

1 STATE OF NEW YORK
2 SUPREME COURT

COUNTY OF ESSEX

3 -----
4 TOWN OF ESSEX and JAMES Z. MORGAN, JR., AS
5 SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF ESSEX,

6 Plaintiff(s)

7 -against-

8 LEWIS FAMILY FARM, INC.,

9 Defendant(s).

10 -----
11 SCHENECTADY COUNTY JUDICIAL BLDG.
12 612 State Street
13 Schenectady, New York 12305
14 October 16, 2007

15 **TRIAL TESTIMONY OF EUGENE BENWAY**

16 B-E-F-O-R-E:

17 HONORABLE MARK I. POWERS,
18 Acting Supreme Court Justice

19 A-P-P-E-A-R-A-N-C-E-S:

20 **DARRELL W. HARP, ESQ.**
21 Attorney for the Plaintiffs
22 12 Rolling Brook Drive
23 Clifton Park, New York 12065

24 **JOSEPH BRENNAN, ESQ.**
25 Attorney for the Defendant
1663 Haviland Road
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EUGENE BENWAY, called as a witness, after having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. BRENNAN:

Q You stated your name. Please state your address.

A 889 Whallons Bay Road.

Q Are you employed by the town highway department?

A Yes.

Q And I refer to the town -- it's Essex?

A Yes.

Q How many years?

A Two and-a-half.

Q In what capacity?

A As a heavy equipment operator.

Q What does a heavy equipment operator do?

A Runs different types of equipment and plow trucks.

Q When you say different types of equipment, do you operate a plow? Do you operate a grater? Do you operate a backhoe?

A Grater, loader, front end loader.

1 Q That type of equipment?

2 A Yes.

3 Q Do you require a chauffeur's license for
4 your truck?

5 A Class B.

6 Q Were you ever employed by the town prior to
7 2004?

8 A Yes.

9 Q In what capacity?

10 A As a temporary wing man.

11 Q In other words, during the Winter you
12 operated a wing on a plow?

13 A Yes.

14 Q Do you know what years that was?

15 A Not certain, but I believe it was 2002 and
16 2003.

17 Q Could you -- do you plow Cross Road? By the
18 way, we're only talking about the 400 foot area near
19 where Cross Road dips down and then goes up toward
20 Whallons Bay Road; okay? Just that 400 foot section.
21 We're not talking about the whole road. Do you plow
22 Cross Road?

23 A Yes.

24 Q Did you plow Cross Road in 2007?

25 A Yes.

1 Q Can you describe what type of plow you used?
2 What's it look like? What's the size of the blades,
3 whatever else is on the thing?

4 A It's a Viking one way plow. It's designed
5 to throw the snow off to the right hand side, and it
6 looks like a big funnel.

7 Q Looks like a big funnel. In other words,
8 it's curved. Is that correct?

9 A It's small on one end and gets larger at the
10 other end.

11 Q What's the height -- so -- okay. At the
12 lowest end is on the left side?

13 A Yes.

14 Q And it gets larger as it goes across to the
15 right?

16 A Yes.

17 Q At the left side about how high off the
18 ground is the plow?

19 A Probably a foot and-a-half.

20 Q Okay. At the right side how high is it?

21 A Probably four and-a-half feet.

22 Q Now, does your plow have a wing on it?

23 A Yes.

24 Q What does the wing look like?

25 A It's just a straight blade. It's 11 foot

1 long.

2 Q And is that angled slightly back?

3 A Yes.

4 Q Now, when you plow what happens? By the
5 way, does the blade rest on the road that you're going
6 along?

7 A Yes.

8 Q When you go down the road it picks up snow,
9 and what happens?

10 A It throws it off to the right-hand side.

11 Q It goes through your funnel like; right?

12 A Right.

13 Q And it goes -- your wing is out there;
14 right?

15 A Yes.

16 Q And what happens after that?

17 A The wing pushes it off to the side of the
18 road.

19 Q Pushes out further?

20 A Yes.

21 Q Does it form sort of like snowball type
22 things by the time it hits?

23 A Yes.

24 Q And it rolls out further?

25 A Yes.

1 Q Now, you said you worked as a wing man, so
2 you know how the wing operates; correct?

3 A Yes.

4 Q Do you have any idea of what the maximum
5 distance the plow and its wing plows, the snow before
6 it's cast over off even further?

