

P R O C E E D I N G S

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(Proceedings held over Zoom videoconferencing)

THE LAW CLERK: Hi, Judge. We have on the call for Westinghouse Air Brake Technologies Corporation: Attorneys Horrigan, McArthur, and Marcello.

For Railware, Inc.: We have Attorney Vogel.

And for SEPTA: We have Attorneys Priselac, Ricciuti and Hughes. I apologize if I mispronounced any of those, which I'm sure I did.

THE COURT: Thanks so much. The lawyer who is screen identified as Pittsburgh 5 Mobile is?

MS. HARRIGAN: Good afternoon, Your Honor. This is Courtney Horrigan from Reed Smith. My colleagues, Andrew McArthur and Nicholas Marcello, who are in the 4904 Chelsea New York office, will be speaking on behalf of Wabtec this afternoon.

And, Your Honor, Mr. Marcello is a senior associate at Venable. So he'll be addressing some of your questions with your permission pursuant to your statement regarding courtroom opportunities for newer lawyers.

THE COURT: Absolutely. Thanks, Ms. Horrigan. Just so I know who is who, will Mr. McArthur raise his hand.

MR. MCARTHUR: Hello, Your Honor. Nice to meet you.

THE COURT: Nice to meet you.

1 MR. MCARTHUR: If I could add one point. Mr. Ralph
2 Dengler is also in the conference room. He's not going to
3 have a speaking role. He also represents Wabtec. He's
4 counsel of record in this case. But Mr. Marcello and myself
5 will be speaking.

6 THE COURT: How do you spell the last name, the
7 surname on that other individual?

8 MR. MCARTHUR: Dengler, D-E-N-G-L-E-R.

9 THE COURT: Great. Thanks to Mr. Dengler for being
10 here also.

11 MR. MCARTHUR: Thank you, Your Honor.

12 THE COURT: And it appears everybody else is
13 identified by name.

14 Are you good to go, Ms. Balobek?

15 THE COURT REPORTER: Yes, thank you.

16 THE COURT: Okay. We're here for argument on all
17 pending motions in miscellaneous matter 24-MC-1283, Railware
18 Inc., versus Southeastern Pennsylvania Transportation
19 Authority. The other party of interest in the matter is
20 Wabtec. Wabtec got the ball rolling with their motion so they
21 get to go first.

22 So whoever wants to speak on behalf of Wabtec, you'll
23 get -- absent an emergency -- you'll get ten uninterrupted
24 minutes without any interruptions from me.

25 Then when you're done, we'll turn it over to

1 Mr. Vogel. He'll get ten uninterrupted minutes.

2 And to the extent SEPTA wants to weigh in, they'll
3 get the same prerogative.

4 Then if I have any followup questions, I'll ask them.
5 So whoever wants to make the opening presentation on behalf of
6 Wabtec, the court is all ears.

7 MR. MCARTHUR: Thank you, Your Honor. As mentioned,
8 my name is Andrew McArthur of Venable, representing Wabtec.
9 Do I have your permission to share some slides before you?

10 THE COURT: Anybody on the call object? If anybody
11 can't see Mr. McArthur's, slides, just orally interrupt. And
12 along the way, if anybody can't hear or see what's going on,
13 please speak up immediately, even if it's interrupting
14 somebody, including me.

15 So seeing no objection, Mr. McArthur, you're good to
16 go.

17 MR. MCARTHUR: Thank you, Your Honor. We're going to
18 start showing the slides right now. Nick, if you can scroll
19 the slide forward, please.

20 So, Your Honor, where did this case originate? This
21 case started in the Eastern District of Pennsylvania.
22 Railware sued SEPTA on three patents relating to blocking and
23 unblocking a track using a generated code. Fact discovery
24 opened in September -- well, we believe in 2024. And we
25 understand it closes September 5, 2025.

1 Importantly, in that case, both SEPTA and Wabtec
2 agree that the work zone block, or what we use as an acronym
3 WZB, is the accused technology, that's the accused product.
4 Both SEPTA and Wabtec have stated that.

5 Go to the next slide, please. So what happens next?
6 After the litigation goes on with SEPTA, then Railware issues
7 us -- or Wabtec -- not one, not two, but three subpoenas of
8 all the same scope. I think at least the parties agree on
9 that.

10 They have 43 demands, 28 document requests and 15
11 deposition topics. And on a number of levels, they're
12 overbroad and vague. I mean, first off, I mean, in our view
13 it would practically require almost every document we shared
14 with SEPTA, and it's over a 12-year period, while the topics
15 are unlimited. There's no actual duration or explicit time
16 period spoken of in the duration.

17 Putting that aside, then you have the definitions.
18 What you have is products definition, which is quite vast. It
19 not only includes AIM, which is where the accused feature
20 resides. It includes railway net and it includes numerous
21 other products -- could capture numerous other products of
22 Wabtec's that are supplied to SEPTA. I'll get to those
23 definitions shortly.

24 It also has a broad definition of Wabtec. Wabtec is
25 defined in subpoena as basically any entity, foreign or

1 domestic, including any predecessors or subsidiaries, and also
2 any distributors.

3 And then third, it's got the issue of numerous vague
4 categories. So what I mean by categories is if you look at
5 one request, you could see 20 different things it's
6 requesting. So request number two is a good example where
7 that could easily be 20 requests or 15 requests at least.

8 So next slide. The overbroad definitions that I
9 spoke to. So the product definition, what we've done there is
10 we've highlighted the product definition. And this goes to
11 question number one, the breadth of it. And we've highlighted
12 the various areas. We put numbers -- we added the numbers
13 there. And we also color coded "you" for Wabtec.

14 So one is any dispatching of centralized traffic
15 control system by "you". And if you look at "you" to the
16 right side, "you", as I said, is Wabtec, any subsidiaries,
17 companies, U.S. and foreign. And on top of that, they want
18 all like directors, officers and any distributors.

19 Then going back, it says: Including but not limited
20 to -- lawyers' favorite language -- its products or services
21 like -- so it's not defined -- AIM, railway net. Then this is
22 a key language Railware always uses: Any other same or
23 similar system.

24 But unfortunately, it doesn't stop there. It says:
25 As well as any dispatching in or central traffic control

1 system. Then it goes on to say: Work zone block, which we
2 believe is the accused feature. And then EEPS, which Railware
3 claims is its patented product. But then it's got a fifth
4 catch-all of: And/or same or similar system or functionally.

5 So if you're looking at the product definition, it's
6 quite vast and captures, I would say, almost any product we've
7 supplied to SEPTA. On top of that, given Wabtec is a global
8 company, the reach of the "you" definition would put
9 significant pressure on Wabtec itself given the vast array or
10 wide-ranging companies involved in this.

11 As noted below, Railware tried to change that
12 definition during its briefing to accused system, but that
13 still has the vague: Any same or similar system.

14 If you can go to the next slide. Thanks. I
15 mentioned the vague category. This is from our opposition
16 where we highlighted several of the requests where some of
17 them have 20, some of them have 10, some have 8, it's quite
18 significant. But request number two is a good example of what
19 we're dealing with here.

20 Request number two has at least 20 categories, and I
21 can read this to you, but I might use up my ten minutes. So
22 I'm going stop here and just say, it's over 12 years, and it
23 has: Including but not limited to -- so it's not finite --
24 design, function, performance, composition, characteristics,
25 et cetera. And as --

1 THE COURT: Mr. McArthur, could you pause for a
2 moment. You're off the clock. So the clock stops at 1:20.
3 You're not missing a beat here.

4 (Off the record)

5 THE COURT: Okay. Mr. McArthur, so my bailiff came
6 in with what appeared to be a quite urgent matter. We've
7 resolved it. You're back on the clock.

8 MR. MCARTHUR: Thank you, Your Honor. I can
9 understand why that takes precedence.

10 We're focused on request number two, 20 categories.
11 And Mr. Passano, our declarant, even discussed them. How is
12 he supposed to know how one category differs from another and
13 when they overlap?

14 If we can go to the next slide. So, I want to talk
15 about what Wabtec produced. Wabtec, on its own in terms of
16 time, expense and effort, tried to like in good faith respond
17 to these subpoena requests. We've produced over 8,000 pages
18 related to work zone block, but it also includes other
19 components of AIM. And we also produced source code on work
20 zone block, which Railware printed significant code and also
21 SEPTA printed significant code and version history.

22 What you see below there is from Mr. Passano,
23 outlining the statements of what occurred during the source
24 code inspection and what they provided. Both source code for
25 work zone block and version history was provided.

1 Now I'm going to save some of the time for
2 Mr. Marcello, I think, to address -- so that should address
3 question one. He'll address question two of your questions.

