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ILLINOIS POLLUTION CONTROL BOARD

ANTHONY and KAREN ROTI,)	
PAUL ROSENSTROCK, and)	
LESLIE WEBER,)	
)	
Complainants,)	
)	
vs)	PCB 99-19
)	(Citizens
)	Enforcement-Air)
LTD COMMODITIES, INC.,)	
)	
Respondent.)	

REPORT OF PROCEEDINGS held at the
hearing of the above-entitled case, before
BRADLEY P. HALLORAN, commencing at the Libertyville
Village Hall, 118 West Cook Road, Second Floor,
County of Lake and State of Illinois, Libertyville,
Illinois, on the 16th day of October, A.D., 2002, at
11:09 a.m.

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 James R. Thompson Center
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-8917
8 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

9
10 THE LAW OFFICE OF STEVEN P. KAISER,
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12 Suite 404
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14 (312) 372-4779
15 BY: MR. STEVEN P. KAISER

16 Appeared on behalf of the Complainants;

17
18 BAIZER & KOLAR, P.C.,
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22 (847) 433-6677
23 BY: MR. JOSEPH E. KOLAR

24 Appeared on behalf of the Respondent.

25 BOARD MEMBERS:

26 MS. AMY C. ANTONIOLLI
27
28 MS. ALISA LIU, P.E.
29
30 MR. ANAND RAO
31
32
33
34

1		I N D E X			
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3	EDWARD M. ANDERSON				
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8	WITNESS	DX	CX	RDX	RCX
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1 MR. HEARING OFFICER: Good morning.
2 It's approximately 11:07. My name is
3 Bradley Halloran. I'm a hearing officer with
4 the Illinois Pollution Control Board. I'm assigned
5 to this matter PCB 99-19, Anthony and Karen Roti,
6 Paul Rosenstock, and Leslie Weber, Complainants,
7 versus LTD Commodities, Respondent.

8 I want to note for the record
9 there are no members of the public here, but if they
10 were here, there would be a lot of testifying
11 subject to cross-examination.

12 I also want to make clear that
13 Mr. Roti and Ms. Weber were also present at various
14 times at the hearing yesterday.

15 Again, this hearing is continued
16 on record from yesterday, October 15. I also want
17 to clarify the record. Yesterday, I admitted
18 Respondent's Exhibit J. Mr. Kaiser had an objection
19 regarding the foundation.

20 Since then, it was -- Mr. Thunder
21 was on the stand at the time, and, actually,
22 Respondent's Exhibit J is his opinion regarding
23 Dr. Schomer's testimony.

24 At this time, I'm going to reverse

1 my ruling and stay my decision until Mr. Thunder
2 again takes the stand where Mr. Kolar can further
3 explore this exhibit and Mr. Kaiser can cross and
4 then we'll make our ruling at that time.

5 Are there any preliminary matters
6 that we need to take up before we proceed? And,
7 also, I may back up that Mr. Kolar will be able to
8 open direct of Mr. Thunder when we take that matter
9 up again.

10 Mr. Kolar?

11 MR. KOLAR: The only thing is that
12 financial issue. Are we just going to let Steve
13 file a motion and then I'll just file a response?

14 MR. HEARING OFFICER: Well, I guess we
15 would address that when you do want to read that
16 into the record and then Mr. Kaiser can object.

17 Do you want to read that into the
18 record?

19 MR. KOLAR: This is just an issue of
20 the company's financial ability to pay for a wall.
21 I proposed this stipulation to Steven, and it's not
22 agreeable to Steve.

23 It states, LTD Commodities
24 stipulates that by borrowing money, it could pay for

1 the construction of a \$623,350 noise wall. However,
2 a noise wall costing that amount would be a
3 significant expense for LTD with no operating
4 benefit to LTD.

5 MR. HEARING OFFICER: Mr. Kaiser?

6 MR. KAISER: Yes, I have not agreed to
7 that stipulation and intend to file a motion seeking
8 to re-open discovery for the limited purpose of
9 providing the Board with additional information
10 concerning LTD's financial condition.

11 As we've advised you,
12 Mr. Halloran, off the record, and I'll put a little
13 bit of it on the record, we've had some discussions
14 and some tentative agreements about LTD's financial
15 data and the way in which we expected to deal with
16 it.

17 As the cost of the wall has gone
18 up, our ability to agree on language that would
19 reflect LTD's ability to pay has been made more
20 difficult.

21 I do note that the Board, in its
22 February 15, 2001 decision at page 28, observed that
23 there was no evidence presented at hearing regarding
24 the value of LTD's sales or LTD's profits. And it's

1 that type of information that I would seek to
2 discover and present to the Board.

3 I anticipate filing a written
4 motion. I will try to do that tomorrow and then
5 serve a copy onto Mr. Halloran as well as
6 Mr. Kolar with the expectation that the Board can
7 consider that motion and perhaps we could present
8 testimony when we reconvene to conclude the
9 testimony of Thomas Thunder.

10 MR. HEARING OFFICER: Thank you,
11 Mr. Kaiser.

12 Mr. Kolar, were you going to make
13 that an exhibit, the --

14 MR. KOLAR: No, I just -- if you want
15 me to, I will, but I think that might be prudent.

16 MR. HEARING OFFICER: We'll make that
17 Respondent's Exhibit -- unless you have other ones
18 marked already?

19 MR. KOLAR: Yeah, I think I do. Let
20 me see.

21 MR. HEARING OFFICER: And, Mr. Kaiser,
22 you would object to Respondent's Exhibit --

23 MR. KOLAR: N.

24 MR. HEARING OFFICER: N?

1 MR. KAISER: Yes, I would.

2 MR. HEARING OFFICER: I'm going to
3 sustain your object at this point. I will allow it
4 as an offer of proof, and I will take it with the
5 case.

6 And, Mr. Kaiser, do you think we
7 may be able to have your motion in within seven
8 days?

9 MR. KAISER: Certainly.

10 MR. HEARING OFFICER: Either myself or
11 the Board will make a ruling on that. And if need
12 be, we'll discuss it further when Mr. Thunder takes
13 the stand at a yet undisclosed time.

14 MR. KOLAR: We call Edward Anderson to
15 the stand as a witness for LTD Commodities.

16 (Witness sworn.)

17 MR. KOLAR: If I can just, for the
18 record, Jack Voigt is here. He's going to testify,
19 but he's also initially here as the representative
20 of LTD Commodities.

21 MR. HEARING OFFICER: Thank you.

22

23

24

1 WHEREUPON:

2 EDWARD M. ANDERSON

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 DIRECT EXAMINATION

6 BY MR. KOLAR:

7 Q. Can you state your name for the
8 record?

9 A. Edward M. Anderson.

10 Q. And where do you live?

11 A. I live in Lake Forest, Illinois.

12 Q. And what do you do for a living?

13 A. I'm a professional engineer.

14 Q. Are you a licensed professional
15 engineer?

16 A. Yes.

17 Q. In Illinois?

18 A. In Illinois, yes.

19 Q. How long have you been a licensed
20 professional engineer?

21 A. 40 some years.

22 Q. And your engineering area is what?

23 A. Civil engineering, municipal
24 engineering.

1 Q. Can you tell us your education after
2 high school?

3 A. Yes, I'm a graduate of Cornell
4 University with the -- it's a special five-year
5 program which it was a master's equivalent. They
6 called it a BCE.

7 Q. And when did you graduate from
8 Cornell?

9 A. 1957.

10 Q. And what's the name of the company
11 with which you practice civil engineering?

12 A. James Anderson Company.

13 Q. And who is James Anderson? The
14 company's named after?

15 A. After my grandfather.

16 Q. And when was James Anderson Company
17 formed?

18 A. It was established -- it was formed in
19 1891.

20 Q. And it's located where?

21 A. In Lake Bluff, Illinois.

22 Q. And your engineering experience is
23 with James Anderson Company?

24 A. Yes.

1 Q. You started there when?

2 A. Right after -- well, I was working
3 there even summers, you know, before, before my
4 graduation from Cornell University.