7 A Roughly about 15 feet.

8 Q Roughly about 15 feet. Then it's cast off
9 further?

10 A Yes.

11 Q You are familiar with Cross Road?

12 A Yes.

13 Q And it is on your maintenance route?

14 A Yes.

15 Q Are there recently constructed farm roads on
16 the north and south of the area in question? Only
17 that 400 foot I'm concerned about.

18 A Yes.

19 Q Are they completely constructed both north
20 side and south side?

21 A No.

22 Q North side is not constructed?

23 A No.

24 Q If you have a large snow storm or several
25 storms in a short span of time does the town ever use

1 additional equipment to move snow or remove snow?

2 A Yes.

3 Q What do they use?

4 A They have a grater with a wing on the back.

5 Q Could you describe that and how that
6 operates?

7 A It's a machine used for grating roads. It
8 has a 14 foot blade underneath it where the driver
9 sits, and it has a 12 foot wing on the back that
10 sticks off out to the right hand side.

11 Q Do you know how high that blade is? Is that
12 a constant level across?

13 A Yes.

14 Q Do you know how high it is from the ground?

15 A Probably two foot.

16 Q Can you raise the blade?

17 A Yes.

18 Q Do you know how high you can raise it?

19 A Eighteen, 20 inches.

20 Q Eighteen to 20 inches. So you could have 18
21 and 20 inches and then two feet above that?

22 A Yes.

23 Q And then it pushes the snow out further onto
24 a wing?

25 A Yes.

1 Q And the wing casts the snow? That
2 combination -- do you know how many feet that is?

3 A No; I do not.

4 Q You don't know what angle the blade is
5 operated on; right?

6 A No.

7 Q Have you ever operated the grater?

8 A No.

9 Q But you do know the town has one, and you
10 know what it looks like?

11 A Yes.

12 Q And what it's outfitted with. During 2007
13 did you plow Cross Road?

14 A Yes.

15 Q From your recollection, how many major
16 storms -- and I use the word major in the sense of
17 more than six inches of snow -- were there, if you
18 recall?

19 A Three or four.

20 Q Three or four. Okay. Was there a major
21 storm on February 14, 2007?

22 A Yes.

23 Q About how much snow did you receive?

24 A Three feet.

25 Q Did you plow Cross Road in connection with

1 that storm?

2 A Yes.

3 Q What equipment was used?

4 A Plow and wings.

5 Q Could you describe in the area in question
6 how you went about plowing 36 inches of snow on or
7 about February 14, 2007? How many times did you go
8 back and forth across it, and how did you do it, et
9 cetera?

10 A I'm really not sure how many times I went
11 back and forth, but it was a lot. We put the center
12 of the front plow on the center of the road and plowed
13 that way.

14 Q When you got down to the lowest point on
15 Cross Road in the area in question did you have any
16 difficulty plowing through that area?

17 A The wing hit stones on the road.

18 Q Stones on --

19 A From the farm road.

20 Q On the farm road?

21 A Yes.

22 Q When it hit stones what did you do?

23 A Pulled out a little bit to the other lane.

24 Q In other words, you moved the plow and its
25 wing over to the left?

1 A Yes.

2 Q Beyond the center?

3 A Yes.

4 Q As a result, how close to Cross Road was the
5 embankment of that?

6 A I don't recall.

7 Q Was it quite close? Was it --

8 A It was closer than usual.

9 Q Closer than usual.

10 Q Do you know how high in the lowest point of
11 the area in question how high in relationship to Cross
12 Road the farm roads are?

13 A About six feet.

14 Q During that storm of February 14, 2007, was
15 a grater used?

16 A No.

17 Q Was the front end loader used?

18 A Not in that section of the road, no.

19 Q Do your other duties entail things like
20 cleaning ditches, et cetera?

21 A Yes.

22 Q Do you clean the ditches along Cross Road?

23 A Yes.

24 Q How often do you clean the ditches?

25 A Every year.

1 Q Every year. Can you describe in the area in
2 question, you know -- that's the only part I'm going
3 to be concerned about, in the area in question -- what
4 a ditch looks like relative to how wide it is, how
5 deep it is, et cetera?

