

1                   BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2           ANTHONY and KAREN ROTI,                   )  
3           PAUL ROSENSTROCK and                   )  
4           LESLIE WEBER,                            )  
5    Complainants,                    )  
6    )  
7    vs.                                    )       No. PCB 99-019  
8    )  
9           LTD COMMODITIES,                        )  
10    )  
11    Respondent.                        )

12    The following is the transcript of a hearing  
13    held in the above-entitled matter taken  
14    stenographically by DEBORAH T. BRAUER, CSR, a notary  
15    public within and for the County of Lake and State of  
16    Illinois, before JOHN KNITTLE, Hearing Officer, at 118  
17    West Cook Avenue, Libertyville, Illinois, on the 5th  
18    day of November, 1999, A.D., commencing at 9:45 a.m.

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PRESENT:

STEVEN P. KAISER & ASSOCIATES  
BY: MR. STEVEN P. KAISER  
4711 Golf Road  
Suite 708  
Skokie, Illinois 60076  
(847) 677-7066

Appeared on behalf of the  
Complainants;

BAIZER & KOLAR  
BY: MR. JOSEPH E. KOLAR  
513 Central Avenue  
5th Floor  
Highland Park, Illinois 60035  
(847) 433-6677

Appeared on behalf of the  
Respondent.

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I N D E X

THE WITNESS: JACK LEO VOIGT

PAGE

Direct Examination  
by Mr. Kaiser

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Cross Examination  
by Mr. Kolar

Redirect Examination  
by Mr. Kaiser

Recross Examination  
by Mr. Kolar

Further Redirect Examination  
by Mr. Kaiser

E X H I B I T S

COMPLAINANTS' EXHIBIT NO.	FOR ID	ADM IN EVD
5		1228
13		1229
14		1229
17		1230
18		1230
19		1230

	24		1232
18	25		1233
	31		1234
19	32		1235
	52		1027
20	53		1027
	54		1027
21	55	1089	1223
	56	1094	1223
22	57	1102	1224
	58	1108	
23	59	1137	
	60	1206	1218
24			

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1	I N D E X (CONTINUED)		
2			
3	E X H I B I T S (CONTINUED)		
4	COMPLAINANTS' EXHIBIT NO.	FOR ID	ADM IN EVD
5			
	61	1208	
6	62	1211	1218
	63	1211	1218
7	64	1214	1216
	65	1242	1243
8			
9	RESPONDENT'S EXHIBIT NO.	FOR ID	ADM IN EVD
10	28		1239
	36		1238
11	51 thru 85		1238
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1           HEARING OFFICER KNITTLE: We are back on the  
2           record. Today's date is November 5, 1999. It's  
3           approximately 9:45 a.m. This is the fifth day of the  
4           hearing in PCB 1999-019, Roti, et al. versus LTD  
5           Commodities.

6                     Just for the record, once again, there are no  
7           members of the public present. If there were, they  
8           would have the opportunity to offer public comment if  
9           they so chose. Also for the record none of the

10 complainants are here today nor is any representative  
11 from LTD Commodities, aside of course from today's  
12 witness who works for LTD.

13 We had some preliminary matters, Mr. Kaiser.  
14 We have three exhibits we want to offer.

15 MR. KAISER: Yes, Mr. Knittle, I would move for  
16 the admission into evidence at this time of  
17 complainants' Exhibits 52, 53 and 54.

18 MR. KOLAR: No objection.

19 HEARING OFFICER KNITTLE: No objection to any of  
20 those three. And those are admitted.

21 (Complainants' Exhibit No. 52,  
22 53 and 54 were  
23 admitted into evidence.)

24 HEARING OFFICER KNITTLE: Any other preliminary

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1 matters at this time, Mr. Kaiser?

2 MR. KAISER: No, Mr. Knittle.

3 HEARING OFFICER KNITTLE: Mr. Kolar?

4 MR. KOLAR: No.

5 HEARING OFFICER KNITTLE: Let's move on then.

6 It's your witness, Mr. Kaiser.

7 MR. KAISER: Thank you.

8 JACK LEO VOIGT,

9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KAISER:

13 Q. Sir, could you please state your full name  
14 and spell your last name for the court reporter's  
15 benefit.

16 HEARING OFFICER KNITTLE: Then we'll swear him in.

17 MR. KAISER: Sorry.

18 HEARING OFFICER KNITTLE: That's okay. Why don't  
19 we swear you in first so we know who you are.

20 (Witness sworn.)

21 THE WITNESS: My name is Jack Leo Voigt spelled  
22 V-o-i-g-t.

23 BY MR. KAISER:

24 Q. Mr. Voigt, could you please tell the Board

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1 what's your date of birth?

2 A. July 28, 1954.

3 Q. By whom are you currently employed?

4 A. LTD Commodities, Incorporated.

5 Q. How long have you worked for LTD Commodities?

6 A. Nine and -- nine years, nine months.

7 Q. You were hired in 1990 by LTD to fill a

8 position with the title Distribution Center Manager?

9 A. Yes.

10 Q. And at some point the title of that position

11 changed to Director of Distribution in approximately

12 1996?

13 A. Yes.

14 Q. And in 1998 LTD promoted you to the position

15 of Vice-President of Distribution, is that correct?

16 A. Yes.

17 Q. Is that the position you currently hold?

18 A. Yes.

19 Q. And the only person above you essentially --

20 at least the person to whom you report is Mike Hara?

21 A. Correct.

22 Q. And is the President -- are you aware of who

23 the President of LTD Commodities is?

24 A. Yes.



1           Q.    And what is the name of the President of LTD  
2 Commodities?

3           A.    Sheldon Leibowitz.

4           Q.    Do you own stock in LTD Commodities?

5           A.    No.

6           Q.    Now, I'd like to show you what's been marked  
7 for purposes of identification as Respondent's Exhibit  
8 88. From where you sit, Mr. Voigt, can you see this  
9 aerial photograph that's hanging from the easel?

10          A.    Yes.

11          Q.    And can you identify within Respondent's  
12 Exhibit 88 the footprint or the roof line of LTD's  
13 Bannockburn facility as it looked prior to the  
14 expansion in roughly 1994?

15          A.    Yes.

16          Q.    And at that time, back in '88, and until  
17 there was an expansion to the south, is it fair to say  
18 that the total amount of warehouse space under roof at  
19 Bannockburn was roughly 200,000 feet?

20          A.    Yes.

21          Q.    I'm showing you what's previously been marked  
22 for purposes of identification as Respondent's Exhibit  
23 89.

24                       From where you're seated are you able to see

1 this aerial photograph hanging from the easel?

2 A. Yes.

3 Q. And I represent to you that this aerial  
4 photograph was taken in the spring of 1999. From where  
5 you sit are you able to identify the roof line outline  
6 of the expansion to the LTD facility that occurred some  
7 time in the middle 1990s?

8 A. Yes.

9 Q. And did this south addition to the LTD area  
10 in fact add an additional 150 or so thousand square  
11 feet of warehouse space?

12 A. Yes.

13 Q. Just to clear up something that's been a  
14 little uncertain in the record so far.

15 Now, when you took -- when you were first  
16 hired by LTD in 1999 I take it part of your  
17 responsibilities had to do with shipping and receiving?

18 A. Yes.

19 Q. And you're familiar with the docks that  
20 existed at the LTD facility prior to the expansion in  
21 the mid-1990s?

22 A. Yes.

23 Q. And is it accurate to say that on the north  
24 end of LTD's facility back as early as 19- -- well as

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1 early as the time you arrived, 1990, there were 26 dock  
2 doors located on the north wall of the LTD facility?

3 A. Yes.

4 Q. What is a little unclear is whether -- right  
5 now if you go out to the dock area, the dock is below  
6 grade. LTD's north parking lot is some height above  
7 the grade of the dock area, is that correct?

8 A. Could you ask that question again?

9 Q. Well, if I walked out or if you walked out  
10 any one of the dock doors and stood at the north end of  
11 this, what I'm calling the truck staging area, can you  
12 see that?

13 A. Yes.

14 Q. I mean, if you stood at that north end you'd  
15 be looking at a retaining wall of a height of, I don't  
16 know, 8 to 12 feet, right?

17 A. Yes.

18 Q. And above that retaining wall is LTD's north  
19 parking lot, correct?

20 A. Yes.

21 Q. What I'm trying to understand, and what I  
22 want to clarify for the record is, before -- at some  
23 point was the dock area, LTD's dock area, reconfigured  
24 or reworked a little bit? In connection --

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1 specifically in connection with the expansion of the  
2 warehouse facility to the south did LTD also make  
3 changes, not additions to the number of docks but  
4 changes in the topography of the dock area?

5 A. Yes.

6 Q. And could you describe for the Board what  
7 those -- do you know what changes were made?

8 A. Yes. There were 12 spots for trailers, empty  
9 trailer parking and potentially full trailer parking  
10 also with dock bumpers that were put on in that area  
11 that you pointed to where the 12 trailers are.

12 Q. And that was added at the same time that LTD  
13 expanded to the south?

14 A. Yes.

15 Q. And there was earth moving equipment and  
16 earth moved in order to create those 12 dock spaces for  
17 either empty or full trailers?

18 A. Yes.

19 Q. And I don't know if this is more to satisfy  
20 my curiosity or for the Board's benefit, but was the  
21 north parking lot above grade prior to the development  
22 of these 12 dock or parking spaces or staging area or  
23 was it on grade with the docks prior to the work in  
24 connection with the southern expansion of LTD?

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1 A. It was always above.

2 Q. That north parking lot was always above?

3 A. It wasn't changed except for a  
4 reconfiguration of islands that were put in there and  
5 parking spaces.

6 Q. All right. But there was some earth movement  
7 in order to create these 12 truck parking slots?

8 A. Yes.

9 Q. Now, you're aware of what LTD does within the

10 walls of its facility in Bannockburn, Illinois?

11 A. Yes.

12 Q. Does LTD manufacture any products under the  
13 roof of its Bannockburn facility?

14 A. No.

15 Q. To your knowledge does LTD manufacture any  
16 products anywhere?

17 A. No.

18 Q. And in fact LTD simply markets and  
19 distributes products?

20 A. Yes.

21 Q. And the products that LTD sells pass either  
22 through its Bannockburn facility or after late October  
23 of 1998 through it's Aurora facility?

24 A. Yes.

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1 Q. And while LTD may employ satellite public  
2 warehouses in Kenosha, Wisconsin; Franklin Park,  
3 Illinois; and Bolingbrook, Illinois before a good is  
4 shipped to an LTD customer, it passes through either  
5 the Aurora facility or the Bannockburn facility, is

6 that correct?

7 A. Yes, but we did have a Libertyville facility  
8 in '98 that we did do shipping out of, and presently we  
9 have a Gurnee facility.

10 Q. When did the Gurnee facility come on line?

11 A. We started shipping a week ago.

12 Q. And this is -- I take it LTD had to add an  
13 additional facility in Gurnee because the volume of  
14 sales keep growing?

15 A. Yes.

16 MR. KAISER: All right. Now if I may just go off  
17 the record.

18 (Discussion off the record.)

19 BY MR. KAISER:

20 Q. And is it fair to say that you have seen  
21 LTD's volume grow since you joined the company in 1990?

22 A. Yes.

23 Q. And in fact LTD had to add the Aurora  
24 facility in October of 1988 because the Bannockburn

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1 facility alone was reaching capacity?

2 A. Yes.

3 Q. And I don't think anybody would quarrel with  
4 the proposition that the amount of truck traffic to the  
5 Bannockburn facility has increased since you joined the  
6 company in 1990, would you quarrel with that  
7 proposition?

8 A. No.

9 Q. And in fact the volume of truck traffic to  
10 the Bannockburn facility has increased since LTD  
11 constructed the south addition some time in the  
12 mid-1990s, is that true?

13 A. I would have to check numbers to verify that.

14 Q. Do you doubt that?

15 A. I'm not doubting it. I would have to verify  
16 it.

17 Q. Is there any way that you can even imagine  
18 that LTD added an additional 150,000 square feet of  
19 warehouse space and didn't increase the volume of truck  
20 traffic at its Bannockburn facility?

21 A. Well, the business could have a situation  
22 where you had to bring in the product anyways and you  
23 bring it in in just-in-time mode versus a storage-type  
24 mode. Having the additional storage space gives you a



1           comfort level in that you don't run out of product and  
2           cause possible shortages.

3           Q.    All right.  Well, I think we'll investigate.  
4           We'll look at the numbers and we'll make some  
5           determinations so I don't want to put you in a place  
6           where you're speculating.

7                     Is that what is your problem there, Mr.  
8           Voigt, you didn't want to speculate?

9           A.    Yes.

10          Q.    All right.  Now, previously we have  
11          introduced into evidence Complainants' Exhibits C-1 and  
12          C-2.  Do you recognize these two catalogs?

13          A.    Yes.

14          Q.    And those are LTD's catalogs, right?

15          A.    Yes.

16          Q.    And the goods that are shown in those  
17          catalogs are representative of the goods LTD sells?

18          A.    Yes.

19          Q.    And during the testimony of Greg Zak, Greg  
20          Zak had downloaded certain pages from LTD's website,  
21          and have you looked recently at LTD's Web page?

22          A.    Yes.

23          Q.    Does that look to be a true and accurate  
24          printout of certain screens from LTD's Web page?

1 A. Yes.

2 Q. Now, do you recall during the course of your  
3 deposition -- and you'll remember I took your  
4 deposition at Mr. Kolar's office back in the spring of  
5 1998, right?

6 A. Yes.

7 Q. And we talked at that time about the  
8 Sportcraft electronic dartboard that's shown for sale  
9 on Page 91 of LTD's Christmas catalog, Complainants'  
10 Exhibit 2. Do you see that dartboard?

11 A. Yes.

12 Q. And we talked about that as representative of  
13 one type of goods LTD sells, do you remember that  
14 discussion?

15 A. Yes.

16 MR. KOLAR: If you would stipulate it was spring  
17 of '99 when you took his dep.

18 MR. KAISER: Yes, I would stipulate. I appreciate  
19 that correction. Thank you.

20 BY MR. KAISER:

21 Q. And, as I understood it, LTD's merchandising  
22 group develops a forecast for demand of the Sportcraft

23 electronic dartboard and either the merchandising  
24 traffic area or the distribution traffic area decides

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1 what carrier will deliver the Sportscraft dartboard to  
2 one of LTD's facilities?

3 A. Yes.

4 Q. And, as I understood it, LTD's merchandising  
5 group tends to coordinate overseas and some domestic  
6 deliveries, is that right?

7 A. Yes.

8 Q. And 50 percent or more of LTD's products are  
9 manufactured overseas, is that right?

10 A. Yes.

11 Q. And the distribution group within LTD will  
12 coordinate domestic traffic on behalf of LTD, is that  
13 right?

14 A. Yes.

15 Q. So depending on whether the dartboard is  
16 manufactured overseas or manufactured domestically,  
17 that will play some role in determining how that  
18 dartboard makes its way from the manufacturer to LTD's

19 facility, is that right?

20 A. Yes.

21 Q. But, as I understood it, it's LTD and not the  
22 manufacturer of in this case the dartboard, who decides  
23 how the goods will be shipped to LTD's facility?

24 A. Yes.

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1 Q. And LTD may work with a subcontractor to get  
2 the goods from the manufacturer to LTD, but the  
3 manufacturer is not responsible for delivery of the  
4 goods?

5 A. No.

6 Q. And, as I understood it, you told me during  
7 your deposition that approximately 98 percent of the  
8 goods arrive on carriers selected by LTD, is that  
9 correct?

10 A. Yes.

11 Q. Did LTD successfully conclude contract  
12 negotiations with CTC Distribution Services?

13 A. Yes.

14 Q. You'll recall when we took your deposition

15 last spring LTD was negotiating a new contract with CTC  
16 Distribution Services?

17 A. Right.

18 MR. KAISER: And I want to note for the record  
19 that Karen Roti, one of the complainants is here and --

20 KAREN ROTI: My daughter Kristin.

21 MR. KAISER: Her daughter Kristin and --

22 MS. KARASIK: A neighbor.

23 MR. KAISER: A neighbor. An interested neighbor,  
24 member of the public.

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1 MR. KARASIK: A very concerned neighbor.

2 MR. KAISER: A very concerned neighbor.

3 Would the very concerned neighbor mind giving  
4 Mr. Knittle, the Illinois Pollution Control Board's  
5 Hearing Officer, your name and address?

6 MS. KARASIK: My name is Kendra Karasik. That's  
7 K-a-r-a-s-i-k. My address is 1590 Wedgewood Drive,  
8 Lake Forest 60044.

9 HEARING OFFICER KNITTLE: Thank you, ma'am.

10 MR. KOLAR: Is Ms. Karasik going to testify for

11 the complainants?

12 MS. KARASIK: 60045, sorry.

13 HEARING OFFICER KNITTLE: Mr. Kolar, what was  
14 that? I couldn't hear you.

15 MR. KOLAR: I was asking if Ms. Karasik is going  
16 to testify for the complainants?

17 HEARING OFFICER KNITTLE: Mr. Kaiser, are you  
18 planning on calling Ms. Karasik?

19 MR. KAISER: I hadn't discussed that issue with  
20 Ms. Karasik, so I don't know.

21 MS. KARASIK: I'd be more than happy to.

22 MR. KOLAR: I'd like to exclude her if she's going  
23 to testify for the complainants.

24 HEARING OFFICER KNITTLE: Well, you're going to

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1 have to come to a decision fairly quickly on this  
2 issue.

3 MR. KAISER: Right.

4 If I may take a break for two minutes.

5 HEARING OFFICER KNITTLE: Yes.

6 MR. KAISER: Thank you.

7 HEARING OFFICER KNITTLE: Let's go off the record.

8 (Discussion off the record.)

9 HEARING OFFICER KNITTLE: Mr. Kaiser, perhaps a  
10 summary of the situation?

11 MR. KAISER: Sure.

12 By way of explanation, we began Mr. Voigt's  
13 direct examination at about 9:45. Shortly thereafter  
14 Karen Roti and her daughter arrived as did two  
15 neighbors, Kendra, K-e-n-d-r-a, Karasik, K-a-r-a-s-i-k.

16 MS. KARASIK: That's correct.

17 MR. KAISER: Who lives at 1590 Wedgewood Drive,  
18 Lake Forest, Illinois and Cindy Lakin, L-a-k-i-n, who  
19 lives at 1566 Wedgewood Drive arrived shortly  
20 thereafter. It's now 10:20.

21 In the intervening roughly 20 minutes we have  
22 been, along with Mr. Kolar, talking with Ms. Lakin and  
23 Ms. Karasik to find out what it is they -- why they're  
24 here, why they have an interest in these proceedings,

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1 and what it is they might say if the Board allowed them  
2 to offer testimony in this case. As residents in the

3 vicinity of LTD they have had an opportunity to observe  
4 LTD's operations and make observations about noise from  
5 LTD's facilities, and they would like an opportunity to  
6 tell the Board what it is they have heard and what it  
7 is they are currently hearing.

8 As you know, Mr. Knittle, complainants are  
9 getting close to the end of their case here or we  
10 thought we were. What we would like to do, and what we  
11 would propose, consistent with some of the discussions  
12 we have had both on and off the record, is that we  
13 finish up the examination of Mr. Voigt today. We  
14 expect that that could go as late as 3 o'clock this  
15 afternoon. Ms. Lakin and Ms. Karasik have children.  
16 They're able to be here now, but later in the afternoon  
17 children will be returning home from school, they don't  
18 have sitters lined up to cover it, and it would be a  
19 great hardship to have them come back this afternoon.  
20 We had been talking about having a recess of some  
21 perhaps week or even two before we came back to put on  
22 LTD's case in defense.

23 What I would propose at this time is that we  
24 finish up with Mr. Voigt's testimony, agree on a date



1           where we'd come back, and it would be at that point  
2           that the complainants would call, if the Board allows,  
3           Ms. Lakin and Ms. Karasik to testify as part of the  
4           complainants' case in chief. And we would expect them  
5           to close our proofs at the conclusion of their  
6           testimony. And so that's essentially my proposal this  
7           morning.

8                        HEARING OFFICER KNITTLE: Mr. Kolar.

9                        MR. KOLAR: My comment would be basically that's  
10           fine, but I don't see us reconvening within a week or  
11           two. And if they're going to testify for the  
12           complainants, I would move to exclude them during Mr.  
13           Voigt's testimony. And whoever goes first, if it's Ms.  
14           Karasik when we reconvene, then at that time Ms. Lakin  
15           would be excluded consistent with witnesses being  
16           excluded generally. And then I guess I would like to,  
17           if I chose during the break, whenever we reconvene,  
18           take their depositions and limit further more  
19           complainant witnesses to Ms. Lakin and Ms. Karasik so  
20           that we don't come back in December or whatever the  
21           case may be and then suddenly we have three, four other  
22           people that now want to testify for the complainants.

23                        HEARING OFFICER KNITTLE: Right. Let me -- well,  
24           I'm inclined to agree with Mr. Kolar, at least in part

1 on this, Mr. Kaiser.

2 I'm sure you're aware we have provisions in  
3 the Board reg's for interested citizens to provide  
4 comment that wouldn't be testifying for the complainant  
5 or the respondent. Although, you know, in essence it  
6 seems as if these particular complainants, if they  
7 wanted to provide public comment, would be, you know,  
8 providing public comment that would be perhaps more  
9 favorable to the complainant.

10 Generally we allow, and you should know this  
11 too, generally we allow interested citizens in any  
12 Board case to provide comment, and we do that at the  
13 end of his case and his case before we start closing  
14 arguments. So when everything is done, interested  
15 citizens, if they want, can come up to the Board to  
16 tell the Board what they think about the case as long  
17 as it's semi-relevant. But in that situation you  
18 wouldn't be appearing for the complainant and you  
19 wouldn't be conducting a direct examination, Mr.  
20 Kaiser. I would have to swear the witness in and I  
21 would allow both parties to cross examine them, but --

22 MR. KAISER: But they would essentially make a

23 statement?

24 HEARING OFFICER KNITTLE: They would make a

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1 statement. It would be a narrative statement of sorts,  
2 not a direct examination, and they would not be  
3 witnesses for the complainant.

4 MR. KOLAR: And that's at the end of the whole  
5 case?

6 HEARING OFFICER KNITTLE: That's at the end of the  
7 case in rebuttal. So it would be before closing  
8 arguments, if any, and before the close of the case.  
9 That's authorized by our regulations. It's something  
10 we always want to hear what the citizens, you know, in  
11 the surrounding area have to say if it's relevant. So  
12 we'd be happy to do that as well. But you would  
13 understand that, you know, it wouldn't be like they'd  
14 be your witness and you'd be able to direct exam and  
15 lead them to what you want them to testify to. They  
16 would be giving a statement.

17 MR. KAISER: Right.

18 HEARING OFFICER KNITTLE: So --

19           MR. KAISER: I'm not prepared to express a  
20 preference about how their testimony would come before  
21 the Board but --

22           HEARING OFFICER KNITTLE: Well, if we're going to  
23 want to hold open your case in chief, I agree with Mr.  
24 Kolar, that I don't want another five or six witnesses

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1           coming in in December in the interim. And of course,  
2 as you know, you can always appeal any of my decisions  
3 to the Pollution Control Board, and they may disagree  
4 with me, but I don't think it's procedurally fair to  
5 Mr. Kolar and to LTD Commodities to have witnesses who  
6 are as of yet undisclosed come forward in the recess as  
7 you will.

8           MR. KAISER: Right. I understand.

9                       But as these witnesses have presented  
10 themselves during the course of the hearing I  
11 understand that they would be allowed to testify as  
12 witnesses in the complainants' case in chief but other  
13 members of the public, who might want to provide  
14 comment, would be allowed to comment but not

15 necessarily appear as witnesses, is that --

16 HEARING OFFICER KNITTLE: I think that's an  
17 accurate.

18 MR. KAISER: -- the essence of your --

19 HEARING OFFICER KNITTLE: My ramblings?

20 MR. KAISER: Yes.

21 HEARING OFFICER KNITTLE: That's essentially  
22 correct.

23 MR. KAISER: All right. If that's --

24 HEARING OFFICER KNITTLE: Mr. Kolar.

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1 MR. KAISER: If it's your ruling, I would accept  
2 that.

3 MR. KOLAR: Well, given that, I guess I would  
4 rather have them all be public comment then at the end  
5 of the case. I would object to them as not being  
6 timely disclosed witnesses and let them come in,  
7 without questions from Mr. Kaiser, give their public  
8 comment, and then we would each have cross examination  
9 opportunity at the end of the case, whenever that  
10 happens to be.

11 HEARING OFFICER KNITTLE: Mr. Kaiser, is that  
12 acceptable to you?

13 MR. KOLAR: It sounds like what now we would have  
14 is these two people would be in the complainants' case  
15 and they would get eight or ten people to come down and  
16 talk in the public comment section. So it seems to me  
17 that I would prefer they all just be in the public  
18 comment section if they're that interested in this  
19 hearing. I mean, LTD's people can come down as well  
20 and comment.

21 MS. KARASIK: Well, we could all get simple  
22 affidavits from everybody and speed everything up  
23 and --

24 HEARING OFFICER KNITTLE: Hold on, folks.

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1 MS. LAKIN: We don't want to inconvenience the  
2 Court but on the other hand it's an inconvenience to  
3 us.

4 HEARING OFFICER KNITTLE: Hold on. At this point  
5 we're having a legal discussion between the -- well, at  
6 least a quasi legal discussion --

7 MS. LAKIN: You asked if there is any way that we  
8 will --

9 HEARING OFFICER KNITTLE: Ma'am, I'm asking you to  
10 be quiet for a little bit.

11 MR. KOLAR: I would move to strike the comments  
12 from the record as to how it's affecting them. It's  
13 not a public comment period.

14 HEARING OFFICER KNITTLE: Yeah, we're not going to  
15 allow any testimony about how this matter is affecting  
16 them. I do want it stricken at this point until we  
17 figure out how to allow them to come in.

18 Mr. Kaiser, do you have something else?

19 MR. KAISER: I think where we stood previously was  
20 that Ms. Lakin and Ms. -- or, as I understood, where  
21 the Board seemed to be going was that Ms. Lakin and Ms.  
22 Karasik could testify as witnesses, where I would have  
23 the opportunity to do their direct, where Mr. Kolar  
24 during the break, if he so chose, could take their

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1 depositions, and that they would be put on as witnesses  
2 with formal direct and formal cross examination. And

3 then other members of the public, who haven't appeared  
4 at this hour, would be treated as members of the public  
5 who could make a public statement under the rules that  
6 you have described. So that would be -- that's my  
7 preference and that's what I'm moving toward.

