transportation cost made necessary additionally by the cost of unloading?

A 5.5 percent increase of our total payroll would be certainly more.

Q No comparison between the two; right? It would be far more substantial?

A It would be smaller.

Q One would be minute compared with the other?

A It would be smaller.

Q The smaller one would be the unloading and the

larger would be the additional wage cost?

A Right.

MR. WEINBERG: I have no further questions.

MR. KILLKELLEY: I have no questions.

MR. COLLINS: I have no further witnesses to go on today. I have told them to come back at eleven o'clock on Monday.

THE COURT: What did you do that for?

MR. COLLINS: Because I miscalculated how long it would take.

THE COURT: No criticism, but I might have changed my mind, and you never can tell what I will do. I have to gauge what I am going to do by what is in the office, and whatnot.

That is all right with me.

Let's get a program. Do you want to put on your witnesses now or adjourn for the night?

MR. COLLINS: I have no more witnesses in the building, your Honor, and I will have about three.

MR. KILLKELLEY: Your Honor, I have a couple of matters we can take up now. I would like

to offer the deposition of ---

THE COURT: Give it to the clerk.

MR. KILLKELLEY: This is a deposition of Mr. Yardley. I believe the original was filed the last time we were before the Court. That was taken in December, 1970 and it was submitted by agreement the last time.

THE COURT: Was it filed in accordance with the rules of this Court?

MR. KILLKELLEY: I think it was marked for identification.

MR. WEINBERG: These were depositions taken prior to the previous case. I don't think it has any pertinence to this case.

THE COURT: This is an entirely de novo case. I don't care. File it with the clerk. That's all you can do at the present moment.

MR. KILLKELLEY: I believe the original is already on file.

Also, your Honor, I have a motion again to continue the case. This is an updated affidavit, your Honor. This is as of February 27.

THE COURT: If it was filed in accordance with the rules, then I will entertain

it.

Go ahead.

MR. KILLKELLEY: Again, your Honor,

I move to continue to a convenient date after April 1st so there will be no snow cover on the track so that an adequate inspection of the track can be made.

THE COURT: Anything else?

(Conference at the bench.)

(Adjournment.)

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