6 A It's about three foot wide and two feet
7 deep.

8 Q Did you clean the ditches in 2007?

9 A Nope.

10 Q This year?

11 A No.

12 Q Why not?

13 A We were instructed not to.

14 Q Who instructed you not to?

15 A The highway superintendent.

16 Q Did you clean the ditches in 2006?

17 A Yes.

18 Q Do you know how many times you cleaned the
19 ditch in 2006?

20 A No.

21 Q Do you recall what you found in the ditches
22 in 2006? Just in the area in question.

23 A Mostly stones from the road.

24 Q Approximately how much -- how deep of
25 wollasonite did you find in the ditches?

1 A Anywhere's between two to three inches.

2 Q And the ditch is two feet deep?

3 A Yes.

4 Q And two or three inches was wollastonite?

5 A Yes.

6 Q Is there a ditch on the north side of Cross
7 Road at the present time? Again, just the area in
8 question.

9 A Yes.

10 Q Is it approximately two feet by three feet?

11 A Yes.

12 Q Or three feet by two feet? What about the
13 south side? Is there a ditch on the south side?

14 A Yes.

15 Q Throughout the area in question?

16 A Yes.

17 Q What does it look like on the south side?

18 A Now or then?

19 Q I was referring now in my question.

20 A Yes.

21 Q So in 2006 it was there. Is that what
22 you're saying?

23 A Yes.

24 Q What about 2007?

25 A It's there. It's just half filled with

1 stone.

2 Q Half filled with stone?

3 A Yes.

4 Q Is part of your duties also to clean out the
5 culverts along the road?

6 A Yes.

7 Q Is there a culvert under Cross Road?

8 A Yes.

9 Q Can you see the inlet on the north side?

10 A Yes.

11 Q Can you see the outlet on the south side?

12 A No.

13 Q If you can't see it what is obstructing your
14 view?

15 A Stones from the farm road.

16 Q Did you physically ever look down from the
17 north end?

18 A Yes.

19 Q And what do you see?

20 A Stone.

21 Q You can actually see stone?

22 A Yes.

23 Q Did you have a light or something?

24 A No. You can see it from the other side.

25 Q If a culvert freezes up in the Winter time

1 do you have to take and use any kind of device to
2 clean it out?

3 A Yes.

4 Q What type of device do you use?

5 A Steam Jenny.

6 Q What does that look like? What does that
7 do?

8 A It runs off a big tank of water. It's a
9 high pressure sprayer with water. There's 10 foot
10 sections of pipe we put onto it.

11 Q You run from the low end or run from the
12 high end of the culvert?

13 A Run from the low end to the high end.

14 Q Could you get a Steam Jenny into the present
15 culvert?

16 A No.

17 Q Why not?

18 A Because of the road.

19 Q How much of the road. When you say road
20 you're talking farm road; correct?

21 A Yes.

22 Q How much of the road?

23 A Most of the road.

24 Q So there would be no way for you to get a
25 Steam Jenny in there for pipe?

1 A Not from the low edge.

2 Q What would happen if it was left frozen?

3 A It would probably undermine the road.

4 MR. BRENNAN: I'm going to object to
5 that and ask it be stricken, Your Honor.
6 This witness is not qualified to answer that
7 question.

8 THE COURT: I'll sustain the objection.

9 BY MR. HARP:

10 Q If it freezes up would water pass through
11 the pipe?

12 A No.

13 Q Have you ever seen water passing through the
14 pipe since the farm roads have been constructed?

15 A No.

16 MR. HARP: No further questions.

17 THE COURT: Thank you, Sir.

18 Mr. Brennan?

19 CROSS EXAMINATION

20 BY MR. BRENNAN:

21 Q Mr. Benway, during this storm in February of
22 2007, that storm went on for a couple of days; didn't
23 it?

24 A Yes.

25 Q And I presume that you worked a lot of

1 hours?

2 A Yes.

3 Q And you don't know exactly how many trips
4 you made with the snow plow up and down Cross Road; do
5 you?

6 A No.

7 Q I take it it was numerous times over a two
8 day period?

9 A Yes.

10 Q Now, I believe when Mr. Harp asked you you
11 indicate that when you plow the road you put the
12 center of the plow or try to near the center line of
13 the road?

14 A Yes.

15 Q And your best estimate as to the length of
16 the plow is approximately 10 feet?

17 A Yes.

18 Q So you would have five feet of the plow if
19 you were going -- let's say you were going east. You
20 drive down the road as long as there wasn't oncoming
21 traffic, you put about five feet of the plow to the
22 left of the center line. Is that correct?

23 A Yes.

24 Q So there would be five feet of the plow in
25 the road, and then you would have a wing man with you?

1 A Correct.

2 Q And the wing man -- he operates separately
3 the wing on the plow?

4 A Yes.

5 Q And you've estimated the length of that wing
6 is 10 feet or so?

7 A Yes.

8 Q And you would continue straight down the
9 road in that fashion. Is that correct?

10 A Right.

11 Q Is that what you did when you plowed Cross
12 Road going in an easterly direction in this storm in
13 February of 2007?