4 THE COURT: Thanks, Mr. McArthur.

5 Mr. Marcello, delighted to hear from you.

6 MR. MARCELLO: Good afternoon, Your Honor. Thank you
7 for the opportunity to speak.

8 With its subpoenas, all three of them, Railware
9 included its ESI order that's governing the underlying
10 litigation. Railware failed to comply with its own ESI order.
11 According to that ESI order, general ESI requests include
12 those under FRCP-45, which governs subpoenas. You can see
13 that in the excerpt we have there, which is from section 4B of
14 that ESI order.

15 In the subpoenas, there are definitions for
16 communications, documents that cover electronic communications
17 and electronically stored documents, which we believe would
18 cover e-mails. And the document definition specifically
19 includes e-mails in that definition. Additionally,
20 instruction four on the ESI order covers the production of
21 electronic documents.

22 So turning back to this excerpt that we have here,
23 and you can see it in the second sentence: To obtain
24 electronic communications, parties must propound specific
25 electronic communications productions requests. Railware

1 didn't do so here. It didn't provide us with any search terms
2 to run and did not identify any custodians. I'll put it back
3 to my colleague, Mr. McArthur, here for the next few slides.

4 THE COURT: Thank you, Mr. Marcello.

5 MR. MCARTHUR: Your Honor, now we're going to try to
6 address question three, the relevancy of the customers and the
7 non-SEPTA customers. So we believe they're entirely
8 irrelevant. And we believe the Avago case controls on this,
9 that Railware just provides simplistic or generic reasons for
10 its relevancy. So they think they can just say infringement,
11 invalidity, damages, so therefore, Wabtec should just turn
12 over all its documents based on that.

13 But the standard is not so low. There's a
14 proportionality standard. Even Avago shows that there's
15 analysis involved in determining, hey, are these actually
16 relevant from a non-party? What we have here is a quote from
17 our brief where we quoted that the suggestion that customers
18 are somehow relevant to the question of infringement is a
19 reach.

20 What we did below that is we have an example or
21 exemplar request number 15 that shows the breadth in request
22 of these topics. As you can see, it's any person, entity or
23 customer to whom you have acquired, purchased, distributed,
24 produced, offered for sale, sold, sampled, qualified, tested,
25 analyzed, marketed, promoted or corresponded about regarding

1 any of your products. And products goes back to the breadth
2 of products.

3 So we have 13 categories here. And worse, it's over
4 12 years, from January 1, 2013 to present. And it includes a
5 broadly defined "you" of Wabtec.

6 So, likewise, the financial data is similarly
7 overbroad. And, again, we think Avago controls on that. And
8 Railware requests not just financial data on the accused
9 feature, it wants, as shown in the example below, it wants
10 sales, domestic, foreign sales, profits, revenues, value,
11 units sold, unit sale price. Again, it's over a 12-year
12 period.

13 But Avago said, hey, it surveyed the cases and it
14 found nothing to show that requesting financial data of this
15 kind is relevant to establish SEPTA infringes on a patent or
16 to calculate damages.

17 Next slide, please. And this, I think, goes to your
18 customer question as well. Because there's a few topics on
19 compliance with worker protection rule law. That's request
20 number 28.

21 In that request, they ask us to give any documents
22 where we would comply with a certain rule, or our customer
23 comply. We don't see how in any way that can be relevant in
24 proving SEPTA infringes. In fact, Railware's own case seems
25 to indicate that in many instances, an industry standard does

1 not provide the level of specificity required to establish
2 that practicing best standard would always result in
3 infringements.

4 Go to the next line. One more that's relevant to the
5 customers would be the agreements and licenses. So Wabtec, on
6 its own, produced the SEPTA agreement related to work zone
7 block. We actually filed that as an exhibit, I think exhibit
8 11, that you actually have. It's under seal.

9 But that's not good enough for Railware. They want
10 every agreement related to -- and customers. And so again, we
11 don't see how that has any relevance to proving SEPTA
12 infringes or SEPTA's damages for using work zone block or even
13 AIM.

14 So now -- I'm sorry, Your Honor, if this gets
15 confusing. I'm going to turn it back over to Mr. Marcello to
16 answer your question number four.

17 THE COURT: Mr. Marcello, happy to hear from you.

18 MR. MARCELLO: Thank you, Your Honor. I'm going to
19 try to address your questions to topic four from this
20 morning's order, which I believe covers the scope of the
21 request as related to the patents.

22 So as Mr. McArthur already mentioned in the
23 beginning, we've made two document productions so far and they
24 total over 8,000 pages. In those productions, we included a
25 vast amount of technical documents.

1 Now Railware, in its motion to compel, contends that
2 it needs more documents that cover general aspects or generic
3 components to cover the rest of the patent.

4 While we used work zone block as a guideline, we
5 think a reasonable guideline to search for and produce
6 documents, the documents we did produce cover the other
7 aspects that Railware contends it needs. We know this because
8 in its motion to compel, Railware listed six document types
9 that it says it would expect to receive that cover these
10 generic aspects.

11 As you can see in Mr. Passano's declaration
12 supporting the motion to seal, Exhibits 10 through 17 cover
13 those categories that Railware listed out.

14 Just briefly, as an example, Exhibit 15 was a user
15 manual that Wabtec provided to SEPTA. That user manual covers
16 work zone block. But work zone block is only about 10% of
17 that user manual. The other 90% of the user manual covers
18 those generic components that Railware alleges we did not
19 produce.

20 MR. MCARTHUR: Your Honor, I'm not sure if we used up
21 our ten minutes or if we have more --

22 THE COURT: We'll extend you, and we'll give
23 Mr. Vogel the same opportunity.

24 MR. MCARTHUR: Thank you, Your Honor, for that
25 extension.

1 So I want to talk about question five. I think your
2 question related to the cost of compliance. So based on our
3 rough map, to produce the documents that we've produced thus
4 far -- so the documents were not challenging, the 8,000 pages
5 in the source code. We roughly put that at 50 hours of
6 Venable time or \$50,000. And in terms of Wabtec time to
7 collect the documents, to collect the source code, prepare the
8 laptop, we put that at roughly 55 to 65 hours.

9 So to answer your question of forward projection, I
10 mean -- and this all goes to our question of what is the scope
11 of these subpoenas. And that's a big question because there's
12 numerous vague categories, there's overbroad definitions and a
13 long time period.

14 So depending on how this is -- what is actually found
15 to be reasonable, I mean it could easily be three, four times
16 that amount. And that should answer question five.

17 Relating to question six, I'm going to go back to
18 slide 29. I think you had a question of the blocking data.
19 How is the relevance -- how can Railware have a basis to show
20 that Wabtec has the blocking data?

21 So our understanding of the record thus far is
22 Railware cited a late 2024 e-mail, and stated SEPTA has only
23 produced a limited date window. But by September 2024, SEPTA
24 stated in their statement to you that they produced
25 approximately nine years of blocking data. We've highlighted

1 that in yellow below from SEPTA's statement.

2 So we don't understand, first, how that can be
3 considered a limited date window. And second, Railware should
4 have the data it needs, given that SEPTA stated it produced
5 almost nine years.

6 We understand that Railware's other complaint is the
7 date is unmanageable and they want HubDB tables and such, but
8 they should address that with SEPTA directly, not -- the party
9 who produced the blocking data, not Wabtec, the non-party, at
10 least in the first instance. So we don't understand why
11 that's not sufficient and why this -- honestly, this request
12 is not already resolved.

13 Then I think you had a last question of question
14 number seven, relating to: Given the intertwinedness, should
15 there be a transfer to the Eastern District of Pennsylvania
16 where the underlying litigation lies? So we understand that
17 standard is dependent on exceptional circumstances and it's
18 not sufficient based on our understanding that another judge
19 just has knowledge.

20 We don't believe a transfer is warranted for several
21 reasons. First, Wabtec is a non-party. It's headquartered
22 here. And we believe we've already complied in good faith
23 pursuant to Rule 45 with the production of documents and
24 source code. We put forth, as you can see by the cost and
25 effort, documents filed under seal and the source code. We

1 believe the Federal Rules of Civil Procedure require the
2 subpoenas to be issued from the Western District of
3 Pennsylvania. Any transfer still would not cure all the
4 issues with Railware's subpoena, the overbreadth, the
5 vagueness, the long time period.

6 And then, you know, Wabtec has come to this court
7 where it's headquartered and it's seeking protection from
8 these subpoenas given their overbreadth. As I just mentioned,
9 this case has been expensive with numerous filings -- and I'm
10 sorry you had to receive all those -- and then document source
11 code collection and production.

12 Then lastly, if there's a dispute -- because we argue
13 that Railware has never stated what SEPTA has produced and we
14 imagine that they -- we know they produced documents. We know
15 they have eight years of e-mails. We know they produced
16 blocking data.