8 HEARING OFFICER KNITTLE: I'm still inclined to do  
9 that, Mr. Kolar. I know you have an objection to that,  
10 and there is going to be enough time between any of  
11 this happens that you could get a ruling from the Board  
12 on that. But at this point that's what I'm going to  
13 do. So you guys will be able to appear as  
14 complainants' witnesses if you want to.

15 MR. KAISER: Right.

16 HEARING OFFICER KNITTLE: But if in fact that's  
17 what you want to do, we're going to exclude them from  
18 today's testimony.

19 MR. KAISER: Fair enough.

20 HEARING OFFICER KNITTLE: Anybody else who shows  
21 up, we're not going allow you to keep your case in  
22 chief open to call them as witnesses.

23 MR. KAISER: I understand the ruling.

24 HEARING OFFICER KNITTLE: Is that clear?



1 MR. KAISER: Yes.

2 MR. KOLAR: I understand that's your ruling.

3 HEARING OFFICER KNITTLE: I'm not asking for  
4 agreement at this point in time.

5 MR. KOLAR: That's clear.

6 MR. KAISER: If you could, Mr. Knittle, just  
7 explain the policies behind excluding the witnesses,  
8 why they wouldn't be allowed to observe Mr. Voigt's  
9 testimony.

10 HEARING OFFICER KNITTLE: Mr. Kolar has moved that  
11 you're excluded from the testimony of Mr. Voigt. If  
12 you're a witness for the complainant, it's not really  
13 fair for you to listen to what other people say and  
14 then decide what you're going to say before you say it.  
15 Essentially that's my understanding. I generally  
16 accept, as do all courts throughout the land, that if  
17 you're not a party, and you're going to appear as a  
18 witness for one of the parties, you can be excluded  
19 until you testify.

20 MR. KAISER: So they have made a motion, and that  
21 is that you would not be able to sit in and hear what  
22 Mr. Voigt has to say because of the concern that that  
23 would in some way influence the way you might testify  
24 in the future.



24

Q. Now, how long has CTC had a contract with

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1 LTD?

2 A. Three or four years.

3 Q. And is CTC essentially the -- LTD has a  
4 variety of trucking firms that bring goods into the  
5 facility, is that right?

6 A. Yes.

7 Q. But CTC is essentially the exclusive entity  
8 shipping goods out of LTD's Bannockburn facility?

9 A. Yes.

10 Q. So when somebody orders the dartboard or any  
11 other item in the catalogs, that item is pulled from  
12 the shelves within either the Bannockburn or Aurora or  
13 now the Gurnee facility, and if it's from the  
14 Bannockburn facility, it's put on a CTC truck and  
15 shipped out?

16 A. A truck that works for CTC.

17 Q. Or a truck that works for CTC?

18 A. Yes, correct.

19 Q. And CTC is allowed on LTD's Bannockburn

20 property in furtherance of the contract between LTD and  
21 CTC? I mean, they're not trespassing when they're  
22 there --

23 A. No.

24 Q. -- right?

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1 I mean, you want them there? LTD wants CTC  
2 and their trucks to be there and be there at a certain  
3 time and get those products and get them to the post  
4 office and out to the customers, right?

5 A. Yes.

6 Q. So CTC performs a very important function for  
7 LTD Commodities?

8 A. Yes.

9 Q. All right. With respect to the trucks  
10 bringing in goods to LTD's Bannockburn facility,  
11 Cavalea, C-a-v-a-l-e-a, is one of the larger firms that  
12 brings goods into LTD?

13 A. Yes.

14 Q. And in fact Cavalea handles more than 50  
15 percent of the volume goods coming into LTD's

16 Bannockburn facility?

17 A. In my estimation, yes.

18 Q. And there are other carriers, are there not?

19 A. Yes.

20 Q. Now, Federal Express, they account for less  
21 than 1 percent of the total volume of goods brought  
22 into LTD's Bannockburn facility?

23 A. Yes.

24 Q. And UPS I believe you estimated is 5 percent

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1 or less of the total volume of products coming into  
2 LTD's Bannockburn facility?

3 A. Yes.

4 Q. And Roadway is a slightly bigger carrier that  
5 brings in between 5 and 10 percent of the goods to  
6 LTD's Bannockburn facility?

7 A. Those are estimations, yes.

8 Q. But within a margin of error or 1 or 2  
9 percent?

10 A. It could be greater. I mean, they are one of  
11 our carriers.

12 Q. And one of LTD's principal carriers?  
13 A. Yes.  
14 Q. Not nearly as big as Cavalea --  
15 A. No.  
16 Q. -- but bigger than, for instance, Federal  
17 Express?  
18 A. Yes.  
19 Q. And Dolphin, that's the name of a carrier as  
20 well, isn't it?  
21 A. Yes.  
22 Q. But Dolphin principally brings in supplies to  
23 LTD's Bannockburn facility?  
24 A. Yes.

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1 Q. And what types of supplies does Dolphin bring  
2 into LTD's Bannockburn facility?  
3 A. Corrugation or corrugated.  
4 Q. Boxes?  
5 A. Boxes, yes.  
6 Q. All right. I take it -- I mean, with the  
7 volume of goods LTD is shipping out of Bannockburn, LTD

8 uses a lot of boxes, right?

9 A. Yes.

10 Q. And those boxes get there by Dolphin trucks?

11 A. Right.

12 Q. Principally?

13 A. Right.

14 Q. And then you seem to be indicating you want  
15 to clarify something?

16 A. I want to ask a question. We were talking  
17 about the deposition, and we were answering the  
18 question at that time because right now we are using a  
19 different trucking firm for the corrugated boxes.

20 Q. Who is LTD using today, November 5, 1999, to  
21 bring in the corrugated boxes?

22 A. Leak.

23 Q. Could you spell that for the court reporter's  
24 benefit?

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1 A. I'm guessing it's L-e-a-k.

2 Q. Why did LTD change from Dolphin to Leak?

3 A. We're using a different manufacturer of

4 boxes.

5 Q. And how often does Leak bring boxes to the  
6 LTD facility?

7 A. Daily.

8 Q. Daily.

9 Once a day or more than once a day?

10 A. Multiple trailers per day equal to what  
11 Dolphin did.

12 Q. And that's just supplies?

13 A. Yes.

14 Q. When you say multiple trailers per day is  
15 that two, three, four, can you give us a little better  
16 number there?

17 A. It will vary. It could be as little as two,  
18 as little as zero, it can be as high as five, six.

19 Q. And does that include Saturdays? Does Leak  
20 deliver boxes to LTD's Bannockburn facility on  
21 Saturdays?

22 A. I'm not aware that they do but they could.

23 Q. All right. But certainly Monday through  
24 Friday Leak is bringing in boxes?



1 A. Yes.

2 Q. Zero to five or six times a day?

3 A. Yes.

4 Q. Now, with respect to goods that are  
5 manufactured domestically and brought to LTD's  
6 Bannockburn facility, is it my understanding that  
7 Roadway is the biggest domestic transporter of goods?

8 A. Yes.

9 Q. And behind Roadway then the United States  
10 Postal, Kix, K-i-x, and J.B. Hunt or some of the other  
11 entities that bring goods into LTD's Bannockburn  
12 facility?

13 A. Yes.

14 Q. And LTD typically pays the shipping costs for  
15 delivery of goods to its warehouse?

16 A. Yes.

17 Q. And LTD doesn't employ any long-haul truck  
18 drivers, does it?

19 A. No.

20 Q. And LTD doesn't own any long-haul trailer  
21 tractors?

22 A. No.

23 Q. And LTD doesn't own any long-haul  
24 over-the-road semi-trailers?

1 A. No.

2 Q. And LTD's business is not -- LTD doesn't  
3 lease warehouse space to any other catalog houses?

4 A. No.

5 Q. And LTD doesn't package goods or ship goods  
6 for other catalogs other than its own?

7 A. No.

8 Q. And LTD doesn't make its money by selling  
9 freight forwarding services?

10 A. No.

11 Q. LTD makes it money by selling the products  
12 shown in its catalogs and available through other means  
13 like the internet?

14 A. Yes.

15 Q. Now, LTD does employ a large number of people  
16 at its Bannockburn facility, is that right?

17 A. Yes.

18 Q. And during this season, what we have been  
19 referring to as roughly the Christmas season, which is  
20 a period of time within your industry or within LTD's  
21 year beginning in roughly August and extending to the  
22 middle of December, is that right?

23 A. Yes.

24

Q. And LTD sells a greater volume of goods

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1 during its Christmas season than during the season  
2 between say January and July of any given year?

3 A. Yes.

4 Q. So LTD gears up for that Christmas increase,  
5 correct?

6 A. Yes.

7 Q. And part of that gearing up is hiring an  
8 additional 500 or 600 people to help receive the  
9 freight, ship the freight, pick the orders, handle  
10 telephone sales, and so forth, is that right?

11 A. Yes.

12 Q. And currently working at the LTD Bannockburn  
13 facility in November of 1999 there are more than a  
14 thousand employees under the roof, right?

15 A. Yes.

16 Q. And in fact that number may be even in excess  
17 of 1,300 employees, correct?

18 A. Yes.

19 Q. Now, I'd like to help you take the Board

20 through a typical day at LTD. As I understand it LTD  
21 operates two shifts a day, is that right?

22 A. Yes.

23 Q. And the first shift officially begins at 6  
24 a.m. in the morning, right?

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1 A. Right now the shift starts at 5:30.

2 MR. KOLAR: Objection, typical day during what  
3 season?

4 MR. KAISER: All right. I'll lay a foundation.  
5 Thank you.

6 MR. KOLAR: Foundation.

7 BY MR. KAISER:

8 Q. What time does LTD's first shift currently  
9 begin?

10 A. 5:30 a.m.

11 Q. When did LTD -- when I took your deposition  
12 the typical shift was beginning at 6 a.m., when did  
13 LTD --

14 A. Yes.

15 Q. -- adjust the schedule so that the first

16 shift now begins at 5:30 a.m.?  
17 A. A couple months ago.  
18 Q. So some time late summer/fall of 1999?  
19 A. September.  
20 Q. Why did LTD move the start time for the first  
21 shift?  
22 A. We were working nine hour shifts.  
23 Q. When does the -- now, November 1999, when  
24 does the first shift end?

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1 A. Right now it's ending I believe at 2:00. We  
2 are off nine hours as of this week. We're only working  
3 eight hours right now.  
4 Q. All right. So right now it's just eight  
5 hours, but until this week or during September and much  
6 of October of 1999 is it your testimony LTD's first  
7 shift ran for nine hours in length?  
8 A. Yes.  
9 Q. So it started at 5:30, and help me with the  
10 math, when did it finish?  
11 A. I believe 3 o'clock.

12 Q. 3 o'clock.

13 During this period, again September and most  
14 of October 1999, when did LTD's second shift start?

15 A. Either 4 p.m. or 3:45 p.m.

16 Q. And as I understand there is a break, LTD  
17 finishes all the work of the first shift and then there  
18 is a complete turnover of the dock personnel, the  
19 second shift comes in and starts fresh, is that right?

20 A. Right.

21 Q. And during September and October of 1999 they  
22 started -- the second shift started at either 3:45 or  
23 4 p.m.?

24 A. Yes.

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1 Q. And was that second shift also a nine hour  
2 shift?

3 A. Yes.

4 Q. So, again, typically if there was no  
5 overtime, when did the second shift end during this  
6 period of September and October 1999?

7 A. 1 a.m.

8 Q. During this period of September and October  
9 of 1999 was there one or more occasions where you  
10 authorized, you or anyone under you, authorized the  
11 second shift to work overtime?

12 A. Working nine hours is overtime.

13 Q. Nine hours is overtime?

14 A. Yes.

15 Q. So one of those hours is an overtime hour?

16 A. Yes.

17 Q. So essentially LTD scheduled daily two hours  
18 of overtime?

19 A. Yes.

20 Q. One hour on the first shift and one hour on  
21 the second shift?

22 A. Yes.

23 Q. In addition to the scheduled overtime were  
24 there any days between September 1st and October 31st

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1 of 1999 on which LTD authorized additional hours of  
2 overtime?

3 A. Not that I'm aware of.

4 Q. So to your knowledge there was no date  
5 between September 1st and October 31st of 1999 where  
6 LTD operated beyond 1 a.m. in the morning?

7 A. Not that I'm aware of based on the shift  
8 ending at that time.

9 Q. All right. Now, you know that one of the  
10 sources of noise about which the Rotis, Webers and  
11 Rosenstrocks have complained is the yard tractor,  
12 right?

13 A. Yes.

14 Q. And the yard tractor -- can you tell the  
15 Board basically what is a yard tractor and what does it  
16 do?

17 A. It's an off-the-road vehicle. It's used for  
18 yard work to typically move trailers in a quick and  
19 efficient fashion.

20 Q. And you're aware that back in 1996 LTD's  
21 subcontractor used a yard pig that was unmuffled and  
22 was loud?

23 A. Yes.

24 MR. KOLAR: Objection, sounded unmuffled, I think.



1 BY MR. KAISER:

2 Q. Sounded unmuffled and sounded to the  
3 neighbors extremely loud, right?

4 A. Yes.

5 Q. And LTD took steps and actually replaced the  
6 yard tractor that was in operation in 1996?

7 A. We asked the carrier to look into a different  
8 yard tractor, which they did.

9 Q. And the carrier did?

10 A. Yes.

11 Q. And the carrier substituted a new or a newer  
12 yard tractor, a different yard tractor?

13 A. Yes.

14 Q. But that yard tractor -- again, you spoke to  
15 the carrier and that's the subcontractor, right?

16 A. We spoke with CTC.

17 Q. CTC. Yes, subcontractor is not correct.

18 It's a contractor for LTD, right?

19 A. Carrier, yes.

20 Q. And LTD didn't own the yard tractor in 1996?

21 A. No.

22 Q. And doesn't own the yard tractor that's in  
23 operation in its dock area in 1999?

24 A. No.

1 Q. But, again, that yard tractor is not there as  
2 a trespasser, is it?

3 A. No.

4 Q. That yard tractor is there to help LTD move  
5 goods in and move goods out efficiently?

6 A. Yes.

7 Q. LTD does not issue a paycheck to the driver  
8 of the yard tractor?

9 A. No.

10 Q. CTC pays the yard tractor driver?

11 A. Yes.

12 Q. You don't control when the yard tractor  
13 begins or when the yard tractor stops operation on any  
14 given day?

15 A. Yes, we do.

16 Q. How so?

17 A. It's based on the work that we generate for  
18 that tractor.

19 Q. But it's possible, and correct me if I'm  
20 wrong, but it's possible that LTD's shift goes home at  
21 1 a.m. but that yard tractor is still doing work to  
22 finish up his or her duties, right?

23 A. It could be a short period after the shift  
24 ends because when a shift would end, the trailer would

1 be closed up, and it would have to be pulled out and  
2 that door would be closed at 1 a.m. and the tractor  
3 would pull the load out. It might take a few minutes  
4 to take care of that, and then we're shut down.

5 Q. I take it that driver of the yard tractor had  
6 better be in position and ready to go at 5:30 in the  
7 morning when the first shift starts, right?

8 A. Yes.

9 Q. And that first shift starts at 5:30 in the  
10 morning on Monday morning in the time frame between  
11 September 1st and October 31, 1999?

12 A. Yes.

13 Q. And trucks -- well, all right. During that  
14 time frame -- now, the dock doors open on the north end  
15 of LTD's facility from September 1st through October  
16 31st at 5:30 am, right?

17 A. They can be open then, yes.

18 Q. They can be open then?

19 A. Yes.

20 Q. I mean, LTD is open for business, the

21 warehouse people are in place, LTD is ready to receive  
22 and ship freight?

23 A. Yes.

24 Q. Have you ever seen occasions where trucks,

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1 semi-tractors with their trailers, have arrived at  
2 LTD's docks before LTD has opened its doors for  
3 business, whether that's 6 a.m. or -- between September  
4 1st and October 31, 1999 -- before 5:30 am?

5 A. I have seen -- yes, I have seen it.

6 Q. Approximately how often do you see  
7 semi-tractors and semi-trailers arrive before LTD has  
8 opened its dock operations?

9 A. I have seen that -- when we started at 6 a.m.  
10 I had seen that periodically.

11 Q. How about now that you have gone to this 5:30  
12 a.m. start time, do you see that periodically?

13 A. No because I usually get there at quarter to  
14 6:00 so --

15 Q. You get there at quarter to 6:00?

16 A. Yes.

17 Q. So you're not there to see it?

18 A. Correct.

19 Q. All right. And, as I understand it, LTD --  
20 these trucks do not typically arrive randomly, is that  
21 right?

22 A. No.

23 Q. I mean, LTD works hard to schedule the  
24 arrival of the trucks?

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1 A. Yes.

2 Q. And in fact I understood that you were able  
3 to tell me that LTD tries to schedule the arrival of  
4 each truck within approximately a half hour time frame?

5 A. Yes.

6 Q. And unless there is bad weather or unforeseen  
7 traffic, the trucks typically roll in pretty much on  
8 schedule?

9 A. Yes.

10 Q. And that's to avoid -- I mean, LTD doesn't  
11 want 30 trucks arriving at the same time and there is  
12 only 26 dock doors, right?

13 A. Yes.

14 Q. So, as a matter of efficiency, LTD schedules,  
15 with some precision, the arrival and the departure of  
16 trucks?

17 A. Yes.

18 Q. Are there certain dock doors -- and there are  
19 26 dock doors in total, correct?

20 A. Yes.

21 Q. Are there certain dock doors that LTD has  
22 dedicated for receiving goods?

23 A. Yes.

24 Q. Do you know offhand which docks are dedicated

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1 to receiving goods?

2 A. I estimate doors 9 through 20 are for  
3 receiving.

4 Q. And which doors are used for shipping goods?

5 A. 4 through 8 and 21 through 26.

6 Q. And, if I'm recalling correctly, as you go  
7 east the numbers increase, door 1 starts on the west  
8 end of the building and you count towards the east?

9                   A.    Yes.

10                  Q.    So a trailer that's empty that receives goods  
11                   in doors 9 through 20, that empty trailer is not then  
12                   loaded in place?

13                  A.    No, it's not loaded.

14                  Q.    Goods going out of LTD leave through dock  
15                   doors 4 through 8 and 21 through 26 typically?

16                  A.    Yes.  I might add that we do -- doors 20 and  
17                   19 also are outbound doors for transfers between the  
18                   different facilities that we ship out of.

19                  Q.    All right.  So doors 19 and 20 outbound --  
20                   for instance, if you're shipping something from  
21                   Bannockburn to Aurora or Bannockburn to Gurnee, those  
22                   would be inter-LTD shipments?

23                  A.    Right, in and outbound.

24                  Q.    In and outbound.

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1                   A.    Right.

2                  Q.    So if you're receiving goods from one of the  
3                   three public warehouses or from Aurora or from Gurnee  
4                   they would come in through doors 19 and 20?

5           A.    Not the public warehouses.

6           Q.    Not the public warehouses?

7           A.    No.

8           Q.    Public warehouses would then be with the

9           general traffic and be received through 9 through 20

10          and go out docks 4 through 8 and 21 through 26?

11          A.    I mean, it is possible that a public

12          warehouse could pull in there if it's available, but

13          generally it is dedicated for the transfer between the

14          buildings.

15          Q.    All right.  If we could describe what

16          happens -- now, you're aware of LTD's good neighbor

17          policy?

18          A.    Yes.

19          Q.    And in fact when LTD became aware through

20          Mike Hara and through conversations you had with Karen

21          Roti and others that there was complaints from

22          neighbors to the north, one of the things LTD did was

23          create this good neighbor policy --

24          A.    Yes.



1 Q. -- right?

2 And part of the good neighbor policy was  
3 posting certain rules on the wall as drivers exit  
4 Lakeside Drive and move into LTD's dock area?

5 A. Yes.

6 Q. As I understand it one of the elements of  
7 LTD's good neighbor policy is that instead of people  
8 arriving and honking their horn to let LTD's dock  
9 personnel know they're here, the driver is to get off  
10 at Lakeside Drive and come into LTD's dock area and  
11 then turn off the tractor?

12 A. Yes.

13 Q. And are you aware that when the tractor's  
14 engine is turned off, that typically the air from the  
15 air brake is released at that time?

16 A. I have heard that.

17 Q. You're familiar with the noise air makes when  
18 it's released from an air brake?

19 A. Yes.

20 Q. How would you describe that noise?

21 A. A rushing of air through a hose or whatever.

22 Q. So when the truck stops, it turns off its  
23 engine, releases air from its air brakes, is that  
24 right, typically?

1           A.    Yes.  I'm not sure if it happens when they  
2           turn it off or not.  You know, I know I have heard it,  
3           but when does it exactly happen, I couldn't tell you.

4           Q.    All right.  The driver gets out of the  
5           tractor, announces that he or she is here, and what  
6           happens next?

7           A.    Then the driver is given directions on what  
8           the next steps are for it.  If they're to disconnect  
9           from their trailer, then the yard tractor will put it  
10          into one of the dock doors or they will back it in  
11          themselves if they're capable.

12          Q.    Who makes that decision whether the yard  
13          tractor will put the trailer into the docks or whether  
14          the long-haul truck driver would pull the trailer into  
15          the dock?

16          A.    Dock personnel, and we also utilize the  
17          judgment of the yard tractor driver.

18          Q.    The yard tractor driver?

19          A.    Yes.

20          Q.    What if he says, "That guy can't drive, no  
21          way is he backing in"?  Then do you make them unhitch  
22          or what judgment calls does the yard tractor driver  
23          make?

24          A.    I think the driver does talk to the

1 personnel, asking them how confident they feel about  
2 backing up the trailer within a short period of time.  
3 They also -- you know, whatever the situation is, it's  
4 possible that the yard tractor is busy doing something  
5 else and is not available. At that time a dock person  
6 from LTD would direct the driver what to do.

7 Q. All right. So let's take the example where  
8 the yard tractor determines that the yard tractor  
9 driver -- and do you know the name of the current yard  
10 tractor driver?

11 A. No.

12 Q. I take it there is a morning shift yard  
13 tractor driver and an evening shift yard tractor  
14 driver?

15 A. Yes.

16 Q. The morning shift yard tractor driver, some  
17 time between September 1st and October 31, 1999 the  
18 tractor and trailer has come into LTD's dock area, the  
19 engine has been shut off, the air brakes have released,  
20 the yard tractor driver, in consultation with the

21 long-haul truck driver, determines that the yard  
22 tractor is in a better position to back the trailer  
23 into the dock, what would next happen?

24 A. Typically the driver that dropped off the

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1 trailer either dropping it right in the yard or  
2 dropping it off at a dock will pick up an empty and  
3 take it away.

4 Q. So, to break that down into movements, the  
5 tractor that's pulled the trailer across the roads to  
6 LTD's dock disengages from the trailer it's been  
7 hauling?

8 A. Yes.

9 Q. Have you observed that process before?

10 A. Yes.

11 Q. Is there noise made when the tractor  
12 disengages from the trailer?

13 A. Yes.

14 Q. How would you describe for the Board the  
15 sound made when a tractor disengages from a  
16 semi-trailer?

17           A.    There is a noise that it disconnects from the  
18           fifth wheel, that's the back end of a tractor.  There  
19           is a -- I'm not sure what they call it on the trailer,  
20           there is --

21           Q.    Is that the boogie wheel?

22           A.    I don't know.  Maybe it is for all I know.

23           Q.    There is that big sort of disk on the back of  
24           the tractor that --

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1           A.    That I call the fifth wheel, but the part  
2           that comes off the trailer is like a stem that comes  
3           off, and that fits into that fifth wheel slot, and that  
4           pulls apart.

5           Q.    All right.  Is there a noise generated when  
6           the fifth wheel disengages -- I may call that the  
7           trailer pin.

8           A.    Trailer pin.

9           Q.    Would that be descriptive?

10          A.    Yes.

11          Q.    So when the fifth wheel disengages from the  
12          trailer pin is there a noise that's generated?

13 A. Sometimes.

14 Q. Have you ever heard it disengage when there  
15 isn't and it doesn't make noise?

16 A. Yes. With the yard tractor if the legs of  
17 the trailer are raised high enough when you drop the  
18 fifth wheel of the yard tractor, and I'm calling that  
19 that disk on the back, that can just pull away just  
20 from the bottom of it and have a clearance that it can  
21 move away from.

22 Q. All right. But at this point in time we're  
23 trying to describe the movement of a representative  
24 truck that's come in and the semi-tractor, the

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1 long-haul semi-tractor is disengaging from the trailer,  
2 has it been your experience that the disengagement of  
3 the semi-tractor from the trailer generates a noise?

4 A. Yes, it can.

5 Q. About what percentages of the time have you  
6 observed that process generate noise?

7 A. I haven't really kept stats on it so I --

8 Q. But it can?

9 A. Yes.

10 Q. So the tractor moves away, the trailer is  
11 there, then is the next step that the yard tractor  
12 engages with the trailer that's been left?

13 A. Yes.

14 Q. And how does the yard tractor engage with the  
15 trailer?

16 A. It backs up to it with the fifth wheel and it  
17 places the pin into the slot. And from there there is  
18 a hydraulic lift that's utilized on the yard tractor to  
19 raise the front end of the trailer to get the legs off  
20 the ground that are presently supporting the trailer.  
21 And once the legs are off -- a sufficient height off  
22 the ground, then they can proceed moving the trailer.

23 Q. And have you observed that action you just  
24 described?

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1 A. Yes.

2 Q. Is there noise generated when the yard  
3 tractor engages with the trailer, pneumatically raises  
4 the trailer so that the legs can come up?

5           A.    Yes.

6           Q.    And then the yard tractor I take it backs  
7           that trailer into one of the docks?

8           A.    Yes.

9           Q.    What does the yard tractor then do?

10          A.    Then the yard tractor will disconnect from  
11          the trailer by lowering the hydraulic fifth wheel so  
12          that the legs of the trailer support the trailer and  
13          then the tractor will pull away.

14          Q.    And is the dock door open or closed when the  
15          yard tractor is disengaging from the trailer it's just  
16          put in position?

17          A.    The dock door is open.

18          Q.    Is there noise generated when the yard  
19          tractor disengages from the trailer after it's placed  
20          it into the dock?

21          A.    Yes.

22          Q.    Does the yard tractor's engine make noise as  
23          it pulls away or as it accelerates away from the  
24          trailer it's just --



1 A. Yes.

2 Q. -- positioned?

3 A. Yes.

4 MR. KOLAR: For the record the complainants have  
5 to prove noise in excess of numerical regulations. So  
6 to a certain extent this is not relevant, all these  
7 operations, unless they make noise in violation of the  
8 Pollution Control Board Regulations.