14 A Yes.

15 Q And you use the same technique every time;
16 correct?

17 A Yes.

18 Q Now, you were able to remove all the snow
19 from Cross Road. Is that correct?

20 A Yes.

21 Q At some point you didn't have to stop the
22 plow or slow the plow or anything while you were
23 proceeding in an easterly direction; correct?

24 A Correct.

25 Q That's a two lane road?

1 A Yes.

2 Q Now, the wing man operates the plow with a
3 separate set of controls?

4 A Yes.

5 Q Can the driver of the truck operate the
6 wing?

7 A No.

8 Q So you have to have a wing man?

9 A Yes.

10 Q So when you were operating on Cross Road did
11 you have a wing man in February of 2007?

12 A Yes.

13 Q Other than for the storm in February of 2007
14 what would be your best estimate as to the number of
15 times that you plowed Cross Road?

16 A I do not know.

17 Q Would it have been 10 or 20 times?

18 A Probably more than 20 times.

19 Q And you were able to plow the road every
20 time?

21 A Yes.

22 Q And you were able to remove all the snow
23 from the road?

24 A Yes.

25 Q The wing on the plow that operates, is the

1 wing man controlling that? Is he able to raise that
2 up by controls inside the cab?

3 A Yes.

4 Q How far does it pick it up?

5 A You can pick it right up to the cab.

6 Q Can he also bring the wing back closer to
7 the truck?

8 A Yes.

9 Q So that in fact you can narrow the plowing
10 area with the plow and the wing man -- what area you
11 cover with the plow and the wing?

12 A Yes.

13 Q Now, are there areas on Cross Road
14 particularly further to the east where in fact there
15 are no open areas, but the foliage and the trees come
16 up almost adjacent to the actual lanes to the road
17 itself?

18 A Yes.

19 Q And what do you do when you plow in those
20 areas?

21 A Pull out around it.

22 Q How about when you're going west? Same
23 situation or areas where the foliage and the trees are
24 up to the edges of the road?

25 A Yes.

1 Q And what do you do, just pull further to the
2 left?

3 A Yes.

4 Q You don't bring the wing back?

5 A No.

6 Q In those areas what would you estimate from
7 one edge of the road in those areas where the trees
8 and everything were almost up to the sides of the
9 road -- what would you estimate the width of the road
10 to be?

11 A Maybe 15 feet.

12 Q And that's part of Cross Road?

13 A Yes.

14 Q From your experience working on that road --
15 I show you what's been marked as Defendant's Exhibit
16 A. Can you recognize what's depicted in that
17 photograph?

18 A Yes.

19 Q Is that on Cross Road?

20 A Yes.

21 Q And does that fairly and accurately depict
22 what is shown in that photograph?

23 A Yes.

24 Q And does that depict the condition of that
25 road as it exists in 2007 and also in 2006?

1 A Yes.

2 MR. BRENNAN: Your Honor, I would offer
3 it into evidence.

4 THE COURT: Any objection, Mr. Harp?

5 MR. HARP: We don't know who took this
6 picture or anything about the picture. I
7 would object to it.

8 THE COURT: Overruled. The witness
9 doesn't have to account for how the picture
10 was taken or who took it, rather, but
11 whether or not it accurately and fairly
12 depicts what it purports to depict.
13 Received.

14 (Defendant's Exhibit A, previously marked
15 for identification, was marked and received in
16 evidence.)

17 MR. HARP: Do you have a copy for me?

18 BY MR. BRENNAN:

19 Q Mr. Benway, I also show you what's been
20 marked as Defendant's Exhibit B and ask -- I would ask
21 you do you recognize what's depicted in that
22 photograph?

23 A Yes.

24 Q What is depicted in that photograph?

25 A The ditch on the south end going down the

1 hill on the Marshall Cross Road.

2 Q Is that on the Cross Road?

3 A Yes.

4 Q Does that fairly and accurately depict what
5 appears there?

6 A Yes.

7 Q As exists now in 2007, also in 2006?

8 A Yes.

9 MR. BRENNAN: I'd also offer that in
10 evidence also, Your Honor.

11 THE COURT: Any objection?

12 MR. HARP: No.

13 THE COURT: It is admitted.

14 (Defendant's Exhibit B, previously marked
15 for identification, was marked and received in
16 evidence.)