5 Q. As a civil engineer, can you give us
6 some representative clients that you've represented?

7 A. Yes. We, on occasion, work for the
8 State of Illinois. We have several contracts now.
9 We work for the Village of Vernon Hills. We've been
10 the village engineers and the village consulting
11 engineers there for some 20 years.

12 In that regard, we've been
13 responsible for over \$200 million worth of
14 construction. And numerous others, if you want me
15 to go on I will or --

16 Q. Any other, let's say, municipal or
17 county clients?

18 A. We're engineers for the Village of
19 Old Mill Creek here in Lake County. We're engineers
20 for four or five drainage districts, which are
21 municipal organizations. And we do lots of work for
22 private people too.

23 Q. Now, do you have, as a civil engineer,
24 any experience relating to noise walls?

1 A. Yes, we have laid out and staked some
2 noise walls, yes, for the Toll Highway Commission
3 and/or the IDOT.

4 Q. Now, in this particular case, through
5 me, you were retained to look over the report
6 prepared by Dr. Paul Schomer, correct?

7 A. Yes.

8 Q. And it's been marked as Complainant's
9 Exhibit A in this portion of the hearing.

10 You've read that report?

11 A. Yes.

12 Q. And what basically was your job after
13 you read the report?

14 A. Well, our -- we were to look into how
15 that wall would be built and the problems that there
16 would be in building it.

17 Q. If any?

18 A. If any. There are problems with
19 building everything.

20 Q. And have you been to the LTD property?

21 A. Yes.

22 Q. About how many times?

23 A. Oh, four or five times, six times.

24 Q. And when were you last there?

1 A. About a week to ten days ago.

2 Q. Now, after you were given that report,
3 did you set about looking for any drawings relating
4 to the LTD retaining wall?

5 A. Yes.

6 Q. Where did you look at drawings and
7 just generally what drawings did you look at?

8 A. Well, we first searched out some
9 drawings with Mr. Voigt at LTD itself. We were
10 always suspicious because we looked at the wall, the
11 wall was not the same as the drawings showed, but we
12 never know what has been added to it.

13 So to start with, we thought we
14 had one wall, but then we kept looking. We went to
15 the Village of Bannockburn, looked more, found a
16 slightly different wall there. Then we went through
17 the three design engineers that had worked on it,
18 and each of us told -- each of them told us that
19 there's was built, but we were always skeptical
20 until we went to the third design engineer, who did
21 build it.

22 Q. Initially, when you had your first
23 visit at LTD, you looked at the retaining wall, you
24 walked around the site?

1 A. Yes, and other things.

2 Q. And when you looked at the retaining
3 wall, just as an engineer with your experience, did
4 you have the belief that something was helping to
5 hold up that retaining wall?

6 A. Yes, we know there would be something.

7 Q. And that was what you were trying to
8 figure out?

9 A. Right.

10 Q. And, at some point, did you, I guess,
11 come to believe that there was something in there
12 called deadmen?

13 A. Yes. The original -- and that was
14 borne out by the original plans because if it had
15 been a concrete or steel mill, there would have been
16 deadmen back there.

17 Q. So did you see initially some plans
18 that had deadmen drawn as holding up the wall?

19 A. Yes.

20 Q. And in my opening I described for
21 people here that a deadman would look something like
22 this microphone bent over (indicating), that it
23 would be attached to the retaining wall at one end
24 and then would go back under the parking lot with

1 fill on top of it?

2 A. It would go back to a concrete block
3 that would serve to hold the wall in place.

4 Q. And they would be spaced at a certain
5 interval?

6 A. Yes.

7 Q. And then did you, at some point,
8 determine that there were no deadmen there as
9 indicated on the drawing?

10 A. Yes.

11 Q. And how did you do that?

12 A. Well, it was finally determined by
13 talking to the last design engineer that we were
14 rather convinced that that was what was done, that
15 his wall was built and it was a safe metal block
16 wall. And then Mr. Voigt, some of his people
17 exposed for us the fabric material, the reinforcing
18 material that was put in behind the wall to help
19 hold it up.

20 Q. And did you actually see that fabric?

21 A. We've seen that fabric, yes.

22 Q. And you saw that fabric at the LTD
23 site near the retaining wall?

24 A. Yes.

1 Q. Now, in your profession and your
2 experience as a civil engineer, have you had
3 occasion to recommend fabric to hold up retaining
4 walls?

5 A. Yes.

6 Q. In fact, you brought with you here
7 today, you have like a big three-ring binder. I
8 don't want to mark it as an exhibit, but this is
9 what?

10 A. That's a catalog from TC Mirafi, who
11 is a manufacturer of many of the fabrics that are
12 used in construction.

13 Q. Do you have any members of your family
14 who work for this company?

15 A. Yes, I have a son that's the director
16 of sales for that company.

17 Q. Was he with you when you saw the
18 fabric at LTD?

19 A. Yes.

20 Q. And is that a notebook that you had in
21 your possession prior to LTD even contacting you
22 about this job?

23 A. Oh, yes. It's a notebook we refer to.

24 Q. Let me show you a couple exhibits.

1 The first one I marked as
2 Respondent's Exhibit L. I'll give you the original,
3 Mr. Anderson. Now, can you tell us, Respondent's
4 Exhibit L, do you recognize this document?

5 A. Yes.

6 Q. And what is this?

7 A. This shows the type of material that's
8 used to, as we say, reinforce the wall.

9 Q. This Exhibit L is a copy of some pages
10 from this three-ring Mirafi notebook, correct?

11 A. Yes.

12 Q. And on the first page, at the bottom
13 there are two black and white, I guess, photos of
14 fabric, right?

15 A. Yes.

16 Q. And the fabric that you saw at LTD, is
17 it similar to one of those two?

18 A. Yes, it is.

19 Q. Which one?

20 A. It's similar to the Miragrid 18XT.

21 Q. Is that in the lower left or lower
22 right corner?

23 A. Lower right.

24 Q. And a color photo, that would be in

1 this notebook here somewhere, right, or a better
2 photo, true?

3 A. I don't know if it's much -- this is a
4 fairly good photocopy. There are pictures in place
5 of that, is that what you're looking for?

6 Q. Let me ask you another question.

7 You don't know if the fabric there
8 is actually Mirafi fabric, right?

9 A. It isn't Mirafi fabric, it's just
10 similar.

11 Q. It's similar to this one in the lower
12 right-hand corner?

13 A. It's made by Tensar, T-E-N-S-A-R.

14 Q. How do you know that?

15 A. My son told me that. I wouldn't have
16 known.

17 Q. Now, let's take a look at page three
18 of this Exhibit L.

19 Now, does that page show how this
20 fabric is installed?

21 A. Yes.

22 Q. And it would be this drawing on the
23 top left?

24 A. The top left drawing, yes.

1 Q. So is there one layer of this fabric
2 installed for a wall like the LTD retaining wall?

3 A. No, multilayers.

4 Q. For a wall that high, based on your
5 experience and your knowledge of this fabric, about
6 how many would there be for that ten foot high
7 retaining wall?

8 A. I'd say four to six.

9 Q. I think this is self-descriptive, but
10 maybe you can just explain to us how you would
11 install the fabric and how fill is used and how you
12 work your way to the top of the grade at the top of
13 the retaining wall?

14 A. Well, these segmental block walls
15 would not stand up by themselves. They would fail
16 very quickly. But you put this material in, fit it
17 between the blocks, between layers of blocks, you
18 lay the material back behind the wall some six,
19 seven, eight feet. It depends on the wall. This
20 happens to be about seven feet.

21 You lay the material back there,
22 first you put some proper backfill underneath it,
23 then you put the proper backfill on top of it.

24 The whole idea is that you're

1 making a massive device rather inexpensively as
2 opposed to making a concrete wall that would be like
3 that.

4 Q. And then you put fill on top of the
5 first layer?

6 A. Then you put the second layer on and
7 put fill on top of that, put the third layer on,
8 fill on top. Then you have made a substantial wall
9 by the time you finish.

