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November 3, 2009

**VIA ECF:**

The Honorable Robert M. Levy  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

RE: Hopkins et al v. National Railroad Passenger Corporation et al.,  
Case No: 1:08-cv-2965-NGG-RML

Dear Magistrate Levy:

**Introduction**

We represent the plaintiffs, Brian Hopkins, Liana Hopkins and Sean Hopkins in this matter which arises out of the July 9, 2006 electrocution of Brian Hopkins. Please accept this letter in response to defendants' October 26, 2000 letter seeking to further limit the discovery plaintiffs have attempted to obtain.

Mr. Hopkins suffered 3<sup>rd</sup> degree burns over 85% of his body when over 27,000 volts of arcing electricity entered his body from an electrified catenary wire which hung above an Amtrak Acela train parked at a platform in Boston's South Station during the middle of the night. At the time this incident occurred, there was absolutely no reason for the train to be parked at the station, no reason for the catenary wire to be electrified and no reason for the tracks to be wide open to the public. In the wake of other individuals being electrocuted by catenary wires, it was wanton and reckless to allow those conditions to exist unnecessarily. While the defendants continuously tout the purportedly open and obvious danger posed by the catenary wire and the inappropriateness of Mr. Hopkins' conduct, they at the same time go to great lengths to alert their employees about the importance of staying clear of the wires and to shut down the electricity before working around the lines.

To date, the substantive information defendants have produced has been *de minimis*. They have interposed objections to virtually every discovery request made thus far. The efforts to further limit their production will seriously hamper plaintiffs' prosecution of this case.

**Other Amtrak Electrocutions**

**I. This Information is Relevant and Routinely Produced in Discovery**

The defendants have not established why the production of information about other Amtrak electrocutions is unduly burdensome, simply because they cannot meet this burden. Instead they argue issues of trial admissibility, which is inappropriate at this phase of the case.

The Honorable Robert M. Levy  
November 3, 2009  
Page -2-



The scope of discovery in Federal Court is broad. “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed.R.Civ.P. 26(b)(1). Prior cases discussing the *discoverability* of other lawsuit and claim information are instructive. In Cornelius v. Consolidated Rail Corp., 169 F.R.D. 250 (N.D.N.Y. 1996), plaintiff brought a FELA claim alleging repetitive motion injury from working on the railroad. He thereafter moved to compel other case and claim information arguing that it was relevant to notice of the condition, causation and foreseeability. In granting the motion, the Court held:

Clearly, the information sought for the period ending May 1, 1993 is relevant to matters at issue in this case. Claims and law suits filed after May 1, 1993 may be inadmissible at trial. However, the information sought concerning them may with reasonable probability lead to the discovery of admissible evidence. Among other matters, such information should contain or lead to evidence related to the foreseeability to Conrail of Cornelius' alleged injury, the feasibility of remedial actions which would have averted such injury, and information related to work conditions in the possession of Conrail prior to May 1, 1993. [Id. at 252]

Likewise, in Coker v. Duke & Co., Inc., 177 F.R.D. 682 (M.D.Ala. 1998) plaintiff filed suit against a broker alleging fraud and related claims. In granting plaintiff's motion to compel other lawsuits, complaints, disciplinary proceedings and administrative claims, the court held:

As a threshold matter, the information which the plaintiffs seek is **routinely produced**. Courts, in a variety of contexts, have affirmed the right of litigants to be informed about lawsuits and complaints filed against their adversaries. See Cornelius v. Consolidated Rail Corp., 169 F.R.D. 250 (N.D.N.Y. 1996); Rogers v. Electronic Data Systems Corp., 155 F.R.D. 537 (E.D.N.C. 1994). [emphasis added] [Id. at 686]