17 If there's any dispute over what SEPTA has produced
18 or not, Railware should have addressed that in the first
19 instance with SEPTA in the Eastern District of Pennsylvania,
20 not just have an overbroad subpoena for 43 demands over 12
21 years and numerous vague categories to a non-party, Wabtec.

22 So, Your Honor, with that, I believe we've tried to
23 answer question number one to seven and some other things. If
24 you don't have any questions, then we appreciate your time.

25 THE COURT: Thanks, Mr. McArthur and Mr. Marcello.

1 I'm sure I will have questions, but in fairness, we'll hear
2 from Mr. Vogel. And then if Ms. Priselac or any of her
3 colleagues have anything they want to say on behalf of SEPTA,
4 we'll hear from them. Then we'll go to the toss-up round,
5 where I may have some questions here. So thanks to each of
6 you.

7 Mr. Vogel, the court is more than happy to hear from
8 you, sir.

9 MR. VOGEL: Great. Thank you, Your Honor. May it
10 please the court, I think I'll start out by saying I'm not
11 going to rehash all the arguments that were made in the
12 briefing submitted to Your Honor. There was a lot of paper
13 submitted. The arguments that have been made thus far by
14 opposing counsel have all been addressed in the papers. I do
15 want to spend a little bit of time highlighting some of the, I
16 think, pre-eminent issues that are core to the disputes
17 between the parties.

18 I think as to the issue of satisfying their burden on
19 the motion to quash, the information that's being sought is
20 highly relevant. You know, they complain about being
21 generalities, but it's clear that the information that we're
22 seeking is relevant to infringement, validity and damages as
23 well as SEPTA's affirmative defenses. SEPTA is a customer of
24 Wabtec. And Wabtec is providing this system to SEPTA. And so
25 it's not a surprise that they would be integral to resolving

1 issues about the use of that infringing system by SEPTA.

2 And along those lines, there's a need for the
3 information. Wabtec is, in almost all cases, the only source
4 of the information we seek. They're the provider of the AIM
5 system, which stands for advanced information management
6 system, with the work zone block functionality. That's the
7 functionality that's key to the coverage of the patents and
8 the inventions at issue in the underlying case and that's
9 being used by SEPTA, which is a customer of Wabtec. And
10 that's what's accused of infringement.

11 This is important because, ultimately, this is why
12 Railware subpoenaed Wabtec because when Railware was seeking
13 the discovery from SEPTA, properly, through the course of
14 litigation, SEPTA told Railware that it does not have the
15 information it seeks from SEPTA, and that it needs to get it
16 from its supplier. So that sent us down this path of serving
17 a subpoena on Wabtec.

18 Then on top of that, Railware has also learned
19 through discovery from seeking, you know, followup with SEPTA,
20 telling them there's certain documents that are missing,
21 there's certain information that's missing, that we would
22 expect to be produced, learning through that process that
23 SEPTA has also destroyed, through internal policies or
24 otherwise, documents and information that are responsive and
25 relevant to this litigation.

1 And then finally, as to Wabtec's burden of proof, it
2 can't articulate -- the standard is articulating a clearly
3 defined and serious injury and compliance. They have not
4 complied with that standard.

5 Now, with that, I want to turn more generally to the
6 subpoenas themselves. And this is clear from the briefing.
7 We've basically broken down the subpoena to Wabtec into eight
8 categories or buckets as to information and testimony sought.
9 And then on top of that, there's a couple topics for
10 deposition about how the document collection proceeded and
11 how -- and about the documents that were produced. I'm not
12 going to get into those categories other than to say that
13 Wabtec has limited its production to only two of those eight
14 categories or buckets of information.

15 And as to the remaining six categories, it's refused
16 to provide anything. And on top of that, it's refused to
17 provide any deposition testimony whatsoever. And given
18 Wabtec's role in providing the accused system to SEPTA, this
19 refusal and the narrow scope and view of what they should do
20 to comply with the subpoena is not supported by the facts or
21 the law.

22 And then just a couple more points on the documents
23 that have been produced by Wabtec. Railware doesn't dispute
24 that what they've produced is relevant and responsive, but
25 rather that they've overly narrowed and limited that

1 production to such a small amount of documents and categories
2 of documents in information, that it doesn't address the
3 issues in the litigation, and ultimately, what is accused of
4 infringement in the underlying case against SEPTA.

5 So they've articulated this large -- somewhat large
6 number of pages of documents they produced, but what it boils
7 down to is 366 documents. And that number, I think, what Your
8 Honor needs to appreciate is that number is even a bit
9 deceptive because they've produced the same document multiple
10 times. In fact, ten times each.

11 And as an example, they produced the same technical
12 requirements manual ten times. They've produced the same
13 specification document ten times. They've produced the same
14 manual 12 times. And then they've produced a bunch of the
15 same screen shots over and over that are used in those manuals
16 in the previous documents that I've outlined.

17 And, Your Honor, please, I'm not taking this as a
18 criticism. All of those are responsive, and we would expect
19 those to be part of the production. But this is just an
20 objective observation to put the disputes into context. You
21 can't just rely on the number of pages that has been produced
22 to justify reasonableness or compliance with the subpoena,
23 just not playing out that way. They can't just point to the
24 number of pages and documents and say that what they've done
25 is sufficient when they've just simply produced the same

1 documents over and over again, and those documents are limited
2 in a number of ways as to what is relevant and what we've
3 asked for in the context of the litigation. That's as to
4 documents.

5 As to source code, to address that issue, what Wabtec
6 has provided for inspection is a limited, one version, one
7 representative copy and this is Wabtec's version of what is
8 representative of just the work zone block feature that is
9 implemented on the user interface that the dispatcher is
10 interacting with in placing and removing blocks. And then
11 they've also produced some additional code of a third party
12 provider related to the communications between that system and
13 the worker in the field and otherwise.

14 They've not produced any source codes as to any other
15 aspects or features of the accused system. And the reason
16 this is a problem is because what is important in the
17 underlying litigation is that Railware -- and this issue, it
18 pervades across all of the issues that we're fighting with
19 Wabtec about, in that it is that Railware has accused in
20 underlying litigation the entire AIM system, so this AIM
21 system that Wabtec has provided to SEPTA with the work zone
22 block functionality as part of it, of infringement.

23 And it's not just this small work zone block feature.
24 The work zone block feature interacts with the rest of the
25 system to operate in placing and removing blocks and the like.

1 So this notion across I think all of Wabtec's
2 arguments that their production has been sufficient, and that
3 the remainder of the requests and the remainder of the scope
4 of the documents sought is improper is undermined by exactly
5 that point. And this goes to the definition of products,
6 which I can get into since it was a specific question of Your
7 Honor.

8 But I think to illustrate -- and we've done this in
9 the papers, but I think it's important to reiterate again with
10 Your Honor here today -- is that if you just take an example
11 of one of the claims from one of the patents, it has a number
12 of elements that are directed to more than just the work zone
13 block feature that Wabtec wants to continue to focus on and
14 use as a stalking horse to narrow the scope of its discovery
15 obligations in the case. And the claims cover a database,
16 processor, non-transitory medium, a network.

17 So how does the information flow throughout the
18 entire system, the functionality of the -- of controlling the
19 traffic on the railway? So placing and removing blocks and
20 instructing trains that they can and cannot enter the tracks.

21 That is beyond just this work zone block feature
22 that's on the terminal in front of the dispatcher. It's
23 talking about the back end system and how that interface
24 interacts with the rest of the system to prevent trains from
25 crossing on the tracks where the workers are working. That's

1 the whole inventive aspect of the invention that's at issue in
2 the underlying case.

3 Just to go on, some additional examples, there's
4 claim elements directed to placing and removing the blocks.
5 So the point I just made about what's happening on the back
6 end system after the dispatcher interacts with the screen,
7 placing and removing the blocks, and then talking about
8 blocking via an interlocking signal, which prohibits the
9 trains from traversing one or more sections of the track. And
10 then also interacting with the railway traffic control remote
11 control apparatus to place and remove blocks out in the field.

12 All of this relates to the back end and the
13 overarching AIM system that has this block zone functionality
14 that's protecting workers out in the field when they are
15 working.

16 So in sum, Wabtec has refused to produce the source
17 code for the entire AIM system. Now they claim that it's a
18 million lines of code, but they don't articulate in any way
19 the additional burden or expense that they would incur by
20 providing those additional lines of code more than they've
21 already provided. It just sits on a computer in their
22 counsel's office. And presumably, they have easy access to
23 that code that can simply be provided also for inspection like
24 they've done with the existing code.