10 Q. And the layer that you saw at the LTD
11 property was obviously the top one closest to the
12 surface?

13 A. Yes.

14 Q. And on page two of this Exhibit L, the
15 three drawings at the bottom, the one in the middle
16 sort of generally shows how the fabric layers go out
17 away from the retaining wall?

18 A. Yes, that rather clearly shows the
19 situation, I believe.

20 Q. Let me show you another exhibit which
21 I marked as Respondent's Exhibit M.

22 Now, can you tell us what
23 Respondent's Exhibit M is?

24 A. It's a sketch with some calculations

1 by the David Jacobson firm, which is the firm that
2 did design the wall.

3 Q. Did you have contact with
4 David Jacobson during your work on this project?

5 A. Yes.

6 Q. And did you ask him for, you know,
7 drawings, information, so that you could
8 substantiate what's there?

9 A. Yes.

10 Q. And eventually you got something?

11 A. And eventually we got this, yes.

12 Q. Now, on the top of the first page it
13 says, analysis of zone of influence, and then on the
14 bottom there's a note, sound barrier can be
15 installed 16 feet away from face of wall (minimum).

16 Q. You read that, correct?

17 A. Yes, I did.

18 Q. What's meant by the phrase zone of
19 influence based on your knowledge and experience?

20 A. That's the area that you can't do
21 anything else in because that will affect the
22 integrity of the wall, any work done in that 16 foot
23 stretch.

24 Q. And based on your -- I think you

1 mentioned this earlier.

2 Based on your experience and your
3 research on this project, how far out from the
4 retaining wall does the fabric run?

5 A. My recollection is it's six or seven
6 feet.

7 Q. And then the zone of influence is
8 16 feet?

9 A. It's a total of 16.

10 Q. Another nine feet?

11 A. Yes.

12 Q. So based on your education and
13 experience, what would happen if somebody tried to
14 build a noise wall in the zone of influence, let's
15 say, within the seven foot area. Let's start there
16 first. Within the fabric area of about seven feet.

17 What would happen, if anything?

18 A. The wall would fall rather --

19 MR. KAISER: If I may just, by way of
20 clarification, filled within the current existing
21 zone of influence.

22 MR. KOLAR: Right, the zone of
23 influence.

24 MR. KAISER: Seven feet.

1 MR. KOLAR: Well, no, I'm breaking it
2 up first. I'm just --

3 BY MR. KOLAR:

4 Q. What would happen if someone tried to
5 build a retaining wall within the seven foot fabric
6 area?

7 A. Well, that would damage it severely,
8 rather quickly.

9 Q. And how would that work?

10 A. Well --

11 Q. Why would it damage it, what would the
12 fact of trying to build a wall do to --

13 A. The wall would have more tendency to
14 tip over and to come apart because it would have
15 different stresses on it. It was built, it was put
16 in, and the wall is in good shape now. The wall
17 would start to fail slowly over a period of months
18 or a few years.

19 Q. And if you tried to build a wall
20 within that zone of influence in this area out to 16
21 feet, let's say, beyond the fabric, what, if
22 anything, would happen to the retaining wall?

23 A. In the area between 7 feet and 16?

24 Q. Right.

1 A. It would have the same effect, it just
2 wouldn't fail as fast.

3 Q. Now, I think you had described for me
4 that there would be wind loads on a 25 foot high
5 noise wall?

6 A. Massive wind loads.

7 Q. So let's assume that a 25 foot high
8 wall was constructed within the zone of influence
9 and you have a wind that's coming from the north
10 blowing to the south. So it's blowing on the north
11 face of a noise wall. What, if anything, would that
12 do to the soil and the retaining wall?

13 A. That would also affect the integrity
14 of the soil. And as I have said before, you're
15 trying to make one massive item that holds together.
16 That's the theory behind building these walls.

17 Q. But can you describe for us, what, if
18 anything, would the wind do? Does it push on the
19 soil --

20 A. Yes. If you have -- I'm holding up a
21 notebook, this being the ground (indicating) -- this
22 would -- say the ground would be going through here
23 about -- and this is just for exhibit purposes. If
24 you blew on this, as you can see, the wall goes a

1 little bit this way (indicating). Everything moves
2 in something like this. It's very -- it will move.
3 It would force the dirt, it would loosen the dirt
4 between the wall and this -- and the block retaining
5 wall. And it would go back and forth, you know,
6 different winds. And it might even sometimes
7 shutter a little like this (indicating). All having
8 ill effects on our existing wall.

9 Q. So I guess just as -- I think we all
10 understand that. But if this is the retaining wall,
11 this counter top, and our noise wall is in it and
12 the wind blows this way (indicating), it's kind of
13 going to compress the soil and then push it that way
14 (indicating)?

15 A. Yeah, if it's in the zone of influence
16 area.

17 Q. As an engineer, would you recommend
18 trying to construct any sort of noise wall in the
19 zone of influence?

20 A. Not if you're going to retain the
21 existing wall.

22 Q. So if LTD was ordered to try to build
23 a wall on the red line shown by Dr. Schomer, what
24 would have to be done to the retaining wall to do

1 that?

2 A. It would have to be reconstructed as a
3 far more substantial wall.

4 Q. And do you have an opinion as to how
5 much it would cost if you had to start from scratch
6 and rebuild a retaining wall and noise wall as a
7 unified structure in that location, talking general
8 parameters?

9 A. That would cost anywhere from a
10 million and a half dollars to \$3 million, because,
11 in effect, what you'd be doing is building a 35 foot
12 high wall because you'd have the ten foot high
13 existing wall that would be taken out and you have
14 to build on top of that wall. And that's a very
15 tall structure unsupported -- along the way, it
16 would require special care.

17 Q. From an engineering perspective, could
18 a noise wall be built on the north property line of
19 the LTD property?

20 A. Yes.

21 Q. And you have wind-blowing issues there
22 as well?

23 A. Yes.

24 Q. Have you done any analysis as to how

1 deep a supporting structure would have to go to
2 support a wall that's 25 or 28 feet high?

3 A. We don't have soil borings. We have
4 not done that analysis.

5 Q. In your 40-plus years as a civil
6 engineer, have you ever done analysis for a
7 freestanding wall that's 25 feet high?

8 A. No, no.

9 Q. So that is an unusually high
10 freestanding wall?

11 MR. KAISER: Objection, it's leading.

12 MR. HEARING OFFICER: Sustained.

13 Can you rephrase it, Mr. Kolar,
14 please?

15 BY MR. KOLAR:

16 Q. What's the height of walls that you've
17 worked with in the past that were freestanding
18 walls?

19 A. Freestanding walls, as I mentioned
20 before, we have done some layout work on some toll
21 highway and/or IDOT walls along highways, and
22 they're 18 to 20 feet high.

23 Q. Now, a two-story house would be about
24 25 feet high, the roof line, correct?

1 A. Maybe not even quite that high.

2 Q. But, in that situation, if you have
3 four walls, do they provide any support to each
4 other?

5 A. Yes, that makes an integral structure
6 which does give strength. It's far simpler to build
7 a wall that has support from all sides.

8 As a matter of fact, they have
9 great difficulty building houses if a high wind
10 comes up. Until everything is keyed together, you
11 can loose the wall even just with two-by-fours up.

12 MR. KAISER: Objection, move to
13 strike. There's no question pending.

14 MR. HEARING OFFICER: Overruled.

15 BY MR. KOLAR:

16 Q. I guess page two of this Exhibit M,
17 that's another sort of drawing that shows how the
18 support fabric was installed, true?

19 A. Yes, this a typical -- not the wall in
20 question, but a typical wall.

21 Q. Would it be accurate to state that
22 since we know there's support fabric there and we
23 know there's fill there as opposed to original soil?

24 A. Yes.

1 Q. And does fill soil pose any problems
2 for supporting a 25 foot high wall?

3 A. Yes.

4 Q. What would that be?

5 A. Well, depending on the fill, if the
6 fill is -- the -- under the wall, it would not give
7 the same support as good solid blue clay or clay,
8 whatever we might otherwise find. At the north
9 property line, for instance, there undoubtedly would
10 be good soil.