Notwithstanding bona-fide claims that the production of the discovery would be burdensome, Courts have permitted plaintiffs to obtain this information. See i.e. Joseph v. Harris Corp., 677 F.2d 985, 991 (3d Cir. 1982)(noting the distinction between admissibility and discoverability, it was reversible error to deny discovery of other persons injured by printing press and nine other press models); Briney v. Deere & Co., 150 F.R.D. 159 (S.D.Iowa 1993)(“Issues of relevancy are traditionally left to the discretion of the trial court....[P]laintiff is entitled to discovery concerning accidents involving not only the stapler used by plaintiff but also other products that exhibit the features that plaintiff claims caused or contributed to his injury”) Lohr v. Stanley-Bostitch, Inc., 135 F.R.D. 162, 164 (W.D.Mich. 1991)(“In order to be entitled to discovery concerning other incidents, plaintiff need not lay the same foundation concerning substantial similarity as would be necessary to support admission into evidence.”); Uitts v. General Motors Corp., 58 F.R.D. 450, 452-453 (E.D.Pa. 1972)(“At trial we may determine that the evidence uncovered in discovery is inadmissible ... At this time, however, the discovery appears proper under Fed.R.Civ.P. 26).

In the present case, plaintiffs are seeking information on other electrocutions involving Amtrak to show notice of the condition, causation of the injuries and the feasibility of

The Honorable Robert M. Levy  
November 3, 2009  
Page -3-



eliminating the risk. In addition, plaintiffs seek this discovery to support their claim that the risk associated with the catenary wires is extremely severe. Further, plaintiffs seek to obtain this information to demonstrate that Amtrak has done nothing over the years to reduce the likelihood of this type of accident which, as a result, is inevitably doomed to occur again. This is especially pertinent given that defendants contend that plaintiffs must prove willful, wanton and reckless conduct (which plaintiffs do not concede). Defendants' claim that many of the 25 other Amtrak stations are dissimilar in composition from South Station is irrelevant. The critical characteristic among them is that each has electrified catenary wires and pantographs.

## **II. It is Not Unduly Burdensome to Produce the Information**

By way of background, the Federal Railroad Administration has created a website at <http://safetydata.fra.dot.gov/OfficeofSafety/Default.asp> "for the purpose of making railroad safety information readily available to a broad constituency which includes FRA personnel, railroad companies, research and planning organizations and the public, in general." According to plaintiffs' search of this publically accessible database for trespasser casualties only, since 1975 (when Amtrak first began making records available to the public), there have been **44** electrical shocks due to contact with the third rail, catenary wire and/or pantograph and **16** electrical shocks attributable to some other cause. Admittedly, the search results are somewhat cryptic and difficult to understand (See Exhibit A – website search results). The parameters of the public information do not allow us to limit the search to just the catenary wire and/or pantograph. Nonetheless, the universe of other incidents is **60** in total.

Of the 44 electrocutions which were caused by contact with the third rail, catenary wire and/or pantograph, 4 occurred in 1997, 6 in 1998, 1 in 1999, 2 in 2000, 9 in 2001, 9 in 2002, 3 in 2003, 5 in 2004, 5 in 2005, 2 in 2006, and 1 in 2008. Of the 16 other electrocutions, 2 occurred in 1998, 1 in 2001, 2 in 2002, 3 in 2003, 1 in 2004, 1 in 2005, 4 in 2006, 1 in 2007 and 1 in 2008. The remaining 16 "other cause" electrocutions were from 1998 to the present. Thus, these are all within approximately 10 years of the date of Mr. Hopkins' accident.

Although plaintiffs are able to obtain bare statistical information and short narratives explaining these incidents from the FRA website, plaintiffs are not able to obtain the detailed materials available to defendants, such as photographs, police reports, witness statements, and other documents. Defendants cannot claim that they are unduly burdened by a request for materials relating to previous electrocutions if plaintiffs are able to find much of it on their own and only rely upon them for that information which is not publicly available. Further, while discovery does carry necessary burdens, plaintiffs are happy to make arrangements and dedicate personnel to pull the files and copy the records.

