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ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS

- - - - -X
DAVID SHELTON & SUSIE SHELTON :
Plaintiffs :
- against - : Number PCB96-53
ARI STEVEN CROWN & NANCY CROWN, :
Defendants :

- - - - -X
VOLUME VII
REPORT OF PROCEEDINGS, taken in the
above-entitled cause, taken before JUNE EDVENSON, ESQ.,
Hearing Officer for the Illinois Pollution Control Board,
taken on the 20th day of July, A.D., 1996 at 100 West
Randolph Street, Suite 9-040, Chicago, Illinois, taken at
the hour of 12:00 o'clock p.m..

APPEARANCES:

JEFFREY R. DIVER, ESQ.
STEVEN P. KAISER, ESQ.
45 S. Park Boulevard
Glen Ellyn, IL 60137
Appeared on behalf of the Plaintiffs

REESE ELLEDGE, ESQ.
ROBERT A. CARSON, ESQ.
222 North LaSalle Street
Chicago, IL 60601
Appeared on behalf of the Defendants

VERNITA HALSELL-POWELL
HALSELL & HALSELL REPORTERS

01360

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I N D E X

2 WITNESSES:

WITNESS

3 Steven Crown
(Continued)

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Complainant's 36

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Complainant's 113

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01361

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AFTER RECESS

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HEARING OFFICER: Back on the record.

3

CONTINUED EXAMINATION

4

BY MR. CARSON:

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Q. You have before you Exhibit Number 36, Mr.

6

Crown. Is this a true and correct copy of a letter you

7

received from David Shelton on or shortly after March

8

16, 1995?

9

A. Yes, it is.

10

Q. The letter refers to anticipation of noise

11

readings on your air conditioner. Does this relate to the

12

enclosure that you were just speaking of?

13

A. I believe so. That's the only time we would

14

have been taking it. It would have been after the

15

enclosure had been constructed.

16

Q. The plan was to construct the enclosure with the

17

quiet flow plan and take the reading?

18

A. That was the plan, yes.

19

Q. And that was the plan that was discussed at the

20

village hall meeting in January of '95?

21

A. That's correct.

22

Q. The letter, Exhibit 36, references IPCB

23

standards. Did you have an understanding at this time as

24

to whether the IPCB standards were applicable to a

01362

1 situation where noise was being transmitted from your
2 property to your neighbor's property?

3 A. At the time I didn't understand the IPCB
4 standards to be part of the discussion. As I understood
5 it, it was not germane to this issue.

6 Q. Showing you Exhibit Number 30 which bears the
7 date of April 11, 1995. You were informed by Brad
8 Mautner, were you not, either with this letter or sometime
9 prior that the IPCB standards were not applicable to your
10 situation?

11 A. I received the letter. This is the basis of my
12 understanding, yes.

13 MR. DIVER: This was Exhibit 30, is that
14 correct?

15 MR. CARSON: Yes.

16 MR. DIVER: And this is a letter from whom to
17 whom?

18 A. Mautner to me.

19 MR. CARSON: And I apologize for not having
20 kept better track of this, but is Exhibit Number 30
21 already in evidence?

22 HEARING OFFICER: Yes, it is.

23 MR. CARSON: At this time we would offer
24 Exhibit 36.

01363

1 MR. DIVER: No objection, no objection.

2 Has Exhibit 30 been admitted?

3 HEARING OFFICER: Yes.

4 MR. CARSON: It has been.

5 HEARING OFFICER: Exhibit 36 will be admitted
6 into evidence.

7 (Exhibit 36 was admitted into evidence.)

8 Q. Showing you now what has been marked as Exhibit
9 Number 8. This is a letter dated June 6, 1995, from David
10 Shelton to you. Did you receive this letter on or shortly
11 after June 6, 1995?

12 A. Yes, I did.

13 Q. And according to this letter it was faxed from
14 Ohio. Did you have an understanding that Mr. Shelton, by
15 June of 1995, was in Ohio a good part of the time?

16 A. David had called me a couple of times from out
17 of state or Susi Shelton in our conversations had
18 mentioned that her husband was out of town. I don't know
19 where he traveled, but Ohio is as good a place as any I
20 guess.

21 MR. DIVER: May I have a copy of Exhibit 8,
22 I'm sorry?

23 Q. Mr. Shelton was at this time expressing his view
24 that there was only a modest improvement from the

01364

1 enclosure. Do you see that in the second sentence of
2 Exhibit 8?

3 A. Right, yes, I do.

4 Q. Did you yourself notice any difference between
5 before the enclosure and after the enclosure as far as
6 the sound emission from the unit?

7 A. I thought there had been I guess a significant
8 improvement in the sound level, reduction of the sound
9 level.

10 Q. So, you were not in agreement with Mr. Shelton
11 that it was only a modest improvement?

12 A. No, I was not -- yes, I was not in agreement
13 with Mr. Shelton.

14 Q. At this time had the measurements yet been done?

15 A. I don't think so. I think we were still waiting
16 for a warmer day when the unit would be operating a little
17 bit more. I think we were waiting for a warmer day. I
18 think it was cooler spring if I remember. But I can't
19 tell you.

20 MR. CARSON: This is Exhibit Number 41.

21 MR. DIVER: Date?

22 MR. CARSON: June 26, 1995.

23 Q. Is this a letter that Mr. Shelton sent to you on
24 or about June 26, 1995?

01365

1 A. I think he may have faxed it to me, yes.

2 Q. Okay. And this actually references measurements
3 that were taken June 19, 1995 as shown in the attachment,
4 does it not?

5 A. That's what it says, yes.

6 Q. And you were, in fact, in attendance when those
7 measurements were taken?

8 A. I was at the house. I was not necessarily in
9 attendance during the entire time measurements were taken,
10 but I was outside, inside. I talked to Al Shiner, folks
11 that were there.

12 Q. According to the attachment to Exhibit Number
13 41, that is Mr. Shiner's test results?

14 A. The one that says Monday test on the top?

15 Q. Yes.

16 A. Yes, okay.

17 Q. It appears that measurements were taken with the
18 Shelton conditioner on. Do you see that reference?

19 A. Yes.

20 Q. Do you know who requested that the measurements
21 be taken with the Shelton air conditioner on?

22 A. I did.

23 Q. Were you present when those particular tests or
24 readings were done?

01366

1 A. I was not standing next to anyone when the
2 readings were taken, but I was in and out of the house, as
3 I mentioned and was told afterwards that the tests had
4 been taken.

5 Q. And they were specifically taken at your
6 request?

7 A. It seemed appropriate that all ambient
8 conditions, all other conditions be tested and why not
9 test the Shelton unit as well as testing ours. It just
10 seemed to provide us with better information.

11 Q. Did you personally observe which of the Shelton
12 air conditioners were in operation at the time these tests
13 were taken?

14 A. I asked Al Shiner if the Shelton air
15 conditioning units were on. I was told that only one of
16 those were on.

17 MR. DIVER: Objection, your Honor as to what
18 Al Shiner told him.

19 HEARING OFFICER: Mr. Crown.

20 A. And I actually went -- sorry.

21 MR. CARSON: I'll restate the question.

22 Q. The question sir is not what Al Shiner told you.
23 Did you have occasion to observe which or both or none of
24 the Shelton air conditioners were running?

01368

1 testifying as to what someone else told him, not as
2 to what he said.

3 HEARING OFFICER: What is the purpose of this
4 line of questioning, Mr. Carson?

5 MR. CARSON: The purpose is to establish that
6 testing conditions and I'm asking Mr. Crown about what he
7 observed.

8 MR. DIVER: I'll continue my objection because
9 he's testified to what he observed.

10 HEARING OFFICER: And these are the testing
11 results which were provided to us as a previous exhibit?

12 MR. CARSON: Yes, Exhibit Number 33, it's the
13 same thing that's attached to Exhibit Number 41.

14 HEARING OFFICER: Exhibit Number 33 has not
15 been introduced into evidence. Exhibit Number 41 has been
16 admitted into evidence and I believe we will have some
17 testimony with respect to this noise emission test.

18 MR. CARSON: Yes.

19 HEARING OFFICER: However--

20 MR. ELLEDGE: Your Honor, I think there is
21 another Exhibit Number on the June 20, 1995 letter from
22 Shiner and Associates to David Shelton. I cannot right
23 offhand tell you what that number is. I'm sure that Mr.
24 Shiner, when he testified, testified to this particular

01369

1 letter.

2 MR. DIVER: I believe it was Exhibit 60.

3 MR. ELLEDGE: Exhibit 60 and I believe it was
4 introduced.

5 MR. DIVER: It was introduced. Yes, it was.

6 HEARING OFFICER: Exhibit 60 was also entered
7 into evidence.

8 MR. DIVER: Exhibit 60 is in evidence.

9 MR. CARSON: Is there a difference between 60
10 and 33?

11 MR. DIVER: Yes. The handwritten notations
12 that are present on 33 are not present on 60.

13 HEARING OFFICER: I'm going to overrule the
14 objection and permit the witness to answer what the
15 testing conditions were and that will represent his
16 understanding of the testing conditions.

17 A. My understanding at the time the tests were taken
18 was that only one of the Shelton units was operating. I
19 asked if they would -- we needed to go back and have both
20 units operating and was told by Al Shiner that he didn't
21 think that he would be able to do that or didn't think it
22 was necessary or I'm not sure what his response was, but
23 only one unit was operating during the taking of that
24 test.

01370

1 Q. That one was not the rooftop unit, but rather
2 the one that was at ground level?

3 A. The only one that I observed or heard operating
4 was the one at ground level. I'm assuming that was the
5 only one operating at the time.

6 Q. And you received copies of the results either
7 with Exhibit Number 41 or separately?

8 A. Yes. I believe I received a copy from Al
9 Shiner, carbon copied on his letter of June 20th.

10 Q. And looking at Mr. Shelton's letter, Exhibit
11 Number 41, is it fair to say that he was not pleased or
12 satisfied with the results of the test?

13 A. It appears he wasn't satisfied with the results.

14 Q. With the enclosure?

15 A. With the enclosure. With the results the
16 enclosure was generating.

17 Q. And did you yourself reach any conclusions as to
18 the effectiveness of the enclosure as a result of this
19 test?

20 A. It appeared to me at least that we had made some
21 significant progress in reduction of the sound and that
22 the enclosure was the only new addition and; therefore, I
23 came to the conclusion it was responsible for the noise
24 reduction.

01371

1 Q. And you had also heard the operation of the unit
2 with the enclosure and you already testified as to how you
3 perceived the noise?

4 A. I heard it both before and after and noticed a
5 significant reduction in the noise emitted.

6 Q. Looking now at Exhibit Number 40, this is a
7 letter that you sent to David Shelton on or about June 30,
8 1995 and I believe this has already been admitted into
9 evidence. Is that a letter that you sent to David Shelton
10 on that date?

11 A. Yes, it is.

12 Q. Now, according to this -- strike that -- this
13 letter was sent in response to Mr. Shelton's letter in
14 which he was taking issue with the effectiveness of the
15 enclosure, right?

16 A. Yes, I believe so. It's right after it, June
17 30th. It's June 26th.

18 Q. Okay. Exhibit 41 was Mr. Shelton's letter to
19 you commenting on the new readings and Exhibit 40 dated
20 June 30 is your response?

21 A. Correct.

22 Q. And in this letter you stated that you were
23 pleased to see a very substantial reduction in sound
24 emissions. Was that accurate?

01372

1 A. That's correct, after the construction of the
2 acoustical housing and the removal of the cones.

3 Q. And in this letter you stated to Mr. Shelton
4 near the closing: "In short, we are done and do not plan
5 on spending any more time or money on this issue." Why
6 did you make that statement in this letter?

7 A. We had taken this issue to our consultants, we'd
8 gone to an outside consultant, Al Shiner, we had -- I had,
9 excuse me, requested that MidRes continue to look into
10 this issue over the course of a year, a year and a half or
11 whatever and try and address the problems as the Sheltons
12 had been complaining about. We had, I thought,
13 successfully reduced the noise and continually had been
14 receiving letters from Mr. Shelton saying that enough is
15 not enough. We were being asked to comply with standards
16 that we weren't sure were applicable or not. We, I
17 thought, had been both prudent and thoughtful in the way
18 in which we went about it so it wasn't a band-aid fix and
19 every time we kept coming closer and closer and getting
20 more and more of the sound removed, it was always, you've
21 made some progress, but not enough, some progress, not
22 enough. And I asked Brad Mautner is there anything more
23 that you can think of that we can do at this point and
24 Brad said I think we've done just about all we can. This

01373

1 is quieter than most five ton units that are in the
2 marketplace. In fact, it's clearly the quietest 25 ton
3 unit that he had ever seen, ever heard. My friends and
4 people that had visited our place were perplexed as to
5 what the sound issue was. Many people would ask the
6 question, where's the chiller and they'd be standing next
7 to it. We got to a point where we felt that we had taken
8 the advice of our contractors and their consultants, done
9 everything at the time we thought was possible and it
10 seemed like a never ending discussion. So I told David
11 Shelton at this point in time we are done. We don't plan
12 to do any more. We moved into our house in March and we
13 were just planning on living there.

14 Q. Looking now at Exhibit Number 22, this is a
15 handwritten letter from David Shelton to you dated
16 September 21, 1995. Did you receive that letter?

17 A. I did receive it. It was actually I think faxed
18 to my office and my secretary I think read it to me over
19 the phone.

20 Q. And by this time, September 21, 1995, David and
21 Susi Shelton had filed a complaint against you and your
22 wife before the Illinois Pollution Control Board, is that
23 right?

24 A. I'm not sure of the date, but that's the right

01374

1 date. That's the right date.

2 Q. This letter requests that you take action with
3 respect to the air conditioner in order to assist Susi
4 Shelton's sleep because of some surgery that she's
5 scheduled to have. Did you understand that?

6 A. It's what the letter said, as I understood.

7 Q. Did you take any steps in response to this
8 request?

9 A. I agreed with David Shelton's position. It
10 dropped into the 40s and 40s at night, it was cool, you
11 didn't need air conditioning. So I contacted MidRes and I
12 guess there's a trigger point where the unit goes on and
13 if it's above that trigger point, it flicks on. If it's
14 below that trigger point, it effectively goes off. We
15 raised that trigger point and the temperatures dropped
16 well below it; and therefore, during the unit was off that
17 night. So I believe we complied with Mr. Shelton's
18 request and accommodated the need for Susi Shelton to get
19 a good night's sleep.

20 Q. So, you had informed the Sheltons in June that
21 you're done and you do not plan on spending any more time
22 or money, but indeed you took another step in response to
23 their request in September, right?

24 A. Yes, even after the June letter and Brad had

01375

1 told me that we'd done just about all he could think of at
2 that point in time to address it, I still suggested if
3 you'd come up with anything or think of anything Brad,
4 please let me know. I'm open to suggestions, you know.
5 I agree with you, I think we've done an awful lot at this
6 point, but if something new pops to mind or something
7 comes along that we haven't considered, let's talk about
8 it.

9 Q. And have you authorized additional modifications
10 since that time addressed towards making this unit even
11 quieter?

12 A. Yes, we've put on -- I'm not -- there's
13 a variable speed control mechanism that's now on the unit
14 and there have been some other modifications made to the
15 wall heights and so forth.

16 Q. And are these modifications modifications that
17 were made with your consent?

18 A. They were made with my consent, absolutely.

19 Q. And why did you authorize these additional
20 modifications, even though you had previously informed the
21 Sheltons we are done and we do not plan on spending any
22 more time or money on this issue?

23 A. Because new ideas came to light and as opposed
24 to turning them down out of hand, it just seemed like the

01376

1 right neighborly thing to do to try to implement them and
2 if it helped reduce -- the Sheltons were no longer living
3 at the house next door at this time. As I understood it
4 they had moved out sometime in January, but that had never
5 -- that wasn't the issue at this point. We were just
6 trying to take advantage of a new idea, implement it and
7 if it works, great. There was no guarantee that it would
8 work.

9 Q. Aside from physically moving the unit to another
10 location, is there any proposal that anyone has made to
11 achieve a quieter level of performance that you've refused
12 to implement?

13 A. I think Greg Zak in his testimony talked about
14 burying some pipes underground. I mean there were some
15 other proposals that were out there, but again not being
16 an expert, it was more or less if there are new ideas, new
17 options, explore them. And I don't think we've turned
18 away or not listened to any idea that's come our way. In
19 fact to the contrary, anything that has come along I've
20 tossed over to Brad and said, what do you think? You're
21 the one that has to maintain the system. You're the one
22 that warranties and guarantees the operation. You have
23 the maintenance contract. It's got to work. This is your
24 ballywick not mine. But if there's something more that

01377

1 can be done, let's take a real hard look at it.

2 Q. You testified earlier that you received a number
3 of complaints from neighbors in 1994. Since 1994 from
4 1995 and beyond, have you received any complaints from
5 anybody at all other than the Sheltons concerning the
6 noise from your air conditioning unit?

7 A. No, I haven't. In fact, we had an open house
8 when we moved in and invited the neighborhood over and the
9 issue was never brought up once by anyone.

10 MR. DIVER: Objection. The purpose of this
11 is to establish that the neighborhood had any complaints.
12 I object to it as being hearsay along the same lines as
13 Mr. Carson objected to some of the testimony during our
14 case in chief.

15 MR. CARSON: Again this is not offered for the
16 truth either. This is to establish his response to his
17 state of mind and his response to the perceived issue.

18 MR. DIVER: Madam Hearing Officer, the fact
19 that he had a party, unless he's establishing that he had
20 a party for the purpose of inquiring of any of his
21 neighbors whether or not they had experienced sound or
22 noise problems is absolutely irrelevant to his state of
23 mind or any of the activities that he pursued.

24 HEARING OFFICER: Objection overruled.

01378

1 Q. One last area. You mentioned earlier in your
2 testimony that there were two occasions when you went over
3 to the Shelton residence in order to give the situation a
4 lift and you described the first one.

5 A. The second one Pete Keller and I went over
6 during the workday and wanted to listen to see what the
7 unit sounded like. Susi Shelton was there that day.

8 MR. DIVER: Madam Hearing Officer there's
9 been no foundation laid for this.

10 Q. Can you tell us when that meeting took place?

11 A. This would have been--

12 Q. Showing you Exhibit Number 34 which has the
13 drawing for the enclosure. Does that refresh your
14 recollection as to the approximate time of the meeting?

15 A. I think it would have been in the summer of '94.
16 That's probably, yes, summer of '94. Pete Keller and I
17 went next door to listen to the unit again to see what, in
18 fact, it sounded like.

19 Q. Did you have a conversation with Susi Shelton?

20 A. We asked permission to come onto the property
21 and listen to the unit and we walked down the side, the
22 Shelton side lot, the south side of their lot adjacent to
23 the fence and stood near the kitchen or just beyond the
24 kitchen, a little bit west of the kitchen window and tried

01379

1 to listen to our unit and had a difficult time hearing our
2 unit as their unit was on and then their unit went off and
3 we could hear, just barely hear our unit.

4 Q. Did you try to have a conversation while their
5 unit was operating?

6 A. You mean did Pete and I try to have a
7 conversation?

8 Q. Yes.

9 A. We both noticed this unit was on and we could
10 hear it. It was noisy. It sounded like an air
11 conditioning unit.

12 Q. And this would have been which air conditioning?

13 A. The one on the ground level near the kitchen or
14 the side door, the Shelton side door on the south side of
15 the house.

16 MR. CARSON: No further questions.

17 HEARING OFFICER: Off the record for a moment
18 to discuss the lunch schedule. Let's come back at 1:30.

19 (The hearing was recessed for lunch.)

20 HEARING OFFICER: Back on the record and we
21 will now have the cross-examination of Mr. Crown.

22 CROSS-EXAMINATION

23 BY MR. DIVER:

24 Q. Mr. Crown, you indicated in your testimony a few

01380

1 hours ago there was a rather significant renovation
2 project that you were involved in requiring your use of
3 a significant number of people to assist you in the
4 management of that project, is that correct?

5 A. There were a number of subcontractors and there
6 was some outside people we used, yes.

7 Q. You're now talking about the reconstruction of
8 this entire building, this entire residence that you
9 purchased. The residence, as I understand it at the time
10 you purchased it was give or take seven thousand square
11 feet?

12 A. I don't know what the size was.

13 Q. Well, do you know what the total size is now of
14 the residence as reconstructed?

15 A. I believe so, yes.

16 Q. About sixteen thousand square feet?

17 A. Give or take.

18 Q. Was the existing structure about half the size
19 of the current structure?

20 A. If I didn't know what it started as, I can't
21 give you that answer. I don't know. It may well have
22 been. I don't know what the size of the original -- they
23 didn't have plans that we were able to use to determine
24 what the square footage was and we didn't take the time to

01381

1 measure it.

2 Q. The reason I'm asking is that you indicated that
3 the reason the reconstruction was necessary was the
4 because the existing structure did not conform to your
5 space needs. I assume you would know what the space was
6 in the beginning.

7 A. Space needs as to layout, the number of rooms,
8 type of living spaces we had didn't accommodate what our
9 needs were. Or what our desires were.

10 Q. Okay. When you determined that you set upon the
11 reconstruction project, you set up an organization to
12 actually steer it while you were not able to be present,
13 is that correct?

14 A. I hired certain people to perform certain
15 functions, yes.

16 Q. You had an overall person with responsibility
17 for bringing everything together, is that correct?

18 A. I did. Actually there were three people, four
19 people I guess involved in helping to pull things
20 together, each coming in it with very different types of
21 responsibilities.

22 Q. Okay, indicate for us who those three were and
23 what their responsibilities were.

24 A. Aside from myself you talking about?

01382

1 Q. Yes.

2 A. Okay. There was the original contractor from
3 Pepper Construction. There was the architect, Paul
4 Constant from Constant Architecture and planning which
5 included Don Lybrook, one of his senior people and then
6 Howard Blair who was an owner's representative. He is a
7 partner in development and then obviously me.

8 Q. And these three individuals together with you
9 would meet on a regular basis from the beginning of the
10 reconstruction of this project for a significant number of
11 months, is that correct?

12 A. The players changed into the job. We met on a
13 regular basis. The early stages, because of the nature of
14 the construction project, the shell package was all that
15 had been developed and so some things had to be put in
16 construction ready drawings in order for Pepper to oversee
17 them for a request for proposals to allow bids to come in.
18 We tried to set up a regularly scheduled meetings, they
19 didn't always occur. A lot of them were a function of my
20 travel schedule. If I could make them, some meetings I
21 didn't attend because they were just doing follow up work,
22 but I received, you know, updates as to what had happened.
23 It was slow going at the beginning.

24 Q. Did these meetings at which the plans were being

01383

1 discussed and formulated, did they occur generally on
2 about a weekly basis?

3 A. We tried to do it on a weekly basis, yes.

4 Q. And about how long would the meetings last
5 themselves on average?

6 A. Oh an hour, an hour and a half, 2 hours maybe.
7 And those are the ones that I recall. Sometimes meetings
8 went on during the day which I wasn't involved in, but --
9 and they may have lasted longer with some of the
10 sub contractors. Our general at the time would interview a
11 subcontractor, go through the bid, understand what was
12 involved and then report back to us.

13 Q. And somebody kept track during the course of
14 those meetings of where you were and where you were going?

15 A. Generally speaking, yes.

16 Q. And you either were in attendance at the meeting
17 or were cc'd on minutes of the meeting, is that correct?

18 A. Usually, yes.

19 Q. These minutes were written?

20 A. Most of them, yes.

21 Q. And I believe most of these meetings were
22 proceeded by some kind of an agenda. Somebody had set up
23 an agenda of what was going to happen at that meeting.

24 A. There were open issues, yes I'd call it an

01384

1 agenda. But there were open issues which were either
2 carry over from the previous meeting and the notes from
3 the previous meeting, we used that as an agenda to speak
4 from as things to do, projects in the process.