9 MR. KAISER: Certainly one of the prohibitions is  
10 you can't make noise that's a nuisance that  
11 unreasonably substantially interferes with other  
12 peoples' use and enjoyment of their property. So what  
13 we're showing here is not so much do these noises  
14 result in -- did they result in noise on September 24,  
15 1997 that would be a numeric violation but whether  
16 since 1996 through the present do these noises at  
17 least -- well do they create so much noise that the  
18 Rotis, Webers and Rosenstocks are unreasonably  
19 disturbed.

20 HEARING OFFICER KNITTLE: Right. And I understand  
21 what you're saying, Mr. Kolar. I'm not going to  
22 sustain the objection. I agree with you that it's  
23 not -- all these noises to this point are not being  
24 proved to be in violation of any Board regulation to be

1 a nuisance or otherwise. However, I think it would be  
2 helpful to the Board to know where the noises that have  
3 been complained of come from initially. So in terms of  
4 kind of a background approach I'm going to allow him to  
5 continue.

6 BY MR. KAISER:

7 Q. Mr. Voigt, again, in this typical truck  
8 movement that we have described you were saying that  
9 the original semi-tractor that would have brought the  
10 trailer to LTD's dock area, once it's disengaged, is it  
11 typical that it then goes to another door to pick up a  
12 trailer that's been loaded?

13 A. It could go to another door. It could go to  
14 the staging area that you were pointing to right now  
15 and pull a trailer. It could be a trailer that's been  
16 placed somewhere else in the yard.

17 Q. And I take it that tractor will engage with  
18 that trailer, a full or partially full trailer?

19 A. Yes.

20 Q. And, again, is there a noise generated when  
21 the tractor engages with the trailer?

22 A. There is some.

23 MR. KOLAR: For the record Ms. Roti and her  
24 daughter left, maybe only momentarily, but they left.

1 HEARING OFFICER KNITTLE: Just also for the record  
2 I saw them make eating motions so I think they're going  
3 to go eat, but that's just an assumption. Speculation  
4 one might say.

5 BY MR. KAISER:

6 Q. And, again, when the semi-tractor couples  
7 with the outbound trailer is sound generated at that  
8 moment?

9 A. Yes.

10 Q. And when the tractor accelerates in order to  
11 drag the trailer out of LTD's dock area and up the  
12 slight incline onto Lakeside Drive is sound generated?

13 A. Yes.

14 Q. And then this trailer that has been placed  
15 into position to be unloaded, once it's unloaded,  
16 what's done? What does LTD do with that trailer next?

17 A. The trailer will be pulled away from the dock  
18 either via the yard tractor or via another tractor, you  
19 know, from some trucking company.

20 Q. So there is again the active engagement  
21 either with the over-the-road tractor or the yard

22 tractor with the trailer that's been emptied in the  
23 dock?

24 A. Yes.

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1 Q. Is there sound generated by that action?

2 A. Yes.

3 Q. Then either the yard tractor or the  
4 over-the-road tractor hauls the trailer out of the dock  
5 area?

6 A. Yes.

7 Q. Is there sound generated by the acceleration  
8 of either the yard tractor or the over-the-road  
9 tractor?

10 A. Yes.

11 Q. If that trailer is empty is it typical for  
12 the empty trailer to be taken off the LTD premises or  
13 to be positioned within the LTD premises for loading?

14 A. I would say typically it would be temporarily  
15 stored on our property.

16 Q. Where does LTD temporarily store trailers?

17 A. We have 12 positions with a dock or with

18 bumpers there, and we also to the left of that area,  
19 which would be the west, stage trailers there also.

20 Q. Now, do you know whether the trailers stored  
21 in the -- or placed in the dock area where there are  
22 the 12 docks with the bumpers, do you know whether  
23 those trailers -- can you say whether those trailers  
24 are typically empty or full or is it both?

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1 A. Most of the time they're empty. We don't  
2 like to store any product outside temporary or long  
3 term for security reasons.

4 Q. Are there ever occasions where to your  
5 knowledge a full trailer either just arriving or a full  
6 trailer about to leave LTD's facility is placed  
7 temporarily in the truck staging area?

8 A. Yes.

9 Q. And I take it either the over-the-road  
10 tractor or the yard tractor may have responsibility for  
11 placing the trailers against -- or placing the trailers  
12 in the staging area?

13 A. Yes.

14 Q. Have you ever observed whether sound is  
15 generated when either the yard tractor or the  
16 over-the-road tractor puts a full trailer in position  
17 against the stops in LTD's trailer staging area?

18 A. Yes.

19 Q. Have you ever seen a driver place a trailer  
20 in the staging area and put it in place too quickly so  
21 that it bangs against those back stops?

22 A. No.

23 Q. Now, as I understood it, this empty trailer  
24 that's been unloaded more often than not would be

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1 placed -- either hauled out of the dock by either the  
2 yard tractor or the over-the-road tractor and placed in  
3 either the staging area or moved into a shipping dock,  
4 is that accurate?

5 A. I couldn't give you an exact number without  
6 conferring with staff members back in the building.

7 Q. All right. But that's --

8 A. But it can happen.

9 Q. It can happen?

10 A. Yes.

11 Q. And it sounds to me like it's not usual for  
12 LTD or any of the companies to take empty trailers  
13 away?

14 A. Well, what would tell me if we're staging an  
15 empty is who the carrier is. We do stage empties as a  
16 practice for the CTC carriers because we do need to  
17 have empty trailers on reserve. Once trailers get  
18 filled up, it gives us the flexibility to be able to  
19 pull that trailer out and have it empty, readily  
20 available, instead of shutting down the building to be  
21 able to load trailers. Anything that comes out of  
22 receiving -- and if we do not have the right carrier  
23 here to drop off a full trailer and -- I guess I'm  
24 saying it wrong. If we have emptied trailer A for

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1 trucking company A, but trucking company B shows up,  
2 and we don't have any other dock space open, we'll pull  
3 trailer A out, put it into our temporary storage area  
4 there, and we'll put trailer B in there. And it's  
5 possible that the driver for trailer B would have to go

6 back and do what's called deadheading without a  
7 trailer. It does happen periodically. We don't like  
8 that simply because if we do get empties in our yard,  
9 it does crowd the yard and makes it difficult to work  
10 within those confines.

11 Q. Now, are these trailers pretty much  
12 interchangeable? Can Cavalea drive off with one of  
13 CTC's trailer or are these trailers dedicated, that's a  
14 CTC trailer, that's a Cavalea trailer, that's a Leak  
15 trailer?

16 A. Those are dedicated. Typically they are not  
17 allowed to take any trailer they wish simply for the  
18 purpose of liability and tracking where the trailers  
19 are going.

20 Q. Now I need to understand this. I mean  
21 Cavalea brings goods into you, right?

22 A. Yes.

23 Q. So Cavalea's trailer is emptied and then  
24 what, Cavalea takes away its empty trailer?

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1 A. Yes.



2 Q. Cavalea's trailer isn't taken over for LTD to  
3 fill up and then have CTC drive away?

4 A. No.

5 Q. All right. So you have told me that -- well,  
6 is it true that each time a tractor disengages from a  
7 trailer the air brakes are released?

8 A. Yes.

9 Q. And each time a tractor is coupled or  
10 uncoupled some sound is generated?

11 A. Yes.

12 MR. KOLAR: Yard tractor or tractor?

13 BY MR. KAISER:

14 Q. Well, you were telling us, Mr. Voigt, that a  
15 yard tractor can disengage from a trailer and make less  
16 noise than a semi-trailer or semi-tractor disengaging,  
17 is that right?

18 A. Yes.

19 Q. If it's done right, if the legs are the right  
20 height, if the guy's not in hurry and doesn't bang into  
21 it?

22 A. Is sound and noise the same thing?

23 Q. Yes. I mean noise --

24 A. Is noise a negative thing and sound is a

1 positive? I mean, noise is like "stop making all that  
2 noise" for kids is a thing that you shouldn't be  
3 making. That type of thing?

4 Q. Right. That's why I realize that you were  
5 sensitive to the term "noise" and I tried to say  
6 "sound" --

7 A. Okay.

8 Q. -- so that we wouldn't be arguing.

9 I mean, it's no secret what the Rotis hear as  
10 noise, you may hear simply as sound. But what I want  
11 to know is, is there something that's audible to the  
12 human ear that we'll call sound?

13 HEARING OFFICER KNITTLE: Can I jump in?

14 MR. KAISER: Sure.

15 HEARING OFFICER KNITTLE: Just so you know, if you  
16 say "noise," you're not admitting that LTD is violating  
17 a regulation to noise. I mean, and her clicking her  
18 fingers, the court reporter, and making notes is noise  
19 as well.

20 THE WITNESS: Thank you. I'm glad you clarified  
21 that.

22 HEARING OFFICER KNITTLE: Feel free to answer and  
23 you can say noise and it's not going to be held against  
24 you at this point.

1 THE WITNESS: Okay.

2 HEARING OFFICER KNITTLE: Is that fair?

3 MR. KAISER: Yes. That's certainly fair.

4 BY MR. KAISER:

5 Q. With that understanding when a yard tractor  
6 disengages from a trailer is there sound at that  
7 moment?

8 A. Yes, there is.

9 MR. KOLAR: Objection, it's foundation. When you  
10 say "when a yard tractor" do you mean an over-the-road  
11 tractor or the yard tractor?

12 MR. KAISER: The yard tractor.

13 BY MR. KAISER.

14 Q. When the yard tractor.

15 A. Yes.

16 Q. And when an over-the-road tractor disengages  
17 from a trailer, that's an audible event, isn't it?

18 A. Yes.

19 Q. And, similarly, when the yard tractor engages  
20 with the trailer that's an audible event?

21 A. Yes.

22 Q. And when a semi-tractor within LTD's dock  
23 areas engages with a trailer that's an audible event?

24 A. Yes.

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1 Q. Now, I understand that you have made some  
2 observations that if the legs are a certain height, so  
3 that the yard tractor or the over-the-road tractor can  
4 engage without making as much metal to metal contact,  
5 the event is not as loud?

6 A. Yes.

7 Q. And, similarly, if the yard tractor or an  
8 over-the-road tractor engages at an appropriate speed,  
9 again the sound is not as loud?

10 A. Yes.

11 Q. But you have observed, haven't you, Mr.  
12 Voigt, that if the semi-truck driver isn't careful and  
13 engages the trailer at a speed -- an inappropriate  
14 speed, the sound generated is greater?

15 A. Yes.

16 Q. And, similarly, if the legs on the trailer  
17 have been set too low, so that there is more friction

18 and metal to metal contact between the tractor and the  
19 trailer as they engage, the sound is louder?

20 A. Yes.

21 (Complainants' Exhibit No. 55  
22 was marked for  
23 identification.)  
24

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1 BY MR. KAISER:

2 Q. I'd like to show you what I'm marking for  
3 purposes of identification as Complainants' Exhibit 55.  
4 It's an overtime schedule for 1998.

5 I'm showing you a copy of that, Mr. Voigt,  
6 and asking you if you recognize that?

7 A. Yes.

8 Q. What do you recognize that to be?

9 A. It is listing the months of September,  
10 October, November, December of 1998 and the dates of  
11 each month, the 1st through the -- I guess the 30th and  
12 the number of hours of overtime worked.

13 Q. And this is -- I mean, this is accurate

14 information here that LTD prepared, right?

15 A. I believe so.

16 Q. Well, you prepared this after your  
17 deposition. I asked you to go back and figure out how  
18 much overtime was authorized in 1998 and this is what  
19 Mr. Kolar produced?

20 A. Yes.

21 Q. Did you give this to Mr. Kolar?

22 A. Yes.

23 Q. And you're the person back in 1998 who could  
24 authorize overtime at LTD's Bannockburn facility?

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1 A. Yes.

2 Q. And back in the fall of 1998 LTD operated two  
3 shifts, did it not?

4 A. Yes.

5 Q. And those shifts back then began at 6 a.m. in  
6 the morning and I believe 3:30 in the afternoon, is  
7 that right?

8 A. Yes.

9 Q. Now, I'm curious. I think it's fairly

10 straightforward. I mean the left-hand column is the  
11 day of the month and the right-hand column is how many  
12 hours of overtime were worked, right?

13 A. Yes.

14 Q. I notice that on, for instance, September  
15 12th six hours of overtime were worked and then again  
16 on September 19th six hours of overtime.

17 A. That's what I was looking at and questioning.  
18 Six hours overtime is -- I would question the source of  
19 that number.

20 Q. Well, I note in October on the 3rd it shows  
21 six hours, and once in December six hours. I mean,  
22 that's a lot of overtime, isn't it?

23 A. Well, it seems strange. The only way that  
24 six hours would be considered overtime would be a

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1 Saturday, I mean, to have that multiple hours, but I  
2 don't know if these dates correspond with a Saturday.

3 Q. Okay.

4 A. Typically when we use a Saturday date, a  
5 Saturday date is considered all overtime.

6 MR. KOLAR: September 12th was a Saturday.

7 BY MR. KAISER:

8 Q. Then how about the 19th?

9 A. That would be a Saturday also.

10 Q. October 3rd, a Saturday.

11 A. I would question the 10th.

12 Q. The 10th, four hours.

13 A. Four hours, that's a Saturday then too.

14 Q. Yes, the 10th was a Saturday.

15 A. Well, that makes sense then.

16 Q. And December 12th, again a Saturday.

17 So those were Saturday hours. What was that,  
18 an extended -- that was a second shift. Ordinarily  
19 there would have just been a first shift on Saturday  
20 back in the fall of 1998 but on those Saturdays LTD ran  
21 a second shift as well?

22 A. Saturday could just mean first shift.

23 Q. Could just mean an abbreviated first shift?

24 A. Correct.

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1 Q. And as you sit here today you're not certain?



2           A.    I would suspect that it was simply a first  
3           shift Saturday.  If it would have been second shift, it  
4           more likely would have either been 10 or 12 hours.

5           Q.    And in these instances where we see,  
6           particularly in October, virtually every day of the  
7           week two hours of overtime do you see that?

8           A.    Yes.

9           Q.    Would that have been overtime on the first  
10          shift or on the second shift?

11          A.    I believe it would be for one hour for first  
12          shift and one hour for second shift.

13          Q.    All right.  So if LTD typically concluded its  
14          second shift at 12:30 a.m., on those dates where it  
15          shows two hours of overtime, that would have been one  
16          hour additional, so LTD would have closed at 1:30 a.m.  
17          on those dates, is that right?

18          A.    Correct.

19          Q.    And what about those days where it indicates  
20          LTD operated one hour of overtime, is it more likely  
21          that that one hour was on the first shift or on the  
22          second shift?

23          A.    First shift.

24          HEARING OFFICER KNITTLE:  Mr. Kaiser.

1 MR. KAISER: Yes.

2 HEARING OFFICER KNITTLE: Let's go off the record  
3 for a second.

4 (Discussion off the record.)

5 HEARING OFFICER KNITTLE: We're back on.

6 (Complainants' Exhibit No. 56  
7 was marked for  
8 identification.)

9 BY MR. KAISER:

10 Q. Mr. Voigt, I'm showing you what I have marked  
11 for purposes of identification as Complainants' Exhibit  
12 56. It's a two-page document.

13 Do you recognize this two-page document?

14 A. Yes.

15 Q. What do you recognize it to be?

16 A. The first page is an outbound trailer chart  
17 for December for the weeks of the 5th, 12th, 19th and  
18 26th showing day and night with the total amount of  
19 trailers in Bannockburn.

20 Q. All right. And what's the second page?

21 A. The second page shows the inbound trailer  
22 activity at Bannockburn for November 30th through  
23 December 30th.

24 Q. And, as I recall, when you took over at LTD

1           you wanted to create some way to track the numbers in  
2           and number of trucks out, is that right?

3           A.    Yes.

4           Q.    And this is a summary of trucks in and trucks  
5           out during December of -- essentially December of 1998,  
6           right?

7           A.    Yes.

8           Q.    And this is a true and accurate copy of the  
9           summary that's prepared and maintained by LTD in the  
10          ordinary course of its business?

11          A.    Yes.

12          Q.    This is the type of document you would rely  
13          on if you had to answer a question about how many  
14          trucks are going in and out of LTD, right?

15          A.    Yes.

16          Q.    Now, with respect to the outbound trailers  
17          for December, the first page.

18          A.    Yes.

19          Q.    I see week ending 12-5-98. I take it that's  
20          the business week that concluded on December 5, 1998,  
21          is that right?

22          A.    Correct.

23 Q. And in terms of "day" it says "84 trucks,"  
24 does that mean 84 outbound -- what does that number

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1 mean, 84?

2 A. That was outbound trailers for the week of  
3 December 5th.

4 Q. That number now outbound -- and I take it 90,  
5 that means outbound trailers during the night shift?

6 A. Yes.

7 Q. And the total then you have the day shift and  
8 night shift together, and you come up with 174 outbound  
9 trailers during the week of December 5, 1998?

10 A. Yes.

11 Q. Now, that "outbound trailer," does that  
12 include just trailers loaded with goods bound for LTD's  
13 customers, right?

14 A. Yes.

15 Q. That number does not include trucks that have  
16 been brought goods into LTD but are going out empty,  
17 hauled out by Cavalea and other carriers that  
18 principally bring goods to LTD, right?

19 A. That's correct.

20 Q. So that number does not include supply trucks  
21 coming in -- well, supply trucks going out empty after  
22 they have dropped off corrugated boxes?

23 A. Yes.

24 Q. And "trailers" does not include the

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1 incidental truck traffic of, for instance, FedEx or UPS  
2 or one of the other haulers bringing back goods that  
3 have been returned or dropping off small shipments,  
4 right?

5 A. Yes.

6 Q. So that's not a total number of outbound  
7 trailers or truck traffic for LTD that just tells us  
8 the number of loaded trailers carrying product out to  
9 LTD's customers during the relevant time frames?

10 A. Yes.

11 Q. The total number of outbound trailers, if you  
12 included empties, both supply empties and empties of  
13 trailers that had brought goods into LTD, that number  
14 would be greater than the number shown on the first

15 page of Complainants' Exhibit 56?

16 A. Yes.

17 Q. Now, on the second page of Complainants'  
18 Exhibit 56, this is an analysis of inbound trailers,  
19 correct?

20 A. Yes.

21 Q. And here we see domestic carriers, which is I  
22 guess a miscellaneous category of domestic freight  
23 haulers, right? Up at the top there you see, Mr.  
24 Voigt, we have got domestic -- I mean, Cavalea, we know

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1 that's one of your big haulers --

2 A. Yes.

3 Q. -- deliverers?

4 And "Carton," what does Carton refer to?

5 A. That's the corrugated trucks.

6 Q. That's the supplies essentially?

7 A. Right.

8 Q. Are there other supplies other than  
9 corrugated boxes?

10 A. Yes, there is, you know, tape or strapping,

11 and then we also have styrofoam peanuts that are  
12 delivered.

13 Q. How often are styrofoam peanuts delivered?

14 A. Daily.

15 Q. Do they come in a semi-trailer?

16 A. Yes.

17 Q. Do they come more than once a day?

18 A. Yes.

19 Q. About how many times a day does LTD's  
20 Bannockburn facilities receive a shipment of styrofoam  
21 peanuts?

22 A. Two or three times a day.

23 Q. Does the number of trucks bringing in  
24 styrofoam peanuts, taping and other types of supplies,

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1 is that indicated, can you track that anywhere on this  
2 second page of Complainants' Exhibit 56?

3 A. I think it may fall under miscellaneous, but  
4 I couldn't guarantee that.

5 Q. All right. But in terms of an attempt to  
6 track inbound, we have got domestic, which unless you

7 can tell me otherwise I'll assume it's just  
8 miscellaneous domestic carriers or do you know what  
9 that domestic refers to?

10 A. It's multiple carriers throughout the  
11 country.

12 Q. I see. And Cavalea --

13 A. That would be overseas containers.

14 Q. Overseas. Very good. Thank you.

15 So to understand this, we understand domestic  
16 is the miscellaneous carriers of goods produced  
17 domestically?

18 A. Yes.

19 Q. And Cavalea is the principal deliverer of  
20 goods manufactured overseas?

21 A. Yes.

22 Q. And "Carton" refers to the corrugated boxes?

23 A. Yes.

24 Q. And "Miscellaneous NS" refers to the peanuts

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1 and the other packing materials and supplies?

2 A. And it could be returns, it could be a FedEx



3 truck.

4 Q. You think so? You think that's tracked in  
5 that miscellaneous column?

6 A. Yes, it could.

7 Q. It could be?

8 A. Yes.

9 Q. You're not certain though?

10 A. No.

11 Q. Those could be additional trucks coming in  
12 and out of the docks that just simply aren't recorded,  
13 is that possible?

14 A. That could be also.

15 Q. Is that more likely even?

16 A. I would not say it's more likely.

17 Q. But as you sit here today you're not certain  
18 whether those miscellaneous types of FedEx returns or  
19 UPS returns are or are not included in the  
20 miscellaneous category there?

21 A. I would say they are in there.

22 Q. All right. And with respect to "public  
23 warehouse" I take it that's shipments coming in from  
24 the public warehouses that LTD was using in the fall of

1 1998?

2 A. Yes.

3 Q. And so if we look at a weekly total of  
4 inbound truck traffic we see the number -- not looking  
5 at shuttles yet, but we see the total number of inbound  
6 trucks at 145, is that right?

7 A. That's correct.

8 Q. Now shuttles -- well, what does "shuttles"  
9 refer to?

10 A. That's the transfer of product between the  
11 facilities.

12 Q. And back in November and December of 1998  
13 that would have been between which LTD facilities?

14 A. The Bannockburn and the Aurora facilities.

15 Q. All right. So --

16 A. And Libertyville.

17 Q. And Libertyville which was operated then.

18 And this year, if we looked at a similar  
19 diagram, we might have Gurnee as one of the shuttle  
20 destinations?

21 A. Yes.

22 Q. So that's a separate category, shuttles in --  
23 on December 1st, nine shuttles in and 11 shuttles out,  
24 is that right?

1 A. Yes.

2 Q. And so the total number of shuttles in and  
3 shuttles out during the week ending December 4, 1998  
4 was 97?

5 A. Yes.

6 Q. Right?

7 A. Yes.

8 Q. So 47 shuttles came in from LTD's satellite  
9 facilities and 50 shuttles went out?

10 A. Yes.

11 Q. So to get an accurate outbound number we  
12 would have to take again this 174 and add the number of  
13 shuttles out as well, right?

14 A. Yes.

15 Q. Okay. And to get an accurate number of total  
16 shuttles in or total trucks in we would take the 145  
17 and then we would add also the weekly total 47 shuttles  
18 in to get a number of inbound trailers?

19 A. Right.

20 (Complainants' Exhibit No. 57  
21 was marked for  
22 identification.)

23 BY MR. KAISER:

24 Q. All right. I'm showing you what I have

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1 marked for purposes of identification as Complainants'  
2 Exhibit 57. It's a -- well, I'll show it to you. It's  
3 a one-page document.

4 If you could tell the Board what we're  
5 looking at here in Complainants' Exhibit 57?

6 A. This looks like a monthly summarization of  
7 our inbound shipments in the years '96 and '97 and  
8 outbound shipments '96, '97 for the months of  
9 September, October, November and December.

10 Q. And that was an effort, was it not, to put  
11 together numbers similar to those found in  
12 Complainants' 56 where we knew what LTD was doing in  
13 December of 1998 but we wanted to get a sense of what  
14 LTD was doing in '96 and '97, right?

15 MR. KOLAR: Did I give those to you?

16 MR. KAISER: Yes.

17 MR. KOLAR: I thought I marked all mine with an  
18 "L" in the bottom but maybe I didn't.

19 THE WITNESS: Note that it does state that the  
20 inbound shipments are numbers that are used to  
21 illustrate the inbound shipments for '96 have been  
22 estimated using 20 percent less of what was received in  
23 '97 so --  
24

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1 BY MR. KAISER:

2 Q. So those are estimated numbers, the '97  
3 numbers are hard numbers but the '96 are LTD's best  
4 estimate?

5 A. Yes.

6 Q. Did you prepare this document or cause this  
7 document to be prepared?

8 A. Yes.

9 Q. And I take it you'll vouch for these numbers,  
10 these are true and accurate or the best estimate?

11 A. Yes.

12 Q. And I note that in '97 inbound shipments --  
13 both in '96 and '97 inbound shipments peaked in the  
14 month of October, is that right?

15 A. It appears so.

16 Q. And, similarly, in '97 at least outbound  
17 shipments peaked in the month of October but in '96 --  
18 how could that be that in '96 outbound shipments would  
19 have peaked in November if you were doing an estimate?

20 A. I'm not following what you --

21 MR. KOLAR: The estimate applies to the asterisk.

22 MR. KAISER: I see. Okay. So we had actual  
23 numbers. All right. Thank you.

24 MR. KOLAR: Ask him that, I guess.

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1 MR. KAISER: Right.

2 BY MR. KAISER:

3 Q. I mean, I'm looking down here and I thought  
4 that there was the assumption for '96 but for outbound  
5 apparently you had hard numbers on the number of  
6 outbound shipments --

7 A. Yes.

8 Q. -- in '96?

9 It was simply the inbound shipments that were  
10 estimated?

11 A. Yes.

12 Q. All right. And again the outbound shipments,  
13 that would be a number strictly of outbound trailers  
14 loaded with goods for LTD's customers, right?

15 A. Yes.

16 Q. That would not include the empties that  
17 Cavalea and the domestic freight haulers took away  
18 after they had brought goods to LTD?

19 A. I don't know. I would have to look at this  
20 again.

21 Q. Okay. If you would, please.

22 (Pause in proceedings.)

23 THE WITNESS: The question again was.

24

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1 BY MR. KAISER:

2 Q. On the outbound shipments for '96 and '97  
3 does that outbound number define only the number of  
4 outbound trailers leaving LTD's Bannockburn facility  
5 that were loaded with product?

6 A. Product going to the customer or product

7 going to our other distribution center?

8 Q. Either.

9 A. I'm not sure how to answer it. Again, I  
10 would have to go back and get numbers that would -- the  
11 outbound numbers look high. If you look at a month  
12 of -- let's say the month of November, 853 over four  
13 weeks would be over 200 trailers per week when I look  
14 at the '98 numbers.

15 Q. Of course by '98 at this time you have your  
16 Aurora facility operating?

17 A. That's true. I would say that's correct.

18 Q. Correct?

19 A. A correct assumption.

20 Q. That these are trailers that LTD loaded and  
21 they're either going to another warehouse or another  
22 distribution center or they're going to customers but  
23 it doesn't include the empties, correct?