### **Illegal Activity at South Station**

Plaintiffs have requested materials concerning illegal activity at South Station for the purposes of proving that the defendants knew or should have known about the presence of trespassers and/or criminal activity and failed to take appropriate measures to prevent such individuals from gaining entrance. This information is also critically relevant because defendants will presumably claim that Brian Hopkins was trespassing at the time of the

The Honorable Robert M. Levy  
November 3, 2009  
Page -4-



incident. Thus, it might be just as important to learn that few if anyone has been arrested for trespassing at South Station and the trespassing laws, if any, go unenforced.

Defendants' claim that plaintiffs are seeking to "fish" at discovery is inappropriate. Plaintiffs should be able to discover facts which might support their case. "Discovery is of broader scope than admissibility, and discovery may be had of inadmissible matters." King v. Conde, 121 F.R.D. 180, 194 (E.D.N.Y.1988). "No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession." Dollar v. Long Mfg., N.C., Inc., 561 F.2d 613, 616 (5<sup>th</sup> Cir. 1977) citing Hickman v. Taylor, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). Defendants' claim of irrelevancy or undue burden with respect to virtually every request should not be honored.

This Court's Order of October 21, 2009 concerning the South Station information was extremely limited, requiring defendants to produce incident reports only for the period of 2004-2006 relating to criminality, vandalism and illegal entry on the tracks or trains. The defendants claim that 159 incidents have been located. The Massachusetts Bay Transportation Authority ("MBTA") witnesses who were deposed testified that the information on such incidents are in the MBTA's computer system. See Exhibit B - Deposition of Kelly J. Daniel at page 26, line 17-page 27, line 2. Thus, these incidents need only be flagged, printed and produced. The claim of burdensomeness is hollow. Additionally, this is public information which can be properly requested by any individual by way of a FOIA request.

Lastly, defendants cite the Criminal Offender Record Information Act, M.G.L. c. 6, §§168-171 as a reason not to provide discovery. This argument is a red herring. The incident reports maintained by the MBTA are not CORI records and they are not maintained by the Massachusetts Criminal History Systems Board. The reports are public record and need not be redacted. The public readily has information regarding arrests and criminal prosecutions and can such information by going to the Clerk of Court or even on-line through PACER or the Massachusetts Trial Court Information System (the Massachusetts on-line docket system).

### Conclusion

All parties no doubt agree that this is a extremely serious and important case. The Scope of discovery in Federal Court is broad and producing discovery for both sides is not without necessary burdens. Given the theories plaintiffs are pursuing, the potential relevance of this discovery and defendants' failure to establish undue burden, plaintiffs respectfully request the Court require defendants to produce documents regarding all Amtrak electrocutions for a period of 10 years before Brian Hopkin's electrocution and all materials concerning illegal activity at South Station for a period of 2 years before Brian Hopkin's electrocution.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Russell X. Pollock", written over a horizontal line.

Russell X. Pollock

cc: Christy Luckow, Esq.



# EXHIBIT A

TRESPASSER CASUALTIES (DEATHS AND INJURIES) (BY CALENDAR YEAR, Jan-Dec)  
(EXCLUDES HIGHWAY-RAIL INCIDENTS)

Selections: Railroad - All Railroads  
State - All States County - All Counties  
All Regions  
All Casualties  
Calendar Year - 1997  
End Month of Report - December