5 Q. And for how long a period of time did this
6 particular process continue; that is, almost weekly
7 meetings generally an hour, an hour and a half or so with
8 you in attendance or you cc'd discussing where we'd been
9 and where we were going. For how long during the
10 reconstructing process did that process exist?

11 A. That format lasted up until Pepper left the job
12 and Pete Keller was brought on board the job, the formal
13 meeting of that sort.

14 Q. And that was about May of 1992?

15 A. I think that sounds right. I think somewhere
16 around that point.

17 Q. It was at meetings such as this that you
18 actually participated in the review of proposals with
19 respect to the HVAC system with the architect and the GC
20 and Mr. Blair?

21 A. That was one of the occasions that we would have
22 reason to talk about, yes.

23 We met with the architect separately and
24 Howard Blair was down there and I would be in

01385

1 conversations with different people during different times
2 of the day during different days of the week, so other
3 issues were discussed.

4 Q. Was it the intention, as a result of these
5 meetings at which minutes were prepared that somebody was
6 going to be given an assignment with respect to each
7 matter that had not yet been attended to. That a
8 particular person was identified as the person responsible
9 to go forward with that particular issue?

10 A. That was the intent, yes.

11 Q. And I assume the reason for that is to make sure
12 that somebody knew who had the authority to get things
13 done?

14 A. Having a point person overseeing the job was
15 absolutely desired, yes.

16 Q. Once you were advised of a noise problem at the
17 Sheltons, who did you appoint to be your point person in
18 charge of finding a solution to the problem?

19 MR. CARSON: Objection, only in that the time
20 frame is unclear.

21 Q. In September of 1993 at the time the Sheltons
22 were complaining initially about this noise?

23 A. So we've moved from May of '92 to September of
24 '93.

01386

1 Q. Yes, we're on September of '93?

2 A. I wasn't sure where you were. At that time Pete
3 Keller was now on board the project. The team had been
4 shrunk to Pete Keller, Paul Constant and me essentially as
5 the three parties. We didn't necessarily have as formal a
6 set of meetings since I was visiting the job site
7 regularly and Pete was not brought on as a typical general
8 contractor wherein I would get a complete bid from him and
9 he would then oversee and he would then go out and get all
10 of his bids from the subs and I would pay him and he would
11 take the risk of the up or down. Basically, he worked for
12 me. I paid his salary direct and he was overseeing the
13 interests or overseeing the project of my interest
14 specifically. In other words, the problem I had with
15 Pepper was that they didn't work for me, they worked for
16 themselves. Pete Keller worked for me and I knew that
17 when I asked him to do something, he would do it. Pepper
18 wasn't as responsive.

19 Q. Was it your understanding that after you heard
20 of the complaint from Susi Shelton you initially went over
21 and turned the unit off that you identified a particular
22 person to whom you would look for finding a solution to
23 the problem?

24 A. No, sir, I don't think it went quite that way.

01387

1 I asked Pete Keller to contact MidRes and I believe I
2 talked to MidRes, too. So there may have been a couple of
3 lines of communication to apprise them of the situation
4 and to get back to me. Pete was speaking on my behalf, so
5 he was talking to the same sub contractors on a daily
6 basis.

7 Q. Did you understand at that point in time that
8 you had delegated to Pete the responsibility for being the
9 guy in the field to see to it that the problem was
10 resolved?

11 A. No. I asked Pete to find out information and
12 apprise the subcontractor of the problem. I don't know
13 that I assigned Pete the responsibility of solving the
14 problem because I don't think it was in Pete's purview to
15 solve it. He was asked to contact the subcontractor,
16 MidRes, apprise them of the situation and to the extent
17 that he could either facilitate or provide information to
18 them as the onsite general, he should do so.

19 Q. Did you consider that MidRes then was the point
20 person responsible for finding a solution to the problem
21 at that time?

22 A. Yes, I looked to MidRes to provide me with ideas
23 and solutions.

24 Q. Did they provide those ideas and solutions to

01388

1 you directly or do they provide them to you through Pete
2 Keller?

3 A. Both.

4 Q. At the time of the initial communication of a
5 noise problem and let's say at least through the October
6 11, 1993 letter to you from David Shelton, during that
7 period of time, what particular instructions did you give
8 to MidRes with respect to finding a solution?

9 A. I advised MidRes of the situation, was told the
10 unit had not been fully tweaked and was not fully up to
11 it's -- was not fully installed and to make them aware of
12 the situation at that time was what I felt needed to be
13 done. We didn't even have a machine that was up and
14 running the way it would normally be operating.

15 Q. How would the machine have been different?

16 A. How would it have been different?

17 Q. Yes.

18 A. Tightening screws, tightening belts. There was
19 a lot of dust in the system. Just various start up
20 abnormalities I guess or typical set up issues.

21 Q. Who at MidRes in particular told you that they
22 expected that there would be a difference in the amount of
23 sound emitted from this equipment by tightening screws,
24 belts and eliminating dust in the system?

01389

1 A. I don't believe they said it in that form. They
2 said they were still starting up the system, they
3 were still checking it out. I don't remember whether it
4 was Brad Mautner, Gary Elfering, Harry Akers or one of the
5 technicians on the sight.

6 Q. Or Pete?

7 A. It could well have been Pete through any of the
8 above too, yes, and it may well have been to both of us so
9 we had a concurring information.

10 Q. But you're saying at this point you don't
11 recollect how or from who that information came, but that
12 somehow you received that information?

13 A. I did receive the information, I just don't
14 remember specifically who said it. It may well have been
15 a number of people who gave me some information, yes.

16 Q. Okay. Having received that information that the
17 system needs tweaking, did you determine that there was no
18 need for you at that point in time to give any instruction
19 to anybody with respect to finding any kind of a solution
20 beyond tightening screws, belts cleaning dust out of the
21 system?

22 A. Solution to what, sir?

23 Q. Solution to the sound or noise problem that had
24 been the source of complaints from the Sheltons?

01390

1 A. I don't know that we knew that there was a
2 problem. I knew that the Sheltons had complained and we
3 knew that there was a system that had been put in. I
4 don't think we fully understood it. I didn't fully
5 understand what the operating system was going to be like
6 when it was up and running.

7 Q. But you're telling me somebody had suggested to
8 you the operating system would sound differently after
9 this tweaking?

10 A. No, what I said was that somebody had told me
11 that the system had not yet been fully tweaked and
12 required some further installation modifications to get it
13 up to its running speed, that's what I said.

14 Q. When were you told it was fully tweaked, at what
15 point in time?

16 A. I don't know that I was ever told it was fully
17 tweaked.

18 Q. Do you think it's fully tweaked today.

19 A. I think today it's operating as efficiently as
20 it ever has, yes.

21 Q. In your judgment, not professionally judgment but
22 in your judgment, when do you believe the system was
23 finally tweaked?

24 A. It kept undergoing changes. I don't know when

01391

1 the system was fully tweaked. It probably was fully
2 tweaked shortly after our moving in.

3 Q. Sometime after March of 1995?

4 A. That's right because of all the changes that had
5 taken place.

6 Q. And the changes that had taken place that you
7 put in the tweaking category were what?

8 MR. CARSON: Object to the form of that
9 question. I don't think the witness suggested that the
10 changes were a part of the tweaking category.

11 HEARING OFFICER: Sustained and I would like
12 some explanation of what is meant by the term tweak in
13 your discussion here.

14 Q. It's a term -- all right, let's ask the witness.
15 Mr. Crown, what do you mean by tweaking?

16 A. What I mean by tweaking is that the adjustments
17 to parts within the machine, belts and bolts and fans and
18 bit and pieces that come on a delivered mechanical device
19 have been tightened down and arranged properly so they
20 operate as efficiently as they can in a design fashion.
21 That's what I understand tweaking to be.

22 Q. All right. So by tweaking you're then talking
23 about the components as delivered from the manufacturer?

24 A. That's one level of tweaking, yes.

01392

1 Q. What is another level of tweaking?

2 A. As you move the machine around it's no longer
3 delivered from the manufacturer. You've got bring it back
4 to its operating form or its operating efficiency.

5 Q. But did you do that with parts or equipment
6 other than what the manufacturer gave you?

7 A. I'm not the technician, I don't know what you do
8 it with. If you move a machine, there's a chance that
9 something gets out of whack.

10 HEARING OFFICER: Can we move on with your
11 questioning?

12 MR. DIVER: Yes. I still need to find out
13 what it was that you considered to be in the category of
14 tweaking other than what you've just said that occurred
15 between the time of the equipment installation in the
16 summer of 1993 until the time you moved in in March of
17 1995 when you said you believed it was finally tweaked?

18 A. I'm not sure I understand your question.

19 HEARING OFFICER: Mr. Crown, did you believe
20 that there was any additional tweaking other than the sort
21 of the tightening of the system that you've described?
22 Would you describe anything else as tweaking?

23 A. Maybe I can answer the question a little bit
24 differently and help you out. Until such a time as MidRes

01393

1 was willing to put the machine on the one year first
2 installation warranty period, I felt that the machine was
3 fully under their responsibility to tweak it, as I'm
4 calling it, and bring it up to standards and I think that
5 occurred at least a year or 18 months after the
6 installation. And that's why I used the time frame while
7 it was in their hands and I still had the year time frame
8 to run, it was theirs to tweak, fine tune and do what they
9 needed to do and it didn't come over my time clock for
10 warranty.

11 Q. Well let me ask you. Did you consider that the
12 installation of baffling insulation inside the chiller
13 unit itself was tweaking?

14 A. No, sir, I don't think that's tweaking.

15 Q. Did you consider that the installation of sound
16 blankets of some sort over the compressors was tweaking?

17 A. No.

18 Q. Did you consider that the installation of cones
19 over the top of the unit was tweaking?

20 A. Not in my definition, no.

21 Q. Was the installation of any kind of acoustical
22 panel outside the chiller unit itself any kind of a pen or
23 acoustical enclosure, do you consider that to be tweaking?

24 A. That was done for the benefit of trying to quiet

01394

1 the machine to satisfy the Shelton's complaint as were the
2 other ones.

3 Q. All right. Back in September, October of 1993,
4 you were told that tweaking was necessary. Did you
5 determine then at that point that there was nothing needed
6 to do with respect to the Shelton complaints?

7 A. Other than just the tweaking?

8 Read the question back.

9 (The record was read.)

10 A. I don't know that I determined anything at that
11 point in time. I don't think I knew enough to make any
12 type of determination since it was still being installed.

13 Q. What were the other elements of the system that
14 were still being installed other than the tweaking you're
15 talking about?

16 A. Well, the fencing hadn't been put up, the
17 foliage, trees around it, the fence along the property
18 line, trees. Those were all yet to be installed.

19 Q. The fencing, foliage. By fencing, we're talking
20 about some kind of a fence around the chiller unit to make
21 it -- to provide a more visually attractive appearance.

22 A. It actually was going to serve two purposes, I
23 thought.

24 Q. What was the other purpose of that fencing?

01395

1 A. It was going to be another buffer between the
2 Shelton house and ours.

3 Q. Sound buffer?

4 A. I assumed it would be a sound buffer, yes.

5 Q. So when you approved the installation of a fence
6 around the chiller unit, you were at that point in time
7 considering that that fence would be used as a sound
8 insulator between you and your property and the Sheltons?

9 A. No, I saw it as serving as both purposes, both
10 esthetically it would cover it up as with the trees and
11 the trees would serve with the fence as a sound buffer.

12 Q. When did you first consider or approve the
13 installation of a fence around the chiller unit?

14 A. It was probably in '92 or '93.

15 Q. You're saying that in '92 or '93 you were
16 already considering sound coming from this air
17 conditioning unit and how its affects might be reduced by
18 fencing around the unit, is that correct?

19 A. No, sir. What I'm saying is we had already
20 decided on putting a fence around the unit. Esthetically
21 that was the initial understanding and then to get a
22 double benefit from it, it was also going to provide
23 sound barrier.

24 Q. When did you first consider the double benefit

01396

1 as opposed to this esthetic?

2 A. After the Sheltons said they heard sound, we
3 said we still had some work to do where we would be
4 putting a fence around it to provide a sound barrier.

5 Q. But the fence had already been something that
6 was proposed sometime prior to the time that the air
7 conditioning unit went into operation, correct?

8 A. I thought it was pretty good thinking to be able
9 to do two things at once.

10 Q. What about the fence at the property line, when
11 was that added?

12 A. I think it was either '93, '94, something like
13 that.

14 Q. Sometime after the complaint?

15 A. I believe so, yes.

16 MR. DIVER: What's the next exhibit number?

17 I'm marking as Exhibit 113 which I'll
18 hand to you in just a moment and ask you to look at that
19 if you would?

20 A. Yes, sir.

21 Q. Okay. This is a statement you received from the
22 landscape architect for this project on or about February
23 6, 1992?

24 A. No, sir. It's a proposal. It looks like a

01397

1 proposal and it looks like a preliminary budget.

2 Q. Okay. I ask you to look at Item E on Page 1.

3 A. Yes.

4 Q. It indicates there was proposed a site perimeter
5 fence, 200 feet in length, six foot, to replace an
6 existing fence. Is that the fence that was proposed
7 between your property and the Shelton's property?

8 A. It looks like it, yes, sir.

9 Q. Is there anything incorrect about this document
10 in terms of its date?

11 A. No, the date is what it is, I guess.

12 Q. The suggestion of this document then is, at
13 least as early as February 6, 1992, you had been
14 considering and even intending to erect a fence between
15 your -- a stockade fence between your property and the
16 Shelton's property, is that correct?

17 A. We had asked for a proposal on what it would
18 take to fence the entire property, yes, it's in the
19 proposal.

20 Q. And you did receive a proposal?

21 A. And we didn't act on all the proposals we got.

22 Q. Did you accept this proposal?

23 A. Did we accept this proposal?

24 Q. Yes. Did you accept that proposal with respect

01398

1 to the installation of 200 feet of six foot fence?

2 A. I don't know that we accepted their proposal.
3 We accepted parts of the proposal.

4 Q. Is there anything that actually was installed
5 between your property and the Shelton property along the
6 property line that was different from what is shown in
7 this particular proposal?

8 A. No. There was a fence installed, but I'm not
9 sure its 200 feet.

10 MR. DIVER: Madam Hearing Officer, I'd move
11 the introduction of Exhibit 113.

12 MR. CARSON: Madam Hearing Officer, I'm
13 concerned about the content of the Exhibit 113. The only
14 thing that, even assuming the relevance of Mr. Diver's
15 inquiry here, the only relevant item of information is the
16 date and Item E on the first page. There's a lot of other
17 information on here that has no relevance whatsoever and
18 we had indicated at the outset of this proceeding that we
19 view the cost of the project as an inappropriate item for
20 evidence in this case and I think that this is loaded with
21 information that just doesn't -- its potentially
22 prejudicial in that light and has no relevance at all to
23 the issues in this case. I mean certainly there may be
24 another way to address it if Mr. Diver wants to establish

01399

1 that a proposal or preliminary budget was made on this
2 date that included this item, we can certainly enter a
3 stipulation into the record to this effect.

4 HEARING OFFICER: Mr. Diver, do you have a
5 response?

6 MR. DIVER: Madam Hearing Officer, the
7 relevance of this document I don't think is at issue at
8 all. The question that counsel is asking is about whether
9 this particular document has prejudicial information in it
10 and I haven't heard yet what the nature of that
11 prejudicial information is. It's not been identified and
12 I would ask before having to respond to counsel what it is
13 that's prejudicial in this document?

14 HEARING OFFICER: I will suggest that you
15 respond to the objection that has been made.

16 MR. DIVER: Madam Hearing Officer, I tender
17 the exhibit as entered. If Madam Hearing Officer finds
18 that there's something objectionable about the document, I
19 would be willing to stipulate to reading into the record
20 the actual language indicating the date of the document,
21 the source of the document, and the language on the
22 document.

23 MR. CARSON: I could even suggest another
24 alternative and that would be to just enter page 1 because

01400

1 the only information that's of interest is on the first
2 page and the rest of it is not relevant.

3 HEARING OFFICER: I'll agree. I'll entertain
4 the introduction of Page 1 of Exhibit 113.

5 MR. DIVER: That's acceptable.

6 HEARING OFFICER: All right Page 1 of
7 Exhibit 113 will be admitted as 113 and it's entered into
8 evidence.

9 (The document, Exhibit 113, was entered into
10 evidence.)

11 MR. DIVER: Thank you.

12 BY MR. DIVER:

13 Q. You indicated that there were foliage and trees
14 as well that were being planned somehow as a sound buffer,
15 is that correct?

16 A. I said they were going to be used as a sound
17 buffer, yes, and they also were going to be shielding the
18 -- where are these trees -- yes to your question. There
19 are trees planted on the property.

20 Q. And the purpose of these trees was to attenuate
21 sound on the property?

22 A. Which trees?

23 Q. Whatever the trees were. You indicated that
24 this particular project, the chiller unit was not

01401

1 complete. You said the installation was not complete
2 because of a fence around it, because of foliage, because
3 of a stockade fence on the property line and because of
4 trees. And I'm asking you about the foliage and the trees
5 that you just indicated were part of the reason for this
6 installation not yet being completed in September, October
7 of 1993. And I'm asking you whether those foliage and
8 trees were intended for sound attenuating purposes?

9 A. They would serve as sound attenuating purposes
10 and they would also serve to camouflage the stockade fence
11 and also provide some privacy on the property line.

12 Q. Somebody then told you that this foliage or
13 these trees would provide sound attenuating effects, is
14 that correct?

15 A. No, I don't know that anyone told me that. I
16 just assumed that if you put something up between a noise
17 and another location, it will deaden the sound.

18 Q. So this was Steven Crown's determination as to
19 what would be a sound attenuating device as opposed to a
20 device from the consultants, is that correct?

21 A. I drew that conclusion, yes.

22 Q. Were there any other conclusions that you drew
23 with respect to aspects of the chiller unit and the sound
24 attenuating properties of those aspects that you came to

01402

1 the conclusion of all by yourself without your
2 consultants?

3 A. I relied on the consultants when it came to the
4 mechanical aspects of the machinery and it's operational --
5 how it operated.

6 Q. Am I to understand that in September, October of
7 1993 you did not give direction to either Mr. Keller or to
8 MidRes to start looking at things to be done to the
9 equipment other than tweaking and other than fencing or
10 foliage to quiet the sound?

11 A. We weren't yet done with the installation.

12 Q. What were you done with the installation?

13 A. When were we done?

14 Q. Yes.

15 A. Well it was after the fence and after the trees
16 and after the unit had been turned on and tweaked.

17 Q. And that was well turned on and tweaked you
18 indicated was in March of 1995?

19 A. No, sir. You asked me when you thought
20 the tweaking had completed because of all the movement of
21 the unit, turning it 90 degrees on axis, putting in the
22 bi-fold panels around it. When there were changes done to
23 the unit, then I would still consider them wanting to make
24 sure that it runs operational and efficient and there have

01403

1 been some changes made to date. So it's been tweaked to
2 date in order to make those changes, provide the type of
3 noise output that you do today or lack thereof.

4 Q. When was the installation complete in the sense
5 of having the fencing, the foliage, the fence, the trees,
6 and at least enough tweaking to satisfy you that it had
7 been tweaked?

8 A. The trees and the fences we, actually we pulled
9 out trees. They put in some smaller trees around the
10 unit. I had them pull them out and put in larger trees
11 around the unit and my recollection is that it occurred in
12 '94.

13 Q. Sometime in the spring or summer of 1994?

14 A. Something along those lines to my recollection,
15 but there are facts in the record that will show when the
16 date was. Scott Byron's record will show.

17 Q. But your testimony is that until that time you
18 did not give anybody any directions with respect to
19 providing for some sound attenuating mechanisms for this
20 machinery because it had not yet been installed?

21 A. No, what I did was, I apprised our subcontractor
22 of the problem. I apprised our subcontractor that we
23 wanted to look into the problem. That we still had some
24 more installation and we were waiting to see what the

01404

1 results of that were, which I thought was most prudent and
2 appropriate. And since we didn't run the unit in 1993
3 during the night, it didn't seem to be a problem. In the
4 winter time it didn't run at all.

5 Q. Were there actually changes made to the
6 equipment changes that were not part of the original
7 design of the equipment prior to the time that the system
8 was fully installed in the spring of 1994?

9 A. Blankets came on sometime in 1994 and the unit
10 was turned in 1994 90 degrees on axis and the cones were
11 put on in '94, if that's in response to your question.

12 Q. Okay. Were all those things done at the time of
13 installation, to use your terminology that would have been
14 the Spring of 1994, would all of those changes have been
15 at the same time that installation was being made
16 complete?

17 A. They were being done in generally around the
18 same time, yes.

19 Q. Okay. Were you present during the testimony of
20 John Gsell in this proceeding?

21 A. Yes, I was.

22 Q. Do you recall Mr. Gsell testifying that on or
23 about October 6th and 7th of 1993 he installed Armaflex
24 insulation, a baffling material, on the interior of the

01405

1 chiller unit on those two dates in 1993?

2 A. I recall him saying something to that, correct
3 yes.

4 Q. Do you recall him testifying as well that there
5 was no other insulation added to the interior of that
6 chiller unit after that date?

7 A. I remember him talking about the Armaflex and
8 whatever he said in the record is what he said in the
9 record.

10 Q. I'm asking you if you recall his testimony that
11 to the effect that once he put that Armaflex in in 1993
12 there was no other sound insulating equipment added to the
13 interior of the chiller unit?

14 A. Until what time?

15 Q. Ever.

16 A. The blankets were never added.

17 Q. Those were the blankets.

18 A. Those were the blankets?

19 MR. CARSON: I'm going to object to the form
20 of the question and to counsel directing in his statements
21 at the witness. If he's trying -- he's now asking the
22 witness if he recalls specific testimony, which I'm not
23 objecting to, and the witness all he has to answer is
24 whether he recalls it or whether he doesn't.

01406

1 MR. DIVER: Okay.

2 HEARING OFFICER: The objection is sustained.

3 I would like to ask that the nature of the
4 cross-examination go directly to Mr. Crown's statements
5 this morning on direct.

6 MR. DIVER: Right. I believe he testified,
7 Madam Hearing Officer, that the blankets were installed in
8 1994. I'm trying to test his credibility by indicating to
9 him, trying to refresh his recollection that indeed the
10 blankets were installed in October of 1993 prior to the
11 time that he is now testifying they were installed.

12 One of the issues in this particular
13 case has to do with credibility in terms of remembering
14 when things happened and what actually happened and why.
15 And that's what I have to explore with this witness.

16 MR. CARSON: The specific nature of my
17 objection was when Mr. Diver stared Mr. Crown in the eye
18 and said those were the blankets. That's not proper
19 cross-examination.

20 MR. DIVER: I'll withdraw that statement.

21 HEARING OFFICER: All right. Proceed with
22 your questioning.

23 Q. Do you recall the testimony of Mr. Gsell as well
24 that on October 6th or 7th of 1993 he installed an

01407

1 Armaflex cover over the top of the compressor unit in the
2 chiller?

3 A. I don't recall the Armaflex cover.

4 Q. Do you recall Mr. Gsell's testimony that at a
5 point in time in the summer of 1994 he removed the
6 armaflex blankets that he had put over the compressors?

7 A. What time frame again?

8 Q. Summer of 1994.

9 A. I knew the blankets, as you called them, were
10 removed, yes that I was aware of.

11 Q. And do you recall his testimony that the
12 blanket that he removed was the same blanket that he had
13 installed in October of 1993?

14 A. I'm assuming it was the same blanket that was
15 installed, yes.

16 Q. Had you given to Mr. Gsell directly an
17 instruction to install Armaflex insulation on the sides of
18 the interior of the chiller unit or over the tops of the
19 compressors?