17 MR. HARP: Both of these are outside
18 the area in question; correct? That's the
19 one thing I have to know.

20 THE COURT: There's been a question
21 here with regard to these exhibits, and your
22 question is whether they are outside the
23 area?

24 MR. HARP: Outside the area in
25 question. In other words, outside that 400

1 foot that we're talking about.

2 MR. BRENNAN: I think that's a fair
3 statement. Yes.

4 THE COURT: It's agreed that it is.
5 Yes.

6 BY MR. BRENNAN:

7 Q Mr. Benway, I'd ask you to look at
8 Defendant's Exhibit B. Do you recognize the area on
9 Cross Road that is shown in that photograph?

10 A Yes.

11 Q And it appears that off the road surface
12 that in that photograph that the lands adjacent to the
13 road surface which you can see is several feet above
14 the level of Cross Road. Is that correct?

15 A Yes.

16 Q And is that also the condition that appears
17 in Defendant's Exhibit A?

18 A Yes.

19 Q Now, when you plow those areas how do you
20 change your plowing technique or do you plow in the
21 same fashion when you're plowing on Cross Road in
22 these areas?

23 A Same fashion.

24 Q Same thing?

25 A Yes.

1 Q Pull over five feet, come down with the wing
2 and go up as far as you can to the side of the road?

3 A Yes.

4 Q Is that correct?

5 A Yes.

6 Q Now, you've indicated -- I believe you
7 stated that on Defendant's Exhibit A you observe --
8 you can see a ditch area?

9 A Yes.

10 Q Where is the ditch?

11 A Right here on the south side of the road.

12 Q Okay. Does that ditch area appear in that
13 photograph to be any lower than the surface of Cross
14 Road itself?

15 A Yes.

16 Q How much lower?

17 A About a foot.

18 Q And you have observed that; correct?

19 A Yes.

20 Q Did you do any ditching work in the area
21 depicted in Defendant's Exhibit A on Cross Road in the
22 year 2007?

23 A No.

24 Q Did you use a Steam Jenny anywhere on Cross
25 Road during year 2007?

1 A No.

2 Q Now, other than during the Winter months
3 when you plow Cross Road did you have occasion since
4 2006 to be on Cross Road?

5 A No.

6 Q Were you ever there in the summertime?

7 A Yes.

8 Q You were there in 2006; correct?

9 A Yes.

10 Q And you were there after the farm roads were
11 built; correct?

12 A Yes.

13 Q And you never observed any flooding anywhere
14 on Cross Road; did you?

15 A No.

16 Q And you knew generally where the culvert
17 which passes underneath Cross Road that is owned by
18 the Town of Essex is located; correct?

19 A Yes.

20 Q You never saw any pooling of water on the
21 north end of that culvert, did you --

22 A No.

23 Q -- or on the south end of the culvert?

24 A No.

25 Q And you never saw that there was any erosion

1 on the banks of Cross Road or on the surface of Cross
2 Road itself; did you?

3 A No.

4 Q Now, you indicated that when you were
5 plowing on some occasion on Cross Road the wing of the
6 plow hit some stones?

7 A Yes.

8 Q And that did not slow you or stop you in any
9 fashion; correct?

10 A Correct.

11 Q And you were plowing in the same fashion
12 with the middle of the plow. Would that also be the
13 middle of the truck?

14 A Yes.

15 Q So you had your -- you were plowing the same
16 fashion with the middle of the truck essentially over
17 what would be the center of the lanes of travel on the
18 road?

19 A Yes.

20 Q And you say the wing hit the stones?

21 A Not when the truck was in the middle of the
22 road. I plowed on the right side of the road in the
23 direction of traffic if the wing would hit the stones.

24 Q That would be if you were in the center of
25 the road. Do you know what width of Cross Road was,

1 the lanes of travel?

2 A No; I do not.

3 Q Do you know if each lane is about 10 feet
4 wide?

5 A I believe they are about 10 feet.

6 Q And then there's a shoulder for about
7 five feet?

8 A Two to five.

9 Q And then there are the farm roads some six
10 or seven feet off the right side of the road?

11 A Maybe.

12 Q And you still say they hit stones?

13 A Yes.

14 Q Do you know where the stones were?

15 A They were on the back side of our ditch.

16 Q On the back side of your ditch?

17 A Yes.

18 Q So that would mean that you would have
19 10 feet plus five feet plus six feet, and the plow and
20 the wing still managed to reach to those stones?