11 Q. This photo, Complainant's Exhibit B4,
12 you see there's a structure, four walls?

13 A. I see that, yes.

14 Q. So, in that situation, those four
15 walls would help to support each other?

16 A. Yes, the corners add strength.

17 Q. And if you were asked to analyze what
18 type of support would be needed for a 25 foot high
19 wall, would support arms possibly be needed as well?

20 A. It's possible. Buttresses or guys or
21 whatever, yes.

22 MR. KOLAR: I don't have any further
23 questions of Mr. Anderson. But what I did want to
24 do is just put into the record that with our initial

1 disclosure in June 2002 advised complainant that we
2 thought there were deadmen in the area holding up
3 the retaining wall and indicated we did then learn
4 that there was support fabric, and that's in that
5 Exhibit J.

6 MR. HEARING OFFICER: Okay, that's yet
7 to be determined.

8 MR. KAISER: I mean, I'd stipulate
9 that their disclosure that they tendered in June did
10 raise the possibility of and the likelihood that
11 there were deadmen at that location.

12 And I take it Mr. Kolar would
13 further agree that it wasn't until some point in the
14 middle of September that it was determined that
15 there were not deadmen and, in fact, that there were
16 later some fabric at that location.

17 MR. KOLAR: True, I agree. I have no
18 further questions.

19 MR. HEARING OFFICER: Thank you,
20 Mr. Kolar. Mr. Kaiser?

21 MR. KAISER: Yes, thank you.

22 C R O S S - E X A M I N A T I O N

23 BY MR. KAISER:

24 Q. Mr. Anderson, when was it you were

1 retained by Mr. Kolar to assist LTD in this matter?

2 A. From recollection, I'd say in May or
3 June. I'm not positive.

4 Q. And that would be of the year 2002?

5 A. Oh, yes.

6 Q. So prior to that time, you didn't do
7 any work for LTD or Mr. Kolar in connection with
8 analysis of the feasibility of constructing a noise
9 wall?

10 A. That's right.

11 Q. Now, with respect to Respondent
12 Exhibit M, do you have that in front of you,
13 Mr. Anderson?

14 A. No, I don't.

15 Q. Let me put a copy in front of you.

16 (Document tendered
17 to the witness.)

18 BY MR. KAISER:

19 Q. You see that document?

20 A. Yes.

21 Q. That was a document -- well, how did
22 you receive that document?

23 A. I believe it was faxed to Mr. Kolar's
24 office October 8, from what I read up in the corner.

1 Q. And do you know who or do you have an
2 opinion or belief as to who provided Mr. Kolar with
3 that document?

4 A. David Jacobson & Associates, because I
5 had talked with him asking for that information.

6 Q. And David Jacobson & Associates,
7 that's the third design group that you finally
8 contacted?

9 A. That's true.

10 Q. And you determined that it was
11 David Jacobson & Associates that actually -- it was
12 their design that was actually built?

13 A. Yes.

14 Q. And until October 8 or thereabouts,
15 you hadn't seen the diagram that is now labeled as
16 Respondent's Exhibit M, had you?

17 A. We hadn't seen this specific diagram,
18 no.

19 Q. Until October 8?

20 A. Yes.

21 Q. Do you have any reason to believe that
22 that document was in the possession of either LTD
23 or Mr. Kolar prior to October 8?

24 A. No, I -- I doubt it was, although I

1 don't know if they had -- someplace there they could
2 have had the drawing, I suppose, at LTD.

3 Q. So the first time you saw that drawing
4 was eight days ago?

5 A. Yes.

6 Q. At any time during the course of your
7 work for Mr. Kolar and by extension, LTD, did you
8 prepare any drawings of footings or a foundation for
9 a noise wall?

10 A. No.

11 Q. At any time while you were working for
12 Mr. Kolar and by extension for LTD, did you prepare
13 written cost estimates for a foundation or footing
14 for a 25 foot tall noise wall located at the north
15 property line?

16 A. No.

17 Q. At any time while you were working for
18 Mr. Kolar and by extension for LTD, did you prepare
19 any written cost estimates for footings or caissons
20 to support a 25 foot tall noise wall located in the
21 vicinity of the retaining wall, existing retaining
22 wall?

23 A. No.

24 Q. Have you ever prepared for Mr. Kolar

1 or LTD any written cost estimates for constructing a
2 noise wall at LTD's Bannockburn facility?

3 A. No, I don't believe so.

4 Q. Have you ever prepared any drawings or
5 sketches of what a noise wall at the LTD facility or
6 at the property line separating LTD from the
7 complainant what such a noise wall would look like?

8 A. Repeat the question, please.

9 MR. KAISER: Could we have it read
10 back, please?

11 (Whereupon, the requested
12 portion of the record
13 was read accordingly.)

14 BY THE WITNESS:

15 A. No.

16 BY MR. KAISER:

17 Q. How many soil samples collected in the
18 vicinity of the property line separating LTD from
19 the complainants did you send to a laboratory for
20 geophysical analysis?

21 A. None.

22 Q. How many soil samples did you obtain
23 in the vicinity of the north property line
24 separating LTD from the Roti property?

1 A. None.

2 Q. How many soil samples did you obtain
3 in the vicinity of the Rosenstock home?

4 A. None.

5 Q. You stated on direct testimony that
6 you thought it would cost between 1.5 and \$3 million
7 to remove the existing retaining wall and construct
8 a new retaining wall with a 25 foot tall noise wall
9 on top, was that your testimony?

10 A. Yes.

11 Q. Do you have any notes that describe
12 the manner in which you arrived at those numbers?

13 A. No.

14 Q. Did you ever reduce that cost estimate
15 to writing?

16 A. No.

17 Q. How much time did you spend in
18 calculating that estimated cost?

19 A. Several hours and some discussion with
20 others in our office.

21 Q. In total, how many hours would you
22 estimate you've spent assisting Mr. Kolar and by
23 extension, LTD, since your retention in may or June
24 of this year?

1 A. This is just a guess, obviously, but
2 I'd say by now it's probably 40, 50, 60 hours.

3 Q. Have you invoiced LTD or Mr. Kolar for
4 your work today?

5 A. I believe we have.

6 Q. Have you seen a copy of that invoice?

7 A. Yes.

8 Q. Do you know how much you've charged
9 them to date?

10 A. I would suspect less than a thousand
11 dollars for time spent. This was some time ago,
12 this invoice.

13 Q. Less than a thousand dollars?

14 A. I think you're asking specific
15 questions that --

16 Q. Would it be less than \$5,000?

17 A. Oh, yes.

18 Q. And you're charging LTD, as I
19 understand it, \$90 an hour?

20 A. True.

21 Q. What percentage of your business is --
22 well, over the last five years, what percentage of
23 your business has involved laying out noise walls?

24 A. In the last five years, maybe none.

1 Q. In the last ten years?

2 A. Small percentage. I mean, one or two
3 percent. There aren't many noise walls.

4 Q. Is it fair to say then that in the
5 last five years, your company has not been involved
6 and assisted either private clients or
7 municipalities or corporations in laying out noise
8 walls in the Illinois area?

9 A. I think that's proper.

10 MR. KAISER: Thank you. I have no
11 further questions.

12 MR. HEARING OFFICER: Thank you,
13 Mr. Kaiser. Mr. Kolar, redirect?

14 MR. KOLAR: Just a couple.

15 R E D I R E C T E X A M I N A T I O N

16 BY MR. KOLAR:

17 Q. Mr. Anderson, you were at my office
18 for your deposition when we received that fax of
19 that Exhibit M, right?

20 A. Yes.

21 Q. And prior to that, have you been
22 asking Mr. Jacobson for drawings to help you
23 document this fabric support?

24 A. Yes. And he'd verbally given me

1 things.

2 MR. KOLAR: I don't have any other
3 questions.

4 MR. HEARING OFFICER: Thank you,
5 Mr. Kolar. Any questions -- and I should digress.
6 It was remiss. I haven't told the court reporter
7 that there are members of the board personnel here.

8 We have two technical people. We
9 have Anand Rao, we have Alisa Liu, and we have
10 Amy Antonioli, staff with the Illinois Pollution
11 Control Board.