24 A. No, it would not include empties. Empties

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1 are just a direct correlation to the inbound.

2 Q. Right. Though if one wanted to try to



3 determine how many trucks passed through the entrance  
4 and exit to LTD's dock facility you would have to count  
5 the empties going out, right?

6 A. Yes.

7 Q. I'm going to show you what's previously been  
8 marked for purposes of identification as Complainants'  
9 Exhibit C-4. It's a one-page document from John  
10 Schimel to Jack Voigt dated Wednesday, November 13,  
11 1996. Do you see that?

12 A. Yes.

13 Q. What do you recognize that to be?

14 A. It was an e-mail that John Schimel gave to me  
15 about a visitor he had the evening of November 13th.

16 Q. And did you receive that e-mail from John  
17 Schimel on or about November 13, 1996?

18 A. Yes.

19 Q. And is it fair to say that by at least  
20 November 13, 1996 you knew that person living in the  
21 subdivision to the north of LTD's Bannockburn  
22 facilities was concerned about sound originating at  
23 LTD's dock area?

24 A. Yes.

1 Q. To the best you can recall did you have any  
2 notice, before John Schimel sent you this e-mail, that  
3 neighbors to the north were concerned about noise?

4 A. Not that I can recall.

5 Q. I'm showing you what's previously been marked  
6 for purposes of identification as Complainants' Exhibit  
7 C-5. It's a letter from William Kaufman to Jack Voigt  
8 dated December 10, 1996.

9 I'd ask you to take a look at this and tell  
10 me did you receive that letter some time in December of  
11 1996?

12 A. Yes.

13 Q. And did that again give you notice that a  
14 neighbor living in the subdivision to the north had  
15 some concern about sound from LTD's dock operations?

16 A. Yes.

17 (Complainants' Exhibit No. 58  
18 was marked for  
19 identification.)

20 BY MR. KAISER:

21 Q. Now I'm showing you what's been marked for  
22 purposes of identification as Complainants' Exhibit 58.  
23 It's a document that has as its cover a fax cover sheet  
24 from David Lothspeich to Jack Voigt. It appears to

1 have a date on it of December 19, 1996.

2 Do you see that, Mr. Voigt?

3 A. Yes.

4 Q. Did you receive -- and take your time. Did  
5 you receive this document and the attachment from Mr.  
6 Lothspeich in December of 1996?

7 A. Yes.

8 Q. I'm showing you what's previously been marked  
9 for purposes of identification as Complainants' Exhibit  
10 8. It's a letter from Leslie Weber to David Lothspeich  
11 dated January 30, 1997. It's a two-page letter.

12 I don't know if you can tell by looking at  
13 that document in the form you're seeing it in, C-8,  
14 whether you saw it some time in the time frame late  
15 January-February of 1997, but the question I'm posing  
16 to you is, do you recall seeing it in that time frame,  
17 late January, early February 1997?

18 A. Yes.

19 Q. Was it provided to you by David Lothspeich to  
20 the best of your knowledge?

21 A. Yes.

22 Q. I'm showing you what's previously been marked  
23 for purposes of identification as Complainants' Exhibit

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1 dated December 31, 1997.

2 Have you seen that before, Mr. Voigt?

3 A. Yes.

4 Q. In fact Mr. Schimel works for you, right?

5 A. Yes.

6 Q. Have you tasked Mr. Schimel with the  
7 responsibility for getting some information about  
8 people who knew about noise and noise abatement and  
9 noise measurement?

10 A. Yes.

11 Q. And did you see this some time in late  
12 January, early February 1997?

13 A. Yes.

14 MR. KOLAR: This is 6?

15 MR. KAISER: Yes, that was 6.

16 BY MR. KAISER:

17 Q. C-7 is a letter from David Lothspeich to Mike  
18 Hara dated February 7, 1997. Did Mike Hara pass that  
19 letter on to you some time in February of 1997?

20 A. Yes.

21 Q. I note C-8 then is the Leslie Weber to  
22 Lothspeich letter of January 30, 1997 which I  
23 believe -- yes, here we go. Let me -- this is the same  
24 thing, right?

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1 A. Yes.

2 Q. Let me just show you this, Mr. Voigt. It  
3 says in Lothspeich's letter to Hara of February 7,  
4 1997, "I am forwarding to you a copy of the January 31,  
5 letter from LTD neighbor Leslie Weber."

6 Does that confirm your understanding as to  
7 how you got a copy of C-8, Leslie Weber's letter to  
8 David Lothspeich?

9 A. Yes.

10 Q. Now, C-9 is a fax from you to David  
11 Lothspeich dated April 7, 1997 attaching a one-page  
12 letter that reads as follows: "Dear David, Please find  
13 attached the proposal we felt we would go with for the  
14 environmental noise issue. Call me after you have a  
15 chance to read this over to discuss the next step in

16 dealing with this issue."

17 Did you fax that to Mr. Lothspeich on or  
18 about April 7, 1997?

19 A. Yes.

20 Q. And that's a true and accurate copy of your  
21 fax, isn't it?

22 A. Yes.

23 Q. I'm showing you what's been marked for  
24 purposes of identification as C-10, a letter from

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1 Lothspeich to Hara dated April 25, 1997.

2 Did Mr. Hara forward a copy of that letter to  
3 you in late April or early May 1997?

4 A. Yes.

5 Q. And is it fair to say Mr. Hara gave you  
6 principal responsibility for dealing with the  
7 communications with the neighbors to the north and the  
8 Village of Bannockburn in connection with the noise  
9 issue?

10 A. Yes.

11 Q. And with respect to C-11, a letter from David

12 Lothspeich to Mike Hara -- and for the court reporter's  
13 benefit Lothspeich is L-o-t-h-s-p-e-i-c-h -- Lothspeich  
14 to Hara, July 11, 1997 talking about future noise  
15 investigations.

16 Did Mr. Hara give you a copy of that letter  
17 in July of 1997?

18 A. Yes.

19 MR. KAISER: Off the record.

20 (Discussion off the record.)

21 BY MR. KAISER:

22 Q. I'm showing you what's previously been marked  
23 for purposes of identification as C-52. We were  
24 looking at C-10, which is a letter from Lothspeich to

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1 Mike Hara dated April 25, 1997. And do you see where  
2 it says, "I'm pleased to provide the attached April 20,  
3 1997 review of the proposal from Acoustic Associates by  
4 village sound consultant Schomer & Associates"?

5 A. Yes.

6 Q. I'm showing you what's been marked for  
7 purposes of identification as C-52, an April 20th

8 letter from Schomer to Lothspeich. Is that to the best  
9 of your knowledge the document Dave Lothspeich enclosed  
10 in his April 25th letter to Mike Hara?

11 A. Yes.

12 Q. I'm showing you what's previously been marked  
13 for purposes of identification as Complainants' Exhibit  
14 C-12. It's a letter from Bill and Linda Kaufman to  
15 Mike Hara dated Wednesday July 30, 1997.

16 Did Mr. Hara show you a copy of this letter  
17 some time in the latter part of July or early August  
18 1997?

19 A. Yes.

20 Q. I'm showing you what's previously been marked  
21 for purposes of identification as Complainants' Exhibit  
22 C-13. It's a transmittal memo from Tom Thunder to Jack  
23 Voigt dated November 2, 1997.

24 I'd ask you to take a look at that and tell

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1 me if that's a true and accurate copy of a transmittal  
2 memo you received from Tom Thunder in November of 1997?

3 A. Yes.



4 Q. As I understand it you, in consultation with  
5 John Schimel and perhaps Mike Hara, decided to retain  
6 Tom Thunder's group, Acoustic Associates, to help you  
7 get information about noise issues, is that right?

8 A. Yes.

9 Q. And did LTD in fact authorize or hire Tom  
10 Thunder and his group to, in September of 1997, take  
11 noise measurements of LTD's dock operations and take  
12 those measurements in the vicinity of the Roti and  
13 Rosenstock residences?

14 A. Yes.

15 Q. And do you recall meeting with Tom Thunder or  
16 Roger Harmon before those investigations were made?

17 A. Yes.

18 Q. What did you say to Tom Thunder and what did  
19 he say to you during those meetings?

20 MR. KOLAR: Objection, hearsay as to Tom Thunder.

21 BY MR. KAISER:

22 Q. What did you say to Tom Thunder? What did  
23 you understand Tom Thunder was going to do?

24 A. There were going to do a sound study whatever

1 evening that's dated there and position their  
2 microphones and tape recording devices in strategic  
3 places to help understand the concern that we had.

4 Q. I'm showing you what's previously been marked  
5 for purposes of identification as Complainants' Exhibit  
6 C-14. It's a transmittal memo and memorandum from Tom  
7 Thunder to Jack Voigt dated November 14, 1997, Re:  
8 Class B analysis, impulse analysis.

9 Did you receive this document from Tom  
10 Thunder roughly the middle of November 1997?

11 A. Yes.

12 Q. Now, let's spend a little time on this if we  
13 may, Mr. Voigt. And I note you're reading the front  
14 page and take your time.

15 Have you given it the look you need?

16 A. Are you going to be asking me questions about  
17 it?

18 Q. Yes, I may.

19 A. Then I better read it.

20 Q. Right. You might want to take your time and  
21 familiarize yourself with these diagrams and we'll give  
22 you a minute.

23 A. Sure.

24 Q. Thank you.

1 HEARING OFFICER KNITTLE: Let's go off the record  
2 while he's reading this.

3 (Discussion off the record.)

4 BY MR. KAISER:

5 Q. You have had a chance to look at that?

6 A. Yes.

7 Q. And do you recall having discussions with Tom  
8 Thunder in November of 1997 about whether LTD was  
9 properly classified as a Class B land use or a Class C  
10 land use?

11 A. Yes.

12 Q. And do you remember talking with Tom Thunder  
13 about impulse noise in general and in particular air  
14 brakes, metal to metal noise, acceleration and fifth  
15 wheel noise?

16 A. Yes.

17 Q. I want to show you what's previously been  
18 marked for purposes of identification as Complainants'  
19 Exhibit 15. It's a fax cover sheet from David  
20 Lothspeich to Jack Voigt dated 12-1-97. And it  
21 encloses as an attachment a November 21, 1997 letter  
22 from Karen Roti to David Lothspeich.

23 Mr. Voigt, did you receive that fax from Mr.

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1 A. Yes.

2 Q. I'm showing you what's been marked for  
3 purposes of identification as Complainants' Exhibit  
4 C-16, a letter from Marvin Berman, Trustee Building  
5 Commissioner, Village of Bannockburn, to Mike Hara  
6 dated December 5, 1997.

7 Did Mr. Hara show you a copy of that letter  
8 some time in December of 1997?

9 A. Yes.

10 Q. I'm showing you what's previously been marked  
11 for purposes of identification as Complainants' Exhibit  
12 17. It's a fax cover sheet from David Lothspeich to  
13 Jack Voigt dated 12-8 1997. I note the "Re" line reads  
14 as follows: "Trustee Berman asked that I fax you the  
15 attached letter to make sure that you received it.  
16 Please call and let me know if you will be able attend  
17 tonight's meeting."

18 Did you receive a copy of this fax from Mr.  
19 Lothspeich on or about December 8, 1997?

20 A. Yes.

21 Q. Do you know whether you were able to attend  
22 the Village of Bannockburn's meeting on December 8,  
23 1997?

24 A. I don't believe I was there.

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1 Q. I'm showing you what's been marked for  
2 purposes of identification as Complainants' Exhibit 18.  
3 It's a fax cover sheet from Tom Thunder to Jack Voigt  
4 dated December 23, 1997 enclosing a second draft of a  
5 letter report from Tom Thunder to LTD Commodities. I  
6 note in the comment section on the first page it reads  
7 as follows: "Here's my second draft based on our  
8 recent meeting."

9 Do you recall meeting with Tom Thunder in  
10 December of 1997 to discuss the results of his noise  
11 study?

12 A. Yes.

13 Q. Where did that meeting take place?

14 A. At LTD.

15 Q. During that meeting did you form any opinion

16 as to whether LTD was in violation of the Illinois  
17 Pollution Control Board's numeric standards for noise?

18 And if you need the question read back, the  
19 court reporter can read it back.

20 A. Please.

21 (Record read as requested.)

22 THE WITNESS: Yes.

23 BY MR. KAISER:

24 Q. And what was that opinion?

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1 A. I felt we were not in violation.

2 Q. What was the basis of that opinion?

3 A. Based on the Class C rating that I feel that  
4 LTD is and the, I think, results that Tom had given us.

5 Q. What about with respect to impulsive noise  
6 where in the memo of November 14, 1997 Tom Thunder  
7 suggests that: "On this figure, I have shown the  
8 limits for Class C zoning. As you can see, it appears  
9 we exceed these limits. Figure B shows that two of the  
10 impulses are high frequency in nature (air brakes,  
11 metal to metal) while the other two are low frequency

12 (acceleration, fifth wheel)."

13 You read this memo of November 14, 1997,  
14 didn't you?

15 A. Uh-huh.

16 Q. And this is the one you just took a few  
17 minutes to read?

18 A. Yes.

19 Q. And that's Exhibit C-14 for the record.

20 Did something happen between November 14th of  
21 1997 and the time you reviewed Tom Thunder's second  
22 draft on December 23, 1997 that led you to conclude in  
23 December of 1997 that LTD wasn't violating even the  
24 impulse limits?

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1 MR. KOLAR: Objection. I think that's more  
2 properly a question for Tom Thunder because I don't  
3 think this witness knows if we had one hour averaging  
4 here in this November 14th memo so --

5 MR. KAISER: Well, I'm not saying are they in  
6 violation. I just want to know what Mr. Voigt's  
7 understanding was and whether he had an opinion in

8 December of 1997. Whether it was based on accurate or  
9 inaccurate information the record will show, but --

10 MR. KOLAR: Objection, asked and answered. He  
11 says that we were not in violation based on Class C and  
12 results from Tom Thunder. So anything else I think is  
13 more properly addressed to Tom Thunder.

14 MR. KAISER: I have to understand -- I mean, one  
15 month earlier he gets a memo from Tom Thunder telling  
16 him "I think you're in violation of the impulsive noise  
17 limits." Four weeks later Mr. Voigt has now told us he  
18 had the opinion they weren't, and I want to understand  
19 what happened, if anything, between November 14th and  
20 December 23rd that changed his opinion.

21 HEARING OFFICER KNITTLE: Well, I'll sustain the  
22 objection in a limited sense. I don't think it was his  
23 opinion. We don't know that his opinion was ever  
24 changed unless I'm mistaken but I will allow you to ask

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1 him --

2 MR. KAISER: I guess you're right. Maybe he  
3 disregarded Tom Thunder's November 14th memo.



4 HEARING OFFICER KNITTLE: I would ask you to allow  
5 about the memo, ask him about the memo.

6 MR. KAISER: Sure.

7 BY MR. KAISER:

8 Q. Did you agree or disagree with Tom Thunder's  
9 statement in his November 14, 1997 memo that "as you  
10 can see it appears we" -- and I assume "we" is LTD --  
11 "exceed these limits," referring to the impulsive noise  
12 limits. Do you remember whether you agreed or  
13 disagreed with Mr. Thunder in November of 19- --

14 A. I don't know that I expressed my opinion one  
15 way or the other, I just listened to what he had to  
16 say.

17 Q. All right. Did Mr. Thunder ever explain to  
18 you that the Board has numeric limits on noise and it  
19 also has a nuisance standard that limits the noise a  
20 person can generate?

21 A. He may have.

22 MR. KOLAR: Objection for the record in that it  
23 assumes that the nuisance regulation would apply to  
24 this case but I think there is a Second District case



1 A F T E R N O O N S E S S I O N

2 JACK LEO VOIGT,

3 having been previously duly sworn, was examined and  
4 testified further as follows:

5 DIRECT EXAMINATION (CONTINUED)

6 BY MR. KAISER:

7 Q. Mr. Voigt, let the record reflect we're back  
8 in session, Friday afternoon.

9 When we broke we were talking about  
10 Complainants' Exhibit 18, Tom Thunder's fax cover sheet  
11 and the second draft of his letter report. And it  
12 references a meeting you had -- well, it references a  
13 meeting. Did you in fact meet with Tom Thunder to  
14 discuss noise issues in December of 1997?

15 A. Yes.

16 Q. I'm showing you what's been marked for  
17 purposes of identification as Complainants' Exhibit 19.  
18 It's a letter from Tom Thunder to LTD Commodities,  
19 attention Jack Voigt dated January 8, 1998. And I'll  
20 represent to you this is the letter in its final form  
21 setting forth the results of Mr. Thunder's noise  
22 measurements taken in September of 1997.

23 Have you seen this document? Did you get a  
24 copy of that in January of 1998?

1 A. Yes.

2 Q. Do you know what, if any, changes were made  
3 to the document that wound up in final form as the  
4 January 8, 1998 letter moved from draft stage to final  
5 stage?

6 A. No, I don't. I mean, obviously we went and  
7 compared it to --

8 Q. Right. I'm just wondering if there were any  
9 big areas where you directed Tom Thunder either to  
10 remove things or include particular things, do you  
11 recall anything like that?

12 A. Specifically, no.

13 Q. Do you see the conclusion section here on  
14 Page 4 of Mr. Thunder's January 8, 1998 report?

15 A. Yes.

16 Q. Could you please read the sentence that  
17 begins "the random" and read to the bottom of that  
18 paragraph?

19 A. "The random impact noise events do however  
20 appear to exceed the State's impulse noise limits. The

21 fifth wheel impact noise tends to generate low  
22 frequency noise while the sudden release of air from  
23 the air brakes tends to generate high frequency noise."

24 Q. Is that description consistent with what you

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1 observed, that the sudden release of air from air  
2 brakes tends to generate a high frequency noise?

3 A. Yes.

4 Q. And is that also consistent that the impact  
5 noise made when the fifth wheel engages or disengages  
6 generates a low frequency noise?

7 A. Yes.

8 Q. I want to show you what's previously been  
9 marked for purposes of identification as Complainants'  
10 Exhibits C-21 and C-22. C-21 is a letter dated  
11 February 12, 1998 from Marv Berman to Mike Hara. And  
12 C-22 is a letter from David Lothspeich to Mike Hara  
13 dated February 18, 1998.

14 Did you see Complainants' Exhibit 21 in  
15 February of 1998? Would Mr. Hara have given you a copy  
16 of this?

17 A. Yes.

18 Q. And, similarly, would Mr. Hara have forwarded  
19 to you David Lothspeich's letter of February 18, 1998?

20 A. Yes.

21 Q. Is it fair to say it's more likely than not  
22 you saw those letters in February of 1998?

23 A. That's correct.

24 Q. I want to show you what's previously been

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1 marked for purposes of identification as Complainants'  
2 Exhibit 23. It's a letter from Paul Schomer to Tom  
3 Thunder dated February 27, 1998. Did Tom Thunder or  
4 anyone else ever show you a copy of Schomer's letter  
5 dated January 26, 1998?

6 A. I believe so.

7 Q. If you could look at the last page of this  
8 letter. All right. And I note for the record -- I'm  
9 going to show you a different last page. Do you see  
10 this handwriting here?

11 A. Yes.

12 Q. Is that your handwriting?

13           A.    Yes, it does look like mine.

14           Q.    I would ask at this time to substitute in the  
15 record -- Mr. Kolar, I don't know which copy you wound  
16 up with. Take a look at the last page there.

17           MR. KOLAR: I was looking at C-23.

18           MR. KAISER: Right. And that's a copy of C-23 but  
19 it has a little bit more information. And I may ask --

20           MR. KOLAR: These are different documents. My  
21 C-23 is a February 27th letter.

22           MR. KAISER: I'm sorry. What am I looking at?

23           MR. KOLAR: From Schomer to Thunder.

24           HEARING OFFICER KNITTLE: That's mine as well.

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1           MR. KAISER: I apologize. What did I put in front  
2 of you?

3           MR. KOLAR: January 26th. This might be --

4           HEARING OFFICER KNITTLE: 20.

5           MR. KOLAR: 20.

6                    This is 20.

7           MR. KAISER: C-20.

8           MR. KOLAR: Right.

9 BY MR. KAISER:

10 Q. I'm sorry, what do you have in front of you?  
11 Do you have C -- nothing in front of you at the moment.

12 A. You just took it. That was C-23.

13 Q. Let me grab C-20. I apologize. There is  
14 C-20.

15 Now, take a look at C-20, a letter from  
16 Schomer to David Lothspeich dated January 26, 1998.

17 Do you recall David Lothspeich forwarding a  
18 copy of that letter to you?

19 A. Yes.

20 Q. Would that have been some time in late  
21 January or February of 1998?

22 A. Yes.

23 Q. Now, I'm showing you what's been marked for  
24 purposes of identification as C-23. This is a letter

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1 from Paul Schomer to Tom Thunder dated February 27,  
2 1998.

3 Did you see Complainants' Exhibit 23,  
4 Schomer's letter to Thunder? Have you seen that



5 before?

6 A. Yes.

7 Q. And in fact did you authorize Tom Thunder to  
8 talk with Paul Schomer and discuss the results of  
9 Thunder's noise analysis?

10 A. Yes.

11 Q. I'm showing you what's been marked for  
12 purposes of identification as Complainants' Exhibit  
13 C-24. It appears to be printouts of two e-mails from  
14 John Sejud, S-e-j-u-d, to Jack Voigt the first of which  
15 is dated -- or at least the top one is dated March 5,  
16 1998 and the bottom one is dated March 3, 1998.

17 Did you in fact receive those e-mails in  
18 March of 1998 from John Sejud?

19 A. Yes.

20 Q. Did the information contained in the e-mails  
21 from John Sejud add to the pool of information you had  
22 as of March 1998 with which you evaluated the noise  
23 issues?

24 A. Yes.

1           Q.    I'm showing you a document that's been marked  
2           for purposes of identification as C-25.  It's a letter  
3           from Jack Voigt to Marvin Berman dated March 9, 1998.

4                    Is that your signature on the document?

5           A.    Yes.

6           Q.    Did you in fact send this letter to Marvin  
7           Berman on or about March 9, 1998?

8           A.    Yes.

9           Q.    Is this a true and accurate copy of the  
10          letter you sent to Mr. Berman on or about March 9,  
11          1998?

12          A.    Yes.

13          Q.    I'm showing you a document that's previously  
14          been marked for purposes of identification as  
15          Complainants' Exhibit 26.  It's a letter from David  
16          Mitchell to Jack Voigt dated March 10, 1998.

17                    Did you in fact receive this letter in March  
18          of 1998?

19          A.    Yes.

20          Q.    And did this letter contain information about  
21          noise barriers, the cost and alleged effectiveness of  
22          noise barriers?

23          A.    Yes.

24          Q.    Is this a true and accurate copy of the

1 document you received from David R. Mitchell of the  
2 Huff Company in March of 1998?

3 A. Yes.

4 Q. I'm showing you what's been marked for  
5 purposes of identification as Complainants' Exhibit 27,  
6 a letter from Karen Roti to Mike Hara dated March 21,  
7 1998. It's unsigned but I represent to you that Karen  
8 Roti sent a signed copy.

9 Did Mike Hara ever forward a copy of Ms.  
10 Roti's letter to you?

11 A. He may have.

12 Q. I'm showing you what's previously been marked  
13 for purposes of identification as Complainants' Exhibit  
14 C-28, Mike Hara's response to Karen Roti dated April  
15 16, 1998.

16 Did you have any role in preparing Mike  
17 Hara's response to Karen Roti?

18 A. Yes.

19 Q. What was your role?

20 A. We had talked about what would be our game  
21 plan to help -- you know, help give some response to  
22 the Rotis and, you know, to look at her situation.

23 Q. So you talked with Mike Hara and told him  
24 what you had found out in discussions with the Huff

1 Company and discussions with Tom Thunder and  
2 information you had received from Mr. Sejud?

3 A. Right.

4 Q. I'm showing you what's been marked for  
5 purposes of identification as Complainants' Exhibit 29  
6 a letter from Karen Roti to Mike Hara dated April 20,  
7 1998.

8 Do you know whether Mr. Hara ever forwarded  
9 that letter to you for review?

10 A. He may have. Does it jump out at me? No,  
11 but I'm sure I did have a chance to see it.

12 Q. All right. Now, I'm showing you what's  
13 previously been marked for purposes of identification  
14 as Complainants' Exhibit 30. It's a fax cover sheet  
15 from David Lothspeich to Mike Hara and Jack Voigt dated  
16 April 23, 1998. It encloses or attaches a letter from  
17 Paul Schomer to David Lothspeich dated March 16, 1998.

18 Did you receive this fax from David  
19 Lothspeich on or about April 23, 1998?

20 A. Yes.

21 Q. And the fax you received, it included the  
22 letter from Paul Schomer to David Lothspeich dated  
23 March 16, 1998?

24 A. Yes.

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1 Q. And I'd like to direct your attention if I  
2 may.

3 A. Yes.

4 Q. If you could read the entire paragraph on the  
5 second page of Schomer's letter to Lothspeich. If you  
6 could read that aloud, please.

7 A. "It is now time to mitigate the known  
8 measured noise impact" --

9 MR. KOLAR: I object. This is going to be part of  
10 the record. I don't know if it's necessary to read a  
11 pretty lengthy paragraph into the record.

12 MR. KAISER: I would agree. That's fine.

13 BY MR. KAISER:

14 Q. Did you understand that Mr. Schomer, as of  
15 April of 1998, felt that LTD should build a noise wall?

16 And if you need to look at his letter to

17 refresh your recollection, you may?

18 A. Yes.

19 Q. I want to show you what's been marked for  
20 purposes of identification as Complainants' Exhibits 31  
21 and 32. 31 is a letter from Tom Thunder to Jack Voigt  
22 dated May 19, 1998.

23 Did you receive that letter some time in late  
24 May 1998?

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1 A. Yes.

2 Q. Did you read the letter when you received it?

3 A. Yes.

4 Q. And with respect to all these letters you  
5 received, I take it you read the letters?

6 A. Yes.

7 Q. C-32 is a letter from Tom Thunder to Jack  
8 Voigt dated June 5, 1998.

9 Did you receive this letter in June of 1998?

10 A. Yes.

11 Q. Did you read the letter?

12 A. Yes.

13 Q. I'm showing you what's been marked for  
14 purposes of identification as C-33. It's a letter from  
15 Mike Hara to Mike Grutza, President, Village of  
16 Bannockburn. It's dated June 29, 1998. I want to show  
17 you that letter.