25 Now the other aspect of this that they've disputed is

1 the time frame. And the need -- and why we are asking for
2 source code going back to the 2013, 2014 time frame through to
3 today. Well, I think it's clear from the papers, SEPTA with
4 Wabtec or Wabtec's predecessor, implemented this work zone
5 block functionality within AIM in the 2013, 2014 time frame.
6 So that is why we are going back to that date in time to get
7 discovery and to establish the time of infringement. And then
8 going forward, we want to see how that system has changed over
9 time, what additional features, what additional aspects, how
10 it's been used, because it's our burden. It's Railware's
11 burden to show infringement over time.

12 Sorry, Your Honor, I thought we lost you.

13 THE COURT: You did momentarily. I had to blow my
14 nose.

15 MR. VOGEL: Sorry, Your Honor.

16 So anyway, at the end of the day, there is just ships
17 passing in the night as to what is relevant from a source code
18 perspective and a document perspective because of the limited
19 nature in which Wabtec wants to characterize this case. And
20 it's jumping on allegations that were made by SEPTA, who also
21 has an interest in narrowing the scope of the technology that
22 is at issue. But it's the broader system, again, that's at
23 issue, which is the genesis of the discovery that we've sought
24 from Wabtec as the provider of this system.

25 Let me just address, Your Honor, the questions that

1 you raised and the arguments that were presented by Wabtec
2 counsel on the various issues. So I think I've addressed the
3 breadth of the definition of products. I think it's important
4 to understand that if you look at the highlights in the
5 presentation that was presented by Wabtec, they notably do not
6 highlight the limitation that says: Provides redundant signal
7 protections for railway work groups. That's what's relevant
8 here. And that is the work zone block functionality.

9 So this definition of products is narrow in that
10 sense as it's trying to get at the technology that's covered
11 by the patents at issue. And our understanding, based on the
12 discovery to date, is that Wabtec hasn't provided SEPTA
13 anything other than the AIM system with work zone block
14 functionality. So arguments that we're trying to obtain
15 discovery beyond that is without merit and we're not
16 understanding the genesis of that.

17 But it's also important to appreciate the situation
18 that we're in as a plaintiff and one not knowing what Wabtec
19 and SEPTA knows is that SEPTA has used different names
20 internally to refer to this system. And so we don't know
21 ultimately whether it had code words at Wabtec or it had code
22 words that were used internally at SEPTA. So our discovery
23 definitions and requests were directed to be able to capture
24 this idea of different names that might be used, but anchoring
25 it in this AIM with work zone block functionality and anything

1 same or similar. And we think that's perfectly reasonable.

2 As to the ESI stipulation that is entered in the
3 underlying litigation in the question number two that Your
4 Honor raised. Yes, there is an ESI stipulation in the
5 underlying litigation, we don't dispute that. And we provided
6 it -- actually provided a copy of it with service of the
7 subpoenas, knowing that we would ultimately go there as part
8 of the discovery being sought from Wabtec.

9 Setting that aside, we believe that Wabtec can
10 collect and produce communications without the ESI request,
11 however we're happy to work with Wabtec to provide ESI-related
12 search terms and custodians. But they're asking --
13 essentially their argument is putting the cart before the
14 horse. We don't even know at this point without discovery
15 from Wabtec, who the proper custodians are, under the ESI
16 stipulation, at Wabtec to be able to propose search terms.

17 So our view is this would be an iterative process
18 whereby we would get initial discovery that would identify the
19 appropriate custodians at Wabtec that we could then formulate
20 appropriate search terms under that ESI stipulation that
21 exists in the underlying litigation to use to work with Wabtec
22 to produce those e-mails. We did that with SEPTA. We're
23 perfectly happy to do that with Wabtec. But we don't believe
24 that that is a rationale for quashing the subpoena because it
25 again puts the cart before the horse.

1 As to the third question Your Honor posed in your
2 notice about the relevance of Wabtec's customers' activities
3 and things along those lines, it's relevant at least to
4 infringement and validity. And I think -- and this is
5 consistent throughout the briefing and we pointed this out
6 repeatedly -- the thing that Wabtec is missing in all of their
7 arguments is they want to focus, Your Honor, that we're
8 seeking this information for purposes of damages. We're not
9 seeking it for purposes of damages. We're seeking it for
10 purpose of validity.

11 In the underlying case, SEPTA has asserted that the
12 claims that are asserted in the asserted patents are obvious.
13 They're invalid as obvious in view of the prior art.

14 One of the defenses or rebuttals that Railware can
15 make in response to that defense is that there is objective
16 indicia of non-obviousness that can undermine any combination
17 of prior art that SEPTA is trying to put forth. And some of
18 the examples of this objective indicia, which we've outlined
19 in our papers: Long-felt but unresolved need, failure of
20 others to solve the problem, commercial success, industry
21 praise, copying by others.

22 I'll focus on a couple of those because I think it's
23 particularly pertinent to Wabtec's activities in the space is
24 the commercial success. They have deployed this AIM with work
25 zone block functionality to a number of entities, SEPTA, New

1 Jersey Transit, perhaps other. And our argument is that based
2 on that, that there's no argument that can be made about
3 obviousness because of the commercial success, because of the
4 adoption of this technology across the industry that was
5 developed by Mr. Pirtle at Railware. And then copying by
6 others, it's a similar argument, which is WABTEC copied our
7 view and our argument and our position, which were
8 substantiated through discovery.

9 And we would like to substantiate it through
10 discovery through Wabtec, given that it is the provider of the
11 accused system is they copied Railware's technology by seeing
12 it in operation at Railware's customers at Metro Northern and
13 Long Island Railroad and viewing it in action and said we want
14 to adopt something like this, as well to comply with the
15 Federal Railroad Association and did so through implementing
16 their own technology -- or implementing copied technology of
17 Railware's at SEPTA and others.

18 So this is the reason for why we're seeking the
19 customer and related information from Wabtec, to rebut
20 arguments of invalidity that are being made by SEPTA in the
21 underlying litigation. I'm not sure --

22 THE COURT: We'll give you five more minutes,
23 Mr. Vogel, to even it out.

24 MR. VOGEL: Okay. Thank you, Your Honor.

25 THE COURT: You're welcome.

1 MR. VOGEL: I think the -- what other? I already
2 addressed the document production issue. I mean we have no --
3 this is the first time we're hearing about the amount of time
4 and effort that Wabtec and counsel has put forth to collect
5 and produce the documents. We're shocked and actually
6 surprised given the limited amount of documents and
7 information, as I've described that they've produced, that
8 they've spent that much time.

9 It's a little bit shocking because of the paltry
10 production, which we didn't think required much effort due to
11 the duplication of what they produced and the limited amount
12 of source code that was actually produced for only 1.5% of the
13 source code that should be available for the overall system.

14 As to blocking data -- sorry, yeah, that's the one
15 that I wanted to address. Let me find that. As to the
16 blocking data, just addressing one point that they raised. We
17 already did try to go back to SEPTA and tell them that the
18 blocking data they produced is not sufficient. It doesn't go
19 across the entire date range that we're interested in. It's
20 basically just a data dump into an Excel spreadsheet of
21 accrued -- what they refer to as accrued historian collection.

22 And in this process of trying to generate the
23 blocking data using this tool, they kept warning us that we're
24 not sure what this is going to generate, this might not be
25 what you want. Ultimately, you might want to go seek this

1 from Wabtec, which is what we did.

2 And our understanding, based on our communications
3 with SEPTA and otherwise, is that Wabtec is the best source
4 because of the blocking data, because it is the provider of
5 the system and is operating the system in the background and
6 knowing how it's operating, placing and removing blocks. And
7 they haven't rebutted this. They haven't said they don't have
8 the information. They just don't want to provide it because
9 they say that SEPTA has already done so.

10 But what SEPTA has provided is lacking and difficult
11 to use, and we believe that Wabtec has much better access and
12 usability of data that we need in this case. And just to
13 emphasize the importance and relevance of this information,
14 Your Honor, as I think Your Honor might appreciate through the
15 discussion thus far, the papers and the nature of the patents,
16 what is important is this blocking function.

17 When the dispatcher is placing the block, a code is
18 sent out to the railway worker in the field and the block can
19 only be released when that railway field worker provides the
20 code back to the dispatcher. That is the crux of the
21 inventive aspect, and ultimately this is what saves workers'
22 live, prevents destruction of equipment and the like, and is
23 the value in why it is being adopted across the industry, and
24 why the FRA has emphasized the adoption of this technology.

25 So that is how we can determine how much this is

1 being used. And it goes to the issue of damages. So this
2 blocking data is important. It goes to the use of the actual
3 inventive aspect within a system and it goes to the issue of
4 damages.