12 Does any of the panel have any
13 questions?

14 MR. RAO: I have a clarification
15 question.

16 Mr. Anderson, you talked a little
17 bit about this zone of influence in this Exhibit M
18 that was submitted.

19 Could you explain for the record
20 how this zone of influence is determined and how
21 you --

22 THE WITNESS: Determined it?

23 MR. RAO: Yes.

24 THE WITNESS: I did not determine

1 this. This was determined by Mr. Jacobson. It's
2 his wall. I wouldn't want to determine something on
3 his wall.

4 MR. RAO: Can you just explain for the
5 record how it's generally determined? You know, if
6 you are building a retaining wall with fabric, you
7 know, how do you go about calculating -- I just
8 wanted, for the record, to explain what terms they
9 are. You know, you submitted this exhibit.

10 THE WITNESS: No, I wouldn't want to
11 explain that, no. That's more complex. I'd have to
12 look into it when I did that.

13 MR. RAO: Do you believe that
14 whatever you submitted is an accurate representation
15 of how you go about calculating the zone of
16 influence?

17 THE WITNESS: Yes.

18 MR. HEARING OFFICER: Any further
19 questions?

20 Thank you, sir.

21 MR. KOLAR: I just had a follow-up
22 question.

23 MR. HEARING OFFICER: Oh, I'm sorry.

24

1 BY MR. KOLAR:

2 Q. You have the ability to calculate the
3 zone of influence if you were asked to do that?

4 A. Yes.

5 Q. You just were telling us that it would
6 take more analysis by you?

7 A. Yes. I'm not going to sit here and
8 figure out how to do it.

9 MR. KOLAR: All right, I have no
10 further questions.

11 MR. HEARING OFFICER: Mr. Kaiser?

12 MR. KAISER: No, nothing further,
13 thank you.

14 MR. HEARING OFFICER: Thank you, sir.

15 (Witness excused.)

16 MR. KOLAR: We'll call Jack Voigt to
17 the stand.

18 MR. HEARING OFFICER: Here we have the
19 respondent's next witness, Mr. Voigt. Raise your
20 right hand and the court reporter will swear you in.

21 (Witness sworn.)

22 MR. HEARING OFFICER: Thank you. You
23 may have a seat.

24

1 WHEREUPON:

2 JACK L. VOIGT

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 DIRECT EXAMINATION

6 BY MR. KOLAR:

7 Q. Can you state your name for the
8 record, please?

9 A. Jack L. Voigt.

10 Q. And you work at LTD Commodities?

11 A. Yes.

12 Q. And what's your position there?

13 A. Vice president of distribution.

14 Q. And that relates to the trucking
15 operations?

16 A. Yes, it does.

17 Q. How long have you been at LTD?

18 A. Since 1990.

19 Q. Are you vice president of distribution
20 solely for the Bannockburn facility?

21 A. No.

22 Q. What other facilities?

23 A. Naperville and Aurora.

24 Q. And, just generally, what are your

1 duties as vice president of distribution?

2 A. I'm responsible for the day-to-day
3 operations of distribution centers, controlling the
4 inventory, packing orders, shipping, handling
5 returned goods, security, facilities management. I
6 guess that covers it.

7 Q. Let me show you some photos that have
8 already been introduced in this case, Respondent's
9 Exhibits A through H. Take a look at those real
10 quick.

11 Now, these photos show light poles
12 near the retaining wall?

13 A. Yes.

14 Q. At LTD, you have people that report to
15 you, right?

16 A. Right.

17 Q. Do jobs that you assign them?

18 A. Right.

19 Q. Did you request someone who reports to
20 you to determine the height of, for example, this
21 light pole shown in Respondent's Exhibit A?

22 A. Yes, I did.

23 Q. And someone did that for you?

24 A. Yes.

1 Q. And reported to you?

2 A. Correct.

3 Q. And is that typical in your business,
4 that you rely on information your people provide
5 you?

6 A. Yes.

7 Q. And people that report to you, you ask
8 them to do things and you rely on that information?

9 A. Yes.

10 Q. That's typical in your business?

11 A. Yes.

12 Q. How tall is the light pole in
13 Exhibit A?

14 A. Approximately 28 feet.

15 Q. Just so we're clear, this photo,
16 Respondent's Exhibit H, that would be a photo taken
17 basically at your northeast corner of your property
18 looking straight west?

19 A. That's correct.

20 Q. Basically looking down a line pretty
21 close to parallel to your north property line?

22 A. That is correct.

23 Q. And these photos A, B, E, and C, these
24 show portions of your employee parking lot on the

1 north end of your property?

2 A. Yes.

3 Q. You had your people dig up a hole near
4 the retaining wall to look for that support fabric?

5 A. Yes.

6 Q. And did you actually see the fabric as
7 well?

8 A. Yes.

9 Q. About how far away from the block was
10 the hole?

11 A. Approximately six to seven feet, maybe
12 as far as eight.

13 Q. And the fabric looked similar to what
14 we have in the lower right-hand corner of Exhibit L?

15 A. That's correct.

16 Q. And about how deep was it when you saw
17 that first layer?

18 A. I'd say about three feet.

19 Q. So these cars in the parking lot are
20 cars owned by who?

21 A. Owned by the employees.

22 Q. And, currently, do you have adequate
23 parking at LTD for all your employees?

24 A. No.

1 Q. What, if anything, do you do currently
2 to take care of that situation?

3 A. We utilize a church parking lot east
4 of our property in the Village of Bannockburn. And
5 we approximately have about 110 cars parked there.

6 Q. And how do those people then get to
7 LTD?

8 A. We use the shuttle buses. We have a
9 number of buses that we drive back and forth between
10 the church lot and the employee lot.

11 Q. You read Dr. Schomer's April 26, 2002
12 proposal for a noise wall?

13 A. Yes.

14 Q. I sent it to you?

15 A. Yes.

16 Q. And you saw the red line on
17 page five where he proposed construction of a noise
18 wall?

19 A. Yes.

20 Q. And did you, at some point out at your
21 site, attempt to walk off 15 feet to, in your own
22 mind, see the zone of influence?

23 A. Yes.

24 Q. And when you did that, were you in the

1 auto parking lot?

2 A. That's correct.

3 Q. And did you, on your own, attempt to
4 determine if you would lose any parking spots if a
5 wall was built outside of 16 feet, meaning outside
6 the zone of influence?

7 A. Yes, I did.

8 Q. And how did you do that?

9 A. I walked from one end of the parking
10 lot in the same proximity from the edge of the
11 parking lot. That would be the area that the wall
12 would have been placed and actually counted the
13 parking spaces that would have been within that
14 zone.

15 Q. And what number did you come up with
16 in terms of parking spaces that you felt you would
17 lose if a wall was constructed in the parking area
18 outside the 16 foot zone of influence?

19 A. It appeared to be a number of
20 35 parking spaces. And if I was a little bit off,
21 it could have been up to 40.

22 Q. So those are existing spots that you
23 counted?

24 A. Yes.

1 Q. Where cars currently park?

2 A. Yes.

3 Q. Do you have the ability to rent or
4 lease any additional parking spots at this church?

5 A. No.

6 Q. Would a noise wall constructed through
7 your existing parking lot have any impact on LTD's
8 operations in terms of its employees?

9 A. Yes, it would.

10 Q. And what is that?

11 A. Obviously, we would not be able to
12 accommodate enough cars and it would force us to
13 find alternate parking, which I really -- you know,
14 the Village of Bannockburn will not allow us to rent
15 any more parking spaces.

16 Q. And the parking spaces that you rent,
17 is that year-round or is that only in the busy
18 season?

19 A. Year-round.

20 Q. And is the number constant or is it
21 you rent more spaces in your busy season?

22 A. We rent the church parking lot
23 year-round. It does accommodate both our office and
24 our warehouse employees. There are times that we do

1 drop below during our off-season but still have to
2 utilize that parking lot to a certain degree to a
3 certain percentage.