Event	Total Cases	Total Year Pct	Total Year Counts				YTD Counts 1997	Dec			% Change Over Time 1994 to 1996 to 1997 1996 1997
			1994	1995	1996	1996		1997	1994	1996 to Dec to 1996	
-----GRAND TOTAL-----	1,049	100.0	.	.	.	.	1,049	.	.	.	.
59 Struck by on-track equipment	746	71.1	.	.	.	.	746	.	.	.	.
34 Lost balance	43	4.1	.	.	.	.	43	.	.	.	.
18 Collision/impact - auto, truck, bus, van, etc.	41	3.9	.	.	.	.	41	.	.	.	.
99 Other (describe in narrative)	33	3.1	.	.	.	.	33	.	.	.	.
58 Struck by object	23	2.2	.	.	.	.	23	.	.	.	.
54 Slipped, fell, stumbled, etc. due to object, ballast,	20	1.9	.	.	.	.	20	.	.	.	.
67 Thrill seeking	20	1.9	.	.	.	.	20	.	.	.	.
33 Horseplay, practical joke, etc.	17	1.6	.	.	.	.	17	.	.	.	.
51 Slipped, fell, stumbled, etc. due to irregular surfa	11	1.0	.	.	.	.	11	.	.	.	.
64 Sudden/unexpected movement of on-track equipment	11	1.0	.	.	.	.	11	.	.	.	.
50 Slack action, draft, compressive buff/coupling	10	1.0	.	.	.	.	10	.	.	.	.
61 Struck against object	9	0.9	.	.	.	.	9	.	.	.	.
32 Highway-rail collision/impact	8	0.8	.	.	.	.	8	.	.	.	.
37 Other impacts - on track equipment	6	0.6	.	.	.	.	6	.	.	.	.
56 Stepped on object	6	0.6	.	.	.	.	6	.	.	.	.
17 Collision - between on track equipment	5	0.5	.	.	.	.	5	.	.	.	.
42 Ran into on-track equipment	5	0.5	.	.	.	.	5	.	.	.	.
23 Electrical shock due to contact with 3rd rail, ca	4	0.4	.	.	.	.	4	.	.	.	.
14 Climatic conditions, other (e.g., high winds)	3	0.3	.	.	.	.	3	.	.	.	.
43 Ran into object/equipment	3	0.3	.	.	.	.	3	.	.	.	.
57 Struck by thrown or propelled object	3	0.3	.	.	.	.	3	.	.	.	.
03 Assaulted by other	2	0.2	.	.	.	.	2	.	.	.	.
09 Caught in/compressed by other machinery	2	0.2	.	.	.	.	2	.	.	.	.
10 Caught in/crushed by materials	2	0.2	.	.	.	.	2	.	.	.	.
21 Derailment	2	0.2	.	.	.	.	2	.	.	.	.
35 Missed handhold, grabiron, step, etc.	2	0.2	.	.	.	.	2	.	.	.	.
52 Slipped, fell, stumbled, etc. due to climatic con	2	0.2	.	.	.	.	2	.	.	.	.
53 Slipped, fell, stumbled, etc. on oil, grease, etc.	2	0.2	.	.	.	.	2	.	.	.	.
07 Bodily function/sudden movement, e.g., sneezing, tw	1	0.1	.	.	.	.	1	.	.	.	.
19 Committing vandalism/theft	1	0.1	.	.	.	.	1	.	.	.	.
36 Needle puncture/prick/stick	1	0.1	.	.	.	.	1	.	.	.	.
39 Pushed/shoved into/against	1	0.1	.	.	.	.	1	.	.	.	.
49 Shot	1	0.1	.	.	.	.	1	.	.	.	.
60 Struck by falling object	1	0.1	.	.	.	.	1	.	.	.	.
65 Sudden/unexpected movement of vehicle	1	0.1	.	.	.	.	1	.	.	.	.
66 Sustained viewing	1	0.1	.	.	.	.	1	.	.	.	.

TRESPASSER CASUALTIES (DEATHS AND INJURIES) (BY CALENDAR YEAR, Jan-Dec)  
(EXCLUDES HIGHWAY-RAIL INCIDENTS)

Selections: Railroad - All Railroads  
State - All States County - All Counties  
All Regions  
All Casualties  
Calendar Year - 2000  
End Month of Report - December