18 Do you recognize that?

19 A. Yes.

20 Q. Do you note at the top it references a  
21 meeting between Mike Hara, Karen Roti, Tony Roti and  
22 yourself in June of 1998?

23 A. Yes.

24 Q. Do you recall attending a meeting at LTD's

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1 office in Bannockburn, Illinois in June of 1998 at  
2 which Karen and Tony Roti were present?

3 A. Yes.

4 Q. What was the purpose of the meeting?

5 A. We wanted to try to solve their concern the  
6 best we could face to face.

7 Q. What did you understand Karen and Tony Roti's  
8 concerns to be with respect to noise from LTD's dock

9 operations in June of 1998?

10 A. They indicated that they felt they were being  
11 kept awake by truck noises that they felt that were  
12 coming from LTD's property.

13 Q. Was there discussion at that time about LTD  
14 building a noise wall to reduce transmission and noise  
15 from its docks to the Roti residence?

16 A. I believe there was.

17 Q. Do you recall Mike Hara asking the Rotis  
18 whether they wanted to pay for that noise wall?

19 A. He may have.

20 Q. Do you remember that subject coming up, who  
21 should pay for the noise wall?

22 A. Yes.

23 Q. Do you remember Tony Roti telling Mike Hara  
24 that Tony Roti thought Mike should pay for it since LTD

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1 was the one causing the noise or words to that effect?

2 A. Yes, I guess.

3 Q. That meeting got a little heated at one  
4 point, didn't it?



5 A. Yes.

6 Q. I take it you and Karen Roti weren't battling  
7 one another, but Mike Hara and Tony Roti had some words  
8 with one another, didn't they?

9 A. Yes.

10 Q. I'm showing you what's previously been marked  
11 for purposes of identification as Complainants' Exhibit  
12 34. It's the complaint in this matter.

13 I take it at some point since July of 1998 to  
14 the present you have seen this complaint?

15 A. Yes.

16 Q. I'm showing you C-35 which is a letter from  
17 Tom Thunder to you dated September 30, 1998.

18 Did you receive this letter?

19 A. Yes.

20 Q. I take it you probably received it late  
21 September, early October of 1998?

22 A. Yes.

23 Q. And it's still Tom Thunder talking about the  
24 cost of construction of a noise wall or effectiveness

1 of a noise wall?

2 A. Yes.

3 Q. I'm showing you what's been previously marked  
4 for purposes of identification as Complainants' Exhibit  
5 38-J a memo from Steve Mitchell to Jack Voigt dated  
6 January 13, 1999 and Complainants' Exhibit 38-K a memo  
7 from Steve Mitchell to Jack Voigt dated February 13,  
8 1999.

9 Do you recognize these exhibits, 38-J and  
10 38-K? 38-J first, please.

11 A. Yes.

12 Q. Did you receive that on or about January 13,  
13 1999?

14 A. Yes.

15 Q. Did you read it?

16 A. Yes.

17 Q. With respect to 38-K, did you receive this  
18 memorandum on or about February 13, 1999?

19 A. Yes.

20 Q. Did you read it?

21 A. Yes.

22 Q. I'm showing you what's been marked previously  
23 for purposes of identification as Complainants' Exhibit  
24 36. I'll represent to you it's a figure created by Tom

1 Thunder.

2 Did you ever see this figure or this  
3 numerical analysis of the effectiveness of a noise  
4 wall?

5 A. I don't recall seeing this.

6 Q. Did you ever talk with Tom Thunder about the  
7 effectiveness of a noise wall?

8 A. Yes.

9 Q. And is it fair to say you were concerned that  
10 a noise wall might not reduce noise enough?

11 A. Right.

12 Q. And that's still your position, right?

13 A. Yes.

14 Q. Did you ever talk with Steve Mitchell about  
15 what types of guarantees he could provide you with  
16 respect to the effectiveness of a noise wall?

17 A. Yes.

18 Q. Is that on the telephone or in person, the  
19 conversations you had with Steve Mitchell?

20 A. Both.

21 (Complainants' Exhibit No. 59  
22 was marked for  
23 identification.)

24

1 BY MR. KAISER:

2 Q. I want to show you what I'm marking for  
3 purposes of identification as Complainants' Exhibit 59.  
4 I'll note for the record that it's invoices from  
5 Acoustic Associates, Limited to Jack Voigt. I'm not  
6 certain if I have a copy of these, though I'll look in  
7 my box.

8 Mr. Voigt, I'd ask you to take a look at  
9 Complainants' Exhibit 59 which is a -- let me just note  
10 for the record it's a 16 page document. If you'd thumb  
11 through those, are those some, if not all, of the  
12 invoices submitted by Acoustic Associates Limited to  
13 LTD in connection with the work it had done for LTD?

14 A. Yes.

15 Q. And LTD has paid those invoices, has it not?

16 MR. KOLAR: Objection, relevance.

17 HEARING OFFICER KNITTLE: Mr. Kaiser.

18 MR. KAISER: I want to -- one of the arguments  
19 that has been raised in this case is that the  
20 complainants could have gone out and hired their own  
21 sound expert, they could have obtained their own noise

22 readings. And there is an implication that because  
23 they didn't -- well, there may be argument in closing  
24 briefs about why they did or did not, and I want to

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1 point out what the cost of those types of  
2 investigations are. And we can make that argument by  
3 reference to Acoustic Associates' invoices to LTD in  
4 connection with the work in this case.

5 HEARING OFFICER KNITTLE: Mr. Kolar.

6 MR. KOLAR: Well, I think the invoices go beyond  
7 the actual measurement of noises. I think they relate  
8 to telephone conferences, planning study, a meeting  
9 with Paul Schomer, Bannockburn's noise consultant. So  
10 I think it's, number one, inaccurate to state that all  
11 these invoices totaled together would be the cost to  
12 hire your own noise consultant. And, second, I haven't  
13 heard any of the complainants say they did not have the  
14 financial ability to hire their own noise consultant.

15 HEARING OFFICER KNITTLE: The objection is  
16 sustained.

17 MR. KAISER: If I may offer one more basis.



14 products?

15 A. Yes.

16 Q. Do I recall your deposition testimony  
17 correctly that at any given time LTD offers for sale  
18 between 2,000 and 5,000 products?

19 A. Yes.

20 Q. With respect to the trucking operations is  
21 there any difference, meaningful difference between the  
22 number of trucks that come into LTD on a Monday and the  
23 number of trucks that come into LTD on a Friday?

24 A. No.

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1 Q. You don't staff any differently on Monday  
2 than you do on Friday, right?

3 A. No. I would only say that it's possible that  
4 unexpected live loads may show heavier on a Monday  
5 simply because someone may have traveled over the  
6 weekend and chose to.

7 Q. Unexpected live loads are a little more  
8 likely to show up during the daytime than during the  
9 second shift, right?

10 A. Yes.

11 Q. But other than those occasional live loads --  
12 and that means somebody who wasn't scheduled, right?

13 A. Yes.

14 Q. Other than those occasional live loads do you  
15 receive shipments of boxes during the second shift?

16 A. Yes.

17 Q. Do you receive shipments of the styrofoam  
18 peanuts during the second shift?

19 A. Yes.

20 Q. And really your goal, as the person  
21 overseeing the shipping and receiving operations for  
22 LTD, is to make sure that it's a fairly steady flow of  
23 traffic and that it doesn't build up either at the  
24 beginning of the week or the end of the week, right?

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1 A. Yes.

2 Q. And, similarly, you don't want to have the  
3 first shift working double time and the second shift  
4 sitting around, right?

5 A. Yes.



6 Q. And you try to schedule the deliveries, the  
7 receiving, and the shipping almost equal between the  
8 first and the second shift, right?

9 A. There is more volume on the first shift  
10 simply because of the live loads and the UPS/Federal  
11 Express type deliveries that happen.

12 Q. But with respect to the products going out,  
13 the loaded tractors filled with goods from LTD  
14 Commodities to LTD's customers, those go out pretty  
15 much evenly day in -- first shift and second shift,  
16 right?

17 A. Yes.

18 Q. And Friday night is virtually as busy as  
19 Monday night?

20 A. Yes.

21 Q. Are you aware of the truck volume -- strike  
22 that.

23 Are you aware that the Rotis, Webers and  
24 Rosenstocks have all identified noise from a backup

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1 beeper on one of LTD's -- well coming from LTD's truck

2 dock that sounds different this year, summer and fall  
3 of 1999, than it did in previous years?

4 A. Am I aware that they have identified that?

5 Q. Well, are you aware -- are any vehicles in  
6 LTD's loading dock this year, summer and fall of 1999,  
7 using a backup warning beeper that's different in any  
8 respect than the backup warning beeper LTD used in  
9 previous years?

10 A. Yes.

11 Q. What is the difference?

12 A. I believe this year the yard tractor has a  
13 backup warning device and previous years did not.

14 Q. The yard tractor in the years 1998 and 1997,  
15 and perhaps even as far back as 1996, did not have that  
16 backup warning beeper on it?

17 A. I believe that's true.

18 Q. So it was only the over-the-road truck  
19 tractors that had the backup warning beepers in years  
20 past, if any?

21 A. Yes.

22 Q. I see. But this year the yard tractor that's  
23 stationed 100 percent of its time in LTD's dock area is  
24 operating with a backup warning beeper?

1           A.    Yes.

2           Q.    And do you know whether that backup warning  
3 beeper is engaged by the transmission of the tractor?

4           A.    I would believe when it's put into the  
5 reverse gear that it activates the alarm.

6           Q.    Have you personally done any research or are  
7 you aware of any research done on behalf of LTD which  
8 would demonstrate that LTD can comply with the  
9 regulations promulgated by the Occupational Safety and  
10 Health Administration by disconnecting the warning  
11 beeper but using a person to manually safeguard the  
12 rear of the yard tractor or the trailer it's engaged  
13 with at that time?

14          A.    I have not.

15          Q.    You are aware that the Huff Company has  
16 proposed construction of a noise wall that would extend  
17 from the western portion of LTD's dock area to the  
18 eastern portion including coverage of the spur  
19 connecting the dock area with Lakeside Drive?

20          MR. KOLAR:  Objection.  I think "proposed  
21 construction" is inaccurate.  That's not supported by  
22 the evidence.  They have a proposal for a noise wall.  
23 They're not proponents necessarily of a noise wall  
24 other than for business reasons.

1 MR. KAISER: I'd accept that limitation.

2 BY MR. KAISER:

3 Q. You received a proposal from the Huff Company  
4 for construction of a noise wall from the western end  
5 of LTD's dock area to the east including coverage of  
6 the spur area connecting LTD's loading dock with  
7 Lakeside Drive?

8 A. Yes.

9 Q. You're aware that that wall would cost in the  
10 vicinity of \$300,000?

11 A. I believe that's correct.

12 Q. And you're aware that the Huff Company, and  
13 Steve Mitchell, is of the opinion or has told you that  
14 the wall they have proposed would reduce transmission  
15 of noise from LTD's docks to the Roti, Weber and  
16 Rosenstock residences, correct?

17 A. Yes.

18 MR. KAISER: Thank you, Mr. Voigt. I have no  
19 further questions at this time.

20 HEARING OFFICER KNITTLE: Mr. Kolar.

21 MR. KOLAR: Thanks.

22 THE WITNESS: Could we go off the record for a  
23 second?

24 HEARING OFFICER KNITTLE: Sure.

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1 CROSS EXAMINATION

2 BY MR. KOLAR:

3 Q. Jack, you saw this, Respondent's Exhibit 89?

4 A. Yes.

5 Q. And even though you weren't with the company  
6 prior to 1990, in your nine years have you gained an  
7 understanding as to the stages of the three buildings  
8 that now comprise the LTD warehouse office facility?

9 A. Yes.

10 Q. And if I drew a line vertically here that  
11 would separate the -- sort of the pre-LTD building from  
12 the first expansion, right?

13 A. Yes.

14 Q. The FMC building from then the --

15 A. Yes.

16 Q. Right here?

17 A. Yes.

18 Q. We'll mark this further.

19 And if I drew a horizontal line right here,  
20 that would separate the '95 expansion from the FMC and  
21 the first LTD expansion, right?

22 A. Yes.

23 Q. So in this quadrant to the upper left if I  
24 just put "1986," that would represent the warehouse as

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1 of '86 when LTD bought the building?

2 A. Yes.

3 Q. And then this section to the right would be  
4 the addition from 19- -- I think late 1987, right?

5 A. Yes.

6 Q. And then down below would be the 1995  
7 addition?

8 A. Yes.

9 Q. Now, the truck staging area that you told Mr.  
10 Kaiser was reconfigured with the '95 addition -- if I  
11 understand correctly though, the auto parking lot was  
12 always above grade relative to the truck dock area,  
13 right?

14 A. Yes.

15 Q. So if we can clarify this, there had to be  
16 something there before this concrete wall in order to  
17 have a transition area from the low-grade dock area to  
18 the above grade automobile parking lot --

19 A. Yes.

20 Q. -- true?

21 A. Yes.

22 Q. Can you explain what it looked like before  
23 the concrete block retaining wall was built with the  
24 truck bumpers?

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1 A. There is an existing portion of the retaining  
2 wall. It was a wood retaining wall that went from east  
3 to west. As you proceeded from the east, east being  
4 the highest portion of the wall, and then going to the  
5 west, the wall steadily declined until the -- I guess  
6 by doors one and two which are ground level doors and  
7 there was no need for a retaining wall because the  
8 parking lot wasn't equal height to the truck staging  
9 area there.

10 Q. Okay. So the concrete block wall that's  
11 there now was sort of an improvement over an older  
12 retaining wall?

13 A. Yes.

14 Q. But on top of that, as you acknowledge, the  
15 wooden bumpers for the truck staging area were added?

16 A. Yes.

17 Q. Now, in 1994, the fall of 1994, was LTD  
18 operating a second shift?

19 A. Yes.

20 Q. Were there trucking operations on that second  
21 shift?

22 A. Yes.

23 Q. In the fall of 1995 was LTD operating a  
24 second shift?

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1 A. Yes.

2 Q. Were there trucking operations in the 1995  
3 second shift?

4 A. Yes.

5 Q. Currently 1999 when the second shift ends and



6 employees go home does LTD in any manner sort of lock  
7 up for the night?

8 A. Yes, we do.

9 Q. Can you explain that just generally? What  
10 happens in terms of shutting down?

11 A. Once we complete the shift, trucks are  
12 finished loading and are pulled out of the dock area.  
13 The dock doors are closed and locked and secured. The  
14 security system is turned on and we leave the premises.

15 Q. And for 1999 the Aurora facility is going  
16 full tilt?

17 A. Yes.

18 Q. Are there fewer trucks coming into the  
19 Bannockburn facility in '99 than 1998 because of the  
20 Aurora facility?

21 MR. KAISER: Objection, foundation. I'd like to  
22 know how he knows. I mean, I'm assuming he's going to  
23 give an answer to that question but I'd like to know  
24 what he's looked at.

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1 HEARING OFFICER KNITTLE: Sustained.

2 BY MR. KOLAR:

3 Q. Do you know if there are fewer trucks coming  
4 into the Bannockburn facility in 1999 than 1998 and  
5 1997 because of the Aurora facility, yes or no?

6 A. Yes.

7 Q. Okay. And how do you -- before giving an  
8 answer, how do you know truck traffic in 1999 versus  
9 '98 and '97?

10 A. How do I know the --

11 Q. Yes, how do you know the answer to that  
12 question.

13 A. Roughly 40 to 45 percent of our volume of  
14 work now is shipped out of Aurora. Relative to  
15 pre-1998 of October 100 percent was coming out of  
16 Bannockburn.

17 Q. So then in 1999 versus '98 you think there  
18 are fewer trucks in and out of Bannockburn than in '98?

19 A. I would speculate that is true.

20 MR. KAISER: Objection.

21 BY MR. KOLAR:

22 Q. We didn't want you to speculate. So I mean,  
23 based on your experience at Bannockburn, your knowledge  
24 of the distribution at Bannockburn, your knowledge of

1 the distribution at Aurora, can you tell the Pollution  
2 Control Board if based on that experience there is less  
3 truck traffic this year than last year at Bannockburn?  
4 If you don't know, you don't know. I don't want  
5 speculation.

6 A. I don't have numbers in my mind that can say  
7 yes or no. I'm basing it on outbound shipping that we  
8 do. The volume is less this year than we did last  
9 year. And, again, it's only an assumption at that  
10 point because outbound trailers are quite a bit less  
11 because of less volume being shipped out. Do I know --  
12 do I see two numbers side by side? I don't have that.

13 Q. Okay. The only way you get product out of  
14 the warehouse in Bannockburn is by trucks, right?

15 A. Correct.

16 Q. Trucks ship the merchandise out of the  
17 warehouse?

18 A. Correct.

19 Q. You do know that in 1999 because of Aurora  
20 the Bannockburn shipments out are down?

21 A. Yes.

22 MR. KAISER: Objection. That assumes that sales  
23 are steady or falling. And without that number I don't  
24 think he can make any assumption about volume, overall

1 volume because you're basing it on -- there is an  
2 assumption that's being made, and we don't know if  
3 that's accurate.

4 HEARING OFFICER KNITTLE: I'm going to overrule.  
5 I think he can answer just based on his job description  
6 whether or not the volume is down. And I would hope  
7 that he's not making assumptions that are not in  
8 evidence. You could, Mr. Kaiser, delve into that.

9 MR. KAISER: I'll do cross. Fine.

10 BY MR. KOLAR:

11 Q. In 1999 does LTD have any sort of internal  
12 policy regarding having trucks arrive during the day  
13 shift versus the night shift or any sort of preference?

14 A. We pretty much try to spread it out during  
15 the day. Again, we don't have control of our day shift  
16 as good as we do on the night shift simply because  
17 truckers of the nonscheduled type are less likely to  
18 come in on nights because lot of companies are not open  
19 on second shift. So our volume on days is higher that  
20 way.

21 Q. In the time where you have been at LTD in  
22 distribution has LTD's operation ever been opened 24

23 hours a day?

24 A. No.

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1 Q. Has the yard tractor at LTD ever operated 24  
2 hours a day?

3 A. No.

4 Q. Some time this week was the yard tractor  
5 backup beeper not operating?

6 A. Yes.

7 Q. Why is that?

8 A. Well, I had heard that the neighbors were  
9 concerned about the backup beeper warning device so we  
10 thought we would try an experiment and say, well, you  
11 know, is there an appreciable difference between it  
12 working and not working.

13 Q. When was it disconnected and when was it  
14 reconnected?

15 A. It was off for approximately 36 hours  
16 Tuesday -- I think Tuesday at 3 o'clock, and it was put  
17 back on Thursday morning at 6 a.m., 7 am.

18 Q. And this wasn't the only occasion that LTD

19 had disconnected the backup beeper, right?

20 A. Yes. Roughly two months ago I heard it, and  
21 I asked our maintenance department to disconnect it.

22 Q. How long was it disconnected?

23 A. I would say it was about -- I don't know if  
24 it was quite a week or not.

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1 Q. And the backup beeper on the yard tractor, is  
2 that something -- is LTD still looking into that as to  
3 whether it can permanently disconnect the backup  
4 beeper?

5 A. Yes.

6 Q. And is that something LTD would be willing to  
7 do if it was not in violation of a law to do that and  
8 it didn't have any safety ramifications?

9 A. Yes.

10 Q. Now, except for the yard tractor do all  
11 tractors that come in and out of the LTD facility have  
12 to your knowledge license plates on them?

13 A. Yes.

14 Q. And all these other trucks, other than the

15 yard tractor, come to LTD by Route 22 to Lakeside  
16 Drive?

17 A. Yes.

18 Q. And to your knowledge Lakeside Drive, is that  
19 a public or private road?

20 A. Public.

21 Q. You told Mr. Kaiser about the corrugated  
22 shipment, do you recall that?

23 A. Yes.

24 Q. So I understand, everyday more than once a

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1 day you have cardboard boxes being shipped to LTD?

2 A. Yes.

3 Q. And tape is shipped to LTD?

4 A. Yes.

5 Q. And packaging peanuts are shipped to LTD?

6 A. Yes.

7 Q. So what does LTD do with these boxes and tape  
8 and packing peanuts?

9 A. We offload the trucks. We store it on  
10 shelving, racks, and we utilize those supplies for our

11 outbound shipping.

12 Q. Do employees build boxes with the cardboard  
13 and the tape?

14 A. Yes.

15 Q. And then they, what, might put in some items  
16 from your catalog into a box?

17 A. Yes.

18 Q. Fill it up with peanuts?

19 A. Yes.

20 Q. Close the box?

21 A. Yes.

22 Q. Put tape on the box?

23 A. Strapping, taping, both.

24 Q. And then we have got a package which goes

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1 back into a truck?

2 A. Yes.

3 Q. And that's shipped off to someplace 'till it  
4 eventually makes its way to the business address,  
5 right?

6 A. Yes.



7 Q. And that building of boxes, packing of boxes,  
8 filling with peanuts, closing boxes happens in the LTD  
9 warehouse?

10 A. Yes.

11 Q. Okay. And storage of the merchandise and  
12 that packing and crating activity, that's really the  
13 only thing that happens in the warehouse, right?

14 A. Yes.

15 Q. And every piece of merchandise that comes to  
16 LTD and every piece of merchandise that leaves LTD does  
17 so through the truck docks, right?

18 A. Yes.

19 Q. You mentioned 26 truck docks, but I didn't  
20 hear what happens with 1, 2, and 3. Tell us about  
21 those.

22 A. Docks 1 and 2 are ground level dock doors  
23 that are used for fork trucks/repair trucks backing in,  
24 pickup trucks can come in and out. Door 3 is a

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1 compactor used for our dumping of garbage and things.

2 Q. So when you say "ground level" I guess for

3 the ones 4 through 26, when a trailer backs into the  
4 truck dock, once it's goes all the way down and makes  
5 contact, the warehouse level would be about six feet  
6 above the ground that the truck tires are on?

7 A. It would be more like three and a half to  
8 four feet, but it would -- door 3 is also that way or  
9 dock -- I guess I would say door 3 is the same way,  
10 it's just that that dumpster is modified to be at the  
11 same level as a trailer would be.

12 Q. Okay. Docks 1 and 2, the floor of the dock  
13 is level with so to speak the floor of the warehouse at  
14 that location?

15 A. Yes, and the parking lot.

16 Q. And has LTD ever operated any of its  
17 warehouse area as a public warehouse for other  
18 businesses or individuals?

19 A. No.

20 Q. It's always been strictly devoted to LTD's  
21 private uses?

22 A. Yes.

23 Q. Now, where approximately is your office  
24 located in the facility? Are you in the original

1 office facility or do you have something in the  
2 warehouse area?

3 A. Actually I'm in the part of the building  
4 that's 1986. And there is a hallway that goes between  
5 the 1986 and the office complex. In the northeast  
6 corner of where that hallway runs, that's where my  
7 office is located. Right up -- just a little bit right  
8 there about -- no, down a little bit.

9 Q. In any event, your office is in the block  
10 that we have marked 1986 and it would sort of be in the  
11 northwest --

12 A. Corner of that, yes.

13 Q. -- corner of that block?

14 Can you hear trucking operations in your  
15 office?

16 A. No.

17 Q. Have employees ever come to complain to you  
18 that noise from LTD trucking operations is adversely  
19 affecting them in any way?

20 A. No.

21 Q. As part of your job at LTD have you had  
22 occasion to walk in the truck dock area?

23 A. Yes.

24 Q. And have you walked on the sidewalk above the

1 truck staging area?

2 A. Yes.

3 Q. Have you seen tractor-trailers back into the  
4 truck staging area?

5 A. Yes.

6 Q. Have you seen tractor-trailers come in  
7 contact with the wooden bumpers in that area?

8 A. Yes.

9 Q. Have you ever felt the ground shake when  
10 contact was made between the tractor-trailer and the  
11 wooden bumper?

12 A. No.

13 Q. To your knowledge is there any trucking  
14 reason why a tractor-trailer operator would want to at  
15 an excessive speed ram the trailer into the wooden  
16 bumper?

17 A. No.

18 MR. KAISER: Objection, calls for speculation.

19 HEARING OFFICER KNITTLE: Mr. Kolar.

20 MR. KOLAR: He's in the distribution business  
21 running a trucking operation. I would think he would  
22 be able to tell us whether there is a business reason

23 or a trucking need to hit those at an excessive speed.

24 MR. KAISER: I don't think that was the limit of

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1 the question. If that's the limit that is there a  
2 trucking need as opposed to a personal need to release  
3 tension or vent feelings of rage or some other thing  
4 that might motivate someone to slam a trailer into a  
5 dock, I'd be happy to hear Mr. Voigt's opinion, but if  
6 it's a broader inquiry, like the one I just outlined,  
7 I'd object.

8 HEARING OFFICER KNITTLE: Mr. Kolar, is that okay?

9 MR. KOLAR: Yes.

10 HEARING OFFICER KNITTLE: Can you rephrase it just  
11 because I don't know if the witness remembers.

12 BY MR. KOLAR:

13 Q. Is there any trucking need, truck operator  
14 need to your knowledge -- strike that. Let me put it  
15 this way.

16 In the normal course of backing a  
17 tractor-trailer into a truck staging area, doing it  
18 correctly, is there any reason to ram the trailer into

19 the wooden bumper block?

20 A. No.

21 Q. Okay. And in your experience since 1990 have  
22 you noticed an inordinate amount of time when drivers  
23 appeared to be angry and just wanted to ram their  
24 trailers into the wooden bumper blocks?

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1 A. No.

2 Q. Have you noticed that at all where truck  
3 drivers seemed to for some reason wanted to just ram  
4 their trailers into that wooden bumper block?

5 A. No.

6 Q. If that happens at all how frequently does it  
7 happen when somebody hits it too fast?

8 MR. KAISER: Objection, calls for speculation  
9 unless he can lay a foundation.

10 MR. KOLAR: Let me ask.

11 BY MR. KOLAR:

12 Q. Have you ever seen a tractor-trailer driver  
13 ram into the wooden bumper blocks at which you felt was  
14 too fast a speed?

15                   A.    Not that I recall.  
16                   Q.    It might have happened?  
17                   A.    Sure.  I mean, it's possible.  
18                   Q.    But you don't recall seeing that happen,  
19                   right?  
20                   A.    No.  
21                   Q.    As Vice-President of Distribution is that  
22                   something that you would stand for?  
23                   A.    No.  
24                   MR. KAISER:  Objection, calls for speculation.