5 So I can't underemphasize the importance of the
6 blocking data and getting the blocking data that we need.
7 With that, Your Honor, I'll stop. I understand that I'm
8 probably out of time, but I'm happy to answer any questions.

9 THE COURT: You're right on the money, Mr. Vogel.
10 Thanks a million.

11 Ms. Priselac, you or any member of your team have
12 anything you want to say on SEPTA's behalf? You're welcome to
13 weigh in if you want.

14 MS. PRISELAC: Thank you, Your Honor. I'll defer to
15 Mr. Ricciuti.

16 THE COURT: Mr. Ricciuti, game on.

17 MR. RICCIUTI: Thank you, Your Honor. Nice to meet
18 you. May it please the court --

19 THE COURT: Nice to meet you.

20 MR. RICCIUTI: On behalf of SEPTA, we're here to
21 answer any questions that Your Honor may have for us as would
22 be appropriate, as would be helpful. However, we don't feel
23 we need to take up any more of the court's time with an
24 affirmative statement.

25 THE COURT: I appreciate all of you showing up for

1 exactly the reason you said, Mr. Ricciuti.

2 MR. RICCIUTI: Of course.

3 THE COURT: Something may come up. So a couple of
4 questions. The fact that I ask a question doesn't mean that
5 I've made up my mind about anything, or even that the topic of
6 my question is germane to the disposition of any matter that's
7 before me. It just means I'm interested.

8 Mr. McArthur, all your briefs really emphasize that
9 Wabtec is not a party to the case. I picked up on that
10 because all of them are entitled: Memorandum of non-party
11 Wabtec. Are you worried you're about to become a party?

12 MR. MCARTHUR: Your Honor, our concern is the scope
13 of these subpoenas are like party requests. And I mean
14 that -- I mean, 43 demands, 28 requests and 15 topics, it's
15 quite substantial. And we want to emphasize non-party for
16 that reason, that they're overbroad, vague. And not just
17 that, if you actually look into the requests themselves the
18 time period of the numerous categories. And also it's a
19 factor based on one of your prior cases as well in the undue
20 burden analysis.

21 But yes, Your Honor, I mean, our concern is just the
22 overbreadth of just the numerosity of the requests in the
23 subpoena.

24 THE COURT: Got it. Mr. Vogel, are you folks about
25 to make Wabtec a party to your Eastern District case in front

1 of Judge Younge?

2 MR. VOGEL: Your Honor, I'm not going to opine on
3 that in front of Your Honor. But our indication at this point
4 is no, we see no reason to bring Wabtec into the mix.

5 THE COURT: Okay. And I'm not sure it matters either
6 way. Looking at the -- Mr. Vogel, looking at the definition
7 in paragraph 17 on page 4 of the instructions at document 5.5,
8 I'm not going to read the whole thing out loud because you
9 folks are intimately familiar with it. But it says that it
10 means: Any dispatching and/or centralized traffic control
11 systems currently or previously offered by you -- which is
12 Wabtec and a bunch of other people. And it says: Or services
13 including but not limited to those products or services like
14 the AIM CTC system. And then it goes on and says: As well as
15 any other dispatching and/or centralized traffic control
16 systems.

17 So all of you appear to be in offices that have
18 access to the World Wide Web as we certainly do here. And
19 just a real quick look, doing a little search of the terms
20 "traffic control" generates for Wabtec something called the
21 Gen 3 Collision Avoidance System, the LOCOTROL Tower Control,
22 the ACSES -- that's A-C-S-E-S, Marsia -- Positive Train
23 Control Communication Package, and there are a whole bunch of
24 other ones that Wabtec describes as traffic control systems.
25 Is that what's supposed to be covered in the definition of

1 product or products, those things? You want all this stuff
2 for those things?

3 MR. VOGEL: Your Honor, this is something we address
4 in the briefs. And I think it's important to point out that
5 while this definition is scoped the way that it is, if you
6 look at the request and the topics, it's focused on what was
7 provided to SEPTA. So I don't think any of those that you
8 just described, other than AIM, has been provided to SEPTA.

9 This goes back to a point I said earlier, which is we
10 don't want to get into this catch-22 where we don't actually
11 call it the right thing that is being provided to SEPTA. So
12 we're interested in this redundant signal protection for
13 railway workers that's outlined in the definition, but then
14 plays through into the requests themselves and the topics.

15 THE COURT: Understood. I forgot to give one other
16 caveat at the beginning. After 14 years in this job, I'm told
17 I've become adept at criticizing lawyers, but that I'm really
18 good about it because I say I'm about to do it before I do it.
19 So if I don't say I'm about to criticize somebody, anything I
20 say should not be taken as a criticism. If I mean to
21 criticize someone, I've learned how to just do it. And I
22 haven't heard or seen or read anything that has led to me
23 wanting to criticize any of you.

24 But why didn't you just say that, Mr. Vogel? We have
25 five and a half pages of definitions. And the beaut, the real

1 beaut in the group is number one. The terms: And, or, and
2 and/or shall be construed either conjunctively or
3 distinctively, as necessary -- without saying necessary to
4 whom -- to bring within the scope of the request all responses
5 that might otherwise be construed to be outside of the scope.

6 So your instructions are everything we ask for plus
7 anything that is outside the scope of the answer that might be
8 within the answer.

9 So I got to tell you, Mr. Vogel, my skepticism radar
10 was tipped up the minute I read that one. And if all Railware
11 is interested in -- sounds legitimate to me -- is what SEPTA
12 is up to, you put the receiving party of your discovery
13 request in a bind when you have a product definition that
14 covers all -- arguably covers all these other things that
15 Wabtec defines as a train control system or a traffic control
16 system, that it appears you're not even interested in.

17 And when your definition of product talks about the
18 AIM system, okay, that's like a rifle shot on what you've
19 identified. But then it goes on to say: As well as any --
20 which we know from definition one means anything in the
21 universe -- any dispatching or centralized traffic control
22 system that provides redundant signal protections for roadway
23 work groups.

24 Well, it just seems to me that if what you're
25 interested in is what you just said to me, which sounds

1 perfectly logical to the court, why didn't just say so? And
2 the example I use when I speak with lawyers is: At trial, a
3 lawyer will say, sir, ma'am, would you not agree with me that
4 at no time prior to, after or on Tuesday, did you not elect to
5 use an airplane to not travel to Cincinnati, Ohio, in October?
6 Because they think it's comprehensive.

7 And I'll say, give me a shot at this. I'll turn to
8 the witness: Have you ever been to Cincinnati? How did you
9 get there? Did you go in October? Was it before or after
10 Tuesday? Then we all know what the answer is. The witness
11 did or didn't go to Cincinnati, we know how they got there and
12 we know when they went.

13 So one of the problems that I think is on the table
14 here, Mr. Vogel, is when you combine the objections -- or
15 excuse me, the definitions with what is really involved in the
16 case -- and one of the things I thought your papers did very
17 well -- particularly well. Other things were very well, but
18 particularly well -- is if you look at the court's question
19 four, ECF 17, page 10, you really had a great pro statement.

20 If this case were being tried in a patent
21 infringement case, and I said, counsel, give me a paragraph
22 that I can read to the voir dire panel, to the jury, about
23 what this case is about, it struck the court when I read that,
24 I could pluck page 10 out of your brief at ECF 17 and they
25 would know exactly what we're talking about.

1 It sounds to me like some time before 2013, somebody
2 came up with the idea of the equivalent of two-factor
3 authentication for the guys working on tracks. In the old
4 days, you put a frog down on the rails. The problem was if
5 the train comes, it pops off the tracks and nobody gets --
6 nobody working gets hit by the train, but you got to clean the
7 train up.

8 So here, it creates the equivalent of a fail-safe
9 switch for the worker on the rail bed, that that worker, she
10 or he has the only key to unlock the locomotive because
11 otherwise it's going to be ground to a stop well down the
12 rails. And until that worker, until she calls up the dispatch
13 center and says the magic number is this, that locomotive is
14 not going anywhere. Seems to me that's what the case is
15 about.

16 Now, if somebody says I'm undershooting the mark, but
17 any system, device, item, that facilitates that, Railware
18 seems to argue is within the scope of one or more of the three
19 patents that it alleges it's been protected by and that SEPTA,
20 as an indirect infringer, is currently practicing. And
21 implicit in the argument is Wabtec's practicing it by what it
22 put into its AIM system.

23 When I read all the materials for the second time
24 yesterday, I kept coming away saying, why didn't these folks
25 just say that? So that is one of the challenges the court

1 sees to the matters that I'm going to have to decide.