4 Q. Now, to the south of the 1995
5 expansion, that's an employee parking lot, correct?

6 A. Yes.

7 Q. So even with that lot and your
8 existing lot, you still need to rent spaces from the
9 church?

10 A. Yes.

11 Q. And did you have any role in LTD's
12 efforts to get this 1995 expansion approved by
13 Bannockburn?

14 A. Yes.

15 Q. Based on your experience at LTD and
16 knowledge of your parking needs, do you believe that
17 if you lost parking spaces that would affect the
18 overall value of the LTD property?

19 MR. KAISER: Objection.

20 MR. HEARING OFFICER: He may answer,
21 if he's able. Overruled.

22 BY THE WITNESS:

23 A. In my opinion, yes.

24

1 BY MR. KOLAR:

2 Q. And how's that?

3 A. Well, obviously, when a perspective
4 buyer would come to look at a facility such as ours,
5 they would look how it would meet their needs, just
6 like we do when we -- other sites that I've gone to,
7 and I am, you know, leasing now or whatever.

8 I need the proper facilities to be
9 able to maintain, you know, satisfactory, you know,
10 facilities for my force or for whatever the
11 operation requires. And putting a wall in that area
12 would definitely be something that would be a
13 concern for me.

14 Q. So it's your opinion that any loss of
15 additional parking spaces would have a negative
16 impact on the overall value of the LTD site?

17 A. Yes.

18 Q. Now, currently, do employees of LTD
19 use the parking lot and then walk to the sidewalk by
20 the retaining wall and use that to get into the LTD
21 building?

22 A. Yes.

23 Q. So setting aside the issue of whether
24 it's feasible from an engineering standpoint, if a

1 wall was constructed where Dr. Schomer proposes, at
2 that red line, would LTD require openings in the
3 wall for use by its employees?

4 A. Yes.

5 Q. And that is simply so they don't have
6 to walk all the way to one end or the other of the
7 wall to get around it?

8 A. Correct.

9 Q. And would LTD have any need for
10 pedestrian openings in the wall if it was on the
11 north property line?

12 A. No.

13 Q. And in your work with the 1995
14 expansion, did Bannockburn bill LTD for all its
15 legal and professional fees relating to your
16 application?

17 A. Yes.

18 Q. So you paid your own legal and
19 professional fees and Bannockburn's as well?

20 A. Yes.

21 Q. And has that been the case anytime LTD
22 requested relief from Bannockburn that you were
23 paying fees of your own and Bannockburn?

24 A. Yes.

1 Q. Now, did you, as a very preliminary
2 matter, make an effort to determine what would be
3 the cost if you were to enclose this truck dock
4 area?

5 A. Yes.

6 Q. And what did you do in that respect?

7 A. I'm trying to recall the gentleman's
8 name. I've been working with some -- I've been
9 looking at some other buildings and I asked some
10 builders what it would be to enclose an area and I
11 gave an estimated square footage and then what the
12 elevations were and asked for their opinion on how
13 much that might cost us to put up a building like
14 that.

15 Q. And that's what you do at times in
16 your business, you get prices from people?

17 A. Yes.

18 Q. And you rely on those to give you a
19 general idea of what things would cost?

20 A. Yes.

21 Q. And what cost estimate did you receive
22 if you were to enclose this trucking dock area
23 basically from the retaining wall heading south
24 right to the building?

1 A. If --

2 MR. KAISER: Objection, hearsay.

3 MR. HEARING OFFICER: Sustained.

4 BY MR. KOLAR:

5 Q. Once you got the estimate, did you
6 take any further steps to pursue that?

7 A. No.

8 Q. And why not?

9 A. Because of the expense.

10 Q. Now, your yard tractor has back-up
11 beeper on it, correct?

12 A. Yes.

13 Q. And you're aware that the complainants
14 have complained about the noise of the back-up
15 beeper?

16 A. Yes.

17 Q. I think at one time you got a quieter
18 back-up beeper on the yard tractor, right?

19 A. Yes.

20 Q. Rather, you had a quieter yard
21 tractor?

22 A. Well, I believe at one point they
23 turned off the back-up beeper, but ownership of the
24 company felt that that was an unsafe situation.

1 Q. You need either a back-up beeper or
2 you need somebody to signal that it's safe for
3 trucks to back up.

4 LTD is willing to hire a dock
5 pilot for nighttime operations to enable it to turn
6 off the back-up beeper, true?

7 A. Yes, we are.

8 Q. And you're willing to have that dock
9 pilot prevent the parking of trailers on the exit
10 ramp from LTD during nighttime hours?

11 A. Yes, we are.

12 MR. KOLAR: I don't have any further
13 questions.

14 MR. HEARING OFFICER: Thank you,
15 Mr. Kolar. Mr. Kaiser?

16 MR. KAISER: Thank you.

17 C R O S S - E X A M I N A T I O N

18 BY MR. KAISER:

19 Q. Mr. Voigt, that church that you're
20 referring to, that's just a little bit east on
21 Route 22, isn't it?

22 A. Yes.

23 Q. Within about a half a mile of your
24 facility?

1 A. Yes.

2 Q. And you have shuttle buses like what
3 you might see at the airport that takes you from the
4 Hertz station to the -- that's the type of bus
5 service that you run back and forth, do you not?

6 A. Yes.

7 Q. And in addition to what -- did I
8 understand it correctly that LTD also sends a bus
9 down to the Highwood or Highland Park train station
10 to pick up employees?

11 A. On occasion.

12 Q. And are those occasions when it's the
13 busy season and you need to make sure you have
14 adequate workers to process the orders at the
15 Bannockburn facility?

16 A. We might also do it during the
17 non-busy season.

18 Q. So that's something LTD's done in the
19 past?

20 A. Yes.

21 Q. And does that shuttle bus, does that
22 operate both during the morning, what I'll call the
23 morning shift? And what time does the morning shift
24 begin these days?

1 A. Distribution starts at 6 a.m.

2 Q. And when does that first shift
3 conclude?

4 A. At 2:30 p.m.

5 Q. And do you still operate as you did
6 two years ago where you then have a full hour where
7 you're down and the second shift comes in at
8 3:30 p.m.?

9 A. That's correct.

10 Q. And when does that second shift
11 conclude?

12 A. Midnight.

13 Q. And have you been paying any overtime
14 to those employees on the second shift yet so far
15 this season?

16 A. No.

17 Q. And do you run that shuttle service
18 between the parking lot and the church for what I'll
19 call the morning shift, the daytime shift?

20 A. Yes.

21 Q. And do you also run that shuttle
22 service between the church and your Bannockburn
23 facility for the second shift?

24 A. No.

1 Q. You don't?

2 A. No.

3 Q. Those employees are able to find
4 parking within either the south parking lot or the
5 north parking lot?

6 A. Yes.

7 Q. How long have you had that parking lot
8 arrangement with the church?

9 A. I would estimate six, seven years.

10 Q. Does LTD own or lease the buses?

11 A. Some we own and -- I guess we do own
12 them all.

13 Q. How many buses does LTD own at the
14 Bannockburn facility?

15 A. Three, for that particular need. And,
16 you know, a van, we have a passenger van, I guess,
17 would be the way to describe it versus the bus.

18 Q. And are the persons who drive those
19 buses LTD employees or subcontractors?

20 A. LTD employees.

21 Q. What's the annual cost to LTD for
22 running the shuttle service from its Bannockburn
23 facility to the church just to the east?

24 A. I'd have to calculate that. It's not

1 a number I have off the top of my head.

2 Q. Can you give us a ballpark figure?

3 A. Couple hundred thousand dollars.

4 Q. And that's on an annual basis just to
5 operate that bus service between the church and the
6 shipping and office facility?

7 A. Again, that's an estimate. I might be
8 a little high on that.

9 Q. You're quite certain it's over
10 \$100,000?

11 A. Yeah.

12 Q. Is it likely that it's over \$200,000 a
13 year?

14 MR. KOLAR: Objection, asked and
15 answered. He gave his best estimate.

16 MR. KAISER: That's fine.

17 MR. HEARING OFFICER: Sustained.

18 BY MR. KAISER:

19 Q. You also oversee LTD's Naperville
20 facility?

21 A. Yes.

22 Q. Now is that a facility LTD owns or
23 leases?

24 A. Leases.

1 Q. Does it lease it from Sheldon and/or
2 Pearl Leiberwitz or a land trust that they control,
3 or is it at least from someone entirely unrelated to
4 LTD?