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1                   HEARING OFFICER KNITTLE:  Overruled.  
2                   BY MR. KOLAR:  
3                   Q.    Jack, have you ever been on Wedgewood Street  
4                   where the Rotis, the Webers and Mr. Rosenstock live  
5                   on?  
6                   A.    Yes.  
7                   Q.    Were you in a car or walking?  Explain that  
8                   to us.  
9                   A.    I drove through the neighborhood.  
10                  Q.    Did you put your windows down?

11 A. On a summer day I may have.

12 Q. Well, were you there when LTD had trucking  
13 operations going on?

14 A. Yes.

15 Q. When was that, do you remember?

16 A. Boy. There is no specific date. I mean, I  
17 periodically drive through there just sightseeing  
18 really.

19 Q. What was your observation of noise on the  
20 occasion or occasions that you were on Wedgewood?

21 A. There was none. I didn't hear anything as I  
22 drove down the road.

23 Q. And in the last couple weeks were you in a  
24 car with Mr. Hara and another gentleman sitting on the

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1 north end of the LTD parking lot?

2 A. Yes.

3 Q. What time was that?

4 A. About 7:30 at night, 7 o'clock.

5 Q. On that occasion did you make an attempt to  
6 hear any noise from the LTD trucking operations?



7 A. Yes.

8 Q. How did you do that and what did you hear?

9 A. The gentleman that was driving, he was asked  
10 to stop his car and open up the windows. I was sitting  
11 in the back seat. Mike was in the front seat with the  
12 other gentleman. And we asked him to turn his car off,  
13 and we sat and listened for a couple minutes.

14 Q. What did you hear?

15 A. We heard very little at that time. I mean,  
16 there wasn't -- nothing that was extraordinarily loud  
17 or anything. I believe I may recall the yard tractor  
18 was moving but it was a very -- it was a sound that  
19 wasn't, you know, what I would call loud.

20 Q. Can you hear the tollway from your trucking  
21 area?

22 A. Yes.

23 Q. Do you have any personal experience with  
24 tollway noise?

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1 A. Yes. Where my family and I live we live  
2 within a half mile of the tollway.

3 Q. Does the tollway sound louder when it's wet?

4 A. Yes, especially when we have a northeast or  
5 east wind, and we happen to live on the west side, and  
6 it can be quite loud.

7 Q. Do you remember the questions by Mr. Kaiser  
8 about the meeting with you, Mike Hara, Karen Roti,  
9 Anthony Roti?

10 A. Yes.

11 Q. During that meeting at some point did Tony  
12 Roti say to Mike Hara something about going to the  
13 papers or going to the newspapers about LTD being a bad  
14 neighbor or not caring about his kids, something like  
15 that?

16 A. Yes.

17 Q. So you heard that?

18 A. Yes, I did.

19 Q. And how far -- where were you seated? Where  
20 was Karen Roti seated and where were Mike and Tony  
21 seated roughly?

22 A. I would estimate that we were all sitting  
23 within the confines of like along that table there.

24 Q. About a six foot table?

1           A.    Well, Michael's desk -- if we would say  
2           Michael was on this side of the desk, the Rotis were to  
3           the left of Mike and I was to the right of Mike.  And I  
4           was sitting alongside of -- I don't know, was it Mr. or  
5           Mrs.?  I want to say Mrs. was sitting in the middle and  
6           Mr. was on the left but, you know --

7           Q.    Mike was sitting at his desk?

8           A.    Yes.

9           Q.    And then on other side of the desk you had  
10          yourself and Mr. and Mrs. Roti?

11          A.    Yes.

12          Q.    And you heard Mr. Roti say something about  
13          papers or the newspaper?

14          A.    Yes.

15          Q.    And how many feet from you was Karen Roti at  
16          the time that Tony Roti said that?

17          A.    She was within three, four feet of me.

18          Q.    And did Mr. Roti whisper that when he said  
19          something about the papers or the newspapers?

20          A.    No.

21          Q.    Was it heated at that time?

22          A.    He seemed agitated.  It almost seemed like a  
23          threat.

24          MR. KAISER:  Objection.  What's my proper

1 objection? It's not nonresponsive, it's --

2 HEARING OFFICER KNITTLE: Voluntary?

3 MR. KOLAR: Volunteered.

4 MR. KAISER: Volunteered, exactly. Move to  
5 strike.

6 HEARING OFFICER KNITTLE: I'll sustain that.

7 BY MR. KOLAR:

8 Q. In your opinion did Mr. Roti's comment seem  
9 like a threat?

10 A. Yes.

11 Q. You remember on one occasion walking Mr.  
12 Kaiser and Greg Zak through the warehouse?

13 A. Yes.

14 Q. You took them in the '86, '87 and '95  
15 sections?

16 A. Yes.

17 Q. And exited through the office if I recall?

18 A. Yes.

19 Q. Did you ever walk Paul Schomer through any  
20 part of the warehouse? I don't know if you did.

21 A. I don't know that we walked through the whole  
22 building. I believe he was by the dock.

23 Q. But Mr. Zak, you remember showing Mr. Zak the

24

area where the trucks inside the building make contact

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1 with the dock?

2 A. Yes.

3 Q. And there was something there that raises up  
4 and goes into the bed of the truck, right?

5 A. Yes.

6 Q. What's that called?

7 A. That's called a dock leveler.

8 Q. Did he say something to you about your dock  
9 levelers?

10 A. Yes.

11 Q. What did he say?

12 A. He had indicated that especially I think the  
13 one that we looked at was noisy. I mean, it was giving  
14 off a -- when you activated it, the metal -- there is a  
15 portion that flips down. It's about a 12 to 18 inch  
16 piece of metal. And what it does is it extends the  
17 dock leveler out onto the trailer bed. And when the  
18 trailer is pulled out, what can happen is that the dock  
19 leveler will slam down, and this 12 to 18 inch piece of

20 metal will hit the side of the building or up against  
21 itself, the dock leveler.

22 Q. Okay. And has LTD done anything since that  
23 date regarding its dock levelers?

24 A. Yes. We brought in a company that does PM

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1 work on dock levelers and --

2 Q. What does that mean?

3 A. Preventative maintenance. And what they did  
4 is --

5 MR. KAISER: I'm going to object. I don't know if  
6 we have heard testimony about complaints of noise  
7 emanating from dock levelers, so I don't know that any  
8 repairs to that area would be material to the  
9 complaints in this case.

10 MR. KOLAR: We heard complaints about metal on  
11 metal sounds.

12 HEARING OFFICER KNITTLE: Are you talking about  
13 strictly in Mr. Voigt's testimony?

14 MR. KAISER: No, throughout the hearing.

15 HEARING OFFICER KNITTLE: If it's throughout the

16 hearing, if that's your objection, I'm going to  
17 overrule it. If it weren't beyond the scope of  
18 redirect, I would reconsider it. I don't know, but I  
19 think we can still get to that. He could call him on  
20 his own case in chief.

21 BY MR. KOLAR:

22 Q. You had a company come in and what?

23 A. What they did is they would replace worn  
24 parts that would bring it down at a slower rate similar

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1 to like a hatchback, you know, the cylinders that are  
2 used to bring down a car trunk or whatever.

3 Q. Let me show you Respondent's Exhibit 36.  
4 Take a look at that. Tell us what this group of  
5 documents is.

6 A. This is what we put together, a good neighbor  
7 policy. We put a sign up on the retaining wall. I  
8 believe we have a sign up on the door where the truck  
9 drivers enter the building.

10 Q. The sign, is that shown -- we have another  
11 photo, but is that shown on the last page where it's

12 located?

13 A. Yes.

14 Q. You have got a color copy there, the  
15 original, right?

16 A. Yes. I believe we also have a smaller sign  
17 that goes above the door where the truck drivers walk  
18 in.

19 Q. That's by receiving?

20 A. Yes.

21 Q. And that's what this indicates, second sign  
22 by receiving, right?

23 A. Yes. Oh, yes. There it is, yes.

24 Q. Did you give any sort of written document

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1 regarding the good neighbor policy to drivers that come  
2 to the facility?

3 A. Yes.

4 Q. Which one of these pages would be like that  
5 document or the document if you recall?

6 A. Well, we have the Page 2.

7 Q. It looks like some of these are duplicates, I



8           guess.

9           A.    Yes.

10          Q.    But Page 2, the text of that page --

11          A.    Yes.

12          Q.    -- something like this was given to the truck  
13           drivers?

14          A.    Yes.

15          Q.    Did you as part of this program send anything  
16           to the trucking companies?

17          A.    Yes, we did.

18          Q.    What was that?

19          A.    We sent them a letter about our good neighbor  
20           policy and to known truck companies that we do business  
21           with.

22          Q.    And at one point did you learn that trailers  
23           were parking up on the north end of the LTD parking  
24           lot?

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1           A.    Yes.

2           Q.    A couple years ago?

3           A.    Yes.

4 Q. What, if anything, did you do relative to  
5 that?

6 A. We put a sign up that said no trucks allowed  
7 up there. And then we monitor it with -- we have  
8 security personnel that monitor that area.

9 Q. How would you get a truck up to the auto  
10 parking area?

11 A. Instead of taking a left turn down towards  
12 the trucking dock they would go straight.

13 Q. Do you have anybody posted there?

14 A. Yes, we do.

15 Q. What is that person's job?

16 A. Their job is to give people authorization to  
17 go up into that parking lot and obviously trucks are  
18 not authorized.

19 Q. Do you hear horns honk occasionally at your  
20 facility?

21 A. I haven't heard it in over a year I would  
22 say.

23 Q. Is it accurate to state that as part of your  
24 good neighbor policy you prohibit unnecessary horn

1 blowing?

2 A. Yes.

3 Q. You didn't tell truckers "don't blow a horn  
4 if you're about to hit somebody," right?

5 A. No.

6 Q. So if they think it's necessary for safety  
7 reasons to blow their horn that's still okay with LTD?

8 A. Yes.

9 Q. What about the doors on the trailers, the  
10 back of trailers, has LTD done anything to prohibit  
11 those from swinging open and swinging closed, making  
12 banging noises?

13 A. Those are required to be hitched. There --  
14 as the doors are opened up they have a hook that can be  
15 hooked onto the side of the trailer in the open  
16 position.

17 Q. At any point did you ever speak to CTC about  
18 complaints about how the yard tractor driver was  
19 operating the yard tractor?

20 A. Yes.

21 Q. What did you tell somebody from CTC?

22 A. Well, I spoke to -- I believe it was Ty Clark  
23 at one time and there was another individual that we  
24 had a particular driver in this instance that we felt

1 was driving at a high rate of speed which would raise  
2 the RPMs of the yard tractor and, you know, make it  
3 louder. We asked that that speed be kept at a minimum  
4 which would be, you know, to whatever was necessary for  
5 them to get the job done.

6 Q. And the yard tractor, if I understand  
7 correctly, has this big disk like thing on the back  
8 which is the fifth wheel?

9 A. Yes.

10 Q. And that fifth wheel itself hydraulically  
11 goes up and down?

12 A. Yes.

13 Q. And the purpose of it moving up hydraulically  
14 is to lift a trailer off its --

15 A. Legs.

16 Q. -- legs?

17 A. Yes.

18 Q. So what if -- so you're saying, if I  
19 understand, if the legs on a trailer are at a certain  
20 height, then the yard tractor doesn't have to activate  
21 and operate the fifth wheel as much?

22 A. True.

23 What would be a situation is that if the legs

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1 obviously then the bed of the trailer or where the pin  
2 would be would be at its highest level, therefore, when  
3 a fifth wheel is backed into it that, that would have  
4 very little resistance and would make for a quieter  
5 connection.

6 Q. And with engaging a tractor and a trailer  
7 together is there a certain -- to your knowledge, in  
8 the distribution business here since 1990, is there a  
9 certain speed that has to be maintained in order to  
10 engage a tractor and a trailer?

11 A. Well, there has to be some degree of contact  
12 there that would substantiate, you know, to the driver  
13 that there is a connection, and that when a driver  
14 would pull away, trying to pull the trailer with the  
15 tractor, that it was connected properly.

16 Q. Is there to your knowledge a trucking reason  
17 why a driver of a tractor wanted to make contact with  
18 the trailer and at an excessive rate of speed?

19 A. No.

20 Q. You're familiar with the corporate office  
21 building to your east?  
22 A. Yes.  
23 Q. And you understand that to be Corporate 100?  
24 A. Yes.

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1 Q. Is this Corporate 100?  
2 A. Yes, it is.  
3 Q. Let me just put "C-100" on that.  
4 That doesn't mean complainants' exhibit but  
5 where I wrote "C-100" is the Corporate 100 office  
6 building, right?  
7 A. Yes.  
8 Q. Is that a garbage facility in this area  
9 that's circled that has a "3" and a "G" by it?  
10 A. Yes.  
11 Q. Have you ever looked inside that enclosure?  
12 A. Yes.  
13 Q. What's in there?  
14 A. There is two dumpsters. It appears to be  
15 units that the garbage truck would back into and pick

16           it up and dump the garbage into the truck and then they  
17           set it back down.

18           Q.    And what's the size of one of those  
19           dumpsters?

20           A.    Half the size of a car or the size of a small  
21           car.

22           Q.    When Roger Harmon did the noise measurements  
23           on I think it was September 23rd and 24, 1997, meaning  
24           11 p.m., etc. into the early morning hours, to your

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1           knowledge was that a typical fall evening in terms of  
2           LTD's operations?

3           A.    Yes.

4           MR. KAISER:  Objection, basis foundation.

5           MR. KOLAR:  They're there seven years by that  
6           time.

7           HEARING OFFICER KNITTLE:  Why don't you lay a  
8           little bit of foundation, Mr. Kolar.

9           BY MR. KOLAR:

10          Q.    Late September 1997, would LTD have been into  
11          its Christmas season?

12 A. Yes.

13 Q. And is it busier at LTD in the Christmas  
14 season?

15 A. Yes.

16 Q. Did LTD have a night second shift in the fall  
17 of 1997?

18 A. Yes.

19 Q. And you knew that -- strike that.

20 Did anybody tell you that Mr. Thunder wanted  
21 to measure noise and he wanted to do it on a typical  
22 night in the fall season?

23 A. Yes.

24 Q. And to your knowledge the activities on the

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1 night when Roger Harmon was out there actually taking  
2 measurements was a typical night for the 1997 season?

3 A. Yes.

4 Q. And did you do anything to try to reduce  
5 truck traffic for that night?

6 A. No.

7 Q. Steer trucks away?



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A. No.

Q. Have fewer employees that night?

A. No.

Q. Let me try to do this quickly but I'll show you some photos which have been marked previously as Respondent's Exhibits 51 through 85. Now I think on two occasions you, before right now, you have been through these photos?

A. Yes.

Q. Do these -- we'll talk about what they show, but do every one of these photos truly and accurately depict the scene as it would exist today at LTD Commodities and the surrounding area?

A. Yes.

Q. 51. What does 51 show?

A. This is the new building, the -- what we call the Pizzuiti building. It looks to be the east side of

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1  
2  
3

the Corporate 100 parking lot looking south.

Q. That would be this new office building to the southeast of Corporate 100?

4 A. Yes.

5 Q. 52?

6 A. This looks like we're looking at LTD's  
7 building and the Corporate 100 building side by side  
8 almost where the cul-de-sac would be and we're looking  
9 to the south.

10 Q. So it just gives this perspective of the  
11 proximity of LTD and Corporate 100, right?

12 A. Yes.

13 Q. 53, is that Corporate 100?

14 A. Yes.

15 MR. KOLAR: It's a little quicker if I can lead.

16 MR. KAISER: Lead.

17 BY MR. KOLAR:

18 Q. 54, does that to you look like a view from  
19 the east end of Corporate 100's parking lot looking  
20 west towards your property?

21 A. Yes.

22 Q. And 55, is that the same view?

23 A. It looks like we're a little farther east  
24 but -- I mean farther to the west but it's the same

1 view.

2 Q. And in the background this wooden structure,  
3 is that the area where Corporate 100 keeps its garbage  
4 cans?

5 A. Yes.

6 Q. 56 and 57, what do those show?

7 A. 56 is a view from our southwest corner of the  
8 building showing the tollbooth for getting onto 94  
9 northbound.

10 Q. 58 and 59?

11 A. And I guess this is the tollbooth here.

12 Q. So those both show the -- basically the  
13 tollbooths?

14 A. 57.

15 Q. 58 and 59?

16 A. This is a view to the west showing the  
17 tollway, Interstate 94.

18 Q. So both of those are from LTD's property  
19 looking west at the tollway traffic and the tollway?

20 A. Yes. From our property, yes, from LTD.

21 Q. 60, that's sort of a view from LTD's property  
22 looking to the southwest?

23 A. Yes.

24 Q. You can see the tollway?

1 A. And 22 can be seen here.

2 Q. You barely see a car on 22?

3 A. Yes.

4 Q. Then here we got 61, 62, 63, what do those  
5 show?

6 A. This is -- it appears to be from across the  
7 Interstate 94 looking at LTD and showing traffic and  
8 also showing the on-ramp northbound where the tollbooth  
9 is.

10 Q. So these would be photos on the west side of  
11 the tollway looking east across northbound lanes to LTD  
12 Commodities?

13 A. Yes.

14 Q. 64, does that look like a view looking south  
15 along the east side of LTD towards Route 22?

16 A. Yes.

17 Q. And then 65 and 66?

18 A. These are pictures of our building from the  
19 south side looking to the north.

20 Q. That's the circular thing we see here on  
21 Exhibit 89, right?

22 A. Correct.

23 Q. Part of the new addition?

24 A. The lunch room.

1 Q. And 67 and 68, if I understand, the west side  
2 of LTD, and that shows us the line where the '95  
3 expansion was connected to the original, right?

4 A. That's correct.

5 Q. And one of those I think shows the office  
6 looking north. You can see the office part of LTD,  
7 correct?

8 A. Yes, 67 shows the office part.

9 Q. 69 and 70?

10 A. This appears to be pictures from our  
11 property. 69 would be looking at our building looking  
12 from across the pond.

13 Q. The pond by the tollway looking east?

14 A. Yes. Looking east, correct, on the north  
15 side of our building. And then it appears that this  
16 picture is in the north -- the far northwest corner of  
17 our property looking east at our parking lot along the  
18 north edge of the building. No. 70.

19 Q. 71, that's a perspective from where, looking  
20 in what direction?

21           A.    This is from the edge of our property looking  
22           south.  Approximately the middle of the property, based  
23           on the numbering of the doors here, doors 18 and 16,  
24           that would be the middle.

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1           Q.    72, that's basically sort of the below-grade  
2           truck dock area?

3           A.    Yes.

4           Q.    The doors are closed there?

5           A.    Yes.

6           Q.    All right.  73, it's the same area but it  
7           shows the yard tractor pulling a trailer towards the  
8           person with the camera, right?

9           A.    Yes.

10          Q.    74 shows the same area but it's got the yard  
11          tractor without a trailer?

12          A.    Correct.

13          Q.    And it looks like we got the tractor of a kix  
14          truck in one of the bays?

15          A.    Yes.

16          Q.    75?

17           A.    That would be the north side of the truck  
18           staging area, and that would show the pylons and the  
19           bumpers that the trucks are backed into.

20           Q.    And this concrete block wall, that's the wall  
21           we described earlier that was an upgrade in 1994-'95  
22           when the warehouse expansion was added?

23           A.    Yes, that's a brick retaining wall.

24           Q.    And down below these cement like pillars,

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1           what do those do?

2           A.    Those hold the springs and the wood and the  
3           rubber bumpers.

4           Q.    And 76 shows the top of one of those pillars  
5           and a part of the wooden bumper, right?

6           A.    Correct.

7           Q.    And it's a little difficult to see but it  
8           looks like there is a trailer up against the rubber  
9           part connected to the wood?

10          A.    Yes.

11          Q.    And there is a spring between the cement  
12          pillar and the wood?

13 A. Yes.

14 Q. In this case you really can't see the spring  
15 because it looks like it's compressed a little?

16 A. Yes.

17 Q. 77, that's the sign you mentioned earlier?

18 A. Yes, it's the one on the retaining wall, the  
19 good neighbor policy.

20 Q. I think the complainants talked about these  
21 but 78, 79, 80, 81, 82 basically I think show kind of  
22 homes to the north. And then LTD's building is in the  
23 background sort of to the south, right?

24 A. I recognize 79 as the Rotis' residence

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1 looking from our property to the north. And I  
2 recognize on 81 that LTD is in the background  
3 indicating that we're on the north edge of the property  
4 here looking to the south.

5 Q. Skip 83. I think Mr. Rosenstock identified  
6 this as his house.

7 84, that's your parking lot?

8 A. Yes.



9 Q. Looking sort of to the northeast?  
10 A. Yes.  
11 Q. And then 85, the last photo, 85?  
12 A. 85 looks to be a picture from the bridge  
13 along the east side of the distribution center looking  
14 north.  
15 Q. The new bridge looking directly north?  
16 A. Yes.  
17 Q. And we see the roof of a house in the back?  
18 A. Yes.  
19 Q. Let me ask you a few questions about that  
20 overtime document from 1998. If an employee works any  
21 time on a Saturday what is that considered?  
22 A. It would be considered overtime provided they  
23 worked 40 hours between Monday and Friday, and it is  
24 assumed then that Saturday would be overtime.

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1 Q. So if we see six hours overtime on a Saturday  
2 on this document 55, that would be you think --  
3 A. That was strictly Saturday work which is --  
4 Q. Only six hours total?

5 A. Yes.

6 Q. And most likely in the first shift?

7 A. Yes.

8 Q. Let me check my calendar here for 1998. You  
9 can see that the Saturdays were the 3rd, the 10th, the  
10 17th, the 24th and the 31st, right?

11 A. Of October, yes.

12 Q. Right.

13 And no overtime on October 17th, right?

14 A. Correct.

15 Q. No overtime on October 24th?

16 A. Correct.

17 Q. No overtime on October 31st?

18 A. Correct.

19 Q. And there would be no Sundays here, right?

20 A. No.

21 Q. I mean, is there any overtime at all for  
22 October 4th?

23 A. No.

24 Q. 11th?

1 A. No.

2 Q. 18th?

3 A. No.

4 Q. 25th?

5 A. No.

6 Q. Is there any -- let's go to November. Is  
7 there any -- skip ahead a month. You can see that in  
8 November 1998 the Saturdays were the 7th, the 14th, the  
9 21st and the 28th, right?

10 A. Right.

11 Q. And here it looks like overtime the first  
12 time was November 16th, right, on your --

13 A. Yes.

14 Q. So there was no overtime on November 7th and  
15 14th, correct?

16 A. Yes.

17 Q. And no overtime on November 21st, correct?

18 A. Yes.

19 Q. One hour on November 28th?

20 A. Yes.

21 Q. December 5th was a Saturday, right?

22 A. Yes.

23 Q. In 1998?

24 A. Yes.

1 Q. Any overtime on December 5th?

2 A. No.

3 Q. There was overtime on December 12th, right?

4 A. Yes.

5 Q. Six hours.

6 Any overtime on December 19th?

7 A. No.

8 Q. And again no Sundays worked in December 1998?

9 A. No.

10 Q. Right?

11 A. No.

12 Q. Right?

13 A. That's correct.

14 Q. It's that negative thing.

15 In your experience during this whole noise

16 complaint era did anybody ever complain to you about

17 noise other than the Kaufmans, the Roti's, the Webers

18 or the Rosenstrocks?

19 A. Not that I'm aware of.

20 Q. I mean, like Kendra Karasik never sent you

21 letter, am I correct?

22 A. No.

23 Q. I got to ask the questions better.

24 Did Kendra Karasik ever send you a letter

1 complaining about noise?

2 A. No.

3 Q. Did she ever call you and complain about  
4 noise? Did Cindy Lakin ever call you and complain  
5 about noise?

6 A. No.

7 Q. Ever sent you a letter?

8 A. No.

9 Q. And your first knowledge of them apparently  
10 complaining about LTD's noise is today when they walked  
11 into the hearing room?

12 A. That's correct.

13 Q. Complainants' Exhibit 20, you had said that's  
14 your handwriting on the last page?

15 A. Yes.

16 Q. Your handwriting -- are you taking down notes  
17 of what someone told you Paul Schomer was alleging, at  
18 least some of this, right?

19 A. That's correct.

20 Q. I mean, for here it says, "class B, not

21 class C," is that what you believe?

22 A. No.

23 Q. So that's something that you were told  
24 Schomer was now taking the position on, right?

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1 A. Yes.

2 Q. "Barrier, north wall and south side," again,  
3 that's something you were told Schomer wants you to do?

4 A. Yes.

5 Q. Right?

6 A. Yes.

7 MR. KOLAR: Okay. I got a platt of survey which I  
8 know you looked at once in my office. The first page  
9 has all my writing on it, the second page is the same  
10 thing. Do you have any objection if I submit this?

11 MR. KAISER: If you lay a foundation I have no  
12 objection. You want admit to that for stipulation?

13 MR. KOLAR: Yes.

14 MR. KAISER: Is that in connection with --

15 MR. KOLAR: I guess it shows where Lakeside Drive  
16 ends and where LTD begins. Otherwise in my case I



13 noise at 95 to 99 decibels"?

14 A. I don't recall giving that specific number.

15 Q. You might have said something about the old  
16 yard pig being noisy?

17 A. Yes.

18 Q. But you don't remember a specific decibel you  
19 would have given her?

20 A. Right.

21 MR. KOLAR: I don't have anything else.

22 MR. KAISER: If I may.

23 HEARING OFFICER KNITTLE: Please.

24

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1 REDIRECT EXAMINATION

2 BY MR. KAISER:

3 Q. With respect to the overtime, Mr. Voigt, and  
4 Complainants' Exhibit 55 I had understood during the  
5 course of my direct that while you thought it was the  
6 fact that this referred -- that overtime worked on  
7 Saturdays would be hours in excess of 40 hours during  
8 the week, is that right?



9 A. Yes.

10 Q. Do you know as you sit here today whether in  
11 fact LTD operated on Saturdays other than those shown  
12 here, September 12th and September 19th? Did it  
13 operate any other Saturdays during September of 1998?

14 A. I would assume that that's correct.

15 Q. Do you know as you sit here today --

16 A. That what?

17 Q. -- for a fact that on the other Saturdays,  
18 for instance, September 5th or September 26th, that LTD  
19 did not operate at all on those Saturdays?

20 A. The distribution center would have reflected  
21 those hours. I would say, no, we did not.

22 Q. So then it's your testimony during September  
23 of 1998 LTD, with the exception of the 12th and the  
24 19th, was only working five days a week?

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1 A. Yes.

2 Q. So its operations on those weeks would have  
3 only begun at 5:30 or 6:00 in the morning on Monday,  
4 and by 12:30 a.m. on Friday night LTD would have been

5 done for the week?