20 A. No, sir.

21 Q. Had you given instructions to Mr. Keller to have
22 Armaflex insulation or an insulating material added to the
23 interior of the chiller unit and over the tops of the
24 compressors?

01408

1 A. No, sir.

2 Q. Had you given such an instruction to Mr.
3 Mautner?

4 A. No, sir.

5 Q. And yet I'm understanding by your testimony that
6 you had given the instruction to put the blankets on?

7 A. No, sir, I didn't say that.

8 Q. I'll leave the record to decide that part. At
9 some point in June of 1994 I believe you testified about
10 an incident involving the police and a report that was
11 made to the police department by the Sheltons about the
12 noise coming from your chiller unit, is that correct?

13 A. I was contacted by the police, yes.

14 Q. Do you recall that being in late June of
15 1994?

16 A. Approximately that time, yes.

17 Q. Do you recall prior to that date, one or two
18 days before, having two telephone conversations on two
19 separate dates prior to that contact with the police by
20 Mr. Shelton in which you advised Mr. Shelton that you did
21 not intend to do anything more than you had already done
22 with respect to improvements to the chiller unit with
23 respect to its sound?

24 A. I don't recall any conversation of that sort.

01409

1 Q. Do you recall two telephone conversations with
2 David Shelton approximately two days before the chief of
3 police incident; one at your home at night and one at your
4 office which you discussed with Mr. Shelton what it was
5 that you were doing to reduce the amount of sound coming
6 from the chiller unit?

7 A. I didn't talk to the chief of police.

8 Q. No, I'm not saying you did, I'm just trying to
9 give--

10 A. You did say that. I didn't talk to them.

11 Q. At some point in time prior to the police chief
12 incident -- I'm just calling that the police chief
13 incident being the time in late June of 1994 when the
14 police department was contacted, whatever that date was
15 I'm talking about which in the one or two days before that
16 you received two telephone calls from David Shelton; one
17 at your office and one at home.

18 A. I talked to David Shelton off and on, I can't--

19 Q. Do you recall having the telephone
20 conversations, particularly that few days prior to the
21 police call incident?

22 A. I don't recall the days specifically, no, sir.

23 Q. Do you recall prior to the police call incident
24 telling Mr. Shelton over the phone that you had no

01410

1 intention of doing anything more with respect to reducing
2 sounds from the chiller unit?

3 A. No, I wouldn't have said that to Mr. Shelton.
4 To the contrary, we were working on it.

5 MR. DIVER: I believe I don't have a
6 question.

7 A. Oh, I was trying to answer your first one.

8 Q. You indicated that as one of your ways to
9 consider the inconvenience to neighbors in the
10 construction of your project, you authorized the addition
11 of a haul road to the what would it be the south end of
12 your property?

13 A. South end.

14 Q. As a consequence of that haul road being placed
15 there, where did the workers park when they had to park on
16 your property?

17 A. They entered either from the Pelham side or they
18 came in through the driveway side.

19 Q. But when they actually parked their vehicles,
20 where did the workers park their vehicles because I think
21 you indicated that you told them to park on your property
22 rather than on the road?

23 A. They parked on the property.

24 Q. Did they park on the property adjacent to the

01411

1 Shelton's residence?

2 A. A few cars might have been there, yes.

3 Q. Had you at any time during construction of the
4 project put up any kind of a barrier between the working
5 project and the Shelton residence?

6 A. Barriers such as what?

7 Q. A visual barrier, any kind of barrier to stop
8 the visual impact that was ongoing at the construction
9 site?

10 A. No there was a fence there.

11 Q. What kind of a fence was that?

12 A. An old wooden fence, stockade fence, I believe.

13 Q. Had you put construction fences around any other
14 parts of the property?

15 A. We had put orange construction fences around the
16 work area, yes, with keep out signs and all the
17 appropriate things the insurance company told us to put.

18 Q. You testified about a number of written
19 complaints that you had received from people in the
20 Ardsley-Pelham Road neighborhood about sound emissions
21 from the chiller unit, correct?

22 A. I received letters from members of the
23 neighborhood, yes.

24 Q. You received one from Marge Alexander?

01412

1 A. Yes, sir.

2 Q. Did you ever respond to it in writing?

3 A. Yes, that was the letter that was sent out in
4 June. The letters that I sent to all the Pelham neighbors
5 was in response to their letters to me in June, July,
6 whatever the date was.

7 Q. Do you recall what the date was to your letter?

8 A. No, but I think it's in the record someplace.

9 MR. CARSON: That would be Exhibit 38, I
10 believe.

11 MR. DIVER: Okay. I'm going to ask you if
12 you recall the following exchange of questions and answers
13 at your deposition on June 10th, 1996 in this matter.

14 MR. CARSON: Page number, please.

15 MR. DIVER: Page 123.

16 "Q. Okay. I'm going to show you
what's now been marked as Joint
17 Exhibit 22 being a letter dated September
21, 1994 from Marge Alexander to you.

18 THE WITNESS: (you), okay, I read it.

Q. Did you receive that letter?

19 A. Yes, I did.

Q. Okay. Did you respond to

20 Ms. Alexander?

A. I have not.

21 Q. Have you ever responded to

Ms. Alexander?

22 A. On this letter, no."

23 MR. DIVER: Did you give those answers in

24 response to my questions so asked on April 10th, 1996?

01413

1 A. Yes, I did.

2 Q. Were those answers that you gave me true?

3 A. No, they weren't because at the end of our
4 deposition if you will remember, I recalled letters that
5 were sent out to the neighbors that were in a different
6 file in my office and I told you that I would get copies
7 of those letters to you which were in response to the
8 neighbor's complaints.

9 Q. Your consideration then is that the mailing that
10 you made in July of 1994 to the neighborhood were the
11 responses to the individual complaints that you had
12 received from neighbors in writing?

13 A. Yes, sir, I considered those responsive to the
14 neighbors.

15 Q. Not responsive to them, but in response to their
16 letters.

17 MR. CARSON: Objection, that's argumentative.

18 MR. DIVER: I'm not trying to be cute, I'm
19 asking whether or not you considered by that letter you
20 were communicating to Ms. Alexander on her particular
21 letter.

22 HEARING OFFICER: Sustained.

23 A. I was communicating.

24 Q. Am I correct that at the time you decided upon

01414

1 the particular kind of chiller unit to be installed on
2 this property that you had been given a number of
3 different options and you considered all of those options
4 essentially equal?

5 A. I was given options and discussed the various
6 options with Brad Mautner and his people, yes.

7 Q. Did you consider all the options that you were
8 given to be essentially equal?

9 A. I didn't know the difference between the two
10 quite honestly.

11 Q. At the time that you wrote the July 27, 1994
12 letter to the neighborhood, were you at that time already
13 aware of the results of the Shiner sound testing on July
14 5, 1994?

15 A. I believe I was -- I believe I received a copy
16 of it, yes.

17 Q. Was there any discussion in your letter of July
18 27, 1994 of the fact that sound tests had been made some
19 three weeks before?

20 A. I don't think it was mentioned in the letter.

21 Q. When did you first learn of the results of sound
22 tests that were made on July 3rd, 1994?

23 A. I believe they were faxed to me by David
24 Shelton, Al Shiner or Brad Mautner. One of the above

01415

1 sent me a copy.

2 Q. I believe you testified that at or about that
3 time there were some discussions with Mr. Mautner and
4 between Mr. Mautner and Mr. Shiner concerning the
5 possibility of the use of Mr. Shiner in assisting in the
6 development of a corrective action plan, correct?

7 A. Brad talked -- Brad Mautner talked to Al Shiner
8 about using his services in conjunction with the Sheltons
9 to try to come up with a plan, yes.

10 Q. And that plan, what was that plan intended to
11 do?

12 A. Address the sound issue.

13 Q. The sound issue that was brought up in the July
14 5th, 1994 test?

15 A. No, it was addressing the sound issues that were
16 ongoing since the Sheltons first expressed a concern about
17 it.

18 Q. But I believe you had indicated that prior to
19 the July 5th, 1994 test, a number of things had been done
20 to attempt to reduce the amount of sound coming from this
21 equipment, correct?

22 A. Yes, sir.

23 Q. And then after that test a determination was
24 made to have something more done, is that correct?

01416

1 A. Right. I wanted to see what else we could do to
2 try to accommodate the Sheltons, yes, sir.

3 Q. Was it to accommodate the Sheltons or also in
4 response to the test data that were shown to you?

5 A. I didn't understand what the test data proved at
6 the time, I just knew that the Sheltons were complaining
7 and we had some data that someone could look at and make
8 heads or tails out of it better than I could and bringing
9 on an expert to help us decipher it seemed like a prudent
10 and appropriate approach.

11 Q. Bring on an expert. What kind of an expert was
12 to be brought on?

13 A. Acoustical sound expert.

14 Q. Up to that point there had not been an
15 acoustical sound expert involved in evaluating the problem
16 or proposing a solution to you, is that correct?

17 A. Up to that point I'd been relying on my
18 subcontractor.

19 Q. And up to that point you had never asked your
20 subcontractor whether it had any expertise at all with
21 respect to acoustics, had you?

22 A. I didn't ask for the qualifications, no.

23 Q. In point of fact, you know at this point that
24 that subcontractor does not have any acoustical skills?

01417

1 A. I've learned through this whole process that
2 they do not have acoustical engineers on staff, yes.

3 Q. So when Mr. Shiner was talked to, did you
4 understand that he was going to be asked to provide some
5 acoustical consulting services to MidRes as opposed to
6 David Shelton?

7 A. I thought he was working with both of
8 us.

9 Q. I'm going to show you -- well, it's not been
10 marked as an exhibit, it's a statement from Shiner &
11 Associates dated July 29, 1994. I show it to counsel
12 first and ask you to look at that document and ask you
13 whether that refreshes your recollection as to who Mr.
14 Shiner was working for at the time of the discussions in
15 July of 1994 towards establishing additional sound
16 attenuation for the chiller unit?

17 MR. CARSON: Objection to the attempt to
18 refresh his recollection when he never said that he didn't
19 recall or that his recollection was exhausted. In fact,
20 he answered the previous question with what he understood
21 the situation to be.

22 HEARING OFFICER: I have a problem with the
23 lack of foundation for the document. I also have a
24 problem with how it's associated with cross-examination

01418

1 based on Mr. Crown's--

2 MR. DIVER: At this point there's been a
3 suggestion in the testimony of this witness during his
4 direct examination that Mr. Shiner was working on behalf
5 of both David Shelton and on behalf of the witness with
6 respect to the development of a compliance plan. While
7 Mr. Shelton had authorized Mr. Shiner to be released from
8 his work obligation to Mr. Shelton to work for MidRes with
9 respect to development of a solution, Mr. Shiner did not
10 then become Mr. Shelton's expert, he just became a
11 released expert available to MidRes and was working for
12 MidRes at that time. That's what I'm trying to establish
13 because that is, I believe, the actual factual
14 circumstance. And I believe if Mr. Shiner were here, he
15 would so testify.

16 MR. CARSON: I think that's patently false.
17 That does not square with the documents or the evidence.

18 MR. DIVER: It squares exactly with
19 everything.

20 HEARING OFFICER: What is the document that
21 has been offered to the witness? I would like to see it.

22 MR. DIVER: I'm sorry. The document is the
23 billing from Mr. Shiner to MidRes for his consultative
24 services in July of 1994?

01419

1 THE WITNESS: Madam Hearing Officer, may I
2 talk to my counsel for an quick second?

3 HEARING OFFICER: Let's go off the record to
4 examine this document.

5 (A brief recess was taken.)

6 HEARING OFFICER: Back on the record.

7 MR. DIVER: Counsel, I believe I have a
8 question to Mr. Crown as to whether this document helps
9 him with respect to understanding what the nature of the
10 relationship between Mr. Shiner and MidRes was with
11 respect to the consultative services in July of 1994?

12 MR. CARSON: And I objected to that question
13 and this one is equally objectionable. The witness
14 already described what his relationship was and Mr. Diver
15 has shown him a piece of paper, unidentified, in an effort
16 to try to get the witness to change his story. It's not
17 proper cross-examination. He's not refreshing the
18 witness' recollection.

19 HEARING OFFICER: The objection is sustained.

20 Q. Mr. Crown, from whom did you receive the
21 understanding as to the nature of the relationship between
22 Shiner and MidRes and who Mr. Shiner was working for?

23 A. All Shiner.

24 Q. I have just shown you a bill. Do you know

01420

1 whether that bill was paid by MidRes?

2 A. No, sir, I don't know that. You have to look at
3 the books and records.

4 Q. There was a proposal that at least made it to a
5 preliminary drawing stage that I believe was found in a
6 couple of documents dated July 12, 1994, a drawing that
7 you believe was from Pete Keller. Do you recall it?

8 A. I recall a drawing by Pete Keller.

9 Q. Okay. You indicated to us that Mr. Keller was
10 going to, I believe, take this concept to the Village of
11 Winnetka and see whether or not there would be any
12 requirement to obtain a variance or the like because of
13 the particular design of this system, is that correct?

14 A. Pete had a concern that by putting a roof on it,
15 it might require more than just building a stand to it,
16 yes.

17 Q. No, I understand. But was it your understanding
18 that he was going to go to the Village of Winnetka to
19 determine whether or not indeed a variance was required
20 for this particular construction?

21 A. That was the reason he drew up the drawing to
22 try to expedite matters to get to the problem as soon as
23 possible.

24 Q. Do you understand that he did do

01421

1 that?

2 A. I don't recall if he had get to the village or
3 not.

4 Q. Do you recall him ever telling you that he did
5 go to the village and did get an expression of an opinion
6 as to whether or not a variance would be required for this
7 construction?

8 A. I believe he did talk to the village and they
9 told him that putting the foundation in would be required
10 if you were going to put a roof on it, yes.

11 Q. But you recall that there was not a requirement
12 for a variance from the village?

13 A. No, sir I don't recall that at all. In fact, to
14 the contrary. If it required footings, my understanding
15 at the time was that since we were out of FAR, it would
16 require a variance.

17 Q. So is it your testimony today that it's your
18 understanding that had this construction gone forward with
19 the design that we're talking about here, that a variance
20 would have been required from the Village of Winnetka?

21 A. It was my understanding at the time, yes.

22 Q. All right. And from whom did you understand
23 that a variance was required from the Village of Winnetka?

24 A. It was my understanding Pete Keller and also

01422

1 from our architect at the time that we were out of FAR and
2 if you're out of FAR and you wish to build something in
3 addition to that you need to go for a special variance.

4 Q. And did you talk to the people at the Village of
5 Winnetka yourself to determine whether a variance would be
6 necessary?

7 A. No, sir, I didn't because we didn't go forward
8 with that plan.

9 Q. Were you present yesterday during Mr. Keller's
10 testimony with respect to this particular design?

11 A. Yes, sir, I was.

12 Q. And do you recall Mr. Keller saying anything
13 about a variance and the need for a variance being the
14 reason for taking the roof top off of this particular
15 design?

16 A. No, he didn't say that was the reason it was
17 taken off or not.

18 Q. What did he say the reason for taking it off was
19 as you understand it? What did he tell you the reason for
20 talking the roof top off?

21 MR. CARSON: Objection. That's a compound
22 question. He's asking what he said here and what he told
23 him in the same question.

24 HEARING OFFICER: Let's clarify.

01423

1 Q. What did he tell you at or about the time this
2 design was being proposed as to why the roof top was
3 coming off?

4 A. What did who tell me?

5 Q. Peter Keller tell you?

6 A. Pete wasn't the one that told me anything about
7 the roof. The roof was discussed as being a constriction
8 to air flow. That was my understanding at the time.

9 Q. I understand, but you received on July the 12th
10 a drawing from Pete indicating that that was what he
11 understood was the concept that was discussed that would
12 be gone forward with to the development?

13 A. That was a concept that was discussed and where
14 we do want to take it forward. Pete wanted to get a jump
15 on it, that's correct.

16 Q. Who decided that you didn't want to go forward
17 with it if indeed that decision was made?

18 A. Brad Mautner.

19 Q. When did Brad make that decision that you didn't
20 want to go forward with the design that Pete showed in his
21 letter of July 12th?

22 A. When he felt there was a better way of
23 addressing the noise issue relating to the chiller.

24 Q. And when was that relative to July 12th?

01424

1 A. Afterwards.

2 Q. Well, between July 12th and today, can you give
3 us a better idea of when that was?

4 A. With in the 30, 60 days afterward.

5 Q. And what did Brad tell you with respect to the
6 better idea?

7 A. He wanted -- he was concerned about the air flow
8 with the roof on top. He felt there might be some other
9 alternatives. He had done some checking, I don't know
10 with whom, he testified to that effect, and came up with I
11 guess what was called quiet flow panels or whatever the
12 technical terminology is and said these would provide as
13 good if not well -- well they would provide comparable
14 sound insulation and attenuation.

15 Q. And that's what you understood his testimony and
16 his position to be?

17 A. That's what my frame of mind was at the time.
18 That's what I understood Brad Mautner, yes, sir.

19 Q. Okay. So the enclosure, the acoustical
20 enclosure that was actually built did not include any 8
21 inch concrete block walls surrounding 3 sides of
22 the condenser unit, did it?

23 A. It did not.

24 Q. It did not contain any concrete block interior

01425

1 wall services lined with one inch Neoprine-faced fiber
2 blast duct liner board, did it?

3 A. It did not.

4 Q. It did not include a block labyrinth with
5 fiberglass lining to be used as an air intake, did it?

6 A. Whatever that is, it did not.

7 HEARING OFFICER: What is the purpose of this
8 line of questioning?

9 MR. DIVER: Merely to indicate that the
10 design that was actually proposed at the meeting following
11 the conference of July 11th was in no respect implemented.
12 That indeed the system that was implemented here was a
13 system that was created by Mr. Mautner as his testimony
14 has already indicated yesterday and that this was not the
15 result of Al Shiner, this was the result of Mr. Mautner.

16 HEARING OFFICER: Thank you.

17 Q. Between -- did you first communicate the changed
18 plan to the Sheltons?

19 A. Sometime that fall.

20 Q. September?

21 A. I don't remember the date, sir.

22 Q. How did you communicate it to them?

23 A. I think verbally.

24 Q. Do you recall where you were when you verbally

01426

1 communicated it to them?

2 A. It may well have been Susi Shelton out in front
3 of the school. It may well have been in a phone
4 conversation, but it was indicated by me.

5 Q. And that system was actually constructed when?

6 A. Before the start up of the system in 1995.

7 Q. When had you first been told about the October,
8 1993 experiment using various sizes of plywood board
9 around the chiller unit to determine the effect of that
10 plywood on sounds perceived outside the plywood?

11 A. Are you asking me when I --

12 Q. When you were first apprised of the existence of
13 that experiment?

14 A. I don't know, shortly thereafter I was told why
15 it was being moved, plywood was being moved around.

16 Q. You had indicated at several times most
17 specifically in your letter of July 27, 1994 being
18 admitted herein as Exhibit 38 that this unit, the chiller
19 unit had been properly reviewed by the village and it
20 complied with all code ordinances and zoning requirements,
21 correct?

22 A. That was to the best of my understanding, yes.

23 Q. That understanding you received from someone?

24 A. When we applied for our permits and for the

01427

1 installation and also when Ken King and Ed Kirshner came
2 by and they said I was fine.

3 Q. Did you check with counsel to determine whether
4 or not you were in compliance with all code ordinances or
5 zoning requirements?

6 A. No, I felt the village was probably a better
7 source since they're the ones that can either approve or
8 disapprove permits.

9 Q. What did you understand to be the requirements
10 of the village at that time with respect to code
11 ordinances and zoning requirements with respect to
12 the air conditioning unit?

13 A. At that point in time I didn't ask the
14 specifics. I just said are we out of compliance? Is
15 there something more we need to do. The answer was no. I
16 assumed they understood their own zoning ordinances, codes
17 and compliance requirements.

18 Q. I'll ask the question one more time. What did
19 you understand the Village of Winnetka requirements to be
20 under their code, zoning and ordinances with respect to
21 air conditioner location?

22 MR. CARSON: Objection, asked and answered.

23 MR. DIVER: I don't believe that the answer
24 that I received, Madam Hearing Officer, was at all

01428

1 responsive to the question I had asked. I was told again
2 about what the Village of Winnetka people knew about the
3 ordinances, but I'm asking this witness what he understood
4 the requirement to be.

5 HEARING OFFICER: I'll permit the witness to
6 answer the question.

7 A. At that time it wasn't -- I didn't feel it
8 necessary for me to understand what the zoning ordinances
9 and codes were as long as I was in compliance. There are
10 a number of codes in the Village of Winnetka that I don't
11 know.

12 HEARING OFFICER: If I might interject here.
13 Could I see Exhibit 38? Off the record to discuss
14 exhibits.

15 (A brief off the record discussion was held.)

16 HEARING OFFICER: Back on the record.

17 MR. DIVER: Back on the record. I believe
18 there's an issues as to whether Exhibit 38 had been
19 previously offered for evidentiary purposes during
20 Respondent's case in chief and it turns out apparently
21 that it had not been through oversight of counsel and I've
22 indicated that Complainant would stipulate that it has no
23 objection to the admissibility of that particular document
24 as a statement of what Mr. Crown did do in July of 1994

01429

1 about communicating his view of the situation to his
2 neighbors.

3 MR. CARSON: We are offering Exhibit 38 and
4 38A. 38A was marked -- was the one Marge Julian testified
5 to. We are offering that with the permission of the
6 Hearing Officer.

7 HEARING OFFICER: Exhibit 38 and 38A are
8 entered into evidence and is a collection of letters which
9 were discussed during Mr. Crown's direct testimony this
10 morning.

11 MR. CARSON: Thank you.

12 Q. Mr. Crown, I believe you testified earlier today
13 that you determined as an act of good will to leave the
14 air conditioner unit off at night during the balance of
15 1993 following receipt of the Shelton's complaint, even
16 though that was over the opposition of your general
17 contractor, is that correct?

18 A. It was against the advice of the general
19 contractor, yes.

20 Q. And I believe you testified that the reason for
21 that was because of the amount of millwork and wet goods
22 inside the house that were there and needing to have
23 dehumidification applied, is that correct?

24 A. If you're asking me the reason it would have

01430

1 been better to keep it on would have been to address those
2 particular installation, yes.

3 Q. Okay. Because those particular installations
4 were in existence at that time, is that correct?

5 A. Yes. There were some, that's correct.

6 MR. DIVER: Okay. I'm going to ask counsel
7 if he could give me another copy of Respondent's Number 7
8 to show the witness.

9 Q. I have another copy in my file. I'm going to
10 direct your attention to Exhibit Respondent's Number 7
11 which is your January 10th, 1995 letter to the Village of
12 Winnetka and I'm asking you to look to the first full
13 paragraph at the top of Page 2. Reading that first
14 sentence which states that you contacted David Shelton
15 during this time period and explained what your plans were
16 and that you would not be running the unit at night
17 inasmuch as you didn't have any millwork or sensitive
18 materials within the house that required ambient
19 temperature or a reduction in humidity to allow them to
20 set and not warp. Did you write that sentence in January
21 of 1995?

22 A. Yes, sir, I did.

23 Q. Was it true?

24 A. It proved to be incorrect. It was true at the

01431

1 time. I thought we would be fine and it proved to be
2 wrong. I had to replace floors as a result of that, not
3 millwork, floors.