5 A. Unrelated to LTD.

6 Q. How many square feet of space does LTD
7 lease in Naperville?

8 A. 400,000 square feet.

9 Q. How many employees does LTD have at
10 the Naperville facility?

11 MR. KOLAR: Objection, beyond the
12 scope.

13 MR. HEARING OFFICER: I'll allow a
14 little latitude, if you can answer.

15 BY THE WITNESS:

16 A. Maybe 350. I apologize. I don't have
17 that number.

18 BY MR. KAISER:

19 Q. Does LTD own or lease its Aurora
20 facility?

21 A. Lease.

22 Q. Does it lease it from Mr. And Mrs.
23 Leiberwitz or an entity they control or from an
24 independent?

1 A. Independent.

2 Q. How many square feet does LTD lease in
3 Aurora?

4 A. 260,000 square feet.

5 Q. How many employees do you estimate LTD
6 employs at its Aurora facility?

7 A. 650, 600.

8 Q. Now, Mr. Kolar directed your attention
9 to Paul Schomer's April 26, 2002 report, and he said
10 he sent you a copy. He did that, didn't he?

11 A. Yes.

12 Q. And you read that over, did you not?

13 A. Yes.

14 Q. And you noticed that Mr. Schomer had
15 outlined a fence that ran roughly along the edge of
16 the existing retaining wall?

17 A. Yes.

18 Q. And you'd seen a fence proposed at
19 that same location several years before
20 April 2002, had you not?

21 A. Yes.

22 Q. And, in fact, at least two and perhaps
23 as many as four years ago, Tom Thunder proposed a
24 fence at roughly that same location, did he not?

1 A. Yes.

2 Q. Now, between the time Tom Thunder
3 first submitted a proposal for a fence running along
4 the retaining line in April of the year 2000 when
5 Dr. Schomer issued his report, what -- how many
6 engineering firms did LTD retain to do soil analysis
7 in the vicinity of the retaining wall to determine
8 whether a noise wall could be built at that
9 location?

10 A. None.

11 Q. Prior to May or June of the year 2000,
12 how many engineering firms or any other type of
13 consulting firms did LTD retain to determine whether
14 a noise wall with a height of 14 feet could be built
15 along the property line separating LTD from the
16 Roti residence?

17 A. None.

18 Q. How many written cost estimates did
19 LTD receive from contractors or consultants
20 containing written cost estimates for enclosing the
21 dock area?

22 A. None.

23 Q. Other than Tom Thunder, has LTD
24 retained any other consulting firms in the field of

1 acoustics to propose solutions to what the Board has
2 found to be a nuisance originating at LTD's dock
3 area?

4 THE WITNESS: Could I hear that again,
5 please?

6 (Whereupon, the requested
7 portion of the record
8 was read accordingly.)

9 BY THE WITNESS:

10 A. Would you consider Steve Mitchell from
11 the Huff Company a consultant?

12 BY MR. KAISER:

13 Q. I would put him in that category.

14 A. We have spoken with him and he has
15 provided us with estimates.

16 Q. So then there's Mr. Thunder and his
17 firm and Steve Mitchell and his company, the Huff
18 Company?

19 A. I believe Mr. Thunder used
20 Mr. Mitchell as his source for his numbers.

21 Q. And other than those two gentlemen,
22 has LTD retained anyone else to provide it with
23 advice or recommendations concerning the reduction
24 of noise from its dock facility?

1 A. No.

2 Q. Prior to May or June of this year, had
3 LTD consulted with Mr. Anderson in connection with
4 the feasibility of building a noise wall in the
5 vicinity of the retention wall?

6 A. No.

7 Q. And just so I'm clear, is LTD offering
8 the complainants as a resolution of this matter to
9 construct an appropriately scaled noise wall at the
10 north property line?

11 MR. KOLAR: I object to that question.

12 MR. KAISER: Well, we allow this
13 discussion as if, well, gee, a noise wall would be
14 great at the north line. We wouldn't have to
15 inconvenience our employees with these walkways, we
16 wouldn't have to tear up our parking lot.

17 The implication to me seems to be,
18 we'll build a wall at the north line, we won't build
19 it anywhere else. I'm just trying to find out if
20 that's LTD's position.

21 MR. KOLAR: The reason for my
22 objection is that, initially, LTD didn't build a
23 noise wall because there was no finding there was
24 any violation of any provision of the Act. So once

1 that finding was made, then it looked further into
2 the situation.

3 And I don't want to waive the
4 right to appeal the finding of a nuisance, so I
5 would object to the question, unless Steve would
6 stipulate there's no waiver of my right to -- I
7 think it's an inappropriate question because it's
8 not a final order on the nuisance issue. And LTD
9 wants to try to resolve this, but I don't want to
10 waive that right to challenge that --

11 MR. KAISER: I'll withdraw the
12 question and ask a few in and around that area.

13 MR. HEARING OFFICER: Thank you,
14 Mr. Kaiser.

15 BY MR. KAISER:

16 Q. Has LTD ever received from any source
17 a written cost estimate for constructing a noise
18 wall along the property line separating the dock
19 area from the complainants's homes?

20 A. Yes. Ask the question again and I --

21 Q. Let me take it back. No, I'll let it
22 stand as it is.

23 Has LTD ever received a written
24 cost estimate for constructing a noise wall along

1 the property lines separating its Bannockburn
2 facility from the complainants's homes?

3 A. Along the property line?

4 Q. Yes.

5 A. Versus by the parking lot and truck
6 staging area?

7 Q. Yes.

8 A. I don't think so.

9 Q. And when I ask that question, I'm
10 asking not only a written cost estimate for
11 construction of a noise wall along the lines
12 described by Steve Mitchell, that is with the
13 foundation, steel posts, and noise reduction panels
14 slid in between the posts, but such cost estimates
15 would also include construction of a wooden noise
16 wall with wooden supports.

17 Did LTD ever receive a written
18 cost estimate for constructing a wooden fence with
19 wooden supports along the property line?

20 A. I don't know specifically wood versus
21 metal.

22 Q. So you don't recall looking at a
23 comparison of cost, the cost of a wooded fence
24 versus the cost of a steel-supported fence?

1 A. Correct.

2 Q. I take it Mr. Kolar did supply you in
3 your capacity as vice president for distribution
4 with a copy of the Illinois Pollution Control
5 Board's opinion in order dated February 15, 2001.

6 A. I'm sure he did.

7 Q. And is it fair to say you read that
8 opinion and order?

9 A. Yes.

10 Q. Have you ever seen any written
11 calculations generated at LTD's request which had
12 determined an appropriate height for a noise wall
13 along the property line?

14 A. I've heard estimates. I may have read
15 them, I may have heard them. You know,
16 specifically, can I quote you or, you know, picture
17 it? I can't recall that, but I do recall hearing
18 there were estimates.

19 Q. Do you think you have papers anywhere
20 in a file at LTD that include calculations that LTD
21 commissioned to determine an appropriate height for
22 a noise wall along the north property line?

23 A. I'm not absolutely certain that I have
24 that.

1 Q. If you did have that, who would have
2 provided it to you in your capacity as vice
3 president for distribution?

4 A. I would have received it either
5 through Steve Mitchell, Huff Corporation, or Tom
6 Thunder.

7 Q. Do you know how much LTD is paying Tom
8 Thunder to provide testimony in this matter?

9 A. The exact hourly rate, no, I don't
10 have that number at my --

11 Q. Has LTD ever paid Steve Mitchell to
12 have the Huff Company provide any cost estimates?

13 A. Not that I'm aware of.

14 Q. Has LTD ever paid Steve Mitchell to
15 provide LTD with any recommendations for reduction
16 or mitigation of noise in the vicinity of LTD's dock
17 area?