6 A. Yes.

7 Q. On those shortened weeks where there was no  
8 overtime, right?

9 A. Yes.

10 Q. Now, with respect to whether a driver might  
11 slam a trailer into the bumpers at LTD's dock staging  
12 area, you don't know personally every driver who comes  
13 into LTD's dock area, do you?

14 A. No.

15 Q. And in fact there are a lot of drivers who  
16 come in and out of LTD, right?

17 A. Yes.

18 Q. And any given day you don't know what  
19 experiences those drivers have had, do you?

20 A. No.

21 Q. And you don't know whether they're in a calm  
22 centered mood or whether they have some anger of some  
23 sort, do you?

24 A. No.

1 Q. And your job frankly is not -- you're not  
2 dock supervisor, are you?

3 A. No.

4 Q. I mean, you have people whose job it is to  
5 watch the dock area and see what happens in the dock,  
6 right?

7 A. Yes.

8 Q. Those are people who report to you, right?

9 A. Yes.

10 Q. In fact on a given week you probably spent  
11 less than five hours a week out in the dock area,  
12 right?

13 A. Yes.

14 Q. I mean, your job is an office job, right?

15 A. Yes.

16 Q. You're an executive, right?

17 A. Yes.

18 Q. This person who LTD currently employs to keep  
19 trucks and other traffic from going up into the north  
20 parking lot, what other responsibilities does that  
21 person have?

22 A. Well, there is multiple people that do it.  
23 Someone covers during breaks and that person may be a  
24 van driver at times.

1           Q.    The "van driver" being the way you get your  
2 employees from the train station to the LTD facility?

3           A.    Driving employees.

4           Q.    I mean, are you telling me that the only  
5 responsibility that person has standing there at the  
6 north end of Lakeside Drive is to make sure people  
7 don't come up into LTD's north parking lot?

8           A.    Yes.  And also to help with truck traffic  
9 down below giving them some direction.

10          Q.    All right.  Help give some direction to the  
11 truck traffic.

12                    I mean, even with the expansion, and LTD  
13 expanded substantially the area it has under roof in  
14 Bannockburn, right?  I mean, you doubled your capacity?  
15 I mean, you went from 200,000 square feet under roof to  
16 350,000 or 400,000 square feet under roof, right, by  
17 1995?

18          A.    Yes.

19          Q.    But despite that expansion, LTD didn't  
20 measurably enlarge its dock area, did it?

21          A.    No.

22          Q.    And it's a little tight back in that dock  
23 area, isn't it?

24          A.    Yes.

1 Q. So one of the functions that this person who  
2 supervises and patrols Lakeside Drive does is help the  
3 trucks get in and out of LTD's dock area, right?

4 A. Yes.

5 Q. Now, this good neighbor policy, how much time  
6 did you spend personally developing that policy?

7 A. A couple hours.

8 Q. And how many hours did your staff spend on  
9 that project?

10 A. Similar.

11 Q. So all total there were a couple hours you  
12 spent and a couple hours your staff spent?

13 A. Yes.

14 Q. And then you spent a little time distributing  
15 the good neighbor policy to the drivers -- the hundreds  
16 of drivers who come in and out of LTD's docks, right?

17 A. It's done daily.

18 Q. Let's be honest, that wasn't an enormous  
19 expenditure of either time or money for LTD, was it?

20 A. No.

21 Q. And with respect to disconnecting the backup

22 beeper at various points during the summer and fall of  
23 1999, that didn't cost LTD too much, did it?

24 A. No.

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1 Q. And repairing these dock levelers inside so  
2 that instead of them slamming down they would lower  
3 like the hatchback of a car, that cost under \$100,000,  
4 didn't it?

5 A. Correct.

6 Q. Do you know exactly how much that did cost?

7 A. No.

8 Q. Do you know whether it cost under \$20,000?

9 A. I would say that's true.

10 Q. Did it cost under \$10,000?

11 A. I don't know.

12 Q. Certainly below \$20,000?

13 A. Yes.

14 Q. And that was to improve the performance of  
15 the dock levelers at all 26 docks?

16 A. Twenty --

17 Q. 24?

18 A. Yes, 24, 23.  
19 Q. Not the two docks that are at ground level  
20 but all 24 that are docks, raised docks?  
21 A. Yes.  
22 Q. Now, you told us on cross examination that  
23 you and your family live approximately one half mile  
24 east of Tollway 290?

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1 A. 294.  
2 Q. 294, excuse me.  
3 And that's the same tollway that's located  
4 just to the west of LTD's facility?  
5 A. Yes.  
6 Q. And you live north or south of Route 22?  
7 A. North.  
8 Q. You live south of Route 60?  
9 A. North.  
10 Q. North of Route 60.  
11 You live between Route 60 and Route 176?  
12 A. No, I live just south of 137.  
13 Q. Just south of 137. All right. Thank you.

14 Well, what community do you live in?

15 A. Green Oaks.

16 Q. Green Oaks.

17 Now, that tollway noise that you testified  
18 you can hear in your home, particularly when the  
19 pavement is wet and the wind is from the northeast --

20 A. Yes.

21 Q. -- does that tollway noise interfere with  
22 your ability to sit in your home and read a book or  
23 magazine?

24 A. No.

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1 Q. Does that tollway noise interfere with your  
2 ability to sit in your home and use your computer?

3 A. No.

4 Q. Does that tollway noise, even when the  
5 pavement is wet and the wind is blowing from the  
6 northeast, interfere with your ability to comfortably  
7 enjoy your home with your wife and children?

8 A. If it's wet in the eastbound lane it could.

9 Q. Has it?



10 A. Yes.

11 Q. In what ways?

12 A. We had a graduation party, and we were on the  
13 deck and in the sunroom. And we had to close the  
14 windows because it happened to be the Harley Davidson  
15 reunion in Milwaukee. And it was a Sunday and  
16 everybody was coming home. And I didn't care to hear  
17 the motorcycles going by.

18 Q. All right. So on that day, graduation day,  
19 when the Harley Davidson motorcycle riders were on  
20 parade, you felt you had to go inside and close your  
21 doors and windows?

22 A. Yes.

23 Q. Now, we were talking about and trying to  
24 determine whether the total number of trucks in and out

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1 of LTD's Bannockburn facility is greater than, equal to  
2 or less than the total volume of trucks that went into  
3 LTD's Bannockburn facility in 1998, do you recall that  
4 questioning?

5 A. Yes.

6 Q. Do you know whether LTD's total volume of  
7 goods shipped during 1999 is greater than the total  
8 volume of goods shipped during 1998?

9 A. For the year?

10 Q. Well, so far. Obviously, we're not done yet  
11 with '99, but you must have some numbers from September  
12 and October?

13 A. Right.

14 For the Christmas season of 1999 we have  
15 shipped less -- the unit measure that we use is  
16 invoices. We have shipped less invoices out of the  
17 Bannockburn Distribution Center compared to 1998.

18 Q. Can you tell by virtue of the invoice how big  
19 the load was that corresponded to the invoice? I mean,  
20 you could have fewer invoices but more boxes going out,  
21 wouldn't you agree?

22 A. You could.

23 Q. I mean, if the orders were for more goods,  
24 you would have more boxes, right?

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1200

1 A. Yes.

2           Q.    I mean, you could have a single invoice that  
3           could be for a shipment no bigger than Mr. Kolar's  
4           briefcase and then you could have a single invoice that  
5           would include an order that would be as big as Mr.  
6           Kolar's table here, right?

7           A.    Correct.  But I do recall looking at some  
8           numbers from 1999 for October and the number being  
9           between 55 and 60 trailers per day coming out of  
10          Bannockburn.  And I believe those numbers are less than  
11          what's shown on your chart that you handed to me that  
12          apparently we gave to you.  I don't know which exhibit  
13          it is.

14          Q.    Complainants' Exhibit 56.

15          A.    I believe the number is less.

16          Q.    All right.  Is it fair -- I mean, you just  
17          spent a moment looking at Complainants' Exhibit 56  
18          which shows outbound trailer traffic for December of  
19          1998?

20          A.    Yes.

21          Q.    And I take it you didn't find support for  
22          your belief in the figures you just looked at on Page 1  
23          on Complainants' Exhibit 56?

24          A.    Well, we're not comparing the same months, so

1 I can't answer that question that way.

2 Q. Right. So you have a feeling -- I mean,  
3 let's just make it as clear as we can for the record.

4 You have some feeling that the volume from  
5 Bannockburn is less than it was a year ago but you're  
6 not sure if that's in fact true or exactly where that  
7 feeling came from, is that fair?

8 A. I feel pretty confident that we have less  
9 volume because I know we're shipping less invoices.  
10 And it's a direct correlation to shipments going out  
11 the door. And the more shipments that go out the door  
12 or the less shipments, there is a direct correlation to  
13 the number of trailers that are involved.

14 Q. But that would assume, and that was my point  
15 with Mr. Kolar's briefcase and the table comparison,  
16 that would assume that the invoices from '98 and the  
17 invoices from '99 were identical and that the size of  
18 the order from '98 to '99 didn't grow, isn't that the  
19 assumption?

20 A. There is a factual backing of that assumption  
21 because what we consider as a line count per invoice  
22 stays consistently at the same number between 1.68 and  
23 1.72 which is pieces per invoice.

24 Q. So you're telling me that the average LTD

1 invoice contains an order for between 1.68 and 1.72  
2 items?

3 A. Yes.

4 Q. I don't quite understand. LTD seems to  
5 represent that you have to order in volumes of three or  
6 more, is that right?

7 A. It is advertised.

8 Q. But is it possible -- I mean, for instance,  
9 with the dartboard that we were looking at earlier  
10 today on Page 91 of the Christmas catalog, do you  
11 really have to order three of those or can you get away  
12 with just ordering one dartboard?

13 A. You can get away with one.

14 Q. And it seems to me, from what you're telling  
15 me, that if the average invoice is for 1.68 to 1.72  
16 items, you might be shipping one dartboard and one  
17 Civil War puzzle, and that would be the size of an  
18 average order, is that right?

19 A. No. The term "invoice" has a different  
20 meaning to us than it does to you.

21 Q. Well, what's your meaning, LTD's meaning?

22           A.    If you order one of these items on a page,  
23           that would be considered an invoice.  It's because of  
24           an old -- it was from years ago back in -- before my

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1           time we didn't have a catalog.  We sent out envelopes  
2           with flyers, and the customers would send back the  
3           yellow card that corresponded with the flyer that they  
4           received or, you know, any of the yellow cards.  And  
5           each yellow card was generating an invoice to LTD.  It  
6           was the way that they did business before the catalog.

7                        That has never changed our way of looking at  
8           our volume of work and business.  It's been a  
9           consistent unit of measure.  But to say an invoice is  
10          what we would consider an invoice such as going to a  
11          car shop and getting, you know, shock absorbers and  
12          tires and wiper blades all on one invoice, that's not  
13          considered one invoice to us.  That would be three  
14          invoices to us.

15          Q.    I see.  So a shipment to a business if you  
16          sent one Civil War puzzle and one dartboard, that would  
17          be two invoices?

18 A. Yes.

19 Q. Even though they're ordered at the same time  
20 and going to the same destination?

21 A. Yes.

22 Q. Let me ask you this if I may. If you ordered  
23 12 dartboards at the same time going to the same place  
24 would that be one invoice or 12 invoices?

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1 A. One invoice.

2 Q. So if it's the same item, regardless of  
3 quantity shipped, it's one invoice?

4 A. Correct.

5 Q. So that gets me back to my point that unless  
6 you analyze those invoices, that number alone doesn't  
7 permit, with any level of precision that I think the  
8 Board could rely on, whether the volume from LTD's  
9 Bannockburn facility is up, down or the same as 1998?

10 A. I disagree because I said that the number of  
11 pieces per invoice has consistently been the same over  
12 the last five to ten years that I have been there.

13 Q. And you looked at the numbers for 1999 and

14           seen that that same 1.68 to 1.72 pieces per invoice has  
15           stayed the same?

16           A.    Yes.

17           Q.    Now, with respect to noise measurements  
18           obtained by Tom Thunder and his crew, actually by Mr.  
19           Harmon on behalf of Mr. Thunder, you have seen C-57,  
20           which shows the inbound shipments and the outbound  
21           shipments for LTD's Bannockburn facility in 1997,  
22           correct?

23           A.    Yes.

24           Q.    And you didn't tell Mr. Thunder or direct

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1           him, "Tom, wait until October, that's our busy month,  
2           let's see what the noise is like during our busiest  
3           month," you didn't tell him that, did you?

4           A.    No.

5           Q.    When he said, "I'm going to go out there in  
6           September" you told him, "Great, go ahead," right?

7           A.    Right.

8           Q.    You didn't hold him back and say, "That's not  
9           really our peak month, why don't you wait 'till



10           October"?

11           A.    Well, what do you consider a "peak month"?  
12           The month of October is what we consider a five week  
13           month, and the month of September is a four week month,  
14           so when you look at it on a per week basis, I think  
15           that would be fairly consistent.

16           Q.    Thank you, Mr. Voigt.  Well, that clears that  
17           up.

18                         Mr. Voigt, what was your role in LTD's  
19           extension to the south in 1994 and 1995?

20           A.    I worked with consultants or a consultant,  
21           and we then designed what we felt was the appropriate  
22           needs for the company along with an architectural firm.

23           Q.    Was that Lohan & Associates, L-o-h-a-n, was  
24           that the architectural firm?

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1           A.    Yes.

2           Q.    And as between you and Mr. Hara who had  
3           responsibility for the day-to-day work in connection  
4           with LTD's expansion to the south in '94 and '95?

5                         Do you understand the question?

6 A. Could you repeat it.

7 Q. Well, who had more -- I mean, what was Mike  
8 Hara's role in the expansion and what was your role in  
9 the expansion?

10 A. My role is to offer advice and technical  
11 knowledge. Mr. Hara's role is to bless it and give it  
12 the okay.

13 Q. But on the day-to-day then decision making  
14 when people would call to talk about the expansion or  
15 when the Village of Bannockburn would want information  
16 from LTD about the expansion, would you be the person  
17 to pull that information together and provide it either  
18 to the architects or to the Village of Bannockburn or  
19 whomever needed information in that moment?

20 A. Yes.

21 (Complainants' Exhibit No. 60  
22 was marked for  
23 identification.)

24

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1 BY MR. KAISER:

2           Q.    I want to show you what I'm marking for  
3           purposes of identification as Complainants' Exhibit 60.  
4           And at the moment I don't have a copy of this, but I'll  
5           show it to Mr. Kolar before I show it to Mr. Voigt.

6           MR. KOLAR:  Show me what you're interested in.  
7           BY MR. KAISER:

8           Q.    And just to clarify things, Mr. Kolar was  
9           counsel for LTD in connection with LTD's expansion in  
10          1994 and 1995, was he not?

11          A.    Yes.

12          Q.    All right.  Now, I'm showing you what's been  
13          marked for purposes of identification as C-60.

14                 Do you recognize this building permit  
15          preapplication for zoning and architectural review  
16          approval dated 2-17-94?

17          A.    Yes.

18          Q.    Is this a true and accurate copy of that  
19          four-page document?

20          A.    Yes.

21          Q.    And in that document LTD refers to what it's  
22          doing, "applicant's interest in subject property," and  
23          what does it say in that line beyond?

24          A.    "Warehouse addition."

1 Q. And where it says, "have any variations or  
2 special use permits been granted for this property?",  
3 which box did LTD check?

4 A. "Yes."

5 Q. And "If yes, please identify the ordinance or  
6 other document granting such zoning relief (use  
7 separate sheet)."

8 What document is identified there?

9 A. Ordinance No. 93-37.

10 (Complainants' Exhibit No. 61  
11 was marked for  
12 identification.)

13 BY MR. KAISER:

14 Q. I want to show you what I'm marking for  
15 purposes of identification as Village of Bannockburn  
16 ordinance No. 93-37. I'm marking that for purposes of  
17 identification as Complainants' Exhibit 61.

18 And, again, I apologize I have only one copy  
19 of this, and I'm going to show it to Mr. Kolar.

20 MR. KOLAR: Let the record reflect he's using my  
21 stapler too.

22 BY MR. KAISER:

23 Q. If I may, I'm showing you what's been marked  
24 now for purposes of identification as Complainants'

1 Exhibit 61, Village of Bannockburn's ordinance 93-37.

2 MR. KOLAR: For the record that's not executed  
3 on -- it looks similar to the one that I remember or at  
4 the end of their expansion but it's not executed.

5 HEARING OFFICER KNITTLE: Are you objecting to the  
6 exhibit, Mr. Kolar?

7 MR. KOLAR: I'm not sure what its purpose is. It  
8 says "warehouse." If that's his purpose, he wants to  
9 show that it says "warehouse" --

10 MR. KAISER: Right, that's all I'm looking for.

11 MR. KOLAR: For that purpose, no. It uses the  
12 generic term "warehouse."

13 BY MR. KAISER:

14 Q. Right, it uses the generic term "warehouse."  
15 It talks about, again, an ordinance amending the zoning  
16 map of the Village of Bannockburn granting a special  
17 permit and a height variation for a business  
18 headquarters planned development at 2800 Lakeside  
19 Drive.

20 MR. KOLAR: Actually, the only other point I would  
21 make then, and if Mr. Kaiser would look into this  
22 further, Bannockburn would tell him that the property

23 is no longer zoned E commercial park district. So I  
24 would object in terms of he's got the zoning

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1 highlighted, and he's representing that to be the  
2 current zoning of the property.

3 MR. KAISER: No, I'm not saying that. I'm just  
4 saying this is what it may have been back in 1994.

5 BY MR. KAISER:

6 Q. And was it your understanding, Mr. Voigt,  
7 that LTD was seeking approval from the Village of  
8 Bannockburn to obtain a special permit and height  
9 variation for a business headquarters planned  
10 development at 2800 Lakeside Drive?

11 A. Yes.

12 Q. And on Exhibit C-60 where it says,  
13 "description of proposed work," it says, "warehouse  
14 expansion consisting of 147,500 gross square feet," is  
15 that right?

16 A. Yes.

17 Q. It talks about "a truck waiting area at the  
18 existing truck dock will be restriped as a result and

19 landscape screening will be added," is that right?

20 A. Yes.

21 Q. But LTD didn't propose -- other than  
22 landscape screening, it didn't propose to build a noise  
23 wall along the north boundary of its dock area, did it?

24 A. No.

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1 Q. And would you agree that the Village of  
2 Bannockburn in their ordinance No. 93-37 described the  
3 then existing use of the subject property as an  
4 existing warehouse and office facility?

5 A. Yes.

6 (Complainants' Exhibit Nos. 62  
7 and 63 were marked for  
8 identification.)

9 BY MR. KAISER:

10 Q. I'm showing you what's been marked for  
11 purposes of identification as Complainants' Exhibit 62  
12 and Complainants' Exhibit 63. They're both letters  
13 from Lohan & Associates, L-o-h-a-n, to David  
14 Lothspeich, Village Administrator, Village of

15 Bannockburn, both dated February 21, 1994.

16 I'm showing those to Mr. Kolar.

17 HEARING OFFICER KNITTLE: What was the date?

18 MR. KAISER: The date is February 21, 1994.

19 BY MR. KAISER:

20 Q. Do you recognize those two letters?

21 A. Yes.

22 Q. And I see you were cc'd on them, Mr. Voigt?

23 A. Yes.

24 Q. When you were working on LTD's expansion back

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1 in February of 1994, and LTD had retained Lohan &  
2 Associates to assist them, was that what Lohan &  
3 Associates was referring to the project as, LTD's  
4 warehouse expansion?

5 A. Yes.

6 MR. KOLAR: Objection. I think these would be  
7 hearsay. They're business records from another  
8 company, but I guess to the extent that he has notice  
9 that a third-party called it a "warehouse expansion,"  
10 that might be okay, but the whole text of the letter



11 otherwise is just hearsay.

12 HEARING OFFICER KNITTLE: So on a limited basis,  
13 Mr. Kolar, you don't object?

14 MR. KOLAR: Yes, on a limited basis.

15 BY MR. KAISER:

16 Q. Did you ever send Lohan & Associates a letter  
17 saying, "please refrain from describing this project as  
18 LTD's warehouse expansion, you should know that this is  
19 in fact an expansion of our freight forwarding" --

20 A. No.

21 Q. -- "enterprise"?

22 A. No.

23 Q. You didn't send such a letter?

24 A. No.

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1 Q. In fact, at least in the way people talk  
2 about these things in an everyday sort of way, I mean,  
3 what you did was expand the warehouse, right, back in  
4 1994?

5 A. Yes.

6 Q. And you're aware we're going to hear Mr.

7 Cracower tell us, "Well, that's the way the lay people  
8 use it, yeah, somebody who's not trained as I am would  
9 call it a warehouse, but for \$285 an hour I'm calling  
10 it a freight forwarding facility," right?

11 MR. KOLAR: Objection, this sounds like rebuttal  
12 and beyond the scope.

13 HEARING OFFICER KNITTLE: Sustained.

14 MR. KAISER: I apologize.

15 I'd like to show the witness --

16 MR. KOLAR: I ask that the reference to \$285 an  
17 hour be stricken unless we also put in there the \$2,000  
18 that Mr. Schomer got from his client.

19 MR. KAISER: I think we got that in there.

20 HEARING OFFICER KNITTLE: Do I have to strike  
21 anything?

22 MR. KOLAR: No. The \$2,000 that Mr. Schomer got  
23 is in the record.

24

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1 (Complainants' Exhibit No. 64  
2 was marked for

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identification.)

BY MR. KAISER:

Q. I'd like to show you finally -- perhaps not finally -- Village of Bannockburn ordinance No. 94-12 which does appear to be signed.

Mr. Voigt, I'm showing you -- and please be careful, these staples are in here in such a way that they may pose a hazard to one's thumb.

Village of Bannockburn ordinance No. 94-12, have you ever seen this, an ordinance amending ordinance 93-37 and granting detailed and final plan approval for a business headquarters planned development at 2800 Lakeside Drive?

A. No, I don't recall seeing this.

Q. You don't recall seeing that?

A. No.

Q. How was it you understood that LTD was permitted to go ahead and build the south addition?

A. We had to go forward to the Village or, you know, Lohan & Associates.

Q. The Village of Bannockburn?

A. The Village of Bannockburn.

1 Q. And gain approval, right?

2 A. Yes.

3 Q. Well, who told you or how did you find out  
4 that, hey, the Village of Bannockburn has approved the  
5 development, we can go forward?

6 A. Michael.

7 Q. Michael Hara told you that?

8 A. Yes.

9 Q. Did he ever show you a document that seemed  
10 to be the place at which or in which the Village of  
11 Bannockburn expressed that approval?

12 A. Not that I recall.

13 Q. So when you look at this ordinance number  
14 94-12 that's not something you recognize?

15 A. No.

16 Q. But you note that in -- well, did you ever  
17 hear of anyone in the Village of Bannockburn refer to  
18 LTD seeking approval for the expansion of its freight  
19 forwarding activities?

20 A. No.

21 Q. Or its freight forwarding facility?

22 A. No.

23 Q. In discussions with the Village of  
24 Bannockburn isn't it true that you have always referred

1 to it as the expansion of LTD's warehouse and office  
2 facility?

3 A. Yes.

4 MR. KAISER: I would at this time move for the  
5 admission into evidence of Complainants' C-64. It does  
6 appear to be certified in every possible way and its  
7 authenticity beyond question. I mean, as Mr. Kolar  
8 knows, I have Village Administrator David Lothspeich  
9 under subpoena and I could bring him in at this point  
10 virtually for the sole purpose of authenticating this  
11 document but --

12 HEARING OFFICER KNITTLE: Is it a certified public  
13 record?

14 MR. KOLAR: No objection.

15 MR. KAISER: It may very well qualify as a  
16 certified public record. It's got all the signatures.

17 HEARING OFFICER KNITTLE: He didn't object so I  
18 will admit it.

19 MR. KAISER: Thank you.

20 (Complainants' Exhibit No. 64  
21 was admitted into evidence.)

22 HEARING OFFICER KNITTLE: That's the only one that

23           you moved to admitted though?

24           MR. KAISER: Yes.

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1                   At this point I would move to admit C-63,  
2           Lohan & Associates February 21, 1994 letter.

3           HEARING OFFICER KNITTLE: Mr. Kolar.

4                   I'm jumping in if that's okay, Mr. Kaiser.

5           MR. KAISER: Yes.

6           MR. KOLAR: Again, sixty -- I guess you got a copy  
7           of it.

8                   I think 62 and 63 are hearsay. It's a  
9           business record by Lohan & Associates. I guess for the  
10          limited purpose that Jack Voigt got a letter that said  
11          "warehouse" on it -- if it's for the limited purpose  
12          that he knew Lohan called it a "warehouse," that would  
13          probably be legally okay.

14          HEARING OFFICER KNITTLE: Is that sufficient, Mr.  
15          Kaiser, if we admit it for that limited purpose?

16          MR. KAISER: Yes, along with his testimony that he  
17          never sent him a letter saying don't call it that, call  
18          it something else.

19 HEARING OFFICER KNITTLE: Okay. Then that will be  
20 admitted as reflected on the record with Mr. Kaiser's  
21 qualification.

22 MR. KAISER: Thank you.

23

24

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1 (Complainants' Exhibit Nos. 62  
2 and 63 were admitted into  
3 evidence.)

4 MR. KAISER: C-60 is the building permit  
5 preapplication for zoning and architectural review and  
6 approval.

7 HEARING OFFICER KNITTLE: Mr. Kolar.

8 MR. KOLAR: That's fine.

9 HEARING OFFICER KNITTLE: That will be admitted.

10 (Complainants' Exhibit No. 60  
11 was admitted into evidence.)

12 HEARING OFFICER KNITTLE: 61.

13 MR. KAISER: C-61 is the Village of Bannockburn's  
14 ordinance 93-37 referenced in C-60. This is the

15 document that doesn't carry the -- well, it's not  
16 signed by the Village representatives. I'm looking to  
17 have it admitted only for the sole purpose that the  
18 project was referred to as granting a special permit  
19 and height variation for a business headquarters and  
20 planned development and not for the truth of the  
21 matters asserted therein other than the description of  
22 the facility as existing office and warehouse facility.

23 MR. KOLAR: Before we reconvene this hearing,  
24 couldn't you get a signed copy of 93-37 so that I know

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1 it's the final and not the draft? As you know I was  
2 counsel and I got a lot of drafts of these things.

3 HEARING OFFICER KNITTLE: Is that a problem, Mr.  
4 Kaiser? I'd even give you leave to send it into me if  
5 you wanted to.