4 Q. And your testimony was that you were required to
5 replace floors in 1994?

6 A. And 5.

7 Q. Because you didn't turn on the air conditioner
8 at night in 1993, is that your testimony?

9 A. My testimony is that the humidity in the walls
10 got into the floors and caused the floor to buckle, yes.

11 Q. And I'm asking whether it isn't true that that
12 was in 1994 and not 1993?

13 A. The humidity got into the floors in 1993. The
14 humidity got into floors in 1994. I replaced them in
15 1994.

16 Q. Was there any indication of any problem in 1993
17 with the floors of your house?

18 A. The problem didn't manifest itself until later
19 on.

20 Q. And is it your testimony today that to your
21 knowledge humidity that entered the house in the fall of
22 1993 caused floors to buckle in the house sometime in June
23 and July of 1994?

24 A. I was told by the flooring contractor that the

01432

1 humidity level in the house was not adequate.

2 Q. What flooring contractor would that have been?

3 A. Birger-Juell, B-i-r-g-e-r J-u-e-l-l.

4 Q. And this would have been information that you
5 received from Birger Juell sometime in June of 1994?

6 A. This was when we had to remove the floor, yes,
7 sir.

8 Q. Which would have been June or July of 1994?

9 A. You maybe right, yes.

10 Q. Is it that I maybe right or am I right?

11 A. I don't know, it's one of the two.

12 Q. Oh, it was one of those two months?

13 A. Yes. I don't know the exact date when the
14 floors were removed.

15 Q. And when Birger-Juell communicated this to you,
16 you communicated this to Mr. Keller?

17 A. Communicated what to Mr. Keller?

18 Q. What Birger-Juell had told you about the
19 humidity getting into your house in 1993 because of the
20 air conditioner being off?

21 A. Pete was aware of the situation, yes.

22 Q. Did you communicate it to him?

23 A. I may well have, yes.

24 Q. Did anybody tell you in July of 1994 that your

01433

1 kitchen floor was buckling because of evidence of poor
2 glue down?

3 A. That was one of the conditions, yes.

4 Q. Did anybody tell you in July of 1994 that you
5 had a leak in the attic of your house that was
6 contributing to the humidity in the house?

7 A. No, that I don't recall.

8 Q. Did anyone tell you in July of 1994 that a valve
9 had been shut off on one of the fan coils and it left open
10 such that the air conditioning unit was not functioning?

11 A. In one of the sealed off rooms, yes. We had a
12 multitude of problems occur.

13 Q. Who told you though that the problem was caused
14 by your turning off the air conditioning in the night time
15 of 1993?

16 A. I was told it contributed to the lack of
17 reduction of humidity in the environment.

18 Q. So what you're telling me is, so that I
19 understand it, that sentence that's in your January
20 10th, 1995 letter is incorrect because indeed there were
21 materials in your house that required protection from
22 humidity. Is that what you're saying?

23 A. As I found out later, yes, and quite honestly
24 turning off the air conditioning system seemed like the

01434

1 appropriate neighborly thing to do.

2 Q. Why did you communicate in January 10th of 1995
3 this particular rationale in this sentence? Why did you
4 communicate to the Village of Winnetka that you turned it
5 off because you didn't have these materials in there when
6 in January 10th of 1995 you knew you did have it?

7 A. I was mistaken as to the materials involved, but
8 they didn't seem to be significant at the time and the
9 issue of addressing the Sheltons concern seemed more
10 imminent, more appropriate.

11 Q. In your letter of July 27th, 1994 in the last
12 paragraph you have a sentence that says: "The complaints
13 from the Sheltons seemed to include a time period where
14 the unit was not in operation." This is the July 27th,
15 1994 document. This is your letter to the residents in
16 general, Exhibit 38. I'll point it out to you here. The
17 complaint seemed to include a time period--

18 A. Yes.

19 Q. When was that period of time that seemed to be
20 out of place? When was that time period when the unit was
21 not in operation that the complaints seemed to relate to?

22 A. When they would complain during winter time and
23 the unit hadn't been operational.

24 Q. You received complaints in the winter time?

01435

1 A. Sure.

2 Q. About the noise coming from this unit?

3 A. About the noise and the concerned of the lack of
4 --they were concerned about the corrective action that
5 was being taken and the unit wasn't even operating at that
6 time and we hadn't even put in the trees or the fence at
7 that point in time.

8 Q. No, but I'm trying to find out whether they
9 were, actually whether the Sheltons were complaining about
10 noise that they were experiencing in the winter of 1993?

11 A. No, sir. What I said there was that the
12 complaints occurred during times when the machine was not
13 operational. They occurred in January. The machine was
14 not operational. If they were complaining about what was
15 going to be done -- throughout the course the Sheltons
16 took the position that nothing could be done, nothing that
17 was done would work and by registering that complaint in
18 the winter time the chiller wasn't working, it was down.
19 That's what I'm referring to in that letter.

20 Q. Okay.

21 A. It didn't seem appropriate to me to be -- I
22 didn't know how to respond to an apparatus that was
23 sitting quiet in the backyard.

24 Q. So, is it your position then that already by the

01436

1 winter of 1993 you had formed a conclusion that in some
2 respect the Shelton's complaint was off the wall or wrong
3 because they were complaining about wanting a solution
4 even though it was winter time?

5 MR. CARSON: Object to the compound question.

6 MR. DIVER: I'll withdraw the question.

7 Q. What was the opinion that you formed of the
8 complaint of the Sheltons in consequence of the fact that
9 they were complaining during the winter of 1993 of wanting
10 a solution to the noise problem that they had experienced
11 in the fall of 1993?

12 A. I agree with them. I would have wanted to see a
13 solution, too, but I thought we ought to at least wait
14 until we had the modifications and whatever other types of
15 remedies installed and see what the outcome was. I
16 thought it was a little precipitous to be forming
17 conclusions before something was tried or occurred.

18 Q. As of the time of this letter, July 27th
19 however, what had been tried had already been tested,
20 correct?

21 A. Up to that time what had been tried had been
22 tested, yes and we were continually moving forward with
23 other areas.

24 Q. With a new phase?

01437

1 A. Yes, sir. We continued to try and address it.

2 Q. You indicated in your direct testimony that
3 during the course of considering either the type or
4 location of a HVAC -- strike that -- of a chiller unit,
5 sound wasn't much of an issue, is that correct?

6 A. That's right.

7 Q. How much of an issue was it. I know it wasn't
8 much of one, but how much was it? Was it even discussed?

9 A. There may have been one sentence and I don't
10 think color was discussed either. It was not an issue
11 that was really addressed as an issue. The weight of it
12 was not discussed as an issue. There were a number of
13 things that weren't discussed as issues.

14 Q. I bell you testified that in the June 19, 1995
15 test of the sound coming from the chiller unit that you
16 were present during part of the test, but not all of it,
17 isn't that creek?

18 A. That's correct.

19 Q. Did you actually witness any part of the test at
20 all?

21 A. I was there for part of it. I went in and out
22 of the house, yes.

23 Q. What part of the test did you yourself observe?

24 A. I was there at the beginning and I was there at

01438

1 the end.

2 Q. What was it that you observed at the beginning?

3 A. I observed them setting up for the test.

4 Q. Where did they set up when you observed it?

5 A. They were in Michigan driveway at the time. I
6 didn't stay for very long.

7 Q. Had the instrumentation actually been placed?
8 Was it in a fixed position before you left?

9 A. No, I don't think so.

10 Q. Okay. When you returned I believe you said that
11 was at the end. Where was everybody when you returned at
12 the end?

13 A. In my driveway.

14 Q. Back where you had seen them last?

15 A. That's correct.

16 Q. Were they actually testing any sound at that
17 point in time? That is, were instruments in place and was
18 there apparent recordation or testing going on?

19 A. No, I don't know that -- they had hands held
20 units. I don't know if they were still taking tests.

21 Q. Just to clarify it for me as well as for the
22 record. I believe you testified that on two occasions you
23 actually went onto the Shelton property with the express
24 purpose of listening to the sound coming from your air

01439

1 conditioner, is that correct?

2 A. That's correct.

3 Q. And the first such visit onto the Shelton
4 property was in what year?

5 A. I believe it was 1993.

6 Q. So this would have been sometime after the
7 complaint in September of 1993?

8 A. Sometime later, yes in that range, during the
9 day.

10 Q. And in that meeting you met with which of the
11 Sheltons?

12 A. I don't remember which one.

13 Q. And who did you go there with?

14 A. I may have gone there with Pete Keller as I
15 testified earlier.

16 Q. At the time that you went over there that first
17 time, where did you actually stand to experience the
18 sound?

19 A. I believe we were on the patio, porch area.

20 Q. And again do you recall what month this was?

21 A. No, you just asked me that.

22 Q. Do you recall whether either of the two
23 compressors were on at the time?

24 A. No, I just know the unit was on.

01440

1 Q. Do you recall whether any of the three fans were
2 on at the time?

3 A. I just know that the unit was on.

4 Q. But you don't know whether you were listening to
5 the sound of one or two compressors or one, two or three
6 fans, is that correct?

7 A. The unit was on. I don't know whether it was on
8 completely or whether partially on, that's correct.

9 Q. The second time that you went on the property
10 was in what year?

11 A. It was 1994.

12 Q. And do you recall the month for the second
13 visit?

14 A. No. May, June, July, something like that.

15 Q. And were you there by yourself?

16 A. No, that time I went with Pete Keller.

17 Q. And on what part of the Shelton property did you
18 stand to perceive the sound coming from the unit?

19 A. Near the doorway on the south end of their
20 property, their kitchen door, I guess.

21 Q. And which of the Sheltons or both of them were
22 you with at that time?

23 A. Susi Shelton was at the house.

24 Q. And you recall listening to the sound of the air

01441

1 conditioner at that time?

2 A. Tried to.

3 Q. What was it that was stopping you?

4 A. The Shelton air conditioner.

5 Q. What time of day was this?

6 A. I believe in the morning.

7 Q. And your testimony is that you could not hear
8 your air conditioner because of the sound of the Shelton
9 air conditioner?

10 A. That's correct. We told Susi Shelton to turn it
11 off.

12 Q. And after Susi Shelton turned off her air
13 conditioner, what did you perceive with respect to yours?

14 A. I could barely hear it.

15 Q. At that point in time were both compressors
16 operating?

17 A. No, sir. I don't know if both were operating.

18 Q. Were any of the three fans operating?

19 A. I don't know if three fans were operating or
20 they weren't, but the unit was on.

21 Q. Had you ever been on the property any other time
22 other than this time in 1993 and 1994?

23 A. I don't believe so.

24 Q. Do you recall in your deposition April 10, 1996

01442

1 at page 125 being asked:

2 "Q. Have you been over there more
than once?

3 A. No, I don't believe so.
Actually no, that's not true. I may
4 have walked over there once later in
1995, but that was about it."

5

6 A. Corrected the year. I think it was 1994 that it
7 was over there.

8 Q. And it was late in 1994?

9 A. I was there twice, that much I will testify to.
10 As to the date, I can't give you exact date, but I was
11 definitely there two times.

12 Q. Do you recall whether the time that you were
13 present in 1994 was before or after the Shiner test of
14 July 5th, 1994?

15 A. I believe it was afterward.

16 Q. So, it would not have been May or June then, it
17 would have been July or later?

18 A. Probably not if the Shiner test was in July,
19 July, whatever.

20 Q. Carrying on with that same deposition testimony
21 on page 125, you indicated in -- the question is:

22 "Q. Okay."

23 In response to your saying you walked over there once in

24 late 1995. You answered with:

01443

1 "A. With David Shelton, accompanied
2 By David Shelton."

2

3 Do you recall that testimony being given?

4 A. No, I don't recall that one.

5 Q. Is that an incorrect statement?

6 A. When are you talking about, sir?

7 Q. When you're talking about your second visit to
8 the Sheltons, you indicated that I may have walked over
9 there once later in 1995, but that was about it with David
10 Shelton, accompanied by David Shelton?

11 A. No. I believe that time is I'm referring to is
12 when I went over with Pete Keller and it's with Susi
13 Shelton so I'll stand corrected on that.

14 Q. So it was not with David Shelton?

15 A. I don't believe so, no. That's why I said may
16 in my testimony. I know I went over with one of the
17 Sheltons, or they were there I should say.

18 Q. Going back to your letter to the Village Council
19 of January 10th, directing you to page 2 at the bottom
20 last paragraph beginning with the words, "From mid October
21 through January." I direct you to that, if you would
22 look?

23 A. Uh-huh.

24 Q. Were you present in this hearing when Brad

01444

1 Mautner testified that during that period of time then
2 October through January in the development, the various
3 plans for cones and baffling and blankets, they consulted
4 with no outside engineering firms at all?

5 A. I was here for Brad Mautner's testimony.

6 Q. Do you recall that testimony being given?

7 A. Yes.

8 Q. Is that in contradiction to your statement here?

9 A. No because they had to buy the part from outside
10 people, from Tran or from whoever. I assume those were
11 the outside firms they were dealing with. It was my
12 understanding that outside firms, engineering firms or an
13 engineering type component or company was going to comply
14 with this particular understanding. This is my
15 understanding.

16 Q. All right. So this is not something that
17 MidRes told you?

18 A. No, they said they were talking to Tran which to
19 me is an engineer, air conditioning engineering firm.

20 Q. So, that's what you had reference to, not they
21 had been talking to outside engineering firms or they'd
22 been talking to Tran, the manufacturer of the unit?

23 A. My understanding was they were talking to
24 outside firms that had engineering capabilities, yes.

01445

1 Q. And who told you that they were talking to
2 outside engineering firms with engineering capabilities?

3 A. Brad, Brad said he was talking to Tran. It's an
4 engineering product.

5 Q. I don't want to fight with you, I just want to
6 make sure that we're not talking about two different
7 firms. We're just talking about Tran?

8 A. I don't know if he talked to additional firms.
9 In his testimony, he gave his testimony. I just knew that
10 he said he talked to people outside.

11 Q. When was the decision made to go forward with
12 the cones, the baffling and the compressor cover; when you
13 say go, do it?

14 A. When was the -- I don't know when.

15 Q. When did you make the decision?

16 A. I told Brad to do what was necessary to try and
17 -- I told Brad to do what was necessary to try to quiet
18 the unit.

19 Q. And did he come back to you and say here are the
20 things to do. Am I authorized to do it, Steven?

21 A. Eventually he came back with a list of things to
22 do. I don't know the time frame.

23 Q. Do you know if it was '93 or '94?

24 A. I believe it was 1993.

01446

1 Q. Earlier you talked about Exhibit 47 being a July
2 21, 1994 letter with some attachments, including some
3 information from Tran. Do you have a copy of that,
4 counsel, Exhibit 47? If you don't, I believe you have a
5 copy of it here.

6 This document was admitted earlier in
7 this proceeding. I believe your testimony was, correct me
8 if I'm wrong, that you received the letter but you didn't
9 receive the attachment?

10 A. I don't recall receiving the attachment, that's
11 correct. I think I apprised David Shelton of that at some
12 point in time.

13 Q. Referencing you to the same deposition on pages
14 104 and 105, you were presented with the letter of July
15 21, 1994 with attachments from David Shelton to Alan
16 Shiner cc is S. Crown, carrying onto 105 the question was:

17 "Q. Do you recall having received
the letter?

18 A. Yes, I do.

Q. And the attachments?

19 A. I believe so, yes."

20 Q. Do you recall giving those answers to those
21 questions at that time?

22 A. I gave those answers.

23 Q. Were those answers incorrect?

24 A. Apparently so. That's why I said I believe so.

01447

1 I wasn't sure.

2 Q. How do you believe now that you didn't receive
3 it?

4 A. Because I wasn't -- the enclosure were never
5 marked as being part of the cc and I remember, my
6 recollection later on was that I did not specifically
7 receive this because the first time I saw it was later on
8 after Shelton included it on a second time in a second
9 transmittal.

10 Q. Did you keep letters in a file, the
11 correspondence between yourself and Mr. Shelton?

12 A. Yes.

13 Q. And did you, when this proceeding began, go to
14 that file to determine whether or not you had the letter
15 of July 21, 1994?

16 A. I gave all letters to counsel.

17 Q. And do you know whether at the time you gave
18 that letter to counsel it had the attachment on it?

19 A. I don't know.

20 Q. You indicated in your July 27th letter to the
21 neighbors that you needed to keep the house dry and cool
22 and that you had conveyed that "time and time again" to
23 the Sheltons. Could you tell us about the times that you
24 conveyed to the Sheltons about the need to keep the house

01448

1 dry and cool as being the reason for operating this unit
2 24 hours a day beginning in June of 1994?

3 MR. CARSON: Can I interrupt and I'm sorry
4 to interrupt your flow, but I didn't get the reference.
5 Was that part of Exhibit --

6 MR. DIVER: This is to the July 27, 1994
7 letter. This is Exhibit 38. This is to the neighbors as
8 whole letter.

9 A. And your question, what's your question?

10 Q. Well, I'm asking you when it was that you can
11 recall that you actually conveyed to one or both of the
12 Sheltons after the time that you turned the air
13 conditioner on 24 hours a day, seven days a week starting
14 in June of 1994, when you told them that you characterizes
15 as time and time again of your need to turn that air
16 conditioner on and keep it running in order to keep the
17 house dry and cool?

18 A. During conversations with my -- that I had with
19 the Sheltons on the phone I apprised them of that.

20 Q. I'm asking you if you could tell us with a
21 little more specificity when those conversations were held
22 with the Sheltons, which of the Sheltons they were held
23 with?

24 A. I talked to David Shelton mostly on the phone.

01449

1 Q. On a fairly frequent basis?

2 A. I don't know what frequent is. I talked to him
3 on occasion, yes.

4 Q. All right. Subsequent to late June of 1994, how
5 many times have you talked to David Shelton on the
6 telephone about the air conditioning system?

7 A. How many times?

8 Q. Yes.

9 A. I didn't keep a record of it, sir. I wasn't
10 preparing for a trial, I was basically having a
11 conversation with, I thought, my neighbor.

12 Q. But by July 27, 1994, you already had expressed
13 to other neighbors that time and time again you had
14 conveyed this information to the Sheltons. What I'm
15 asking you is since the unit went on on a full time basis
16 in June of 1994, between then and July 27th of 1994, how
17 many times did you talk to David Shelton or Susi Shelton
18 about the need to keep this unit running in order to
19 provide for this dryness and coolness?

20 A. I think you're taking it out of context, Mr.
21 Diver.

22 Q. Okay. Why don't you tell me in what respect I
23 should be taking it?

24 A. From 1993 when the unit was turned on through

01450

1 1994, there was a need to keep the unit on, as I told you,
2 our general contractor and some of the sub contractors had
3 conveyed. That information, throughout that time, was
4 conveyed to them. The unit may not have been on at the
5 time, but the fact that it needed to be on or it was
6 requested that it be on was conveyed. It wasn't during a
7 3 or 4 week period, which is what you're suggesting.

8 Q. Did you not turn the air conditioner on on a 24
9 hour, 7 day a week basis in June of 1994?

10 A. I believe we did.

11 Q. Prior to that time it had not been on in the
12 evening, is that correct?

13 A. That's correct, but that doesn't change the
14 information or the request from sub contractors or, as I
15 was told, the need to try to get some of the humidity out
16 of the air. Those issues were separate and apart from
17 --that's no different from saying we loved to move into
18 our house and those are all things that had been conveyed.

19 Q. Do you recall between the time of the Shelton's
20 complaint in September of 1993 and your letter of July,
21 1994, how many times you told either of the Sheltons about
22 this particular need of yours?

23 A. No, I didn't keep track of the number of
24 conversations, sir. But as I stated in my letter, we've

01451

1 talked a number of times.

2 Q. Just answer the question to the best of your
3 ability.

4 A. I was.

5 HEARING OFFICER: I think that we can be more
6 succinct both in the questioning and in the answers.

7 Q. What did you first -- strike that -- have you
8 ever talked to George Kamperman about improvements that
9 could be applied to either the chiller unit or to the
10 acoustical enclosure around it?

11 A. No, sir.

12 Q. Have you ever met George Kamperman?

13 A. No, sir.

14 HEARING OFFICER: Excuse me, what portion of
15 Mr. Crown's direct testimony are you referring to?

16 MR. DIVER: I'm not referring to a specific
17 portion of his direct testimony.

18 HEARING OFFICER: Let's do that.

19 Q. I believe you testified that Pete Keller had
20 told you that -- never mind. Just to confirm, Pete Keller
21 did confirm to you that he had told Susi Shelton that the
22 unit could be relocated, is that correct?

23 A. Taken in the right context.

24 Q. But that he had used those words, he had

01452

1 indicated?

2 A. In addition, he said the house could be moved
3 to, I think it was done in response to anything can be
4 done in construction, whether it's practical, whether it's
5 feasible, whether it's going to cause other problems
6 unrelated to the or related to the move. I don't think
7 Pete was in a position to say.

8 Q. What instructions had you left Brad Mautner with
9 at MidRes following the June 19, 1995 test for sound at
10 the unit? What instruction had you left him with
11 concerning looking for additional solutions?

12 A. That was the test after the installation of the,
13 I think, the surround panels.

14 Q. Of the acoustical enclosures, correct?

15 A. I was under the impression that we had done a
16 great deal to reduce the sound. That anything else, if he
17 could think of anything else, let me know. I would be
18 open to suggestions.

19 Q. Did you ask him to continue to affirmatively
20 look for solutions?

21 A. I asked him if there was something more we could
22 do and he said he couldn't think of anything at the time.

23 MR. DIVER: May I have a moment to explore
24 with my client before concluding this cross-examination.

01453

1 HEARING OFFICER: That's fine.

2 MR. DIVER: I wonder if we could take a brief
3 break for that purpose Madam Hearing Officer?

4 HEARING OFFICER: Off the record.

5 (A brief recess was taken.)

6 HEARING OFFICER: Back on the record.

7 BY MR. DIVER:

8 Q. Were you invited at various times buy Steven
9 Shelton to -- by David Shelton to come to meetings with
10 him to discuss solutions to the noise problem?

11 A. Was I invited by David Shelton to come to
12 meetings.

13 Q. To come to meetings with him to discuss
14 solutions to the noise problem?

15 A. What meetings are you referring to?

16 Q. I'm just asking whether you recall ever being
17 invited by David Shelton to attend a meeting to discuss
18 the noise problem?

19 A. I don't recall such a meeting, no.

20 Q. Okay. The invitation is what I'm talking about?

21 A. I don't recall an invitation to attend a meeting
22 to discuss the noise problem, no.

23 Q. You testified earlier about an incident or an
24 event that occurred sometime in 1994 I believe involving a

01454

1 Ms. Kirshner and Mr. Keene from the Village of Winnetka at
2 your property?

3 A. It was King, but yes.

4 Q. Well, I believe strictly speaking his name is
5 Keene, K-e-e-n-e.

6 A. Is that correct?

7 Q. Yes. Let's put that aside for the moment?

8 A. Thank you.

9 Q. That event occurred in the spring or summer of
10 1994?

11 A. I believe that's the right time frame.

12 Q. Okay. Would it have been before or after the Al
13 Shiner test on July 5th, 1994?

14 A. I believe it would have been before.

15 Q. Would it have been before or after the
16 completion of the installation of the air conditioning
17 system that you talked about earlier? That is, placement
18 of all the fences, foliage, trees, tweaking.

19 A. Might have been during the middle of it, I don't
20 know if it was the completion of it. It may have been
21 close to the end.

22 Q. And you testified to Mr. Keene's saying that it
23 sounded quiet to him; that is, the chiller unit sounded
24 quiet?

01455

1 A. Yes.

2 Q. Can you tell me whether at the time of that
3 particular event one or two of the compressors were
4 operating?

5 A. No, I can't tell you if one or two were
6 operating.

7 Q. Can you tell me whether one two or three of the
8 fans were operating?

9 A. I can't tell you whether one, two or three
10 except the fans were operating and the unit was on.

11 Q. You're aware that at this period of time in 1994
12 as well as from the time that the equipment started
13 through at least the middle of 1994 that the equipment
14 would go on in phases?