Event	Total Cases	Total Pct	Total Year Counts YTD					Dec		% Change 1997 to 1999	% Change 1999 to 2000
			1997	1998	1999	1999	2000	1997	1999		
-----GRAND TOTAL-----	3,899	100.0	1,049	1,049	924	924	877	-11.9	-1		
59 Struck by on-track equipment	2,966	76.1	746	814	723	723	683	-3.1	-1		
34 Lost balance	174	4.5	43	55	40	40	36	-7.0	-2		
18 Collision/impact - auto, truck, bus, van, etc.	95	2.4	41	12	24	24	18	-41.5	10		
99 Other (describe in narrative)	95	2.4	33	29	15	15	18	-54.5	-4		
70 Slipped, fell, stumbled, other	83	2.1	.	9	43	43	31	.	37		
67 Thrill seeking	66	1.7	20	28	9	9	9	-55.0	-6		
58 Struck by object	40	1.0	23	3	6	6	8	-73.9	10		
33 Horseplay, practical joke, etc.	38	1.0	17	12	8	8	1	-52.9	-3		
64 Sudden/unexpected movement of on-track equipment	33	0.8	11	12	3	3	7	-72.7	-7		
54 Slipped, fell, stumbled, etc. due to object, ballast,	32	0.8	20	6	3	3	3	-85.0	-5		
68 Caught, crushed, pinched, other	30	0.8	.	11	10	10	9	.	.		
51 Slipped, fell, stumbled, etc. due to irregular surfa	27	0.7	11	8	6	6	2	-45.5	-2		
42 Ran into on-track equipment	26	0.7	5	7	2	2	12	-60.0	-7		
50 Slack action, draft, compressive buff/coupling	22	0.6	10	3	2	2	7	-80.0	-3		
61 Struck against object	19	0.5	9	4	3	3	3	-66.7	-2		
37 Other impacts - on track equipment	17	0.4	6	2	5	5	4	-16.7	15		
23 Electrical shock due to contact with 3rd rail, ca	13	0.3	4	6	1	1	2	-75.0	-8		
35 Missed handhold, grabiron, step, etc.	12	0.3	2	4	3	3	3	50.0	-2		
69 On track equipment, other incidents	9	0.2	.	2	3	3	4	.	5		
32 Highway-rail collision/impact	8	0.2	8	.	.	.	.	.	.		
03 Assaulted by other	7	0.2	2	1	3	3	1	50.0	20		
09 Caught in/compressed by other machinery	6	0.2	2	2	.	.	2	.	.		
10 Caught in/crushed by materials	6	0.2	2	1	.	.	3	.	.		
17 Collision - between on track equipment	6	0.2	5	.	1	1	.	-80.0	.		
21 Derailment	6	0.2	2	4	.	.	.	.	.		
43 Ran into object/equipment	6	0.2	3	2	1	1	.	-66.7	-5		
52 Slipped, fell, stumbled, etc. due to climatic con	6	0.2	2	1	.	.	3	.	.		
56 Stepped on object	6	0.2	6	.	.	.	.	.	.		
19 Committing vandalism/theft	5	0.1	1	1	1	1	2	.	.		
41 Pushed/shoved from	5	0.1	.	.	3	3	2	.	.		
57 Struck by thrown or propelled object	5	0.1	3	1	.	.	1	.	.		
60 Struck by falling object	5	0.1	1	2	.	.	2	.	.		
71 Sudden, unexpected movement, other	5	0.1	.	1	3	3	1	.	20		
65 Sudden/unexpected movement of vehicle	4	0.1	1	2	1	1	.	.	-5		
14 Climatic conditions, other (e.g., high winds)	3	0.1	3	.	.	.	.	.	.		
53 Slipped, fell, stumbled, etc. on oil, grease, etc.	3	0.1	2	.	1	1	.	-50.0	.		
24 Electrical shock, other (explain in narrative)	2	0.1	.	2	.	.	.	.	.		
39 Pushed/shoved into/against	2	0.1	1	1	.	.	.	.	.		
07 Bodily function/sudden movement, e.g., sneezing, tw	1	0.0	1	.	.	.	.	.	.		
08 Caught in/compressed by hand tools	1	0.0	.	.	1	1	.	.	.		
36 Needle puncture/prick/stick	1	0.0	1	.	.	.	.	.	.		
49 Shot	1	0.0	1	.	.	.	.	.	.		
63 Sudden/unexpected movement of material	1	0.0	.	1	.	.	.	.	.		
66 Sustained viewing	1	0.0	1	.	.	.	.	.	.		