2 Now I'm not griping because it's hard, because like
3 you, we do hard stuff every day. But it does seem to me it
4 creates a fog that then creates the need for various -- all
5 parties to litigate pretty much everything because there is
6 this fog. They're nervous that if they don't either object or
7 produce a whole pile of stuff, at trial, if they have evidence
8 they wanted to introduce, the other team is going to say, wait
9 a second, you did not seasonably supplement your discovery
10 request as required by Rule 26. Judge, exclude this stuff.
11 So I get why the lawyers are nervous. But I will say that's
12 one of the challenges in the case.

13 MR. VOGEL: Can I just briefly address that, Your
14 Honor, in the context of the definition?

15 THE COURT: Sure. Knock yourself out.

16 MR. VOGEL: So I think just focusing Your Honor back
17 on the definition of products in that paragraph 17 that you
18 started out the discussion with, if you focus on the latter
19 part of that definition, that goes to the issue that you just
20 addressed. So what you described is redundant signal
21 protections for railway work groups, including systems
22 utilizing a work zone block functionality and enhanced
23 employee protection system, EEPS, and other same or similar --

24 THE COURT: But that only is triggered in the
25 secondary clause of the definition because it comes after "as

1 well as." So the stuff above it is not limited to that.
2 Everything that comes after it, I agree. But by using the
3 words "as well as" it sets up a dichotomy. I'm not as good at
4 Brian Garner's use of language as our friends on the Supreme
5 Court are. But it's two separate things.

6 Rather than saying products are the AIM system or the
7 railway net positive train control communication solution or
8 any other same or similar system, method or product used,
9 created, manufactured, sold, maintained by Wabtec. Okay.
10 It's AIM and anything that does the same thing.

11 So again, I'm not being critical, but there is this
12 fog that gets created, and we're going to have to take a
13 little deeper look at that back here.

14 Let me go through some of my other questions for
15 counsel.

16 So Mr. McArthur, one of the points Mr. Vogel
17 highlighted, amplified a bit -- and Mr. Vogel, if I drew a
18 conclusion that you did not intend -- but on the source code,
19 what I took away from Mr. Vogel's written and oral argument is
20 whether it's 10,000 lines, 100,000 lines, a million lines, 3
21 million lines, it's all zeros and ones embedded in that big
22 pile of data. And the data transfer, whether it's 100,000
23 lines or a million lines, is not functionally different.

24 So the fact that it has a lot of lines makes it sound
25 like it's a lot of lines because a million is ten times

1 100,000. But in terms of the logistics of transferring it,
2 what I heard Mr. Vogel -- implicit in Mr. Vogel's argument is
3 it really doesn't make much difference. Did I hear you
4 correctly, Mr. Vogel?

5 MR. VOGEL: Yes, Your Honor. That's a fair
6 characterization. Thank you.

7 THE COURT: So, Mr. McArthur, what do you say to
8 that? There's a certain logic in the world of fast data
9 transfer.

10 MR. MCARTHUR: Your Honor, the issue is that
11 Mr. Vogel stated that not only did they want the entire AIM
12 code, over a million lines, and then they want another million
13 lines if there was a version change. So if we went from
14 version 101 to version 1.1, they want another million lines.
15 If we went to 1.2, they want another million lines. And if we
16 went to 1.3, they want another million lines. They want us to
17 provide the entire AIM code for each version over 12 years.
18 So it's not simply just --

19 THE COURT: But assuming you have it, but if you have
20 it, why isn't it just a bundle of data? Isn't there some
21 person, some professional down in whatever it's called at
22 Wabtec, and you said, do we still have this stuff stored on
23 the system, versions 1 through 1.3? They're either going to
24 say yes or no. You say, how big of a deal is this to transfer
25 this to another person, subject to a protective order? But is

1 it really 13 times harder if there's 13 versions? Or does the
2 person say, yeah, hold on, let me have my coffee, I'll get to
3 this in a couple of minutes?

4 MR. MCARTHUR: So, Your Honor, I think there's a big
5 factual dispute Mr. -- Railware is stating that we never
6 provided version history and that we provided one version.
7 Maybe I should back up. Version history, basically it allows
8 you to see the code changes over time.

9 THE COURT: Yeah, it's red line.

10 MR. MCARTHUR: Yeah. Great, great example. So we
11 provided that version history for work zone block so they can
12 track the history over time from back when the code was
13 developed to the present.

14 Railware disputes that and says, that's an industry
15 standard version history. However, our declarant, Mr. Steve
16 Passano, has stated that is version history and that's a
17 normal version history and here's how you can access it. On
18 top of that, SEPTA inspected the code and printed the version
19 history. So they have the version history --

20 THE COURT: So am I correct in understanding, your
21 answer to Mr. Vogel's discovery request is: You got what we
22 got?

23 MR. MCARTHUR: In terms of work zone block. And
24 SEPTA proved that, they printed version history --

25 THE COURT: Okay. So, Mr. Vogel, Mr. McArthur says

1 as to the source code and the various versions, you got what
2 they got. You got that?

3 MR. VOGEL: That's not correct, Your Honor. I
4 disagree with that characterization. And I think it even
5 plays out in the briefing by Wabtec itself and the
6 declaration. I think counsel for Wabtec is mixing issues.

7 So there's the one issue of whether they've produced
8 the full source code for the AIM system plus work zone block
9 functionality. I don't think there's any dispute that Wabtec
10 has only produced source code for the limited work zone block
11 feature, not the one million lines of code. They've produced
12 the --

13 THE COURT: Stop right there. Mr. McArthur, is
14 Wabtec in a position that it can produce the source code for
15 the AIM system? Because it's alleged in front of Judge Younger
16 that that's the infringing product, that there are elements
17 that are intrinsic and vital to the operation of the product
18 that the whole thing necessarily infringes. I got no idea who
19 will win that in Philadelphia. But they say that's the scope
20 of what they need to know for the infringement. Have you
21 produced the entire source code for the AIM system?

22 MR. MCARTHUR: No. We produced the code for the work
23 zone block, and that's how it's described in the papers and by
24 our declarant with history for work zone block.

25 THE COURT: Does it exist for the entire AIM system?

1 Does the same stuff that you produced for work zone block
2 exist for the entire AIM system?

3 MR. MCARTHUR: Yes, we have the AIM code and we would
4 probably have the version history as well, the same sort of
5 version history that we produced for the work zone block, yes.

6 THE COURT: So it actually exists. If I were to
7 direct some or all of it to be produced, your answer wouldn't
8 be: Well, that's interesting, Judge, it just doesn't exist
9 anymore. It actually exists?

10 MR. MCARTHUR: Yes, Your Honor. And can I make a
11 point on that about producing it or not?

12 THE COURT: Sure.

13 MR. MCARTHUR: Oh, thank you, Your Honor. So they
14 say they need all this other code for these generic
15 components. And as Mr. Marcello alluded, we produced
16 documents on the other components. And something that we
17 don't know is what has SEPTA produced on all this. Why do
18 they need --

19 THE COURT: But who cares? I mean, who cares? I'm
20 mean, Ms. Priselac cares and her colleagues care because they
21 work for SEPTA. But, you know, now, it may be that Mr. Vogel
22 has invited himself and his colleagues to be buried under an
23 avalanche of stuff that they later conclude was entirely
24 pointless, but does it really matter if SEPTA -- if you
25 believe in good faith that SEPTA has turned over the same

1 stuff and it would be a total waste of time for anybody on the
2 receiving end to have two copies of it, isn't it Mr. Vogel's
3 choice if it's otherwise discoverable to look back with regret
4 and say, well, I really did have it all from SEPTA.

5 But one of the reasons lawyers want to get the same
6 information from two logical sources is to, A, make sure they
7 got it all, assuming everybody is operating in good faith, and
8 to see if there's any contradictions. I mean those are the
9 two that quickly come to mind. You're all in the business of
10 practicing law, you can probably think of more, but those are
11 the first two I could think of. Does it really matter if you
12 believe in good faith that SEPTA has forked over some or all
13 of this?

14 MR. MCARTHUR: No. So we -- SEPTA does not have the
15 source code, we only have the source code. But if they
16 produced technical documents and e-mails describing the
17 system, why do we have -- why is Wabtec responsible for
18 turning over one million lines of code just for a few generic
19 components --

20 THE COURT: But is it different? Is it materially
21 different technologically to produce the difference between
22 400,000 lines of code and a million lines of code? Isn't it
23 all -- just for example, right now, patrolling the seas of the
24 globe are 70-some -- well, no, only half are out -- 30-some
25 U.S. Navy nuclear submarines. They try and stay hidden. But

1 one of the ways they transmit and receive information are in
2 bundled burst packages of data. This is publicly read stuff.
3 You can read the Navy Times. It's in there.