15 A. I was told that, yes.

16 Q. Do you recall ever having been invited by David
17 Shelton for you to actually come onto the Shelton property
18 in the night time to experience the sound from your air
19 conditioner?

20 A. I received an invitation, yes.

21 Q. Did you receive that on multiple occasions?

22 A. More than once, yes.

23 Q. Did you ever come to the Shelton property
24 following such an invitation at night?

01456

1 A. No.

2 Q. To experience the sound?

3 A. No, I did not.

4 MR. DIVER: No further questions of this
5 witness.

6 HEARING OFFICER: All right. We will now have
7 the redirect of Mr. Crown.

8 MR. CARSON: Thank you. Just a few items.

9 REDIRECT EXAMINATION

10 BY MR. CARSON:

11 Q. With respect to the retention of Al Shiner
12 to work for both parties to achieve a solution, as you
13 just described, I'm going to show you Exhibit Number 17
14 once again and ask you if that letter played any part in
15 your achieving that understanding that Mr. Shiner was
16 indeed working for both parties?

17 A. It re-enforced my understanding that Al Shiner
18 was working on both of our behalfs to try and come to a
19 solution and I guess this letter helped re-enforced it.

20 Q. In what way? How did this help to re-enforce
21 it?

22 A. If I can read the paragraph?

23 Q. Yes.

24 A. "We truly want to get this problem resolved

01457

1 between neighbors, not with lawyers. I'm not an attorney
2 nor have we engaged one for this matter. In fact, the air
3 conditioner contractor, MidRes, yesterday asked our
4 acoustical engineer, I assume the Shelton engineer, to
5 consult with them on your noise problem. The engineer
6 properly asked for our permission since this could put him
7 in a conflict of interest position if the matter ever came
8 to litigation. An attorney would have probably told us no
9 way. We gave him our permission because he is good and
10 can probably help resolve the problem. Solving the
11 problem is our only goal. We are not trying to set the
12 stage for litigation." My understanding prior to and my
13 understanding going forward was that the whole emphasis of
14 this was to keep it out of court, to keep it out of the
15 legal world. Try and find somebody who we both had
16 confidence in, which was Al Shiner. Have that person
17 provide us with input or provide us with ideas,
18 suggestions and review them and I took David at his word
19 that he truly wanted the problem resolved and solving the
20 problem is the only goal. I guess I sort of took him at
21 his word in that regard.

22 Q. So, you stated this Exhibit Number 17 and the
23 statement that you just read re-enforced your
24 understanding that Al Shiner worked for both parties. Had

01458

1 you already gained that understanding from some other
2 source?

3 A. From Al Shiner, from Brad Mautner. I thought we
4 had Shiner working for both of our interests and it was
5 nothing that we were going to do, test, find, talk about
6 that David Shelton wouldn't be advised of.

7 Q. And in respect to the quiet flow panels which
8 Mr. Diver's questions -- he was contrasting that from the
9 enclosure which had been drawn up in their meeting with Al
10 Shiner, Brad Mautner, Pete Keller and yourself. Who came
11 up with the idea of the quiet flow panels?

12 MR. DIVER: If you know?

13 A. The idea of the quiet flow panels was presented
14 to me by Brad Mautner.

15 Q. And do you know whether Al Shiner was consulted
16 with respect to the selection of quiet flow panels?

17 A. Not only was Al Shiner consulted with it, Al
18 Shiner was also on the telephone during our conversation
19 with the village and he told the village council and David
20 Shelton and me at that time that he felt that this
21 approach should adequately address the noise issue. That
22 I thought we were all on the same page at that time and
23 heard the same information relayed by our joint consultant
24 that he felt that this was a practical, a plausible,

01459

1 reasonable and workable solution.

2 Q. So that was the statement that was made by Al
3 Shiner over the phone in this January, 1995 meeting at the
4 village hall?

5 A. That's correct.

6 Q. Lastly, on the item raised in Respondent's
7 Exhibit Number 7, at the top of Page 2 wherein you state,
8 "inasmuch as we didn't have any millwork or sensitive
9 materials within the house and this is referring to the
10 Fall of 1993?

11 A. Right.

12 Q. If I understand your testimony in response to
13 Mr. Diver's question, that is an incorrect statement?

14 A. I went back and checked some of my bills just to
15 see when certification came in and I was reminded or at
16 least refreshed that cabinets came in for the kitchen
17 which I really didn't put in the millwork category and
18 some flooring came in for some cabinets to sit on.

19 Q. And had you checked your records before writing
20 this letter in January of 1995 in order to make sure you
21 were accurate on the sequencing of the installation of
22 various aspects of the house?

23 A. I think I got the sequencing of the millwork out
24 of sequence. I was just -- I thought the important issue

01460

1 was that we turned the unit off with respect to the
2 Sheltons and try and accommodate their request.

3 Q. So at present now having had the opportunity to
4 review your records, did you or did you not have any
5 millwork or sensitive material in the house in the Fall of
6 1993?

7 A. We had some cabinets and some flooring in at the
8 time. Whether you call it millwork or not, there were
9 some wood pieces installed and there were some flooring
10 installed.

11 Q. Which you understood to be sensitive to
12 humidity?

13 A. Later I found out they were very sensitive to
14 humidity, yes.

15 MR. CARSON: No further redirect.

16 RE-CROSS-EXAMINATION

17 BY MR. DIVER:

18 Q. Mr. Crown, was David Shelton present at the
19 meeting on July 11, 1994 with you and Mr. Mautner and Mr.
20 Keller to formulate alternatives to sound controls for the
21 chiller unit?

22 A. Sound controls?

23 Q. Noise controls?

24 A. At the meeting we had at my house, I don't

01461

1 believe Mr. Shelton was present, no.

2 Q. And I believe your testimony was correct. You
3 don't know who paid Al Shiner's bill for consultative
4 services in July, is that correct?

5 A. I don't know who paid Al Shiner's bill, no.

6 Q. And the telephone conversation with Al Shiner
7 during the meeting at the village hall I believe on
8 January the 17th, 1995?

9 A. That's right.

10 Q. In that conversation did Mr. Shiner not also say
11 that if this doesn't work, we can -- there are additional
12 things we can do to make it come into compliance?

13 A. I don't know about the last statement, but he
14 said that there -- he did say something about there were
15 additional things that could be done.

16 Q. Okay.

17 A. He also said he thought this was going to work.

18 Q. And but that if it didn't, there were other
19 things that could be done.

20 A. He said there were other things that could
21 possibly be done, yes.

22 Q. Okay. With respect to the evidence of problem
23 in the flooring or millwork, again was there any evidence
24 of problem with the flooring or millwork in 1993 itself?

01462

1 This is with respect to the redirect concerning the error
2 or not of the information in that one document?

3 A. No, I didn't see anything in 1993.

4 Q. You said you did look at records after you wrote
5 that letter on January 10th, 1995 and that those records
6 that you looked at told you that indeed you did have
7 moisture sensitive materials in the house or moisture
8 emitting materials such as plaster?

9 A. That's creek.

10 Q. And what would those documents have been?

11 A. Bills.

12 Q. Bills from various trades people?

13 A. Actually they were summary bills from Pete
14 Keller of what the charges were that I had to pay bills
15 from Lucite, bills from Birger-Juell, bills from Julien (phonetic).

16 Q. And those summaries contained information about
17 what the services were that were actually being performed
18 in 1993?

19 A. They didn't specifically say that. What I
20 looked at was just progress payments against delivery of
21 materials.

22 MR. DIVER: No further questions.

23 MR. CARSON: Nothing further.

24 HEARING OFFICER: Thank you very much, Mr.

01463

1 Crown. We will adjourn our proceedings today and we will
2 continue the hearing to tomorrow. The planned time for
3 continuation tomorrow at 1:00 p.m..

4 (The hearing was adjourned for the evening at
5 4:00 o'clock p.m.)

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C E R T I F I C A T E

I, VERNITA HALSELL-POWELL, the undersigned
Notary Public in and for the State of Illinois, do hereby
certify:

That the annexed and foregoing testimony of the
witness named herein was taken stenographically before me
and reduced to typewriting under my direction;

I further certify that I am not a relative or
employee or attorney or counsel of any of the parties to
said action, or a relative or employee of any such attorney
or counsel, and that I am not financially interested in the
said action or the outcome thereof;

I further certify that the proceedings, as
transcribed, comprise an accurate transcript of the
testimony, including questions and answers, and all
objections, motions, and exceptions of counsel.

IN WITNESS WHEREOF, I have hereunto set my and
affixed my official seal this 30th day of August. 1996.

NOTARY PUBLIC in and for the
State of Illinois.

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ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS

- - - - -X

DAVID SHELTON & SUSIE SHELTON :
Plaintiffs :

- against - : Number 96-53

ARI STEVEN CROWN & NANCY CROWN, :
Defendants :

- - - - -X

VOLUME VII

REPORT OF PROCEEDINGS, taken in the
above-entitled cause, taken before JUNE EDVENSON, ESQ.,
Hearing Officer for the Illinois Pollution Control Board,
taken on the 21st day of July, A.D., 1996 at 100 West
Randolph Street, Suite 8-031, Chicago, Illinois, taken at
the hour of 1:00 o'clock p.m..

APPEARANCES:

01466

1

2

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STEVEN P. KAISER, ESQ.

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HALSELL & HALSELL REPORTERS

19

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GEORGE WILLIAM KAMPERMAN

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GREG ZAK

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01468

1 HEARING OFFICER: Thanks and welcome. We are
2 reconvened for the hearing in the case of PCB 96-53, the
3 Sheltons versus the Crowns. And before we hear the
4 testimony of additional witnesses today, we will have the
5 introduction of some exhibits by counsel for the parties.

6 MR. CARSON: Thank you, Madam Hearing Officer.
7 We have several exhibits that we wish to offer at this
8 time. The first is Exhibit Number 21.

9 HEARING OFFICER: Is there any objection to
10 the introduction of this exhibit into evidence?

11 MR. DIVER: No, there is not.

12 HEARING OFFICER: All right, thank you.
13 Exhibit 21 is entered into evidence.

14 (Said document was received into evidence.)

15 MR. CARSON: The next one that I had on my
16 pile was 23, however it may be that that one has already
17 been admitted. If you'd be willing to confirm that for
18 me.

19 HEARING OFFICER: Let me check. Let's take a
20 moment.

21 MR. DIVER: The date of it is?

22 MR. CARSON: Mr. Diver tells me he believes
23 that was admitted on the 19th.

24 MR. DIVER: 19th of August.

01469

1 HEARING OFFICER: Exhibit 23 was introduced on
2 the 19th of August, but was not admitted into evidence.
3 Is there any objection?.

4 MR. DIVER: There is none.

5 HEARING OFFICER: Then Exhibit 23 is entered
6 into evidence.

7 (Said document was received into evidence.)

8 MR. CARSON: Thank you. The next one we wish
9 to offer is Exhibit 24. Exhibit 24 bears a date of August
10 18, 1994. This is a MidRes, Inc. memorandum and we do
11 have a stipulation as to the authenticity of Exhibit
12 Number 24. I don't believe that there was any testimony
13 authenticating the document, however, we do have a
14 stipulation as to its authenticity. We're offering it at
15 this time on that basis.

16 MR. DIVER: We're opposing it's introduction,
17 Madam Hearing Officer, for the reason there was no
18 testimony with respect to this document that was
19 conscious. While the document was an authentic document,
20 it was not connected to the proceeding through either of
21 the witnesses, both of whom were present, both of whom had
22 an opportunity to testify to it by cross or direct
23 examination. That didn't happen.

24 MR. CARSON: Authenticity is stipulated. The

01470

1 relevance is obvious from the document. It addresses the
2 issue pertaining to sound attenuation of the unit in
3 question.

4 HEARING OFFICER: Thank you. Let's go off the
5 record for a moment so I can examine the document.

6 (A brief off the record discussion was held.)

7 HEARING OFFICER: Back on the record. Off
8 the record I have reviewed Exhibit 24 as proposed for
9 admission and that was one page. Thereafter, counsel for
10 the parties examined some additional pages of the
11 correspondence which were attachments concerning
12 insulating blankets for an air conditioner compressor. We
13 heard on the record the objection to the introduction of
14 this exhibit into evidence and the Respondent's counsel
15 reply. Do counsel have anything further to say on the
16 record about the admissibility of the exhibit?

17 MR. DIVER: I merely wanted to restate on the
18 record that the objection of the Complainant was two-fold;
19 one, that the document that's been tendered is not the
20 document that was stipulated to, so there is no
21 stipulation with respect to this document as tendered to
22 the Court. And two, or even if the complaint document
23 that was stipulated to with respect to authenticity were
24 being offered, we would object to it's relevancy because

01471

1 it has nothing to do with this particular proceeding in
2 the sense of anything that actually occurred with respect
3 to insulating this chiller unit.

4 MR. CARSON: And we would just point out on
5 the record that we're tendering as a revised Exhibit 24
6 the document with the three page attachment, securing Mr.
7 Diver's first objection. So we do have a document to
8 which authenticity has been stipulated. Secondly, the
9 relevance is obvious. This document shows that in August
10 of 1994, MidRes was working on taking steps, examining
11 ways to resolve the issues regarding sound emanating from
12 the air conditioning unit at the Crown residence.

13 HEARING OFFICER: Thank you. The document
14 does illustrate that there were ongoing efforts to address
15 concerns related to the air conditioning unit at the Steve
16 Crown residence. For that reason, the exhibit is entered
17 into evidence.

18 (Said document was admitted into evidence.)

19 MR. CARSON: Thank you. I have three more.
20 Exhibit 25, which I believe is agreed.

21 MR. DIVER: Yes, Exhibit 25 we have no
22 objection to.

23 HEARING OFFICER: Exhibit 25 will be entered
24 into evidence.

01472

1 (Said document was entered into evidence.)

2 MR. CARSON: Also, we're offering Exhibit 36.

3 HEARING OFFICER: Excuse me. These exhibits
4 I'm not identifying by name on the record. These will be
5 identified on a separate hearing report which I will be
6 issuing as the hearing is concluded.

7 MR. CARSON: Thank you. We are also offering
8 at this time Exhibit Number 36 and this was a letter from
9 Mr. Shelton to Mr. Crown dated March 16, 1995 and that was
10 identified and authenticated through the testimony of both
11 Mr. Shelton and Mr. Crown, I believe.

12 MR. DIVER: Which document are we talking
13 about?

14 MR. CARSON: 36. It's dated March 16, 1995.

15 MR. DIVER: No, I'm wondering if there was --
16 if it's on Madam Hearing Officer's list of documents that
17 was subject to examination.

18 HEARING OFFICER: Yes. I show, I believe this
19 was entered into evidence on August 20th for Respondent,
20 but I have not received a copy yet.

21 MR. CARSON: Okay.

22 MR. DIVER: Okay. If that has occurred, we
23 obviously won't have an objection.

24 MR. CARSON: That's the last one, Exhibit 54.

01473

1 MR. DIVER: We would have no objection to this
2 document to the extent it shows a document that was sent
3 to David Shelton. But we will certainly object to it
4 being actually entered into evidence as the truth of the
5 materials stated therein.

6 MR. CARSON: We're offering Exhibit 54. It
7 was authenticated by Mr. Crown and that it was the subject
8 of testimony from Mr. Shelton as well. Having to do with
9 the January 17, 1995 Village of Winnetka meeting.

10 HEARING OFFICER: Exhibit 54 is entered into
11 evidence with the qualification that it is not entered
12 into evidence for the truth of the matter asserted in the
13 letter.

14 (Said document was entered into evidence.)

15 MR. DIVER: Madam Hearing Officer, I should
16 state that I show on my copy of your record that page 2 of
17 that document was admitted on July 1st.

18 HEARING OFFICER: All right. I thought that
19 Exhibit 54 has already been admitted into evidence, Mr.
20 Carson.

21 MR. CARSON: Okay, I apologize. That's the
22 last of the exhibits that we offer at this time.

23 HEARING OFFICER: Okay. We'll go off the
24 record until we begin our witness testimony.

01474

1 (A brief recess was taken.)

2 HEARING OFFICER: We have before us
3 Respondent's next witness, Mr. Zak. Will the witness
4 please be sworn?

5 (Witness sworn.)

6 GREG ZAK
7 after having been first duly sworn on oath, testifies and
8 says as follows:

9 DIRECT EXAMINATION

10 BY MR. ELLEDGE:

11 Q. Mr. Zak if you will recall, you were here and
12 testified in this proceeding on I believe July 3, is that
13 correct?

14 A. Yes, it is.

15 Q. And so you're familiar with the Crown chiller
16 unit which was discussed in that hearing, is that correct?

17 A. Yes, I am.

18 Q. And let me show you what has been marked as
19 Respondent's Exhibit Number 8. Have you seen that before?

20 A. Yes, I have.

21 Q. All right. Now did you have occasion today to
22 visit the Crown residence on Ardsley Road in Winnetka?

23 A. Yes, I did.

24 Q. All right. And did you have occasion to observe

01475

1 the present configuration of or the present structure
2 around the Crown chiller unit?

3 A. Yes, I did.

4 Q. Okay. Does that exhibit correctly portray what
5 you observed there?

6 A. Yes, it does.

7 Q. Did you then have -- was the unit operating at
8 that time?

9 A. Yes, it was.

10 Q. Did you then have an opportunity to -- the
11 occasion to go over to the Shelton property?

12 A. Yes, I did.

13 Q. Okay. And what did you do once you got there?
14 First of all, who all was present?

15 A. When I first arrived at 10:30 in the morning and
16 I was the first person there. Upon arriving, I proceeded
17 to walk around the Shelton residence just to observe
18 locations of both of the air conditioners on the Shelton
19 property, the porch area and kind of refresh my memory as
20 to what was present on the property in the daytime.
21 Because the last time I was there, I believe it was night
22 time. I also went over to the Crown property and the
23 gates were unlocked. I went into where the
24 air conditioning chiller is located, noted that work,

01476

1 additional work had been done that I had heard about. I
2 took the liberty of climbing the ladder that was present
3 in the enclosure to the top of the unit and then very
4 carefully walking on top of the unit to look down on the
5 fans and observe various noise control engineering efforts
6 that were performed on the unit. Then I left the Crown
7 property, went back to the Shelton property to see if I
8 could hear any sounds from the Crown unit, which I
9 couldn't. There was a leaf blower operating in the
10 distance along with some machinery that was totally
11 unrelated to this case. In the meantime, David Shelton
12 arrived and then shortly thereafter you arrived, George
13 Kamperman arrived, Steve Kaiser arrived, Jeff Diver
14 arrived. I think that's a complete list.

15 Q. And did you then have occasion to go up on the
16 porch which is shown on Exhibit 51 as being north of the
17 Crown property and see there in blue ink there's a number
18 4.

19 A. Yes, I did. I borrowed the Crown ladder and
20 used that in order to gain access to the porch roof. I
21 went up on the porch roof. I was joined by David Shelton,
22 George Kamperman, yourself and Jeff Diver and I listened
23 with my ears to see if I could hear the Crown unit. At
24 times when other noise sources in the background would die

01477

1 down, the unit was barely audible. At that point in time
2 I believe you told me that from conversations on your
3 cell phone that the unit was operating at approximately 60
4 percent of full speed. You telephoned and asked that
5 whoever was operating the unit to turn it up to full
6 speed. When the unit was turned up to full speed the
7 sounds didn't, to my ear measurably change very much. I
8 couldn't notice any significant change in the quality of
9 sound at that point. That would pretty much conclude my
10 observations of the unit. I asked Mr. Shelton for an
11 opinion on it and he seemed to indicate pretty high degree
12 of satisfaction with the sound as it was coming from the
13 unit. In my own opinion it would be in compliance with
14 the state night time standards.

15 Q. Let me ask you this if I may. Do you have an
16 opinion as to the effectiveness of the control measures
17 taken as you observed today?

18 A. Yes, I do.

19 Q. What would that opinion be?

20 A. My opinion is that the solution is rather an
21 elegant solution and as configured brings the unit into
22 compliance with the Board's standards for night time and
23 in my opinion also nuisance.

24 Q. Thank you. Mr. Zak, let me show you, if I may,

01478

1 what's been marked as, previously marked as Exhibit Number
2 92. Do you recall that?

3 A. Yes, I do.

4 Q. Okay. And could you tell us what it is?

5 A. That is the noise survey report that I performed
6 both on the Crown property and the Shelton property on
7 June 27, 1996.

8 Q. And you previously have testified with regard to
9 that report, have you not?

10 A. Yes, I have.

11 Q. And could you tell me when site number one was
12 -- when you measured this, who all was there when you
13 measured it?

14 A. If I understand your question correctly, you
15 mean what individuals were present?

16 Q. Yes, what individuals were present? It appears
17 to be a half an hour before the others come?

18 A. Yes, that was taken on the Shelton property and
19 David Shelton was present, along with his counsel, Steve
20 Kaiser.

21 Q. Now, if you would flip to the next page. Where
22 was site number 2A, would you tell us where that was, if
23 you recall?

24 A. That was taken on the Crown property. And you

01479

1 mentioned site 2A, I have reference there to site 2B
2 because on the next page it describes as approximately 8
3 feet south of the Crown fence.

4 Q. Same site, is that correct?

5 A. Same site, yes, sir.

6 Q. Okay. Site 2A is an ambient view, is that
7 correct?

8 A. Yes.

9 Q. Would you read what you say here in your
10 handwriting there?

11 A. Okay. Site 2A: Same as site 2B. Ambient
12 measurement with Shelton air conditioner primary noise
13 source.

14 Q. Okay, thank you. Do you know where that Shelton
15 air conditioner was located at that time? Did you know
16 then?

17 A. Yes, I knew then. That particular air
18 conditioner was on the ground.

19 Q. And with reference to Exhibit Number 51, where
20 was that? Do you see that air conditioner on the ground?

21 A. Yes, I see it marked as a 3 ton unit on the
22 ground.

23 Q. All right, thank you. Is there another air
24 conditioning unit on that Crown property -- the Shelton

01480

1 property?

2 A. Yes, there's a 2 ton unit indicated on the
3 diagram here that lies further to the north and east of
4 the 3 ton unit on the Shelton property.

5 Q. Is it shown there as being on the patio at this
6 time? Do you see it?

7 A. I see it. I'm just looking for the word patio.

8 Q. All right. Instead you see it here. They've
9 marked what's marked as Number 2?

10 A. Yes.

11 Q. I'd now like to show you what's been marked as
12 Respondent's Exhibit Number 9. Have you seen that
13 document?

14 A. Yes, I have.

15 Q. I'd like to direct your attention to what's
16 marked as, in the bottom, what the measurement locations
17 were, the number 2?

18 A. Okay, number 2, the patio opposite the Shelton
19 unit.

20 Q. And would that be the site, to your knowledge of
21 the site, what's shown as Number 2 here on the drawing?

22 MR. DIVER: Objection. This witness has not
23 testified to being present there at all at the time this
24 Exhibit Number 9 or the date it was generated in Exhibit

01481

1 Number 9 were prepared. He wasn't there at all. How can
2 he be asked to testify as to where?

3 HEARING OFFICER: Could you rephrase your
4 question?

5 MR. ELLEDGE: Beg your pardon?

6 HEARING OFFICER: Could you rephrase your
7 question?

8 MR. ELLEDGE: Yes.

9 Q. When you were there today, was there, in fact, a
10 Shelton air conditioning unit on the patio?

11 A. Yes, there was.

12 Q. Okay. Now I'd like to direct your attention to
13 the second one here where it says Crown night time mode
14 and Shelton unit on number 2. Could you review to
15 yourself first the line of measurements that run across
16 the octave bands from 31 to 8000?

17 A. Okay, I've done that.

18 Q. Okay, thank you. Now, when you were testifying
19 before, you testified with regard to your measurements
20 that you reported on and you characterized at the Hearing
21 Officer's request the impact of those sound levels in the
22 various octave bands. Do you remember doing that?