TRESPASSER CASUALTIES (DEATHS AND INJURIES) (BY CALENDAR YEAR, Jan-Dec)  
(EXCLUDES HIGHWAY-RAIL INCIDENTS)

Selections: Railroad - Amtrak [ATK ]  
State - All States County - All Counties  
All Regions  
All Casualties  
Calendar Year - 2003  
End Month of Report - December

Event	Total Cases	Total Year Pct	Total Year Counts YTD					% Change Over Time		
			2000	2001	2002	2002 Dec	2003 Jan	2000 to 2002	2002 to 2003	2002 to Dec 2003
-----GRAND TOTAL-----	384100.0	88	104	106	106	86	20.5	1.9	-18.9	
59 Struck by on-track equipment	364	94.8	85	96	101	101	82	18.8	5.2	-18.8
23 Electrical shock due to contact with 3rd rail, ca	8	2.1	.	4	3	3	1	.	-25.0	-66.7
70 Slipped, fell, stumbled, other	2	0.5	.	1	.	.	1	.	.	.
24 Electrical shock, other (explain in narrative)	1	0.3	.	1	.	.	.	.	.	.
34 Lost balance	1	0.3	.	.	.	.	1	.	.	.
37 Other impacts - on track equipment	1	0.3	1	.	.	.	.	.	.	.
40 Pushed/shoved onto	1	0.3	.	.	.	.	1	.	.	.
43 Ran into object/equipment	1	0.3	.	.	1	1	.	.	.	.
58 Struck by object	1	0.3	1	.	.	.	.	.	.	.
61 Struck against object	1	0.3	.	1	.	.	.	.	.	.
67 Thrill seeking	1	0.3	.	1	.	.	.	.	.	.
69 On track equipment, other incidents	1	0.3	1	.	.	.	.	.	.	.
99 Other (describe in narrative)	1	0.3	.	.	1	1	.	.	.	.



TRESPASSER CASUALTIES (DEATHS AND INJURIES) (BY CALENDAR YEAR, Jan-Dec)  
(EXCLUDES HIGHWAY-RAIL INCIDENTS)

Selections: Railroad - All Railroads  
State - All States County - All Counties  
All Regions  
All Casualties  
Calendar Year - 2006  
End Month of Report - December