4 So they take huge amounts of data and they send it in
5 one quick burst. They compress it. And then the recipient
6 expands it. So is it really more difficult technologically to
7 transmit a million lines as opposed to 400,000 lines.

8 MR. MCARTHUR: I mean, it would be more work to put
9 it on a laptop and to collect. But it's a question of -- I
10 mean, they have the initial burden to show relevance.

11 THE COURT: Yeah, they do. But I will say, I will
12 say this: I haven't read every single case you folks have
13 cited, but I've read a bunch of them, not only in your case
14 but in prior cases.

15 And in my experience, which is limited to me, if you
16 read 10,000 Third Circuit or Court of Appeals cases on
17 discovery disputes, except for issues of privilege, the
18 district judge's ruling is going to be upheld unless the court
19 of appeals concludes the district judge lost her mind.
20 Because of the breadth of the discretion and the
21 responsibility to apply broad principles to specific cases.

22 So burdens are germane, there's no question about it.
23 But they really most of the time don't steer the outcome of
24 the case. It really is a measure -- if we look at the
25 definitions of discovery now contained in Rule 26, it's really

1 driven by what are the needs of the case balanced against the
2 difficulties or challenges for the producing party? Because
3 if you said to me: Judge, let me tell you, our folks, our
4 technical folks, tell us it will add three weeks of time to
5 produce a million lines of code as opposed to half a million
6 lines of code and we have a person who could tell you that.
7 Well, that may matter. But if the reality is it's just
8 pulling up a different data set to transmit, then it isn't.

9 MR. MCARTHUR: Your Honor, I mean, it would take
10 additional time. I mean, to collect and put that on a laptop,
11 I mean, like the entire in code, all the files. So that's not
12 something like I don't think Wabtec could do in a week or even
13 two, but I understand you would want some evidence to support
14 that. But I mean there is a difference. It's not as simple
15 as you know put on 15 files versus put on 200 files. There is
16 a difference of putting on --

17 THE COURT: I got it. So Mr. Vogel, what I thought I
18 heard from you in describing the blocking technology here, is
19 the reason you think Wabtec would have the information
20 relative to the blocking data is it sounds like you're telling
21 me that the way this technology works is Wabtec essentially
22 licenses the use of the product, and you used the phrase "In
23 the background," are they actually operating this?

24 Is there some like control room or command center
25 back at Wabtec where all the rail lines that are using this

1 technology, the daily use of the technology, the person that's
2 on the rail bed who receives the lockout code and holds the
3 lockout code until they're ready to reopen the rail bed, in
4 real time, Wabtec is monitoring and collecting that data?

5 MR. VOGEL: That's unclear to us, Your Honor.

6 THE COURT: Well, let's ask them. Mr. McArthur, is
7 that how it works? You got some folks back at Wabtec
8 headquarters that you essentially licensed the use of this
9 technology service day in and day out, it's like cloud
10 computing or cloud storage. And the reality is that Wabtec at
11 any one time knows who is using or has used in the prior 24
12 hour, 96 hours, whatever it is, has used the rail blocking
13 technology that it sells and where they've used it and how
14 long it was blocked and all that stuff?

15 MR. MCARTHUR: So if we're talking about the blocking
16 data, that is owned by SEPTA. SEPTA owns that blocking data.

17 THE COURT: I didn't ask who owned it. I didn't ask
18 who owned it. Do you guys know it?

19 MR. MCARTHUR: We can access it is my understanding.
20 But SEPTA is the one that owns it. So we would probably need
21 their permission to do that accessing, but we can access that
22 data.

23 THE COURT: Okay. Do you have any sense -- maybe
24 nobody has had to look at it hard before -- do you have any
25 sense how big a deal that is?

1 MR. MCARTHUR: Your Honor, I don't. Because I'm
2 still confused as to if SEPTA produced the data, why would
3 Wabtec have to reproduce nine years of data? SEPTA has
4 already stated it produced nine years of blocking data.

5 MR. RICCIUTI: Your Honor --

6 THE COURT: Mr. -- is it Ricciuti?

7 MR. RICCIUTI: Ricciuti.

8 THE COURT: Mr. Ricciuti, are you 100% certain for
9 the nine years of blocking data, that's the whole data set of
10 blocking data? There's nothing spilled on the floor?

11 MR. RICCIUTI: My understanding is that what we've
12 been able to access through the historian program that we
13 have, it has been produced.

14 THE COURT: Okay. So everything you have you've
15 turned over?

16 MR. RICCIUTI: Yeah, we are not holding back any
17 blocking data. If we've been able to get to it, we have
18 produced it.

19 THE COURT: So in terms of what you had, do you have
20 any reason to doubt it's all there for the time period in
21 question.

22 MR. RICCIUTI: If we have pulled from the -- if we
23 had access to a particular time period, our understanding
24 would be that we have it. I think there are temporal gaps.
25 But I think at least where we don't have a temporal gap, our

1 understanding is we would have the data.

2 THE COURT: And when you did your production, if
3 there was a gap, you know, February of 2018, you didn't have
4 any data, did you, as part of your production, say this is
5 what we have and reflect that there was no data for February
6 of 2018?

7 MR. RICCIUTI: I believe the gaps in the data are
8 known, too.

9 THE COURT: They're obvious to the person that views
10 it?

11 MR. RICCIUTI: Yes.

12 THE COURT: Okay. So Mr. Vogel, why do you want
13 those other four years? And do you have doubts you have what
14 there is from SEPTA?

15 MR. VOGEL: Yeah, a couple of points on that, which
16 raises the uncertainty of the data we have obtained from
17 SEPTA, which is when they originally -- when we originally
18 made this request to SEPTA, they told us originally they don't
19 think that they can get it and we would need to go get it from
20 Wabtec.

21 Then through, I think, trial and error, SEPTA learned
22 they could use this -- what I'll characterize as crude
23 historian tool -- to go in and pull what data they could pull
24 and basically just dump streams of data. It's not sorted in
25 any way. It's basically just text across a single line of an

1 Excel spreadsheet, into an Excel spreadsheet for the data they
2 did have.

3 So a couple of issues. One, we don't think it's
4 complete. Two, we think Wabtec has a better handling and has
5 better access to the data we seek. And three, we want to see
6 if there's any contradictions between what Wabtec has on its
7 system -- this goes back to what Your Honor was stating
8 earlier as to other issues. We don't know if what we got from
9 SEPTA is consistent with what we can get from Wabtec and is
10 the entire picture.

11 And just to reemphasize a point I made earlier, this
12 blocking data is extremely important because it is the essence
13 of the invention and use of the invention. So it goes to the
14 level of use by SEPTA and, in turn, to the amount of damages.

15 THE COURT: It fits into one of the many
16 multi-multi-multi-part tests the federal circuit says you
17 apply in an infringement case.

18 So Mr. Ricciuti, do you care -- on behalf of SEPTA,
19 not you personally, obviously -- does SEPTA care if I order
20 Wabtec to turn over the blocking data that they say SEPTA
21 owns? Obviously, it would be subject to whatever protective
22 order is in place in EDPA. Does SEPTA have some other
23 objection to that on the basis that it's their data, we don't
24 want Wabtec doing it?

25 MR. RICCIUTI: As it stands right now, we have

1 produced what we have that is maintained in the normal course.
2 If Your Honor were to compel Wabtec to, I guess, try to pull
3 it on their own, I do not believe we would have objections to
4 that. Because, again, what we have retained in the normal
5 course of business, we have produced to Railware.

6 THE COURT: You folks intended to do the best you
7 could.

8 MR. RICCIUTI: Agreed. And indeed we did, yeah.

9 THE COURT: Okay. So Mr. Vogel, I have to confess, I
10 remain a little in the wilderness as to information about
11 worker protection programs and compliance with worker
12 protection regulations or laws by other customers of Wabtec.

13 So let's assume Wabtec sells products to Burlington
14 Northern. I assume they're still in business, that Warren
15 Buffett didn't sell them this morning.

16 What does Burlington Northern's internal methodology
17 for worker safety programs when they're working on track beds,
18 even though your request isn't limited to that, and their
19 compliance with laws and regulations, what does that have to
20 do with whether SEPTA, who right now is the only defendant,
21 what does that have to do with whether SEPTA has infringed one
22 or more of the three patents? That was for Mr. Vogel, I
23 apologize.

24 MR. VOGEL: I'm sorry, Your Honor. I was on mute. I
25 think you're extending -- I think you're focusing on request

1 number 28, if I'm correct, the document request number 28,
2 which is directed to compliance with any law, rule,
3 regulation, et cetera. This is focused on Wabtec's attempt to
4 comply with any law, rule or regulation.