21 A Just the wing.

22 Q Just the wing. You drove the truck off the
23 road, did you not, at one point?

24 A Yes.

25 Q Didn't have anything to do with this; right?

1 A No.

2 Q Wasn't in this location?

3 A No.

4 Q Was that because were you driving too far
5 over to the right?

6 A Yes.

7 Q Did that happen on Cross Road, at another
8 location on Cross Road?

9 A Yes.

10 Q In fact, did you -- were you involved in
11 twice going off the road or being in an accident with
12 the plow truck during that same storm?

13 A Yes.

14 Q What was the extent of the damage to the
15 truck on the second occasion?

16 A It was totalled.

17 Q And what road did that occur on?

18 A Luke's Lane.

19 Q And that's another town highway?

20 A Yeah.

21 Q And was that because you got driving the
22 plow you were too far off to the right and went off
23 the road?

24 A The truck slid off the road.

25 Q Now, you plow normally at a speed -- the

1 instructions from the highway superintendent were to
2 plow at about 15 miles an hour when you could;
3 correct?

4 A Yes. Yes.

5 Q Now, you did not at any time see a grater
6 being used on Cross Road during the Winter of
7 2006/2007 for the purpose of clearing snow from Cross
8 Road; correct?

9 A No.

10 Q That wasn't necessary; was it?

11 A No.

12 Q And Cross Road was never covered with snow
13 to the point that it was not passable. Isn't that
14 correct?

15 A No.

16 Q And wasn't there another storm of a
17 significant accumulation in March of 2007?

18 A Yes.

19 Q Didn't have any difficulty plowing the roads
20 on that occasion; did you?

21 A No.

22 Q And there was no contact between the plow or
23 the wing and any stones at all; correct?

24 A Correct.

25 Q You didn't have to -- you were a heavy

1 equipment operator?

2 A Yes.

3 Q So that qualifies you to operate front end
4 loaders?

5 A Yes.

6 Q And front end loaders on occasion can be
7 used to remove snow; correct?

8 A Yes.

9 Q Did you ever have to use a front end loader
10 to clear the snow at any location on Cross Road during
11 the year 2006/2007?

12 A No.

13 Q How about -- you didn't operate the grater
14 customarily?

15 A No.

16 Q Who did?

17 A David Murcray.

18 Q Was there ever any requirement where the
19 grater had to be used on Cross Road to plow the snow
20 during the Winter?

21 A No.

22 Q You've never seen water pooling on either
23 the north side of Cross Road or the south side
24 anywhere near the culvert; have you?

25 A No.

1 Q You don't know if the water flowing through
2 the culvert is going through the rock that comprises
3 the farm road; do you?

4 A No.

5 MR. BRENNAN: Could I have just a
6 moment, Judge?

7 THE COURT: Of course you may.

8 (Pause off the record.)

9 BY MR. BRENNAN:

10 Q Do you know what the size of the rock is
11 that comprises the farm road?

12 A No.

13 Q Ordinarily when you plow you can clear Cross
14 Road by making one pass in each direction. Is that
15 correct?

16 A Yes.

17 Q And then if the snow continues to fall then
18 you go back?

19 A Yes.

20 Q Is there any minimum amount of snowfall that
21 you have instructions to plow on?

22 A No.

23 Q There was never any accumulation of snow on
24 the south side of Cross Road that interfered in any
25 way with your ability to remove the snow from Cross

1 Road by normal plowing procedure; was there?

2 A No.

3 MR. BRENNAN: Nothing further, Your
4 Honor.

5 THE COURT: Mr. Harp?

6 REDIRECT EXAMINATION

7 BY MR. HARP:

8 Q From your experience as a plow operator was
9 2007 a typical snow year?

10 A Yes.

11 Q And you had the same major storms in 2007 as
12 you do -- as you did normally from your three years
13 now; right?

14 A Yes.

15 MR. HARP: No further questions.

16 THE COURT: Anything else?

17 MR. BRENNAN: No further questions.

18 THE COURT: You may step down. Thank
19 you.

20 (The witness was excused.)

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C-E-R-T-I-F-I-C-A-T-I-O-N

I, KIM K. NETHAWAY, OFFICIAL SUPREME COURT
REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF NEW
YORK, DO HEREBY CERTIFY THE FOREGOING IS A TRUE AND
ACCURATE TRANSCRIPT OF THE STENOGRAPHIC NOTES AS TAKEN
BY ME OF THE AFORESAID PROCEEDINGS.


KIM K. NETHAWAY
SUPREME COURT REPORTER