Event	Total Cases	Total Pct	Total Year Counts YTD				Counts Jan - Dec		-% Change Over Time		
			2003	2004	2005	2005	2006	2003 to 2005	2005 to 2006	2005 to Dec 2006	
-----GRAND TOTAL-----	3,640	100.0	896	877	877	877	990	-2.1		12.9	
59 Struck by on-track equipment	2,711	74.5	685	685	656	656	685	-4.2	-4.2	4.4	
70 Slipped, fell, stumbled, other	226	6.2	38	52	61	61	75	60.5	17.3	23.0	
34 Lost balance	109	3.0	31	23	27	27	28	-12.9	17.4	3.7	
99 Other (describe in narrative)	98	2.7	27	20	23	23	28	-14.8	15.0	21.7	
18 Collision/impact - auto, truck, bus, van, etc.	58	1.6	15	11	10	10	22	-33.3	-9.1	120.0	
61 Struck against object	51	1.4	16	12	12	12	11	-25.0		-8.3	
68 Caught, crushed, pinched, other	45	1.2	8	12	7	7	18	-12.5	-41.7	157.1	
42 Ran into on-track equipment	32	0.9	4	6	6	6	16	50.0		166.7	
67 Thrill seeking	32	0.9	7	7	5	5	13	-28.6	-28.6	160.0	
58 Struck by object	30	0.8	2	4	12	12	12	500.0		200.0	
71 Sudden, unexpected movement, other	24	0.7	3	2	5	5	14	66.7	150.0	180.0	
64 Sudden/unexpected movement of on-track equipment	20	0.5	7	3	6	6	4	-14.3	100.0	-33.3	
65 Sudden/unexpected movement of vehicle	16	0.4	5	4	4	4	3	-20.0		-25.0	
69 On track equipment, other incidents	15	0.4	5	2	2	2	6	-60.0		200.0	
37 Other impacts - on track equipment	14	0.4	6	1	5	5	2	-16.7	400.0	-60.0	
24 Electrical shock, other (explain in narrative)	13	0.4	1	5	5	5	2	400.0		-60.0	
81 Caught Between Equipment	13	0.4	1	3	1	1	8		-66.7	700.0	
03 Assaulted by other	11	0.3			5	5	6			20.0	
17 Collision - between on track equipment	10	0.3	1	1	2	2	6	100.0	100.0	200.0	
33 Horseplay, practical joke, etc.	10	0.3	3	5			2				
41 Pushed/shoved from	10	0.3	7				3				
43 Ran into object/equipment	10	0.3	2	6	1	1	1	-50.0	-83.3		
23 Electrical shock due to contact with 3rd rail, ca	9	0.2	3	1	1	1	4	-66.7		300.0	
35 Missed handhold, grabiron, step, etc.	7	0.2	1	3	2	2	1	100.0	-33.3	-50.0	
02 Apprehending/removing from property	6	0.2	1		1	1	4			300.0	
10 Caught in/crushed by materials	6	0.2	2	1	2	2	1		100.0	-50.0	
54 Slipped, fell, stumbled, etc. due to object, ballast,	6	0.2	1	1	4	4		300.0	300.0		
57 Struck by thrown or propelled object	6	0.2	1		2	2	3	100.0		50.0	
73 Burned	6	0.2		1	2	2	3		100.0	50.0	
51 Slipped, fell, stumbled, etc. due to irregular surfa	5	0.1	2	1			2				
15 Climatic condition, exposure to environmental hea	4	0.1	3		1	1		-66.7			
09 Caught in/compressed by other machinery	2	0.1	1	1							
16 Climatic condition, exposure to environmental col	2	0.1		1	1	1					
27 Exposure to chemicals - external	2	0.1			2	2					
38 Overexertion	2	0.1		1	1	1					
50 Slack action, draft, compressive buff/coupling	2	0.1					2				
52 Slipped, fell, stumbled, etc. due to climatic con	2	0.1		1			1				
60 Struck by falling object	2	0.1		1			1				
01 Aggravated pre-existing condition	1	0.0			1	1					
11 Caught in/crushed in excavation, land slide, cave	1	0.0					1				
13 Cave in, slide, etc.	1	0.0	1								
14 Climatic conditions, other (e.g., high winds)	1	0.0	1								
19 Committing vandalism/theft	1	0.0	1								
39 Pushed/shoved into/against	1	0.0	1								
40 Pushed/shoved onto	1	0.0	1								
49 Shot	1	0.0					1				
53 Slipped, fell, stumbled, etc. on oil, grease, etc.	1	0.0	1								
55 Stabbing, knifing, etc.	1	0.0			1	1					
66 Sustained viewling	1	0.0					1				
72 Bumped	1	0.0			1	1					
74 Blowing/falling debris	1	0.0	1								

TRESPASSER CASUALTIES (DEATHS AND INJURIES) (BY CALENDAR YEAR, Jan-Dec)  
(EXCLUDES HIGHWAY-RAIL INCIDENTS)

Selections: Railroad - Amtrak [ATK ]  
State - All States County - All Counties  
All Regions  
All Casualties  
Calendar Year - 2009  
End Month of Report - August