23 A. Yes.

24 Q. And could you make the same analysis of that

01482

1 line that you're addressing right now, that's Number 2.

2 What does that line show?

3 A. That line shows the various sound levels at
4 various frequencies. Do you want me to go ahead and
5 continues on and characterize?

6 Q. Yes, would you please?

7 A. Looking at the various levels, the 31 and a half
8 hertz level which is marked on the exhibit as 31, but I
9 would characterize it as 31 and a half. A level of 52 is
10 not normally a problem. At 63 hertz we have a level of
11 65. During the night that would generate some problem, I
12 think especially due to its low frequency characteristic.
13 It's very penetrating of ordinary construction and could
14 be readily heard in the bedroom. At 125 hertz we've got a
15 level of 55 and that level normally would not be a
16 problem. At 250 hertz we have a level of 54 db. That
17 level would typically generate a problem. It's not
18 extremely penetrating, but if the window is open, it would
19 be fairly audible. At 500 hertz, the next frequency, we
20 have a level also of 54. That would be even more
21 troublesome mainly because the human ear is able to
22 discern 500 hertz more clearly than it discerns the 250
23 hertz. So, again, a level of 54 db would be actually a
24 considerable problem.

01483

1 I'm characterizing all of this by the
2 back line. I'm keeping in mind what the night time
3 numerical limits are. At 500 hertz we have a -- I'm sorry
4 I think I didn't do that one yet.

5 Q. Yes, you did.

6 A. I did. Then at 1000 hertz we have a level of 53
7 and again we've got very little drop in decibel level, but
8 an increase in frequency. The sound would be, again, more
9 annoying and would be significantly above the allowable
10 limits. At 2000 hertz we have a level of 50 db and again
11 we're staying fairly high in level, but as we're going up
12 the frequency and making the sound more irritating, again
13 the 2000 hertz would be a significant problem. At 4000
14 hertz we have a slight drop down to 47 db and that is a
15 fairly high level for 4000 hertz octave band and would be
16 a significant nuisance problem. 8000 hertz, we have a
17 level of 43, and again comparing that to our thinking of
18 the impact of that as compared to the regulations, that
19 level would be well above the threshold for a significant
20 amount of the noise.

21 Q. Would it be fair to characterize or summarize
22 your testimony, particularly with regards to the sound
23 pressure levels at both 4,000 and 8,000 hertz as being
24 very, very irritating?

01484

1 MR. DIVER: Object, leading the witness.

2 HEARING OFFICER: Overruled. You may answer
3 the question.

4 A. Assuming that one wasn't exposed to these out of
5 doors or through an open window, yes, that would be a good
6 way to characterize it.

7 Q. Thank you.

8 HEARING OFFICER: Mr. Zak, I'd like you to
9 characterize in particular a couple of lines of data that
10 are on the table, if you would. Counsel, is that all
11 right?

12 MR. ELLEDGE: Sure.

13 HEARING OFFICER: Would you characterize the
14 line of data that's identified under the category, Crown
15 unit night time mode on, Shelton unit off as position
16 Number 2.

17 A. Madam Hearing Officer, if I understand you
18 correctly, we're looking at Item Number 2 Crown unit night
19 time mode on, Shelton unit off.

20 HEARING OFFICER: And that would be the 4th
21 line of data in the table.

22 A. Right. We have a dba level of 41 which for a
23 dba level is quite low. I'm sorry, at 31 and a half
24 hertz, the listed level here is 47 db which again would

01485

1 not be normally a problem in any circumstance I'm aware
2 of. At 63 hertz we've got a level of 46 db. Again, it's
3 a very low level. Audible, but very low. 125 hertz, 44
4 db, that would be somewhat more audible than the 63 hertz
5 level but again quite low in amplitude. A classic example
6 of 125 hertz is a truck exhaust or the exhaust noise from
7 large machinery. At 250 hertz we have a level of 32.
8 That's a very low level. It would not be a problem. At
9 500 hertz I have a level of 31. Again, very low level and
10 not one that would normally cause any problem. At 1000
11 hertz I have a level of 30 db. Again a very low level,
12 would not bring a problem. At 2000 hertz I have a level
13 of 38. We see a db jump going from 1000 hertz to 2000
14 hertz at the same time that the human ear is becoming very
15 sensitive to high frequency sound. This jump would be a
16 potential problem. When increasing by 8 decibels in that
17 frequency range, 38 could be an irritating factor;
18 however, this time of year, that is characteristic of
19 insect noise. The next level is 28 db at 4000 and that is
20 a relatively low level. It could be mildly annoying, but
21 it still is a fairly low level than 8000 hertz I've got 23
22 db and that would be audible, but at a very low level and
23 it would be somewhat of a hissing sound.

24 HEARING OFFICER: Thank you. Could you do the

01486

1 same with the --

2 MR. ELLEDGE: Madam Hearing Officer, can I ask
3 him one question meanwhile.

4 HEARING OFFICER: Yes.

5 BY MR. ELLEDGE:

6 Q. Would you turn to the second page and read
7 what's there?

8 A. Oh the second page, "The measurements marked
9 with an asterisk were taken during distant aircraft
10 activity. Measurements at 2000 hertz and to a lesser
11 extent, those at 4000 hertz were affected by insect noise.
12 Very truly yours, Shiner and Associates, Robert P.
13 Elfering."

14 Q. That is consistent with what you just testified
15 to, is that correct?

16 A. Yes, it is.

17 MR. ELLEDGE: Okay, thank you.

18 HEARING OFFICER: Could you also provide us
19 with some insight on the measurement levels at location
20 number 2 in the last category of the conditions, Crown
21 unit daytime mode 60 hertz on, Shelton unit off.

22 A. Okay. The dba level I list here is 43. The
23 octave band level for 31 and a half hertz is 51. 51 at
24 that particular frequency is a very low level. At 63

01487

1 hertz the level is 54. That also is a very low level to
2 that particular band, making it just barely audible. At
3 125 hertz the level is 50 db. 50 db would be audible, but
4 not to the point where for the average person it would be
5 annoying. At 250 hertz the level is 41. We have a 9 db
6 drop or 9 decibel drop going from 125 to 250 hertz. That
7 would tend to produce results that would be less annoying.
8 So again, the 41 db level would not be a problem at 250
9 hertz. At 500 hertz the level is 34. It dropped about 7
10 decibels, going up one octave band and again the level is
11 one that would be audible, but not normally annoying. At
12 1000 hertz the level is 32. We haven't had very much of a
13 drop going from 500 to 1000; however, the 32 level would
14 still be low enough that it would not normally cause
15 annoyance. At 2000 hertz the level is 48. We've
16 increased by 6 db. The area, the frequency area where
17 this falls is one where the human ear is very sensitive
18 and a level of 38 for night time situations would normally
19 be considered quite annoying. At 4000 hertz the level
20 drops by ten db to 25. This might cause a minor annoyance
21 and it would be plainly audible. And finally at 8000
22 hertz the level is 23 which is a 5 decibel drop from the
23 last octave band and would be audible, but at a low enough
24 level that it would not normally be annoying.

01488

1 HEARING OFFICER: Thank you.

2 MR. ELLEDGE: Thank you. I have no further
3 questions.

4 CROSS EXAMINATION

5 BY MR. DIVER:

6 Q. Mr. Zak, between the time of your visit on June
7 27th, 1996, for the purpose of conducting the sound
8 measurements and today, there have been some changes made
9 to the sound attenuation devices around the chiller unit
10 as well as to the fans themselves, have there not?

11 A. Yes, there have.

12 Q. And going through those changes, one of those
13 changes is that there has been a sheet of plywood put over
14 the plenum of the air conditioning unit, is that correct?

15 A. Yes that's true.

16 Q. Would you in red pen on Exhibit 8 circle that
17 particular piece of the configuration; that is the piece
18 of plywood over the plenum?

19 MR. ELLEDGE: That's not the true exhibit.

20 MR. DIVER: Okay, let's take the true exhibit.

21 Q. Here's a copy of the exhibit.

22 HEARING OFFICER: Let's go off the record
23 to discuss exhibits.

24 (A brief off the record discussion was held.)

01489

1 HEARING OFFICER: Back on the record.

2 Q. Mr. Zak, you had been earlier handed a document
3 marked as Respondent's Exhibit Number 8. I'm going to
4 take that and write the letter A next to 8 in red pen
5 indicating it now being Respondent's Exhibit 8 A. On this
6 particular document I would ask you to take this red pen
7 and just circle that portion of the construction that you
8 understand to be the piece of plywood covering the plenum
9 at the air intake portion of the chiller unit. And could
10 you show it on the side view as well?

11 Okay, and if you would just mark the
12 number 1 in both of those circles so that we understand
13 that that's the plywood sheet?

14 Okay. Secondly, it's my understanding that
15 pieces of plywood sheeting with a pink fiberglass on their
16 back have been installed on top of the original 8 foot
17 acoustical enclosure, is that correct?

18 A. Yes.

19 Q. All right. And can you draw a circle around
20 those plywood sheets that have been drawn with the
21 insulation that have been installed. Would you put a
22 number 2 inside of that? Okay. And I believe a 3rd item
23 that was not present at the time of your visit on June
24 27th, 1996 was the use of a variable speed control for the

01490

1 three fans on the chiller unit is that correct?

2 A. That's correct.

3 Q. Are those -- does this diagram itself show that
4 the variable speed drive for those fans?

5 A. No, it does not.

6 Q. Okay. So but that would be a third element of
7 change from the time that you visited on June 27th, 1996,
8 correct?

9 A. Yes, that's correct.

10 Q. Is there any other changes since that time?

11 A. Not that I'm aware of.

12 Q. You had earlier described the changes that had
13 been made as elegant. I'm asking you if you also see
14 these changes as simple, uncomplicated?

15 A. Yes. To expound very slightly on your
16 question--

17 Q. Please?

18 A. --As far as elegant is concerned, whenever
19 the noise solution, the simpler the noise solution is
20 typically the more elegant the solution is. Simplicity
21 and an inexpensive solution I would classify as an elegant
22 solution; whereas, a very large cumbersome enclosure,
23 while effective, would not be very elegant.

24 Q. Okay. What you see suggests that there has been

01491

1 some effort applied by someone to identify what the actual
2 noise sources are of this chiller unit, am I correct?

3 A. Yes.

4 Q. You described earlier some conversation that
5 occurred on the rooftop of the Shelton family room today,
6 correct?

7 A. Yes.

8 Q. During the course of your conversation then with
9 Mr. Kamperman, did he express any opinion with respect to
10 his measurements of the sound at the 4000 hertz level?

11 A. Yes.

12 Q. Could you explain to us what he told you and
13 what you understood it to mean?

14 MR. ELLEDGE: I think this is simple hearsay
15 and I would have to make a hearsay objection as to you're
16 asking him to relate what Mr. Kamperman told him. We will
17 have the occasion to cross examine Mr. Kamperman later in
18 this proceeding, of course.

19 MR. DIVER: No, I understand, but I'm not
20 going to tender this testimony for the purpose of
21 establishing the truth of what Mr. Kamperman said, but
22 what he did say to Mr. Zak so that we of course can
23 compare what Mr. Kamperman said Mr. Kamperman said and
24 what Mr. Zak says Mr. Kamperman said. And the only way we

01492

1 can do that is by having Mr. Zak testify as to what Mr.
2 Kamperman said, understanding that it's not being admitted
3 for the purpose of establishing the truth of it, but that
4 is what was said. That is the conversation that was had.

5 HEARING OFFICER: Objection sustained.

6 Q. During the course of the rooftop conversation,
7 were you asked your opinion concerning the possible
8 removal of 2 feet or 4 feet of this additional enclosure
9 that you had described as Item 2 on the drawing?

10 A. Yes, I was.

11 Q. And what was it that you responded in response
12 to that request for your opinion?

13 A. It occurred during general conversation between
14 myself and Mr. Kamperman. We were discussing the effect
15 of removing a -- me leaving the 4 feet as is versus
16 removing 2 feet versus removing the entire upper structure
17 of plywood. And during that conversation Mr. Kamperman
18 explained that the unit had a problem -- he may not have
19 used the exact word "problem", it did have a -- well I
20 would still use the word "problem". His typical word that
21 would be used to describe acoustical problem. The unit
22 had a problem at 4000 hertz and the upper structure was
23 effective and further reducing the 4000 hertz problem. I
24 agreed that, in my opinion, the addition of the upper 4

01493

1 feet of plywood with insulation was a good and prudent
2 approach to take with the situation we had there. The
3 main reason being that rather than trying to engineer a
4 problem like that to within a decibel or two, it's a lot
5 more prudent to slightly over engineer it because these
6 types of solutions don't always work out under all
7 conditions as exact as we hoped they would and it's just
8 good engineering practice to slightly over engineer a a
9 solution.

10 Q. You were asked just a few minutes ago to review
11 some measurements that had been made by Robert Elfering on
12 the evening of August 15, 1996 correct?

13 A. Correct.

14 Q. Were you present during that noise measurement
15 event?

16 A. No, I was not.

17 Q. Okay. Is it your understanding as well that
18 George Kamperman was present that evening?

19 A. He had told me that he was.

20 Q. And have you ever been asked to evaluate any of
21 the data that he generated that night concerning the
22 measurements of sound or noise from the chiller unit?
23 Have you ever been given George Kamperman's data from
24 August 15th to ask him to determine what the experience

01494

1 would be?

2 MR. ELLEDGE: I object, it's a compound
3 question.

4 Q. All right. Have you ever received any of George
5 Kamperman's data with respect to sound measurement on
6 August 15th?

7 A. Yes, I have.

8 Q. Okay. And do you have that data with you today?

9 A. Yes, I do.

10 Q. Okay. Can you produce it, please?

11 Okay. The document that you handed me is a
12 two page document dated August 19, 1996 and has attached
13 to it a handwritten sheet of August 17 and it's stated as
14 Sheet 1 of 1.

15 MR. CARSON: Has this been marked?

16 MR. DIVER: No, not at this point. I just
17 received it.

18 We could. Let's mark this -- what would be
19 the next exhibit number for the Plaintiff be, Madam
20 Hearing Officer?

21 HEARING OFFICER: Exhibit 113.

22 MR. DIVER: I had a recollection of having
23 done 113.

24 HEARING OFFICER: Exhibit 114 or Respondent's

01495

1 11.

2 MR. DIVER: 114 I'll mark this as.

3 Q. I'm now showing you three data sets which I will
4 first show to counsel for Respondent.

5 MR. ELLEDGE: No objection.

6 Q. I'm going to ask you if you have ever seen the
7 data that I'm showing you now as Complainant's Exhibit 115,
8 116 and 117.

9 A. They are multiple pages of it.

10 Q. At this point I'm just ask you up to right now
11 you've never seen these documents?

12 MR. ELLEDGE: I'll be prepared to stipulate
13 that he has not. He would never have had an occasion to.
14 Those were four drawings that I think we both have saw
15 just recently for the first time from the next witness and
16 I'm not sure where you're going with this.

17 MR. DIVER: I'm just trying to find out
18 whether he's ever seen this level of data with respect to
19 George Kamperman's measurements on August 15th.

20 A. No, I have not. I apologize. I may not have
21 understood the question. What I was trying to do, looking
22 through the data, was to see if it contained the fax that
23 George Kamperman had sent me yesterday and because as far
24 as the question was concerned, I just wanted to see if I

01496

1 could find any of the data that he had faxed me in these
2 more detailed documents that I have not seen before.

3 Q. Okay. The form of the information that's
4 presented here with the black bar chart, what is this
5 format, not what is the data itself, but what is being
6 shown in this type of report, this type of a report?

7 A. In that type of a format what we're seeing is
8 the print out from George Kamperman as an analyzer. He
9 uses exactly the same kind of analyzer I do. We're
10 looking at data print outs of probably raw data that he
11 gathered at the Crown and Shelton sites.

12 Q. Okay. And between 115, 116 and 117, is there
13 anything about the nature of the data that's reported in
14 the chart itself; that is, in terms of its refinement?

15 A. Yes. What we're looking at here is one set of
16 charts using Exhibit, Complainant's Exhibit 115 is an
17 octave band data. And, for example, on the octave band
18 data on the Exhibit 115 if we look up at the top lefthand,
19 go down about 3 or 4 lines, the phrase recall from file,
20 Crown 2 record number 4. That's the key with this
21 analysis system as to which record we're really looking
22 at.

23 If we then go to Exhibit 117, the same
24 line, we would see then that we're looking at -- I'm

01497

1 sorry, let me back up a little bit there. Let me go to
2 Exhibit 116 rather than 117 you can look and recall from
3 file, Crown 2 record 4. On the one Exhibit, the 115
4 exhibit we're looking at octave data. On the 116 exhibit
5 we're looking at 1/3rd octave data. And then if we go to
6 Exhibit Number 117, the second page, we again at that same
7 line find, recall from file, Crown 2 record 4. Here we're
8 looking at 112 octave band data. What we generally do in
9 acoustics is the octave band data is used to see if it's
10 in compliance with regulations. The 3rd octave band data
11 is used to some extent for regulatory information, but
12 more for noise control engineering. And then the 12th
13 octave band data is used strictly for noise control
14 engineering information; to solve problems.

15 Q. Okay. And your testimony is you have not, up
16 until this moment seen this data?

17 A. That's correct.

18 Q. You have actually been present at the Crown
19 property on how many occasions now in the presence of the
20 Sheltons for purposes of observing the chiller unit or in
21 terms of measuring the sound?

22 A. I only visited there three times.

23 Q. And you have had a number of telephone
24 conferences and possibly in person conferences with David

01498

1 Shelton concerning the problem here?

2 A. Yes, I would say, thinking back to my phone
3 records, there may be fifty to a hundred phone calls and
4 faxes to go on the subject. That's over the last two
5 years. I believe it started about in 1994.

6 Q. Is there anything in any of those conversations
7 that have occurred with David Shelton to suggest that he
8 was unable to distinguish the sound of the Crown chiller
9 unit from the sound of his own air conditioning unit?

10 MR. CARSON: Objection, calls for hearsay.

11 HEARING OFFICER: Sustained.

12 Q. Is there anything that you have experienced at
13 the Shelton property itself to suggest that it would be
14 difficult for a person to distinguish between the sound of
15 the Crown air conditioning unit and the air conditioning
16 unit on the Shelton property?

17 A. I don't think it would be difficult because the
18 character of the sound is significantly different of the
19 small units on the Shelton property versus the
20 characteristic sound produced by the larger Crown unit.

21 Q. On the night that you measured this sound at the
22 upper southeast window on the Shelton property, was there
23 a rooftop air conditioner on the Shelton property
24 operating at the time of your measurement?

01499

1 A. No, there was not.

2 MR. DIVER: Madam Hearing Officer, I will move
3 the introduction of what is now been marked as
4 Respondent's Exhibit 8A.

5 MR. ELLEDGE: No objection.

6 HEARING OFFICER: Exhibit 8A is entered into
7 evidence.

8 (Said document was entered into evidence.)

9 Q. I ask you if you would, Mr. Zak, to identify on
10 Exhibit 114 that line or those lines which you understand
11 to be George Kamperman's measurement of the sound which
12 would be comparable to the first sound that you were asked
13 to describe. That is, the sound at the Crown unit night
14 time load on, Shelton unit off, circumstance 2. Is there
15 a way that you can tell which of the data that you had
16 been given by Mr. Kamperman corresponds to that data set
17 for Mr. Elfering?

18 A. Yes.

19 Q. Okay. Now that would be the Bob Elfering
20 measurement. Can you find an apparent measurement by
21 George Kamperman that corresponds to what Bob Elfering was
22 measuring?

23 A. No.

24 MR. ELLEDGE: May I ask one question here,

01500

1 Madam Hearing Officer. I propose to bring Mr. Kamperman
2 in as my next witness. It may very well be that an
3 efficient with an for counsel to pursue this line with Mr.
4 Zak is to have Mr. Zak step down and let us proceed with
5 Mr. Kamperman and then you can recall Mr. Zak if you
6 choose. Does that suit your needs?.

7 MR. DIVER: Recall him for the conclusion of
8 Michigan cross? That's fine. As a matter of fact, I
9 thought that was -- that's what was going to happen
10 today, we were going to hear from Mr. Kamperman first so I
11 could then cross-examine Greg with respect to George's
12 data. But I can't do that now and I'm just trying to
13 establish, for the record, with what I've got and what
14 you've given to Greg that he can't do it either.

15 HEARING OFFICER: I do have some difficulty
16 with the introduction of the Kamperman data on cross with
17 Mr. Zak.

18 MR. DIVER: I do not intend to introduce
19 that, merely to indicate that he's never seen it.

20 MR. ELLEDGE: He's testified to that now.

21 MR. DIVER: Yes. That's the only purpose
22 that while he can obviously read what was in Bob
23 Elfering's printed report and tell you what the meaning of
24 the various lines was, he's been given nothing of a

01501

1 similar type from Mr. Kamperman, so he can't make the
2 kinds of comparison needed.

3 HEARING OFFICER: Off the record to discuss
4 the order of hearing.

5 (A brief off the record discussion was held.)

6 HEARING OFFICER: Back on the record. We'll
7 continue with the cross-examination of Mr. Zak.

8 MR. DIVER: Okay. At this point, Madam
9 Hearing Officer, I would move the introduction of
10 Complainant's Exhibit 114 being the document and cover
11 letter that Mr. Zak had received from Mr. Kamperman
12 concerning the measurements of August 15th.

13 MR. ELLEDGE: No objection.

14 HEARING OFFICER: Exhibit 114 is entered into
15 evidence.

16 (Said document was entered into evidence.)

17 MR. DIVER: Madam Hearing Officer, since those
18 are the only copies of those exhibits, I'm hand them to
19 you now but if you wish somebody can make copies now.

20 HEARING OFFICER: That will be find.

21 MR. DIVER: All right. I'll have that done.

22 BY MR. DIVER:

23 Q. Mr. Zak, did you ever receive at any time up
24 until today a formal complaint from Steven or Nancy Crown

01502

1 with respect to sound emissions from either of the two
2 Shelton air conditioners?

3 A. No, I have not.

4 Q. One more thing. Today, when we were actually
5 measuring the sound by our ears on the rooftop, Mr.
6 Elledge called somebody on the phone and asked them to
7 change the operating circumstance of the fans, is that
8 correct?

9 A. That's correct.

10 Q. Such that what we were experiencing when we
11 arrived was a lesser level of operation than what we were
12 supposed to be listening to after the call had been made,
13 is that correct?

14 A. That's my understanding.

15 Q. Do you know any way of requiring that a
16 particular operational condition continue into the future,
17 particularly the operational condition at the Crown
18 chiller unit that at night only a single compressor and
19 the three fans with the variable speed control would be in
20 operation. Is there a way of seeing to it, assuring that
21 that will happen?

22 A. Yes.

23 Q. What is it?

24 A. Based on my electronics background, one

01503

1 alternative would be to include in the algorithm for the
2 current system that should a component fail, rather than
3 allowing the unit to operate under an unwanted condition
4 as far as sound emissions are concerned, to have the unit
5 shut down. Thus forcing the repair of the unit to bring
6 it back to the current operating conditions. Rather than
7 a situation where if a component fails, the default would
8 be where the unit would deem to operate is a pass over a
9 degree to sound level limits, but continue to operate.
10 The rationale there being that there's a very strong
11 incentive on the part of the Crowns to repair the unit
12 because of the fact that the whole thing was shut down if
13 one of the control components should fail.

14 Q. What, if anything, could be done?

15 MR. ELLEDGE: I object, your Honor. This is
16 -- I waited for the last witness -- is far beyond the
17 scope of direct. There was no question that was asked to
18 him with regard to algorithms or as to control operations
19 or to any of the materials with regard to which Mr.
20 Mautner testified yesterday. And so this is just improper
21 cross-examination entirely.