6 MR. KOLAR: That would be fine. I just got a lot  
7 of drafts of these documents when the warehouse was  
8 being built.

9 MR. KAISER: Right. I appreciate that. Yeah, I  
10 can do that.



11 HEARING OFFICER KNITTLE: I'll note that that one  
12 is reserved, and after you and Mr. Kolar get together  
13 you can just mail it to me.

14 MR. KAISER: All right.

15 HEARING OFFICER KNITTLE: Can you give me a copy  
16 of C-64 just so I can jot down what it is? I think Mr.  
17 Voigt still has it.

18 MR. KOLAR: It's ordinance 94-12?

19 MR. KAISER: Yes.

20 BY MR. KAISER:

21 Q. With respect to the expansion, '94-'95  
22 expansion, and what the truck dock area looked like  
23 before the expansion, isn't it true that there were not  
24 these above-ground bumpers at the north end of the

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1 truck staging area until the dock was expanded and  
2 enhanced in '94-'95?

3 A. Correct.

4 MR. KAISER: Thank you, Mr. Voigt. I have no  
5 further questions.

6 MR. KOLAR: I just have a couple.

7 HEARING OFFICER KNITTLE: Okay.

8 RECROSS EXAMINATION

9 BY MR. KOLAR:

10 Q. The guard on your property at the entrance to  
11 the auto parking lot and the area where you enter the  
12 truck staging area, he was stationed there as part of  
13 your good neighbor policy?

14 A. Yes.

15 Q. He's there everyday?

16 A. Yes.

17 Q. Now, is the big building on your lot that's  
18 generically called a warehouse, is that used by or open  
19 to the public?

20 A. No.

21 Q. And inside that warehouse in a nutshell you  
22 pack and crate merchandise?

23 A. Correct.

24 Q. In fact that warehouse, would you agree, is

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1 functionally and organizationally linked to the  
2 activity of packing and crating merchandise?

3 A. Yes.

4 Q. And this phrase -- strike that.

5 One time LTD made an application to expand  
6 its warehouse to the south and Bannockburn turned you  
7 down?

8 A. Yes.

9 Q. And then you came back in '93 or '94 for a  
10 second try?

11 A. Yes.

12 Q. And initially you were doing it just you and  
13 Mike working with the Bannockburn officials, right?

14 A. Yes.

15 Q. Somewhere down the road you got my law firm  
16 involved?

17 A. Yes.

18 Q. We helped you through meeting after meeting  
19 after meeting, right?

20 A. Yes.

21 Q. And eventually you got approval?

22 A. Yes.

23 Q. And it's Bannockburn that came up with this  
24 "business headquarters" phrase as something they wanted

1 to apply to your use, right?

2 A. Yes.

3 Q. In fact do you remember meetings where there  
4 were a lot of discussions over what "business  
5 headquarters" is going to actually mean?

6 A. Yes.

7 Q. Do you recall Bannockburn came up with  
8 "business headquarters" hoping it could control the use  
9 of that property in the future if you ever sold it,  
10 right?

11 A. Yes.

12 MR. KOLAR: I don't have anything else.

13 HEARING OFFICER KNITTLE: Mr. Kaiser.

14 MR. KAISER: Just briefly

15 FURTHER REDIRECT EXAMINATION

16 BY MR. KAISER:

17 Q. And in the give and take with the Village of  
18 Bannockburn over even the definition of "business  
19 headquarters" eventually LTD and Bannockburn agreed  
20 that at least a part of LTD's operations and part of  
21 the approval for the expansion to the south involved  
22 permitting of a business headquarters within LTD's  
23 property located in Bannockburn?

24 A. Yes.

1 Q. And your office is in that business  
2 headquarters, right?

3 A. Yes.

4 Q. And Mr. Hara's office is in that business  
5 headquarters, isn't it?

6 A. Yes.

7 MR. KAISER: Thank you. I have no further  
8 questions.

9 HEARING OFFICER KNITTLE: Anything on those couple  
10 questions, Mr. Kolar?

11 MR. KOLAR: No.

12 HEARING OFFICER KNITTLE: Thank you.

13 Actually, let's go off the record real quick.

14 (Discussion off the record.)

15 HEARING OFFICER KNITTLE: I have got C-55,  
16 overtime schedule for LTD for 1998. Do you move to  
17 admit that?

18 MR. KAISER: Yes.

19 HEARING OFFICER KNITTLE: That's admitted. No  
20 objection.

21 (Complainants' Exhibit No. 55  
22 was admitted into evidence.)

23 HEARING OFFICER KNITTLE: I have got 56 as a

24

trailer chart for LTD for the month of 12-98.

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1 MR. KAISER: Along with a --

2 MR. KOLAR: That's fine.

3 HEARING OFFICER KNITTLE: That will be admitted.

4 (Complainants' Exhibit No. 56

5 was admitted into evidence.)

6 HEARING OFFICER KNITTLE: 57 is the monthly

7 summary of LTD's '96 and '97 Christmas seasons.

8 Do you move to admit that, Mr. Kaiser?

9 MR. KAISER: Yes.

10 MR. KOLAR: That's fine.

11 HEARING OFFICER KNITTLE: That's admitted.

12 (Complainants' Exhibit No. 57

13 was admitted into evidence.)

14 HEARING OFFICER KNITTLE: 58 is the Lothspeich to

15 Voigt -- I think it's a letter of 12-19-96.

16 MR. KOLAR: This one I had a problem with because

17 it has Bannockburn noise -- apparent noise regulation.

18 The zoning ordinance is allegedly dealing with noise.

19 There is no -- I guess it's prejudicial. Bannockburn

20 didn't take any action against LTD, so I don't think  
21 there should be any ordinance in here that deals with  
22 noise and here's one, an ordinance adopting morals and  
23 conduct code.

24 HEARING OFFICER KNITTLE: What's the relevance,

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1 Mr. Kaiser, since it's not a part of this case?

2 MR. KAISER: Well, certainly the communication as  
3 early as 12-19-96. The Village of Bannockburn, through  
4 its representative David Lothspeich, is communicating  
5 with Jack Voigt about noise issues. So that's really  
6 its intention, not that there is a violation, but just  
7 that there are communications, and that part of that  
8 communication is the Village of Bannockburn sending Mr.  
9 Voigt copies of its noise regulations to provide him  
10 presumably with notice of those or just in an effort to  
11 be helpful. I'm not arguing that they're in violation  
12 or ever were in violation, but I'm just saying this is  
13 something Mr. Voigt received from the Village of  
14 Bannockburn in December of '96 relatively early into  
15 the case, and it's a piece of the story that we're

16 telling.

17 HEARING OFFICER KNITTLE: Okay. And I take it,  
18 Mr. Kolar, you did object to this for reasons already  
19 said?

20 MR. KOLAR: Right.

21 HEARING OFFICER KNITTLE: I'm going to deny this.  
22 I don't think it's relevant to any issue on this case.

23 MR. KAISER: Well, I would ask then that if you're  
24 going to deny it, I would ask that at least the fax

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1 cover sheet would be allowed in if not the regulations  
2 that were attached thereto.

3 HEARING OFFICER KNITTLE: What's the purpose of  
4 the fax cover sheet?

5 MR. KAISER: Just to note the notice at that  
6 point.

7 HEARING OFFICER KNITTLE: Right. My problem isn't  
8 any authentication issue, I still don't see how it's  
9 relevant, the fact that they had notice that  
10 Bannockburn communicated to them about noise issues. I  
11 can't see how it's relevant to either the numerical



12 noise violation or the nuisance noise violation. If  
13 you can tell me how, I'd be more than willing to  
14 reconsider.

15 MR. KAISER: I'm having it as part of the  
16 chronology of the case, and I don't think there is -- I  
17 don't think there is really an issue of prejudice given  
18 that we're dealing with the Board and not a jury, but  
19 it's a judgment call that you're asked to make. And if  
20 you have made -- I have made my argument and you have  
21 made your call. I guess we stand at that.

22 HEARING OFFICER KNITTLE: I just wanted to tell  
23 you why I wasn't admitting it and let you have another  
24 shot at it if you wanted. I'll still deny that.

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1 Invoices though I'm going to admit.

2 Mr. Kolar, you want to make further argument  
3 on that or have you said all you want to say?

4 MR. KOLAR: I think I said all I want to say and  
5 quite well I might add.

6 HEARING OFFICER KNITTLE: I think it was artfully  
7 done.

8                   You can step down then.

9                   MR. KAISER: Do we have anything else?

10                  MR. KOLAR: 62 and 63, what were those again?

11                  MR. KAISER: 62 and 63 are Lohan & Associates  
12 letters of February 21, 1994 to Lothspeich referencing  
13 LTD's warehouse expansion.

14                  HEARING OFFICER KNITTLE: Right.

15                         And C-61 was reserved.

16                  MR. KOLAR: 62 and 63 though you allowed that just  
17 as to notice to LTD that their architects were calling  
18 it a warehouse.

19                  HEARING OFFICER KNITTLE: Right. And we were  
20 having a back and forth about that, and you didn't  
21 object if it was for a limited purpose and I admitted  
22 it under that.

23                  MR. KOLAR: Right.

24                  HEARING OFFICER KNITTLE: For that limited

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1                   purpose. Excuse me.

2                   MR. KAISER: Is there anything else that we showed  
3 this witness but haven't at this point addressed?

4 I'm looking for 59. What is 59?

5 HEARING OFFICER KNITTLE: Those were invoices that  
6 I admitted.

7 MR. KAISER: I see.

8 HEARING OFFICER KNITTLE: Mr. Kaiser, there were a  
9 number of exhibits from the very first day that you  
10 were going to tie up with Voigt that I know you talked  
11 about a bunch of them. You may want to move for them  
12 as well.

13 MR. KAISER: Yes, I would at this point.

14 HEARING OFFICER KNITTLE: You want me to tell you  
15 which ones I don't have admitted that might be handled  
16 here?

17 MR. KAISER: Yes.

18 HEARING OFFICER KNITTLE: I have C-5, which is a  
19 Kaufman letter to Voigt 12-10-96.

20 MR. KAISER: Move for its admission at this time.

21 MR. KOLAR: No objection.

22 HEARING OFFICER KNITTLE: That will be admitted.

23 (Complainants' Exhibit No. 5

24 was admitted into evidence.)

1 HEARING OFFICER KNITTLE: I have C-13, which is a  
2 memo dated 11-2-97 from Thunder to Voigt.

3 MR. KOLAR: No objection.

4 HEARING OFFICER KNITTLE: That will be admitted.

5 (Complainants' Exhibit No. 13  
6 was admitted into evidence.)

7 HEARING OFFICER KNITTLE: I have C-14, which is a  
8 memo from Thunder to Voigt dated 11-14-97.

9 MR. KOLAR: No objection.

10 HEARING OFFICER KNITTLE: That's admitted.

11 (Complainants' Exhibit No. 14  
12 was admitted into evidence.)

13 HEARING OFFICER KNITTLE: I have C-17, which is a  
14 fax from Lothspeich to Voigt. I don't have a date on  
15 that.

16 MR. KAISER: 12-8-97.

17 HEARING OFFICER KNITTLE: Could very well be.

18 MR. KOLAR: This one is sort of like the  
19 ordinance. This refers to no loading activities on  
20 Sundays.

21 I guess he's not claiming a violation here,  
22 he's just pointing out -- I still think to a certain  
23 extent it's sort of prejudicial, and he's reminding  
24 that the Bannockburn police monitor the situation to

1 see if there is any violations of the ordinance, and we  
2 haven't heard anything about the Bannockburn police  
3 citing LTD or --

4 HEARING OFFICER KNITTLE: Can I just see it?

5 I didn't mean to interrupt you, Mr. Kolar.

6 MR. KOLAR: That's okay.

7 HEARING OFFICER KNITTLE: I'll allow this one in.

8 I don't think it's prejudicial to the same extent that  
9 other one is.

10 (Complainants' Exhibit No. 17  
11 was admitted into evidence.)

12 HEARING OFFICER KNITTLE: The next I have is C-18,  
13 Acoustical Associates' draft report dated 12-23-97.

14 MR. KOLAR: That's fine.

15 HEARING OFFICER KNITTLE: That's admitted.

16 (Complainants' Exhibit No. 18  
17 was admitted into evidence.)

18 HEARING OFFICER KNITTLE: Next I guess is the  
19 actual report dated 1-8-98.

20 MR. KOLAR: That's fine.

21 HEARING OFFICER KNITTLE: That's admitted.

22 (Complainants' Exhibit No. 19  
23 was admitted into evidence.)

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1 Thunder. That doesn't come into play here.

2 C-24 is an E-mail, Sejud to Voigt. There are  
3 two of them I guess, 3-3-98 and 3-5-98. I don't --

4 MR. KOLAR: Which one, 24?

5 HEARING OFFICER KNITTLE: 24.

6 MR. KOLAR: What did you have for 23?

7 HEARING OFFICER KNITTLE: That was the Schomer to  
8 Thunder letter. I didn't think Mr. Kaiser was trying  
9 to admit that here.

10 MR. KAISER: I'll move to admit it at this point.  
11 I think on the offhand they don't call Mr. Thunder --

12 HEARING OFFICER KNITTLE: I have a quick question  
13 too before we get into that. Was it Schomer that you  
14 did the evidence deposition on?

15 MR. KAISER: Yes.

16 HEARING OFFICER KNITTLE: I want to talk about  
17 that before we leave.

18 MR. KAISER: Right.

19 HEARING OFFICER KNITTLE: If we need to save some

20 time, I don't know if there were any arguments you want  
21 to make about anything involving the deposition, but I  
22 think maybe next time we get together we can start off  
23 with that. Is that part of your case in chief, Mr.  
24 Kaiser?

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1 MR. KAISER: Yes.

2 Well, I do want to move for its admission but  
3 obviously subject to Mr. Kolar's right to address with  
4 you objections today.

5 HEARING OFFICER KNITTLE: Well, since, we're  
6 holding over your case in chief anyway 'till the next  
7 go-around, maybe we can do it just at the beginning  
8 there. Would that be okay with you?

9 MR. KAISER: Fine.

10 MR. KOLAR: Fine.

11 23 I think we could just ask Tom Thunder  
12 about.

13 MR. KAISER: I think Schomer has got it in anyway.  
14 I mean, it's one of his letters, and I don't think you  
15 objected to it.

16 HEARING OFFICER KNITTLE: Let's reserve that until  
17 we see the evidence deposition.

18 MR. KAISER: All right.

19 HEARING OFFICER KNITTLE: What about the Sejud to  
20 Voigt, C-24?

21 MR. KOLAR: No objection.

22 HEARING OFFICER KNITTLE: That's admitted.

23 (Complainants' Exhibit No. 24  
24 was admitted into evidence.)

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1 HEARING OFFICER KNITTLE: C-25 is a March 9, '98  
2 letter from Voigt to Berman.

3 MR. KOLAR: This is Jack to Marvin Berman. No  
4 objection.

5 HEARING OFFICER KNITTLE: Admitted.

6 (Complainants' Exhibit No. 25  
7 was admitted into evidence.)

8 HEARING OFFICER KNITTLE: The next one that I have  
9 is a 5-19-98 letter from Thunder to Voigt. That's  
10 C-31.

11 MR. KOLAR: What about No. 30?



12 HEARING OFFICER KNITTLE: I have 30 as being  
13 admitted. I think Mr. Kaiser moved to admit that  
14 during his testimony of Voigt's -- oh, no, that was  
15 admitted with Hara I think actually. Actually, I don't  
16 have a recollection as to when it was admitted, but I  
17 do have that I have admitted it. Did you object to  
18 that? We could do it again? It will be on the record,  
19 but I'm pretty sure we have done this already.

20 MR. KAISER: I think we did cover this. Jack said  
21 he received it and considered it.

22 MR. KOLAR: Mike said he didn't and Jack said he  
23 did.

24 HEARING OFFICER KNITTLE: Yeah, that's why it

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1 wasn't stipulated to in the beginning.

2 MR. KOLAR: Let me check.

3 It's 30?

4 HEARING OFFICER KNITTLE: C-30.

5 MR. KOLAR: 30, did receive. Okay. That's fine.

6 HEARING OFFICER KNITTLE: C-31 is the 5-19-98

7 letter from Thunder to Voigt.

8 I'm sorry, Mr. Voigt, you don't take any  
9 offense that I keep saying "Voigt" instead of  
10 "Mr. Voigt" and/or "Jack," do you?

11 THE WITNESS: No.

12 HEARING OFFICER KNITTLE: It's just how I take my  
13 notes.

14 THE WITNESS: No problem.

15 MR. KOLAR: He said he received it.

16 HEARING OFFICER KNITTLE: That will be admitted.

17 (Complainants' Exhibit No. 31  
18 was admitted into evidence.)

19 HEARING OFFICER KNITTLE: C-32 is June 5, '98  
20 letter from Thunder to Voigt.

21 MR. KOLAR: I guess he said he received it for  
22 what its worth.

23 HEARING OFFICER KNITTLE: That's admitted.

24 MR. KAISER: And read it.

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1 MR. KOLAR: He said he read everything he  
2 received.

3 HEARING OFFICER KNITTLE: He's a diligent

4 employee.

5 (Complainants' Exhibit No. 32  
6 was admitted into evidence.)

7 HEARING OFFICER KNITTLE: C-36 is barrier  
8 calculations. I don't know what you want to do. We  
9 haven't moved that one, and I don't know --

10 MR. KAISER: He didn't see it, so, right, I can't  
11 move for that at this point.

12 HEARING OFFICER KNITTLE: Let me continue here.

13 MR. KOLAR: What about 40, was that -- the Web  
14 pages, are those in?

15 MR. KAISER: Yeah, I was just going to ask, I  
16 wasn't sure what those were. Is that 40?

17 MR. KOLAR: Right.

18 HEARING OFFICER KNITTLE: I'm not there yet.  
19 Those are already admitted.

20 MR. KOLAR: The Web pages made it in?

21 HEARING OFFICER KNITTLE: Yes.

22 I have a question mark next to C-39, the  
23 noise reg's but we took care of that last night.

24 MR. KOLAR: Right.

1           HEARING OFFICER KNITTLE: I have an admission in  
2 red ink, which is something I used only yesterday or  
3 the day before. You want to make a further objection  
4 to that, Mr. Kolar?

5           MR. KOLAR: No, I think Jack identified those as  
6 the Web pages anyway, right?

7           THE WITNESS: Yes.

8           MR. KOLAR: What about 47? We didn't use 47 as I  
9 recall.

10          HEARING OFFICER KNITTLE: That was reserved.  
11 That was my error. I think I might have given it the  
12 wrong number.

13          MR. KOLAR: It's nothing. You can use that in the  
14 future.

15          MR. KAISER: Thank you.

16          HEARING OFFICER KNITTLE: That covers all of his.  
17 We have got a bunch of those photos, Mr. Kolar.

18          MR. KOLAR: I would just introduce all mine. You  
19 can put them in now, I don't care, or we can do it in  
20 our case.

21          HEARING OFFICER KNITTLE: Why don't you do it in  
22 your case. It doesn't matter to me. Do you have a  
23 preference, Mr. Kaiser?

24          MR. KAISER: I'm always in favor of getting things

1 in the record so --

2 HEARING OFFICER KNITTLE: I think you covered  
3 foundation on all those anyways?

4 MR. KAISER: Right. They're ready to go. Let's  
5 put them in.

6 HEARING OFFICER KNITTLE: Unless you want to keep  
7 them with you?

8 MR. KOLAR: Do you want to hold all the stuff?

9 HEARING OFFICER KNITTLE: I generally hold the  
10 stuff that's been admitted, so if you want to look at  
11 them --

12 MR. KOLAR: I guess I would rather wait. And I  
13 will state on the record I will move to admit these,  
14 but if I move to admit them, I don't have them in my  
15 possession anymore.

16 HEARING OFFICER KNITTLE: Well, I'd make an  
17 exception if you wanted them.

18 MR. KAISER: So why don't we admit them and you  
19 keep them?

20 MR. KOLAR: Okay. Fine. 51 to 85, Respondent's.

21 HEARING OFFICER KNITTLE: Any objections to R-51  
22 to 85, Mr. Kaiser?

23 MR. KAISER: No.

24 HEARING OFFICER KNITTLE: Those will be admitted.

1 (Respondent's Exhibit Nos. 51  
2 to 85 were admitted into  
3 evidence.)

4 HEARING OFFICER KNITTLE: What about the good  
5 neighbor policy stuff, Mr. Kolar?

6 MR. KOLAR: Sure, I'll move to admit 36.

7 HEARING OFFICER KNITTLE: I think I have that as  
8 47. R-47. I'm wrong though. 47 is -- good neighbor  
9 is 36.

10 HEARING OFFICER KNITTLE: Yes, I see that.

11 Mr. Kaiser, good neighbor.

12 MR. KAISER: No objection.

13 HEARING OFFICER KNITTLE: That will be admitted  
14 too.

15 (Respondent's Exhibit No. 36  
16 was admitted into evidence.)

17 HEARING OFFICER KNITTLE: We have got other  
18 respondent's but you want to do the rest of those as I  
19 recall during your case, right, Mr. Kolar?

20 MR. KOLAR: Yes, including these aerials I guess

21 we'll do 88 and 89 that have been referred to ad  
22 nauseam.

23 HEARING OFFICER KNITTLE: I have got a bunch of  
24 yours but they were these aerials and there was a

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1 couple letters.

2 MR. KOLAR: Right. R-75 I have a picture.

3 HEARING OFFICER KNITTLE: Here we go. Let me  
4 cross that off.

5 MR. KOLAR: I'll do the rest of mine -- what about  
6 28? I just have that marked as the plat of survey that  
7 I should -- the LTD plat of survey. Steve and I agreed  
8 on that and I gave that No. 28.

9 HEARING OFFICER KNITTLE: 28, the plat.

10 MR. KOLAR: I'll give that to you now. We even  
11 put a highlighted line on the line between LTD and  
12 Lakeside Drive.

13 HEARING OFFICER KNITTLE: Okay. And Mr. Kaiser  
14 you didn't object to that?

15 MR. KOLAR: No objection.

16 HEARING OFFICER KNITTLE: That's in.

17 (Respondent's Exhibit No. 28  
18 was admitted into evidence.)

19 HEARING OFFICER KNITTLE: What about -- I have got  
20 R-40 and R-34. This is a Schomer letter and a land use  
21 coding manual. You want to save all that for your case  
22 in chief?

23 MR. KOLAR: Yes.

24 HEARING OFFICER KNITTLE: Real estate listings.

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1 MR. KOLAR: Right. I'll wait.

2 HEARING OFFICER KNITTLE: Okay. That's all I have  
3 of yours.

4 MR. KOLAR: Here's the good neighbor 36 and the  
5 survey 28.

6 HEARING OFFICER KNITTLE: Okay.

7 MR. KOLAR: Unless you want me to retain them.

8 HEARING OFFICER KNITTLE: Why don't you retain all  
9 your stuff if you're not going to -- if it's not going  
10 to bother you, Mr. Kolar.

11 MR. KOLAR: No.

12 HEARING OFFICER KNITTLE: Then I don't have to go



13 through and separate which of the respondents I have  
14 and which I don't. I won't have to note that then.

15 As to my recollection I have all of the  
16 complainants' exhibits that have been offered to this  
17 point, correct?

18 MR. KAISER: Yeah, I think you have got --

19 HEARING OFFICER KNITTLE: Did we go through those  
20 ones we missed yesterday and supply them?

21 MR. KAISER: Most of them are here. I'm just  
22 looking.

23 Here is 1 and 2.

24 HEARING OFFICER KNITTLE: The one I was missing

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1 was 4.

2 MR. KAISER: Here is 4.

3 HEARING OFFICER KNITTLE: 12 --

4 MR. KOLAR: Is Jack done?

5 HEARING OFFICER KNITTLE: Jack is done. I'm  
6 sorry, Jack, you can step down.

7 MR. KAISER: 12 is now in place.

8 HEARING OFFICER KNITTLE: 15 and 16.

9 MR. KAISER: 15 and 16 are now in place.  
10 HEARING OFFICER KNITTLE: 21 and 22.  
11 MR. KAISER: 21 and 22 are now in place.  
12 HEARING OFFICER KNITTLE: And C-50 was the only  
13 other one I was missing.  
14 MR. KAISER: Which is what exactly?  
15 HEARING OFFICER KNITTLE: Which is --  
16 MR. KAISER: I don't have C-50.  
17 HEARING OFFICER KNITTLE: That Thursday's night  
18 log, Roti.  
19 MR. KOLAR: That's not in.  
20 HEARING OFFICER KNITTLE: Right, but I still want  
21 it if at all possible.  
22 This, just for both of yours information, is  
23 the most exhibits I have ever had.  
24 MR. KAISER: It's a lot of exhibits, no question.

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1 I need to get you a Roti log. I'm not sure  
2 if I have that.  
3 HEARING OFFICER KNITTLE: The last thing, before  
4 we let the court reporter go, is the evidence

5 deposition. You want to -- I know we're going to go  
6 over that at the next time, but if you want to move for  
7 the admission of that, reserving any arguments that Mr.  
8 Kolar may have, then I could read it before the next  
9 go-around so I could be well versed.

10 MR. KAISER: Right. Now I don't have the exhibits  
11 copied but I do have --

12 HEARING OFFICER KNITTLE: That's fine.

13 MR. KAISER: I went to my office this morning  
14 specifically with the purpose of making a copy of that  
15 transcript.

16 (Complainants' Exhibit No. 65  
17 was marked for  
18 identification.)

19 MR. KAISER: I'm marking for purposes of  
20 identification as Complainants' Exhibit 65 the evidence  
21 deposition taken last Friday, October 29th, of Paul  
22 Schomer. I'm tendering a copy of the transcript,  
23 though not the exhibits, to Mr. Knittle at this time.

24 HEARING OFFICER KNITTLE: Mr. Kolar.



1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF C O O K )

3 I, DEBORAH T. BRAUER, Certified Shorthand  
4 Reporter and Notary Public in and for the County of  
5 Lake, State of Illinois, do hereby certify that I  
6 caused to be reported in shorthand and thereafter  
7 transcribed the foregoing transcript of proceedings.

8 I further certify that the foregoing is a  
9 true, accurate and complete transcript of my shorthand  
10 notes so taken as aforesaid; and further, that I am not  
11 counsel for nor in any way related to any of the  
12 parties to this action, nor am I in any way interested  
13 in the outcome thereof.

14 IN TESTIMONY WHEREOF, I have hereunto set my  
15 hand and affixed my notarial seal this 18th day of  
16 November, 1999.

17  
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23  
24

\_\_\_\_\_  
Deborah T. Brauer, CSR

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