5 THE COURT: 28 says referring to or relating to you
6 or your customers' attempts to comply with any law, rule or
7 regulation. So why do we care what Burlington Northern was up
8 to if they're a customer of Wabtec?

9 MR. VOGEL: Because, again, it goes to this notion
10 that I explained earlier, the objective of indicia of
11 non-obviousness, that this is a feature that's being adopted
12 across the industry and here's the reasons why --

13 THE COURT: Well, but what if one of the rules -- I
14 have not gone back and read the FRA or DOT things that you
15 note because it's the three that are noted in the bullet
16 points are included, but they're not exclusive, any law, rule,
17 regulation or administrative guidance related to roadway
18 worker protection.

19 I don't know if it's in one of the rules or guidances
20 or if it was just the code of the west, but when I worked in
21 the steel mill you weren't allowed to step on a rail. If you
22 were working around a rail bed, you could not step on the
23 rail. And it was a problem. It was a safety violation. You
24 were sent home for the rest of the day.

25 Or that you have to wear a fluorescent vest

1 consisting of at least 168 square inches of a reflective
2 fluorescent color of one of four shades on the Pantone color
3 wheel. Let's assume that would be a rule or regulation.
4 That's within your definition. They would have to go ask
5 Burlington Northern: Your guys following the vest rule?
6 That's not what you want, right?

7 MR. VOGEL: Understood, Your Honor, and point taken.
8 I think just to back up a little bit, these administrative
9 guidances or rules or laws or regulations identified here
10 specifically outline the redundant railway worker protections.
11 So we would be willing to limit the compliance to these
12 specifically elicited and listed rules and regulations. Point
13 taken. The remainder of --

14 THE COURT: I wasn't trying to make a point. It's
15 just we recently had a case that involved a non-compete
16 covenant, and this is in a published opinion, where I had to
17 talk about the role of the court in essentially blue penciling
18 authorship of others. And it's kind of challenging -- and
19 again, I don't mean this to be critical. I'm going to have to
20 think about even if I enforce much of what rail -- what your
21 client has requested, Mr. Vogel, I'm really the least best
22 positioned person to get out the blue pencil or the red pencil
23 for editing. I may have to, but -- so that may be a little
24 bit of a challenge. But we'll take a look at that in the
25 context that you've just said.

1 Mr. Vogel, you used your time very efficiently. One
2 topic you didn't touch on, and again, I just want to ask for
3 sake of completeness: What about my question seven? Are the
4 matters involved in these discovery disputes, your motion to
5 compel, Wabtec's motion to quash, are they so inexorably
6 intertwined with the substance and administration of the civil
7 action before Judge Younger that I should transfer all or part
8 of these discovery disputes to EDPA? Do you have any thoughts
9 on any of that?

10 MR. VOGEL: Your Honor, given the -- well, just a
11 couple of points on that. Judge Younger hasn't addressed any
12 substantive issues in that case other than the scheduling
13 order. So I think Your Honor is probably much further along
14 than Judge Younger in absorbing the technology and
15 understanding the issues in the case. There's been no
16 discovery motions or the like, there's been no substantive
17 motions.

18 While I may not adopt the arguments made why Wabtec's
19 counsel earlier, we do not oppose, and actually would support
20 Your Honor addressing these issues rather than delaying this
21 and essentially potentially rearguing the issues before Judge
22 Younger, which would draw this out potentially beyond
23 September.

24 THE COURT: Understood. So you don't disagree with
25 the conclusion that Mr. McArthur shared. You may or may not

1 adopt the reasoning that led to that conclusion, you concur in
2 the judgment.

3 MR. VOGEL: Correct. Thank you, Your Honor.

4 THE COURT: Okay. I got it. So Ms. Horrigan,
5 Mr. McArthur, Mr. Marcello, anything else you want to talk
6 about? It's open season. I'll give you a couple minutes.
7 You don't have to, but if there's anything you want to
8 emphasize, amplify, steer me more accurately on, now is your
9 shot.

10 MR. MCARTHUR: Thank you, Your Honor. I think just
11 to address a couple of points by Railware's counsel. I think
12 he raised the ESI request. That's quite significant and
13 burdensome. And there's no ESI request in the subpoena as
14 written.

15 And that's a lot of our argument is like the subpoena
16 should be judged by how they're written. And Mr. Vogel's
17 attempt to say they are going to give us ESI requests, it's
18 not in there in the first place. But also SEPTA apparently
19 has eight years of e-mails that they have and they're in the
20 middle of e-mail discovery. So I think a big unknown here is
21 what have they produced and why does that not overlap with
22 many of the requests here?

23 And I think a second thing is there's still --

24 THE COURT: Are they still your client's customer,
25 Mr. McArthur?

1 MR. MCARTHUR: Yes.

2 THE COURT: Okay. Think it's possible somebody could
3 call them up and say, you're our valued customer, we're going
4 to do our duty in front of Judge Hornak on this discovery
5 stuff, but could you let us know what you've turned over?

6 MR. MCARTHUR: Well, we have SEPTA's counsel on the
7 line right now.

8 THE COURT: You can dial him up. You're in New York,
9 right?

10 MR. RICCIUTI: Obviously, if you have any questions
11 in terms of e-mail discovery and what we have done, I'm happy
12 to answer them, Your Honor.

13 THE COURT: Okay. I don't, but others might.
14 Appreciate that, Mr. Ricciuti.

15 Anything else, Mr. McArthur, Mr. Marcello,
16 Ms. Horrigan?

17 MR. MCARTHUR: It's just like the definition of
18 products, you can't tell where one starts and one stops. So
19 those would be significantly looked at, we would respectfully
20 suggest, in terms of cutting or even quashing them.

21 THE COURT: Understood. I noted from the bench in
22 other discovery disputes, sort of the -- it's like an iceberg.
23 What is it? 80% is below the surface of the water?

24 In my experience as a judge -- I had this experience
25 as a lawyer, too, but certainly as a judge -- any time a

1 discovery request begins or close to the front end are the
2 words "any and all," it strikes me that -- you know, Judge
3 Aldisert once said: There's no bad legal writing, there's
4 just a lot of bad editing. So any time I see "any and all,"
5 it tells me there's probably some more focus that can be
6 brought here.

7 I appreciate your observations, Mr. McArthur, because
8 my questions, I hope, indicated to all counsel one of the
9 lenses I was looking through is what's everyone really need
10 here? And your observations certainly amplify that.

11 Mr. Marcello, anything you want to talk about?

12 MR. MARCELLO: Nothing further, Your Honor. But
13 thank you for the opportunity to speak today.

14 THE COURT: No problem. Thanks to your client for
15 letting you -- having the confidence to let you do it.

16 Ms. Horrigan, anything you want to talk about?

17 MS. HORRIGAN: No. Thank you, Your Honor, for your
18 time today.

19 THE COURT: About 20 days from now, you pay for it.
20 You pay for it every April 15th, and I'm delighted that you
21 all do.

22 Mr. Vogel, anything else you want to talk about
23 today?

24 MR. VOGEL: Nothing further, Your Honor. Thank you.

25 THE COURT: Okay. Thank you. Mr. Ricciuti or

1 Ms. Priselac or Mr. Hughes, anything you want to talk about?

2 MR. RICCIUTI: No, Your Honor. Thank you for your
3 time.

4 THE COURT: My pleasure.

5 MS. PRISELAC: Thank you, Your Honor.

6 THE COURT: Mr. O'Neill, anything that I somehow --
7 or something that got left off the list?

8 THE LAW CLERK: No, I think you covered it.

9 THE COURT: Ms. Balobek, are you all set?

10 THE COURT REPORTER: Yes, thank you.

11 THE COURT: I'm not suggesting anybody needs to do
12 this, but experience teaches that with this many lawyers from
13 these many distinguished law firms, somebody might want a
14 transcript of this. If you do, just coordinate with each
15 other and reach out to Ms. Balobek. Her contact information
16 is on my web page if you're trying to hunt that down.

17 So thanks, everyone. Thanks for the efficiency and
18 effectiveness of your written papers, for your efficiency and
19 effectiveness today and your focus. It really helps me
20 because I'm a stranger to your case, which is -- there's a lot
21 going on in your case. So I appreciate the way you did all
22 that.

23 Is there anybody on the call that didn't see or hear
24 everything that went on? If you didn't think you saw or heard
25 everything that went on, just speak up. Doesn't appear there

1 is anyone. Thanks, everyone. Have a terrific rest of the
2 week.

3 C E R T I F I C A T E

4 I, MARSIA L. BALOBECK, certify that the foregoing
5 is a correct transcript from the record of proceedings in the
6 above-entitled case.

7 \s\ Marsia L. Balobeck
8 MARSIA L. BALOBECK
9 Official Court Reporter

04/05/2025
Date of Certification