22 MR. DIVER: I haven't even asked a question
23 at this point.

24 MR. ELLEDGE: You asked the question. I

01504

1 objected before.

2 MR. DIVER: It was asked and answered.

3 MR. CARSON: I want to add, if I may, in
4 addition with respect to foundation, there's been no
5 foundation in terms of this witness' expertise to the
6 things he's testifying in response to the last question.

7 MR. DIVER: At this point, Madam Hearing
8 Officer, the question was asked and answered without
9 objection. The objection was not made until the witness
10 had completed his testimony.

11 MR. CARSON: We're moving to strike the
12 response.

13 MR. DIVER: I understand your--

14 HEARING OFFICER: And your response to the
15 motion to strike?

16 MR. DIVER: Is that the testimony has already
17 been given. The witness testified in his original
18 appearance with respect to his experience in electronics
19 and he's just reiterating that on the basis of his
20 experience in electronics that that is something that can
21 be done. And in this particular circumstance, given the
22 significance of the operational control in the totality of
23 the noise control program, something that ought to be
24 done.

01505

1 HEARING OFFICER: The motion to strike will be
2 denied; however, please confine the remainder of the
3 cross-examination to the direct testimony.

4 Q. Mr. Zak, when you expressed your opinion earlier
5 that you believed that the chiller unit operated under the
6 set of circumstances that you experienced today would meet
7 the Illinois daytime and night time standards. Did you
8 assume that the circumstances that exist today would
9 continue in the future?

10 A. Yes.

11 MR. DIVER: No further questions.

12 MR. ELLEDGE: No further questions.

13 HEARING OFFICER: All right, thank you, Mr.
14 Zak. Will you please stay in case we should wish to
15 recall you today?

16 Thank you. Let's take a brief recess
17 and we'll come back with our next witness.

18 (A brief recess was taken.)

19 HEARING OFFICER: Back on the record.

20 MR. ELLEDGE: I'd like to call Mr. Kamperman.

21 HEARING OFFICER: Mr. Kamperman, would you
22 please be sworn.

23 (Witness sworn.)

24 GEORGE WILLIAM KAMPERMAN

01506

1 after having been first duly sworn on oath, testifies and
2 says as follows:

3 DIRECT EXAMINATION

4 BY MR. ELLEDGE:

5 Q. Mr. Kamperman, state your full name?

6 A. George William Kamperman, K-a-m-p-e-r-m-a-n.

7 Q. And Mr. Kamperman, where do you reside?

8 A. I have -- presently I'm living in Cantonville,
9 Wisconsin and I also have a home in Leesburg, Florida.

10 Q. And what is your occupation or profession?

11 A. Noise Control Engineer.

12 Q. And what degrees do you hold and what societies?

13 A. My degree is a Bachelor of Science graduate
14 study Master Institute of Technology in acoustics. I am a
15 member of the Institute of Noise Control Engineers. The
16 Acoustical Society of America, National Acoustical
17 Consultants, and a professional engineer in the State of
18 Wisconsin.

19 Q. I'd like to show you what's previously been
20 marked as Respondent's Exhibit Number 11. Could you tell
21 me what that is?

22 A. This is two pages of my resume, plus two sheet
23 of clients I worked with over the years and a very brief
24 description of what I did for these clients related to

01507

1 noise control.

2 MR. DIVER: I'll stipulate to Mr. Kamperman's
3 ability to testify to this proceeding as an expert with
4 regard to both sound measurement and sound control system,
5 if that's the purpose of all of this.

6 MR. ELLEDGE: Yes, it is, thank you.
7 And I'll remove the introduction of Exhibit Number 11,
8 please.

9 MR. DIVER: No objection.

10 HEARING OFFICER: Respondent's Exhibit 11 will
11 be entered into evidence.

12 MR. ELLEDGE: Thank you.

13 Q. Mr. Kamperman, are you familiar with the chiller
14 unit located at the Crown residence on Ardsley Road in
15 Winnetka?

16 A. Yes, I am.

17 Q. And were you ever retained by anyone to consult
18 with regard to that unit?

19 A. Yes.

20 Q. And have you ever -- by whom?

21 A. By you.

22 Q. Thank you. And have you ever had occasion to
23 measure that unit when it was operating?

24 A. Yes, I have.

01508

1 Q. When was the first time?

2 A. May 2nd, 1996.

3 Q. All right. Who was present on that date?

4 A. Two representatives of MidRes and yourself.

5 Q. Could you briefly tell us what did you do, what
6 kind of equipment did you use and what was the nature of
7 your activity?

8 A. It was an investigation on the noise sources
9 associated with this equipment. I used a standard type
10 sound level meter connected with a data tape recorder and
11 I obtained data near many of the sources in the unit, very
12 close to the sources within an inch to a foot to several
13 feet away and as far away as the north property line,
14 directly north of the unit.

15 Q. All right. Were there noise control -- were
16 there noise controls associated with that unit at that
17 time?

18 A. Yes, there was a partial height barrier around
19 the unit, 8 foot high acoustical barrier, sound absorptive
20 treatment on the side facing towards the unit. This
21 enclosure was, as I recall was about 8 feet square in plan
22 and 8 feet tall with an acoustical louver on the each side
23 and open on the top.

24 Q. All right.

01509

1 A. And the other three sides there are solid.

2 Q. Do you have an opinion as to the effectiveness
3 of those control measures as they stood at that time?

4 A. Yes.

5 Q. Would you tell us what that is?

6 A. I would have to look at my notes.

7 MR. DIVER: While the witness is looking at
8 his notes, could you repeat again what the question is
9 that is being asked of him?

10 MR. ELLEDGE: I asked him if he had an
11 opinion with regard to the effectiveness of the then
12 existing control measures.

13 MR. DIVER: Then existing as of 5/2/96.

14 MR. ELLEDGE: That's correct.

15 MR. DIVER: Yes.

16 A. Approximately 10 dba noise reduction was
17 achieved at that juncture. This is at the property north
18 of the Crown property.

19 Q. What do you base that on?

20 A. I base this on measurements performed by Al
21 Shiner in a report that you provided me.

22 Q. All right. What did you do after you had taken
23 all of the measurements that you've just described on that
24 May 2? Did you have any further activities with regard to

01510

1 the noise?

2 A. Yes I made recommendations for improving the
3 noise control and also made two different modes of
4 operation; one we could operate for night time with one
5 compressor and won fan at full speed. And in my opinion
6 this, would meet the night time standards based on the
7 measurements I made on the 2nd of May.

8 Q. Now, was it your understanding that those
9 changes were put into effect?

10 A. Yes.

11 Q. It was your understanding. I'd like to show you
12 what's been marked as Respondent's Exhibit Number 92.
13 Would you leaf through that and tell me if you have ever
14 seen that?

15 A. Yes, this is a -- these are data sheets
16 prepared by Greg Zak.

17 Q. And what date do they bear?

18 A. June 27th, 1996.

19 Q. And did you receive those on or about the time
20 and the date that they bear?

21 A. Yes.

22 Q. And what did you do with them, if anything?

23 A. I compared these results to what I had projected
24 the levels would be at the residence. My primary interest

01511

1 was the measurement that Greg Zak made at the elevated
2 location near the second floor bedroom at the Shelton
3 residence.

4 Q. Did those measurements cause you any concerned?

5 A. Yes. My projections were much lower than those
6 observed by Greg Zak and I had no way of resolving those
7 differences.

8 Q. All right. What then did you do? Did you make
9 any further recommendations?

10 A. I then concluded that possibly I was not
11 understanding the acoustics of the problem that was going
12 on at the Shelton property as I had not seen it. There
13 may have been some reverberate build up of sound that I
14 couldn't understand that I had not studied because I had
15 not set foot on the property. So, I added additional
16 noise control recommendations to the Shelton -- excuse me
17 -- the Crown air conditioning enclosure.

18 There were three parts to this
19 recommendation. One was to change the fan speed so that
20 we could reduce the noise emission from those by putting
21 speed control on those units. Then, during night time
22 hours when the demand was less on the system, they did not
23 need to operate it full speed, and the theory shows that
24 this would, reducing the fan speed by a half would reduce

01512

1 the noise emission from the fans by approximately 15 dba.
2 The next was to increase the height of the enclosure above
3 the fan discharge and increase this with a plywood
4 temporary enclosure with sound absorptive treatment on the
5 inside surfaces facing the air flow. The 3rd part of this
6 was to close off the top opening that allowed compressor
7 sounds and fan sounds emission from the inlet side of the
8 air conditioning unit on the east side to go up into the
9 sky and over to the north property, close this off so that
10 air was forced to go through the inlet silencer on the
11 east side of the enclosure that was already in place.

12 Q. I'd like to show you an exhibit which has been
13 marked as Respondent's Exhibit 8A. Are you familiar with
14 that drawing?

15 A. Yes.

16 Q. Okay. And the piece that you have just been
17 describing, is that depicted on this drawing anywhere?

18 A. What I'm describing as the temporary plywood
19 enclosure is shown at the top portion of the lower
20 diagram.

21 Q. Is there a mark on that diagram?

22 A. There's no mark at the top portion.

23 Q. And in red?

24 A. Red is number 2.

01513

1 Q. Now--

2 A. And in addition there's a partition shown
3 between the additional 4 feet and the unit down below,
4 vertical partition down the east edge.

5 Q. Take a blue pen and mark with the piece that you
6 were just talking about on that exhibit put a numeral 3 in
7 there. Now, do you see where there is a marking that
8 is number 1. Could you tell us what that is?

9 A. This is the closing off of the inlet to force
10 all of the air to go through the inlet silencer. If you
11 look at the unit from the top, it looks like it's room for
12 the floor at the 15 foot level and if you were to stand on
13 the ground on the east side of the unit and look up and
14 see that's the ceiling of the unit. It's a horizontal
15 panel.

16 Q. Okay. Did you communicate those recommendations
17 to anyone?

18 A. Yes I communicated these recommendations to
19 MidRes.

20 Q. All right. And thereafter did you have occasion
21 to visit the property again?

22 A. Yes.

23 Q. And when was the next time you visited?

24 A. August 9th.

01514

1 Q. And who was present on August 9th?

2 A. Two representatives of MidRes, yourself and
3 myself.

4 Q. What did you observe when you got there and what
5 did you then do?

6 A. I observed the enclosure and climbed up on top
7 of it to inspect the details of the enclosure. I then
8 asked MidRes to operate this system in many different
9 modes as I made measurements primarily at the north
10 property line, directly north.

11 Q. Let me ask you this. Was there a way that you
12 could observe the speed of the fans as they were put in
13 different modes.

14 A. Well, when they changed them, this was, to my
15 knowledge, this was the first day this was operating, the
16 system, and occasionally the fan would quit. I would
17 notice that because I didn't hear it while I was outside
18 the unit. So I would climb up the ladder and look to see
19 what happened and they would reset the system and by the
20 end of my testing after several hours, they had resolved
21 this problem that they were always working reliably. But
22 in the meantime, I went back and climbed up on top of the
23 unit each time for a series of measurements to assure
24 myself that it is was operating as I had been told it was

01515

1 operating.

2 Q. So you physically checked each time to make sure
3 that you knew of your own knowledge that it is was full
4 speed or half speed or less than half speed?

5 A. And which compressors were operating and when.

6 Q. Okay. Would you continue? What did you then
7 do?

8 A. I made measurements at the property line of
9 these different modes of operation. My interest was to
10 try to understand the sound propagation from the unit over
11 to the Shelton 2nd floor window. So, I made measurements
12 at 8 feet above the ground of the property line, at 12
13 feet above the ground at the property line and 16 feet
14 above the ground. So I made sure that I was always going
15 to include the line of sight, as it were, between the top
16 of the enclosure, which was now 12 feet, over to the
17 window to the Shelton house, which I said to myself, I
18 haven't even seen the house, it must be in the order of
19 14, 15 feet above the ground. So I wanted to be sure I
20 included that direct path. And so I took these results,
21 based on this and measurements I made directly over the
22 air discharge at 2 fan speeds; one at maximum fan speed
23 and one at 125 hertz input to the motors -- I should
24 explain what this is. The motor normally operates at 60

01516

1 hertz, that's our power line frequency. But these new
2 speed controls can vary the frequency into the drives of
3 the motor. So it varies the speed of the motors. So if I
4 said half speed, that really meant 30 hertz is driving the
5 fans and the data I took was at 25 hertz. That was
6 considered sort of at the typical high end of what would
7 be night time operation. Measuring over this unit,
8 standing over the unit and everything at sound level
9 between these 2 speeds, I found that the sound did drop
10 like theory would predict in the order of 15 to 20 db.
11 That the sound decreased when the speed dropped from 60
12 hertz drive to 25 hertz.

13 Q. Okay, thank you. I'd like -- may I go off the
14 record for just a moment with regard to an exhibit?

15 HEARING OFFICER: Yes.

16 (A brief off the record discussion was held.)

17 HEARING OFFICER: Back on the record.

18 BY MR. ELLEDGE:

19 Q. Mr. Kamperman, I'd like to show you what has
20 been marked as Respondent's Exhibit 12. Could you tell me
21 what that is?

22 A. That refers to data that I obtained on the
23 Shelton property the evening of the 15th of August, 1996.

24 Q. All right. Then let me ask you what was the

01517

1 occasion of your going to the property, the Shelton
2 property on the 16th of August?

3 MR. DIVER: The 15th of August.

4 A. 15th.

5 Q. 15th of August. How did you get out there?

6 A. I was requested by you to be present to observe
7 the measurements by Bob Elfering and to virtually tag
8 along and do as I chose to just make some measurements
9 there.

10 Q. And did you take measurements?

11 A. Yes. I brought with me a Larson Davis Model
12 3200 Real Time Analyzer which Greg Zak uses a similar
13 instrument and I was trying to get 30 seconds to a minute
14 of data and so I did not measure at that same instant that
15 Bob Elfering was measuring data because he was using a
16 hand held sound o meter and calling off the results each
17 time he got a different octave band which was
18 contaminating my results with his voice, so I just waited
19 until he moved on to some other location and I took his
20 site and took my own data and followed him in that mode.
21 And these are the results on the sheet, on this sheet.

22 Q. Let me ask you this first. I show you what's
23 been marked as Respondent's Exhibit 9. Have you seen that
24 before.

01518

1 A. Yes.

2 Q. And what is that?

3 A. These are the results of Bob Elfering for that
4 night.

5 Q. And were those results -- are those results
6 consistent with your measurements?

7 A. Yes, they are very consistent.

8 Q. Okay. If you could continue, please?

9 A. This sheet, if we look at my data sheet that
10 that's marked Respondent's Exhibit 12, I have a note at
11 the top that I have corrected this tree of my neuro ban
12 analysis of the data. Just listening to the level you
13 could tell a very strong chirp around 2000 hertz. So I
14 used this detailed reflective information to subtract out
15 the cricket noise by assuming that the noise in those
16 particular narrow bands wouldn't be comparable to the
17 adjacent bands without the cricket noise, and add the sum
18 of those bands again to get back to the octave band. So
19 what I show on these data sheets is I believe what I would
20 have measured had the cricket been quiet. All of this
21 data except for the very last item includes the background
22 that was present at the time I was measuring, except for
23 the crickets.

24 A. The very last item which says bedroom window

01519

1 with two compressors, 3 fans operating at full speed, less
2 background is what I believe is the result at the bedroom
3 window with the Crown system operating at full out, but
4 after I had removed other noise sources in the area.

5 Q. Would you start at the top for your description
6 things just take us through line by line and explain what
7 this shows?

8 A. All right. The first line is the night time
9 Illinois limits and octave bands. The second line is a
10 measurement I made at approximately 4 feet above the
11 ground, approximately 8 feet north of the property line
12 fence between the Sheltons and the Crowns on a line
13 between the air conditioning unit and the Shelton family
14 room. That's what the item 13 and 7. 13 is those, both
15 compressors operating and all three fans operating full
16 speed and what I have noted on the 1000 and 2000 and 4000
17 hertz band that exceeds the night time limit about 1 db in
18 1000, 1 db at 2000, 5 db at 4000, the fans operating at
19 full speed.

20 Q. That's night time?

21 A. Night time variance.

22 Q. Correct.

23 A. The next item down is one compressor plus 3 fans
24 operating at night mode and at this time they were

01520

1 operating at 20 hertz drive frequency. It would be a
2 third of the nominal speed. These measurements are
3 essentially the ambient noise level because the noise from
4 the SHelton unit, excuse me, the Crown unit is so low that
5 I cannot get reliable data from them.

6 My next set of measurements is on the
7 patio on the east side of the Shelton residence. Item
8 16, 2 compressors of the Crown unit operating with 3 fans
9 at full speed. This was the raw data without correction
10 for 2000 hertz band with the crickets. These levels
11 are all below the Illinois night time limit. Of course
12 then I reduced the system to 1 compressor, 3 fans low
13 speed is below it also.

14 The last group of measurements there
15 with a microphone at approximately 3 and a half feet above
16 the roof of the family room, about 7 feet east of the
17 bedroom window and at the south edge of the roof. Item 15
18 with the 2 compressors, the unit operating 3 fans
19 operating at full speed. I measured results with a
20 correction of 2000 hertz for the crickets.

21 Next item is number 10. That's 1
22 compressor plus 3 fans again at one third speed. So those
23 levels are, of course, lower. They are much lower than I
24 had measured, but I can't tell what they are. They are

01521

1 below the background.

2 The next item is 11. That's the same
3 location with the Crown unit shut off completely. So this
4 was the best I could do obtaining the background
5 necessary, 60 second average all octave bands. And what
6 I've done in the next item below that it says bedroom
7 window, 2 compressors. What I started the explanation on
8 this item 11, background energy subtracted from the number
9 15 acoustics energy to arrive at the true contribution
10 from the Crown unit at the bedroom window of the Shelton
11 residence. And here we see that it's in compliance with
12 the night time level.

13 Q. Would you read off dba and just read the numbers
14 across?

15 A. Okay. DBA is 43.0, 31.5 octave bands is 52 db,
16 63 hertz octave band is 6.5 db, 125 hertz octave band is
17 51.4, 250 hertz octave band is 46.6, 500 hertz octave
18 bands is 38.9, 1000 hertz octave band is 35.5, 2000 hertz
19 octave band is 29.8, 4000 hertz octave band is 28.6 and
20 8000 is 22.7.

21 Looking at this you will see a little
22 note I have above 1000 hertz data. It says plus a .5.
23 That's the exceedance of the night time limit. And at
24 4000 hertz I have a note plus 3.6 db. That's the

01522

1 exceedance of the night time limit at 4000 hertz.

2 Q. What exactly are you depicting those
3 measurements?

4 A. What I am measuring is the total noise from the
5 Crown air conditioner with a full operation of the 2
6 compressors and the 3 fans at full speed.

7 Q. So, that's maximum flat out operation?

8 A. That's maximum noise with the present
9 configuration of the unit.

10 Q. So, that's, in other words, with the exception
11 noted. If I understand what you're telling me, your
12 testimony is that with the maximum flat out daytime
13 operation, except as noted, the sound contribution at the
14 bedroom level is below night time standards of the
15 Illinois Pollution Control Board, is that correct?

16 A. That's correct.

17 Q. Okay.

18 A. The last item on the data sheet here is if we
19 operate 2 compressors and 3 fans at 83 percent of full
20 speed. This will reduce the fan noise at the Shelton
21 window about 4 dba or 4 db rather, and this octave band is
22 a higher frequency band so that we will meet the night
23 time standard at any time the fans are operating at 83
24 percent of full speed or less.

01523

1 Q. Let me make sure I understand what you said.

2 Well, you're saying that until the unit fans are subject
3 to their variable frequency controls, they're operating at
4 83 plus full speed. That any time below, that the unit,
5 with both compressors working, met night time standards at
6 the bedroom window.

7 A. That's correct.

8 Q. Thank you. Now, based on your measurements and
9 your analysis, do you have an opinion as to a reasonable
10 degree of certainty whether the sound emitted from the
11 Crown chiller as presently configured and enclosed meet
12 the daytime standards at the upstairs bedroom window when
13 it's operating full out with 2 compressors and 3 fans
14 going at 60 hertz revolutions?

15 A. Yes it does meet the daytime standards.

16 Q. That is your opinion?

17 A. Yes.

18 Q. And on the same basis, based on your
19 measurements and analysis, do you have an opinion to a
20 reasonable degree of engineering certainty whether the
21 sound emitted from the Crown chiller unit is presently
22 configured when the fans are operating, when both
23 compressors are running and the fans are operating at 83
24 or less percent of full RPM, did the sound emitted from

01524

1 the chiller meet the night time standards at that upstairs
2 bedroom window?

3 A. It's my opinion that they do meet the night time
4 standards.

5 Q. All right. Based on your opinion, do you have a
6 recommendation to make to the owner as to what should now
7 be done, based on your opinion and based on the changes
8 that have been made?

9 A. Yes.

10 Q. What is your recommendation?

11 A. My recommendation is that the present enclosure
12 is, has what a safety factor incorporated, was the 4 foot
13 additional height, and I recommend this be maintained in
14 the final construction to have this safety factor
15 available so that any normal operation of the unit, day or
16 night, will always meet the noise regulations.

17 Q. Is this present algorithm which requires it to
18 operate on one compressor, one 10 ton compressor between
19 the hours of 10:00 p.m. and 6:00 a.m. necessary?

20 MR. DIVER: 6 or 7?

21 Q. 7:00.

22 A. No, it's not. The system operates normally,
23 time of day is not important. It is my understanding that
24 unless the ambient temperature is 95 degrees or something

01525

1 of that order that the full speed of the fans will just
2 not be in demand from the system. So, I do not foresee a
3 hundred percent fan operation during night time hours.
4 So, therefore, it's my conclusion, my opinion that this
5 system will always meet the noise regulations as is
6 presently configured irrespective of time of day without
7 any special controls other than monitoring the head
8 pressures and the refrigerant lining to meet the demand of
9 the system.

10 MR. ELLEDGE: Madam Hearing Officer, we have
11 no further questions.

12 HEARING OFFICER: We'll have the
13 cross-examination of Mr. Kamperman.

14 MR. DIVER: Thank you, Madam Hearing Officer.
15 At the outset, the Complainant asks that certain documents
16 that the Complainant understands formed the data predicate
17 for the various opinions from this witness be admitted
18 into evidence. At the moment, however, those documents
19 have been marked up and we need to produce clean copies.
20 But what I would like to identify, for the record, is what
21 those documents are and what the Complainant Exhibit
22 numbers are that are associated with them. If I may do
23 that?

24 HEARING OFFICER: Let's go off the record to

01526

1 discuss Kamperman exhibits.

2 (A brief off the record discussion was held.)

3 HEARING OFFICER: Back on the record.

4 MR. DIVER: Madam Hearing Officer, at this
5 time I am going to identify for purposes of the record
6 those documents which it's at this moment the
7 Complainant's understanding contain the data which is the
8 predicate of the various opinions testified to by George
9 Kamperman and I will identify them and identify the
10 exhibit number that they will be given. Clean copies of
11 these documents will be prepared for the Hearing Officer
12 and for Respondent at a later time indicating that the
13 first is a hand-drawn document of May 2, 1996 consisting
14 of two pages being marked as Exhibit 118. Second is a six
15 page document dated March 2, 1996 consisting of the auto
16 analyzer print out for the data survey of May 2, 1996.