Event	Total Cases	Total Year Pct	Total Year Counts YTD				% Change Over Time			
			2006	2007	2008	2009 Aug	2006 to 2008	2008 to 2009	2008 to Aug 2009	
-----GRAND TOTAL-----	366100.0	93	85	106	74	82	14.0	24.7	10.8	
59 Struck by on-track equipment	339	92.6	85	81	97	69	76	14.1	19.8	10.1
70 Slipped, fell, stumbled, other	6	1.6	1	1	2	.	2	100.0	100.0	.
69 On track equipment, other incidents	3	0.8	1	.	1	1	1	.	.	.
23 Electrical shock due to contact with 3rd rail, ca	2	0.5	1	.	1	1	.	.	.	.
24 Electrical shock, other (explain in narrative)	2	0.5	.	1	1	1	.	.	.	.
37 Other impacts - on track equipment	2	0.5	.	1	.	.	1	.	.	.
42 Ran into on-track equipment	2	0.5	.	1	1	1	.	.	.	.
73 Burned	2	0.5	2	.	.	.	.	.	.	.
02 Apprehending/removing from property	1	0.3	1	.	.	.	.	.	.	.
11 Caught in/crushed in excavation, land slide, cave	1	0.3	1	.	.	.	.	.	.	.
18 Collision/impact - auto, truck, bus, van, etc.	1	0.3	.	.	1	.	.	.	.	.
34 Lost balance	1	0.3	.	.	.	.	1	.	.	.
58 Struck by object	1	0.3	.	.	1	1	.	.	.	.
60 Struck by falling object	1	0.3	1	.	.	.	.	.	.	.
61 Struck against object	1	0.3	.	.	.	.	1	.	.	.
67 Thrill seeking	1	0.3	.	.	1	.	.	.	.	.

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

08 2965 (J. Garaufis)  
(M.J. Levy)

BRIAN HOPKINS, LIANA HOPKINS )  
and SEAN HOPKINS, )  
Plaintiffs, )

VS. )

NATIONAL RAILROAD PASSENGER )  
CORPORATION a/k/a AMTRAK and )  
MASSACHUSETTS BAY )  
TRANSPORTATION AUTHORITY, )  
Defendants. )

DEPOSITION OF KELLY J. DANIEL,  
a witness called on behalf of the Plaintiffs,  
taken pursuant to the applicable provisions of  
the Federal Rules of Civil Procedure, before  
Susan L. Prokopik, Registered Merit Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the offices of Campbell  
Campbell Edwards & Conroy, P.C., One Constitution  
Plaza, Boston, Massachusetts, on Thursday, July  
9, 2009, commencing at 3:17 p.m.

C.J. REPORTING  
P.O. Box 1373  
Andover, Massachusetts 01810  
617.763.1725  
www.cjreporting.com

Kelly J. Daniel  
July 9, 2009

26

1 A. I don't remember.

2 Q. When is the last time you testified?

3 A. I don't remember.

4 Q. Do you have an estimate as to how often the MBTA  
5 Police is called to respond to the South Station  
6 area?

7 A. No, I don't.

8 Q. Would it occur every day?

9 MS. LUCKOW: Objection. You can  
10 answer.

11 A. It's tough to say. Some days yes. Some days no.  
12 You get calls there.

13 Q. Would it occur every week?

14 MS. LUCKOW: Objection. You can  
15 answer.

16 A. Yes.

17 Q. And I think Officer Lamb told us that when a call  
18 comes in there is an incident log that's filled  
19 out and if the call turns into anything, then  
20 there would be a journal that would be done?

21 A. Correct.

22 Q. The MBTA maintains the incident logs and the  
23 journals for all incidents, I take it?

24 A. Computer.



Kelly J. Daniel  
July 9, 2009

27

1 Q. On the computer?

2 A. Yes.

3 Q. And is there a protocol or procedure for  
4 requesting incident reports? Are they available  
5 to the public should be my first question?

6 A. I don't know. Policies change all the time.

7 Q. Do you know how one goes about requesting those  
8 things?

9 A. Do I know the procedure? Is that what you're  
10 asking?

11 Q. (Mr. Pollock nods.)

12 A. Yes, I do.

13 Q. What does a member of the public do?

14 A. All requests go through the prosecutors.  
15 Prosecution department.

16 Q. And where is the prosecution department?

17 A. Headquarters.

18 Q. Aside from this incident, have you responded to  
19 any incident where somebody's been on top of a  
20 train?

21 A. No.

22 Q. Have you ever heard of that from any of your  
23 colleagues, that somebody got on top of the  
24 train?