17 HEARING OFFICER: Identified by Exhibit

18 MR. DIVER: Number 119.

19 HEARING OFFICER: Thank you.

20 MR. DIVER: Next is a document, hand-drawn,
21 dated May 3, 1996 titled at the top, GWK measurements,
22 5/2/96 consisting of one page and marked Exhibit 120.
23 Next is a document, hand-drawn, dated 8/9/96 indicating
24 sheet 1 of 2, one page marked 121. The next document is

01527

1 the apparent second page of that document dated 8/9/96
2 consisting of one page, top language being results
3 corrected for background and that's Number 122. Next is
4 Number 123, hand-drawn, dated August 14, 1996 titled
5 System Noise Floor Testing marked as Exhibit 123. Next is
6 a hand-drawn document dated 8/15/96, one page marked
7 Exhibit 124, that being an identification numerically of
8 the locations at which sound measurements were made by Mr.
9 Kamperman on the evening of August 15, 1996. Next is a
10 group exhibit marked Exhibit 115, 14 pages in length dated
11 8/15/96 being the octave band auto analyzer print out of
12 the readings taken by Mr. Kamperman on August 15, 1996.
13 That's numbered 115 as we numbered it with Mr. Zak.
14 The next is Number 116 being 12 pages in length also dated
15 8/15/96 being the auto analyzer print out of the readings
16 of August 15, 1996 in a one third octave band base. The
17 next marked Exhibit 117 being 16 pages in length again
18 dated August 15, 1996 being the auto analyzer print out of
19 the readings of George Kamperman on the evening of August
20 15, 1996 expressed in 1/12th octave band bases and that
21 was marked as number 117 earlier in the examination of Mr.
22 Zak. Next is Exhibit 125 being one page hand-drawn dated
23 8/16/96 being what we will call the cricket noise removal
24 document for the readings of August 15, 1996. Next is a

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1 document dated August 17, 1996 being sheet 1 of 1 and
2 hand-drawn marked Exhibit 126 entitled sound attenuation
3 for Crown ac unit. There's more language, but that's
4 sufficient for purposes of identification. The last
5 document marked 127, a single page being dated August 17,
6 1996 being sheet 1 of 1, hand-drawn and titled comparison
7 of P/L measurements and that's again sufficient for
8 purposes of identifying this particular document. Those
9 constitute the documents that we understand at this moment
10 form the predicate of this witness' testimony, in addition
11 to certain others which I will inquire about with him in
12 just a moment. Thank you.

13 MR. ELLEDGE: We have no objection.

14 MR. DIVER: And we'll see to it that these are
15 prepared for Madam Hearing Officer expeditiously.

16 HEARING OFFICER: All right.

17 MR. ELLEDGE: And I would like to move the
18 introduction of Respondent's Exhibit 12, please.

19 HEARING OFFICER: Is there an objection?

20 MR. DIVER: No.

21 HEARING OFFICER: Respondent's Exhibit 12 is
22 entered into evidence.

23 (Said document was entered as an exhibit into evidence.)

24 HEARING OFFICER: Will the remainder of the

01529

1 exhibits be moved into evidence?

2 MR. ELLEDGE: I believe I moved 11 and-- may
3 I move the introduction of all Respondent's exhibits so
4 far?

5 MR. DIVER: No, you may not.

6 HEARING OFFICER: Let the record so reflect
7 there was laughter.

8 Off the record again.

9 (A brief off the record discussion was held.)

10 HEARING OFFICER: Back on the record. Let
11 the record show that the exhibits identified as 114, 115,
12 116, 117, and 118 through 127 have been stipulated to for
13 purposes of entering them as exhibits and these numbered
14 exhibits are entered into evidence.

15 (Said documents were entered into evidence.)

16 HEARING OFFICER: We'll proceed now with the
17 cross-examination of Mr. Kamperman.

18 MR. DIVER: Thank you, Madam Hearing
19 Officer.

20 CROSS-EXAMINATION

21 BY MR. DIVER:

22 Q. Mr. Kamperman, you testified to having conducted
23 measurements on May the 2nd, 1996. It appears from the
24 documents that have just been admitted that there were in

01530

1 excess of 20 separate data sets that were generated in the
2 course of that examination, is that about right?

3 A. That's correct.

4 Q. That you measured sound very close to the
5 chiller unit; that is, close to each compressor within an
6 inch of it. That you measured sound at the property line.
7 That measure virtually every sound emitting source
8 associated with the chiller unit that you could identify,
9 is that true?

10 A. Correct.

11 Q. In your professional judgment, is such a sound
12 survey of such an extent necessary as a foundation for the
13 conduct of a program to identify possible corrective
14 action with respect to the sound sources?

15 A. Not necessarily.

16 Q. How would you avoid it?

17 A. The design of the enclosure that was initially
18 built around the acoustic enclosure is an approach that
19 was very, to me was a very logical approach and wouldn't
20 require the emitting detailed measurement design to that.
21 I took more detailed measurements because I was asked,
22 what next to do better than this.

23 Q. To do better than what, the 8 foot acoustical
24 enclosure was doing, correct?

01531

1 A. That's correct. It becomes more of a challenge
2 to improve upon an enclosure like that.

3 Q. You made a recommendation within 24 hours of the
4 conduct of those sound measurements with respect to
5 improvements that could be made to the sound attenuation
6 system to enable it to more reliably comply with Illinois
7 night time noise standards, did you not?

8 A. I'd have to look at my notes to see the exact
9 time probably.

10 Q. Would you please look at your notes if that will
11 help to refresh your recollection and I'm directing you to
12 your notes of May 3, 1996. Was it on that date that you
13 made your recommendations concerning the improvements to
14 be made to the chiller unit, sound proofing?

15 A. It may have been on May 2nd I made a
16 recommendation. That was when I actually met with MidRes
17 to discuss this.

18 Q. Does your note of May 3, 1996 not indicate about
19 60 percent down the page the final recommendation 1, a
20 circle 1 and a circled 2?

21 A. That's correct.

22 Q. Are you saying that that recommendation was not
23 made on the date of the note that you have here?

24 A. Probably not. I didn't -- it was requested I

01532

1 make my report, but I may have and we may not have
2 discussed this at the time with Mr. Elledge. Sometime
3 between May 3rd and May 22nd I discussed with him these
4 recommendations or the need to do something about what
5 might be done to improve the noise reduction and he
6 established a meeting with MidRes to go over this.

7 Q. At that time, immediately prior to that meeting,
8 you had formulated two recommendations, am I correct?

9 A. Yes.

10 Q. And the first of those was to add a 3 foot
11 additional height to the acoustical enclosure wall, is
12 that correct?

13 A. That's right.

14 Q. Did you also recommend, permissibly, that a
15 plastic air barrier could be inserted over the open plenum
16 at the top of the unit?

17 A. That's correct.

18 Q. Did you also recommend that this unit never be
19 operated during the hours of 10:00 p.m. to 7:00 a.m. with
20 more than one compressor and one fan?

21 A. That's what my notes say.

22 Q. You made those recommendations to MidRes at a
23 meeting of May 22, 1996?

24 A. These were discussed -- you must realize that

01533

1 what I'm looking at from an acoustics viewpoint, I had no
2 idea what -- how they could operate this system. It
3 makes sense to the people who engineer this. This is why
4 the meeting to discuss this.

5 Q. And at the meeting did anybody indicate that it
6 could not be done?

7 A. That is when the decision was made to look into
8 the feasibility.

9 Q. Did anybody express, particularly anybody from
10 MidRes express the opinion that the recommendations that
11 you had made could not be done?

12 A. There was concerned, but they said they were all
13 interested. They had not considered this before.

14 Q. Had you made a recommendation similar to the
15 recommendation with respect to the plenum cover at an
16 earlier date?

17 A. That is possible.

18 Q. Would you look at your notes for October 26,
19 1995 to refresh your recollection?

20 A. I possibly discussed it there, but I looked at
21 the unit on the 26th of October, 1995, and it had been
22 turned off for the remainder of 1995. So I had no way of
23 knowing what the noise output was. The next week I went
24 to Florida and didn't return until next spring. So, we

01534

1 picked up the project when I returned from Florida and the
2 result was that I did it at the end of May, get my first
3 observation of the house and the unit was operating.

4 Q. Your testimony was that you were asked to visit
5 the equipment on October 26, 1995 and not asked to
6 re-evaluate the system or look at the system again until
7 May of 1996?

8 A. No, I was not even here. I was in Florida. It
9 was not operating in that period of time.

10 Q. I understand that you understand that. In
11 October 26th of 1995, however, it appeared to you at least
12 intuitively obviously that some sound control could be
13 achieved by having a simple cover over the open plenum at
14 the top of this chiller unit, is that correct?

15 A. At that time I was more concerned about
16 re-circulation as we increased barriers around the air
17 discharge. You'll notice I talked about a light weight
18 plastic cover. Light weight plastic doesn't give you the
19 significant noise control. I was just looking for an air
20 barrier at the moment. The need for the more massive
21 barrier there became apparent then on May 2nd of 1996.

22 Q. Is there a massive barrier on that?

23 A. Plywood is massive compared to plastic.

24 Q. The piece of plywood is -- plywood that's on

01535

1 there at the moment is not insulated itself, is it?

2 A. No, it looks like three quarter inch plywood.

3 Q. At about what size?

4 A. The cross section.

5 Q. Its size officially?

6 A. It's approximately 8 feet long and 3 feet wide,
7 8 feet on the north-south direction, 3 feet in an
8 east-west direction. Of course that's the vertical
9 section that goes from the top of the unit, which is 6
10 feet above the ground, up to 8 foot high to close off the
11 barrier I had to draw the air into the silencer.

12 Q. Is that also a simple piece of plywood?

13 A. Yes.

14 Q. At some point in time you made a determination
15 that sound was emanating from the condenser portions of
16 this chiller unit particularly at it's base near the
17 louvered air inlet, is that correct?

18 A. On May 2nd I made a determination there was
19 noise emission from many areas. I don't understand.

20 Q. At some point in time, at some point during your
21 examination of this chiller unit, you made a determination
22 that sound was coming from the air intake portion of the
23 unit and was going up this open area through the top of
24 the chiller unit, am I correct?

01536

1 A. The first time I visited when it was operating,
2 that was apparent.

3 Q. Okay. At the time that you conducted your
4 measurements on May 2nd, 1996 at the property line between
5 the Crowns and the Sheltons; that is the property line of
6 sound measurements, am I correct that your sound
7 measurement was actually conducted at 1 foot above the 6
8 foot fence on the property line?

9 A. Approximately 1 foot above.

10 Q. Following the sound testing that occurred on
11 June 28th, 1996, or June 27th, 1996 that you did not
12 attend, that would be Greg Zak's testing. Following that
13 you recommended that variable speed controls be placed on
14 the chiller fans, is that correct?

15 A. That's correct.

16 Q. And you recommended at that time that those fans
17 not be allowed to operate at a speed greater than about 50
18 percent of their full speed after the hour of 10:00 p.m.
19 at night, is that correct?

20 A. That may be in my notes.

21 Q. I ask you to look to your notes again for July
22 7, 1996?

23 A. The information that I had up to that point
24 would suggest that I would have a margin of safety with

01537

1 the fans operating at half speed. That's probably the
2 night time noise level.

3 Q. Going back to your notes and also to the extent
4 that they help refresh your recollection, but if you have
5 a recollection, otherwise please tell me. Did you have
6 any contact with MidRes concerning sound controls between
7 May 22, 1996 when you met with them and reports that were
8 given to you on or about June 28th, 1996 concerning the
9 sound testing that had been done? During that
10 approximately month of late May to late June, did you have
11 any contact with anybody concerning sound controls for the
12 Crown unit?

13 A. I don't recall any discussions after the meeting
14 on May 22.

15 Q. That's what I understand. The first time you
16 were asked after May 22, 1996 to make any further
17 recommendations was on July 7th, 1996?

18 A. Immediately after Greg Zak's measurements on, I
19 believe it was the 27th of June, I looked at his data and
20 tried to understand what was happening.

21 Q. And in consequence of that you made a
22 recommendation on July 7th, 1996, correct?

23 A. Yes.

24 Q. And you discussed that with Mr. Elledge on July

01538

1 8th, correct?.

2 A. That is correct. I asked him to explore with
3 MidRes and Tran the feasibility of operating it at
4 adjustable speeds of the fans.

5 HEARING OFFICER: Counsel, what is the purpose
6 of pursuing this line of questioning related to the time
7 line?

8 MR. DIVER: Because we believe that nothing
9 was done with respect to corrective action of this
10 particular system until certain pressure points were
11 received and in this particular case it had to do with the
12 trial in this matter. That is the first time that there
13 was discussion of variable speed times and we're asking
14 was it after trial.

15 HEARING OFFICER: Let's keep it as brief as
16 possible.

17 MR. DIVER: I will.

18 Q. Directing you to your notes of July 29, 1996,
19 you have in those notes a certain drawing with respect to
20 certain dimensions, correct?

21 A. Correct.

22 Q. Dimensions from the chiller unit to the Shelton
23 Crown property line and from that property line to the
24 Shelton structure, correct?

01539

1 A. Yes.

2 Q. Did you make those measurements?

3 A. No, these were estimates from Mr. Reese Elledge.

4 Q. And the estimate was that the chiller unit face
5 on the north was approximately 30 feet from the property
6 line, correct?

7 A. Yes.

8 Q. And from the property line to the Shelton
9 residence was approximately 28 feet?

10 A. Yes. The suggestion was made.

11 Q. Earlier you testified that with the chiller in
12 it's present configuration, with both compressors
13 operating at 83 percent or less speed for the fans, you
14 will meet, you believe, the night time standard at the
15 window, is that correct?

16 A. That is correct.

17 Q. On August 9, 1996 and I'll direct you to your
18 notes for that date, to August 9th, was it not your
19 conclusion that in order to meet the night time standard
20 at the property line as opposed to at the window that if a
21 10 ton compressor operating the 3 fans would be having to
22 operate at 42 percent or less of their capacity. Is that
23 not a correct statement of the last 3 lines of your entry
24 for August 9th, 1996?

01540

1 A. Are you referring to my notes.

2 Q. Yes, I am, sir. August 9th, 1996, your notes.

3 And I ask you was that your opinion on that date?

4 A. Can I have the question read again?

5 (The record was read.)

6 A. My notes says that, but my notes also refer to
7 12 feet above the ground. That's not an occupied location.
8 This is from my information trying -- then I had not seen
9 the Shelton property. I had no idea of the sound
10 attenuation of the property line to the Shelton house.

11 Q. I understand. Have you ever formulated a
12 different opinion with respect to the power level at which
13 the 3 fans must be operating in conjunction with the
14 single 10 ton compressor to assure night time compliance
15 at the property line? Have you ever formulated an opinion
16 other than this one?

17 A. Yes.

18 Q. What is it?

19 A. My opinion is that the 10 ton operation of the
20 compressor, that compressor alone and one fan operating at
21 full speed meet the night time standard at the Shelton
22 residence back in June.

23 Q. I understand your answer, but my question wasn't
24 that. My question was, with the 10 ton compressor

01541

1 operating and all 3 fans operating, at what capacity must
2 those fans not be exceeding in order for you to feel
3 comfortable that the Illinois night time standard is met
4 at the property line? We're talking about the compressor
5 and 3 fans operating, not compressor and one fan,
6 compressor and 3 fans?

7 A. I feel that with one or two, excuse me, one or
8 two compressors operating and three fans operating at 83
9 percent or less, this will meet the night time standard at
10 the property line on the Shelton side of the property
11 line. At a nominal occupied elevation, not 16 feet above
12 the ground, but at it and it will also meet it at the
13 bedroom window.

14 Q. So you're saying the same 83 percent is what is
15 required for both property line and the bedroom window?

16 A. Yes.

17 Q. Even though the bedroom window is 28 feet
18 further away?

19 A. That's correct.

20 Q. Is there diminution of sound over distance?

21 A. Yes.

22 Q. And over 28 feet what diminution of sound would
23 you expect from the measured sound at the property line to
24 the measured sound at the window?

01542

1 A. If the sound is observed at the property line
2 above the fence, elevated, then I would expect the sound
3 level to decrease from the property line to the bedroom
4 window 3 to 5 db, depending, decreasing with frequency.
5 If the measurement observation was made nominal stand head
6 level, if someone stands on the ground near the property
7 line of the Shelton property, there's shielding afforded
8 by the wood fence, so the sound level is less next to the
9 fence than it is at the bedroom window itself very close
10 to the fence.

11 Q. At the time you conducted your various
12 measurements I believe you actually measured the various
13 sound pressure levels for less than a minute at the
14 various locations at which you conduct measurements, is
15 that correct?

16 A. That's correct.

17 Q. Why did you do it for less than a minute?

18 A. The sound source is extremely steady. After 2
19 or 3 seconds I had all the data that was needed to have to
20 concluded what the results are.

21 Q. And in contrast if there had been a sound source
22 that was more, variable, less steady, you may have had to
23 measure the sound pressure level for a more extended
24 period of time?

01543

1 A. If I wanted to know what the average head level
2 was over that period of time.

3 Q. Yes.

4 MR. DIVER: No further questions, Madam
5 Hearing Officer.

6 HEARING OFFICER: All right. We'll have the
7 redirect.

8 MR. ELLEDGE: No, I have no redirect.

9 HEARING OFFICER: Thank you very much, Mr.
10 Kamperman.

11 Let's go off the record to discuss the
12 conclusion order of hearing.

13 (A brief off the record discussion was held.)

14 HEARING OFFICER: Back on the record.

15 MR. CARSON: Thank you, Madam Hearing Officer.
16 What remaining for the Respondent's case in chief would be
17 the introduction of Respondent's Exhibits 5, 13, and
18 Complainant's Exhibit 36 which we want to be sure is
19 offered.

20 HEARING OFFICER: Thank you. Is there any
21 objection to the introduction of these exhibits?

22 MR. DIVER: I haven't seen 5 and 13. 5, fine.
23 13, can we get an agreement that Mr. Shiner agreed to
24 this?

01544

1 MR. CARSON: Yes, he so testified.

2 MR. DIVER: No objection to Respondent's 5,
3 Respondent's 13 or Complainant's 36.

4 MR. CARSON: And with respect to
5 Respondent's Exhibit 13, Mr. Diver is suggesting that we
6 also stipulate that this was in fact signed and accepted
7 by Mr. Shiner which agreed and so stipulated.

8 HEARING OFFICER: All right. Exhibits 5,
9 Respondent's 5, Respondent's 13 and Group Exhibit 36,
10 rather Complainant's Exhibit 36 are entered into evidence.

11 MR. CARSON: Thank you. And with that the
12 Respondent will rest.

13 HEARING OFFICER: Thank you. At this point I
14 believe Complainant would like to recall Mr. Zak as a
15 witness.

16 MR. DIVER: Correct, Madam Hearing Officer.

17 HEARING OFFICER: Mr. Zak, I will remind you
18 that you're still under oath.

19 THE WITNESS: Yes, Madam Hearing Officer.

20 GREGORY ZAK

21 after having been previously sworn on oath, testifies and
22 says as follows:

23 DIRECT EXAMINATION

24 BY MR. DIVER:

01545

1 Q. Mr. Zak, have you had a chance at this point to
2 review the exhibits that I earlier in your testimony
3 marked as 114, 115, 116 and 117 being the identification
4 of the locations at which sound measurements were made by
5 Mr. Kamperman on August 15, 1996 as well as the 3 sets of
6 auto analyzer data print out. Have you had a chance at
7 this point to review that data?

8 A. Yes, I have.

9 Q. And have you -- having, particularly having had
10 an opportunity to focus your attention at the 4000 hertz
11 band?

12 A. Yes, I have.

13 Q. And have you come to any conclusions as to
14 whether or not there is a particular problem shown in
15 those measurements at the 4000 hertz band?

16 A. My impression at 4000 hertz is that it's prudent
17 if not necessary to maintain the core point of the
18 additional height currently on the air conditioner
19 enclosure in order to ensure full night time compliance.

20 Q. And is that because of a particular sound
21 emissions that are reported in the data at the 4000 hertz
22 level?

23 A. Yes.

24 MR. DIVER: No further questions.

01546

1 HEARING OFFICER: Any further questions by
2 Respondent?

3 MR. ELLEDGE: No further questions.

4 HEARING OFFICER: All right. Thank you very
5 much, Mr. Zak.

6 At this point in time I have some
7 closing remarks and also we should discuss what additional
8 activity is to be involved before the record in the case
9 is closed. Let's go off the record to discuss the closing
10 of the record.

11 (A brief off the record discussion was held.)

12 HEARING OFFICER: Back on the record. We have
13 discussed the closing of the record and the activity with
14 respect to this case that still needs to occur before the
15 record can be closed. And Complainants have stated that
16 they may be wishing to make a case in rebuttal and would
17 like until the end of the work day of August 28th, which
18 is a week from today, to determine whether they would like
19 to do that, correct?

20 MR. DIVER: Correct, Madam Hearing Officer.

21 HEARING OFFICER: Thank you. We will,
22 therefore, expect to hear from Complainant's counsel by
23 the end of August 28th as to whether there will be a case
24 in rebuttal in hearing. And at that time should we have

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1 an additional hearing, it will be scheduled for one
2 additional day and it will be scheduled to occur as soon
3 as possible thereafter as can be arranged between the
4 individuals who will need to be present.

5 We have also discussed the parties'
6 desire to brief and the parties do wish to brief the case.
7 I will issue a written order closing the record and
8 identifying an agreed briefing schedule as soon as that
9 can be determined.

10 In the last two days we have had
11 testimony of three witnesses; Mr. Crown, Mr. Zak, and Mr.
12 Kamperman.

13 I have identified no issues of witness
14 credibility with respect to these witnesses.

15 MR. DIVERS: Madam Hearing Officer, if I may,
16 at a point in the process of these hearings Madam Hearing
17 Officer made a tentative determination with respect to the
18 testimony of Jack Doche and the credibility of his
19 testimony, but indicated that Madam Hearing Officer would
20 reserve her determination with respect to credibility
21 until a later time. I'm wondering if Madam Hearing Officer
22 has made a determination with respect to a statement
23 formally concerning Mr. Doche's credibility?

24 HEARING OFFICER: Thank you, counsel. I have

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1 not yet made such a determination; however I intend to
2 include that determination in my report of hearing. That
3 is a document that I will issue after the conclusion of
4 the hearing.

5 MR. DIVER: That's fine.

6 HEARING OFFICER: Are there any further
7 questions?.

8 MR. DIVER: None by Complainant.

9 MR. CARSON: No.

10 HEARING OFFICER: All right. Then at this
11 point in time we will go into a possible hearing
12 continuation. If the hearing is over I will order it when
13 Complainant lets me know they have no case in rebuttal.
14 Otherwise, we are in continued status to a date which will
15 be determine. Thank you very much for your cooperation
16 with our process.

17 MR. DIVER: Madam Hearing Officer, I will
18 indicate on the record that our attempt will be to provide
19 -- today is Wednesday, provide in the overnight mail to
20 Madam Hearing Officer by Friday as well as to Respondent's
21 counsel the clean copies of the exhibits with respect to
22 Mr. Kamperman.

23 HEARING OFFICER: Thank you. We have yet to
24 receive some of the last exhibits.

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Thank you very much.

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(The hearing was concluded at 5:40 p.m.)

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C E R T I F I C A T E

I, VERNITA HALSELL-POWELL, the undersigned
Notary Public in and for the State of Illinois, do hereby
certify:

That the annexed and foregoing testimony of the
witness named herein was taken stenographically before me
and reduced to typewriting under my direction;

I further certify that I am not a relative or
employee or attorney or counsel of any of the parties to
said action, or a relative or employee of any such attorney
or counsel, and that I am not financially interested in the
said action or the outcome thereof;

I further certify that the proceedings, as
transcribed, comprise an accurate transcript of the
testimony, including questions and answers, and all
objections, motions, and exceptions of counsel.

IN WITNESS WHEREOF, I have hereunto set my and
affixed my official seal this 2nd day of September. 1996.

NOTARY PUBLIC in and for the
State of Illinois.
CSR No. 084-001831