18 A. Not that I'm aware of.

19 Q. Has LTD ever paid anyone other than
20 Mr. Anderson and Mr. Thunder to provide it with
21 recommendations for reducing noise in its dock area?

22 A. Not that I'm aware of.

23 Q. Now, as I understood it, it was your
24 testimony that it's your opinion that construction

1 of a noise wall at a distance of 16 feet north of
2 the existing retention wall would reduce the value
3 of LTD's Bannockburn property, was that your
4 testimony?

5 A. That is my opinion, yes.

6 Q. And just so we're clear -- well, do
7 you -- now, you talked about being involved in
8 obtaining approval from the Village of Bannockburn
9 to expand LTD's facility back in 1993, '94, and '95.
10 You were involved in that process, were you not?

11 A. Yes.

12 Q. And you assisted LTD in gaining the
13 necessary zoning approvals from the Village of
14 Bannockburn to expand the warehouse?

15 A. Yes.

16 Q. And the expansion of the warehouse is
17 shown on this aerial photograph, Respondent's
18 Exhibit 89, as the southern portion of -- that has
19 1995 pending there, right?

20 A. Yes.

21 Q. And that entire area was added in
22 roughly 1994, '95, right?

23 A. Yes.

24 Q. And, in addition, the dock area was

1 altered in connection with that expansion, was it
2 not?

3 A. Yes.

4 Q. And that's when the retaining wall was
5 put in, right?

6 A. Yes.

7 Q. And you're aware that the board has
8 found that LTD incurred costs of about \$9.9 million
9 to acquire property and construct this addition back
10 in 94, '95? It's probably a ballpark number, isn't
11 it?

12 A. I am not familiar with that number.

13 Q. Do you have any sense, as you sit here
14 today, what the value -- well, do you know how many
15 acres of property LTD owns in Bannockburn?

16 A. Slightly over 23 acres, I believe.

17 Q. And how many square feet of warehouse
18 are located there?

19 A. 350,000 square feet of distribution
20 center, and approximately 20,000 square feet of
21 office. That's a two-story office.

22 Q. And that's the area located here to
23 the west (indicating)?

24 A. Yes.

1 Q. And then there are other areas like
2 cafeteria?

3 A. Yes.

4 Q. Other amenities for the employees?

5 A. Yes.

6 Q. Do you know or have some idea as to
7 what the value of the LTD Bannockburn property is
8 with the improvements as they currently exist?

9 A. I could guess that there might be a
10 square footage that you normally pay for a
11 distribution center, but the proximity of this
12 distribution center relative to one in Aurora or
13 Naperville, there could be a lot of disparity
14 between the prices, so I wouldn't venture an
15 estimate.

16 Q. You would not venture an estimate?

17 A. No.

18 Q. Were you involved in the decision to
19 lease the property, you know, in Aurora?

20 A. Yes.

21 Q. And do you know what the annual rental
22 is for the Aurora facility?

23 MR. KOLAR: Objection, beyond the
24 scope, and its getting into that issue we addressed

1 before we started today. I guess he's trying to
2 avoid doing his motion by getting his information
3 from Mr. Voigt.

4 MR. HEARING OFFICER: Mr. Kaiser?

5 MR. KAISER: Well, I would not
6 Mr. Kolar, knowing that this issue is pending, ask
7 Mr. Voigt to give an opinion about the reduction in
8 the property value if a fence were built at a
9 certain location.

10 Now, I mean, I'm just trying to
11 find out -- well, what's it worth and what does he
12 think it would be worth with a fence in the middle
13 of the parking lot.

14 MR. KOLAR: I didn't object when he
15 was asking the value of this property, but know he's
16 talking about how much does it cost to lease the
17 Naperville facility, which would not have any
18 relevance to the value of the LTD property.

19 MR. HEARING OFFICER: I agree,
20 sustained.

21 BY MR. KAISER:

22 Q. So you have no idea as you sit here
23 today, Mr. Voigt, what this property with
24 improvements is worth?

1 A. No.

2 Q. You are aware that LTD paid, and the
3 Board found it paid, 6.6 million for the Bannockburn
4 facility in the 1980s?

5 A. You're telling me information I did
6 not have.

7 Q. Were you aware or are you aware as you
8 sit here today that LTD incurred costs of between
9 1.5 and \$2 million in connection with the first
10 warehouse expansion back in the late 80s?

11 A. I've never heard that number before.

12 Q. That predated your tenure with LTD?

13 A. Correct.

14 Q. On how many days since February 15,
15 2001 has LTD operated the dock area without the
16 back-up beeper on the yard tractor being engaged?

17 A. I don't know that.

18 Q. Do you know of any days since
19 February 15, 2001, where LTD directed its
20 subcontractor to disengage the back-up beeper on the
21 yard tractor?

22 A. I would have to go back to notes to
23 find out when we asked the yard tractor company to
24 disengage it. I don't recall the exact date.

1 Q. As I understood it, your testimony was
2 you directed the yard tractor operator to disengage
3 the back-up warning beeper, and then LTD management
4 made a decision and directed the yard tractor
5 operator to turn the back-up warning beeper back on,
6 did I understand that correctly?

7 A. I'm trying to recall if we spoke with
8 their company, but as -- if we had asked them to, we
9 were concerned about us asking them to do that and
10 the risk of liability if somebody was injured
11 without a back-up beeper.

12 Q. Right, and I understand that was the
13 concern, and so my question is, at any time in the
14 last year and a half, has LTD's subcontractor
15 operated without the back-up warning beeper engaged
16 on the yard tractor?

17 A. It's after the date that we asked them
18 to put it back on. There may have been some time
19 that it was not functional because of a malfunction,
20 but it was not because of our request for them to
21 turn it off.

22 Q. So the best of your knowledge, accept
23 when it wasn't working, the subcontractor was using
24 the yard tractor with the back-up warning beeper

1 engaged?

2 A. Yes.

3 Q. Now, you're familiar with Lakeside
4 Drive, are you not?

5 A. Yes.

6 Q. Lakeside Drive is the road trucks take
7 to get into and out of LTD's dock area, right?

8 A. That's correct.

9 Q. And you're aware that there's a sign
10 on the west side of Lakeside Drive that says no
11 standing, stopping or parking, \$100 fine, right?

12 A. I believe it's on both sides of the
13 street.

14 Q. How often do you personally go out
15 there to make certain semi-trailers and tractors are
16 not parked or stopped on Lakeside Drive?

17 A. I did not make a special effort to go
18 check that out.

19 MR. KAISER: I have no further
20 questions. Thank you.

21 MR. HEARING OFFICER: Thank you,
22 Mr. Kaiser.

23 Mr. Kolar, redirect?

24 MR. KOLAR: Yeah, just a few. Thank

1 you.

2 R E D I R E C T E X A M I N A T I O N

3 BY MR. KOLAR:

4 Q. Mr. Kaiser asked you if you had paid
5 the Huff Company for any proposals and you said no.

6 A. That's correct, I said no.

7 Q. You received proposals from the Huff
8 Company though, Right?

9 A. Yes.

10 Q. Including, I guess this last one,
11 maybe Respondent Exhibit K, you got that in May of
12 2001?

13 A. Yes.

14 Q. At any time when you were dealing with
15 Mr. Thunder and Mr. Mithcell, did you ask them, if
16 we build a wall, will that take care of the problems
17 for the complainants?

18 A. Yes.

19 Q. And were you given adequate assurances
20 so that you were able to move forward with the wall,
21 or did you want assurances that a wall would work
22 before you took any further steps?

23 A. Yes.

24 Q. Were you given adequate assurances?

1 A. There were no guarantees that it could
2 solve all the problems.

3 Q. Prior to being found to be a nuisance,
4 LTD was looking at building a wall if it received
5 assurances it would work?

6 A. We would consider that, yes.

7 Q. And, in your mind, you didn't receive
8 adequate assurances?

9 A. Correct.

10 Q. Mr. Kaiser asked you some questions
11 about the Naperville facility, when did that open?

12 A. Last year. May of last year, I
13 believe.

14 MR. KAISER: I'm going to object.
15 I'll withdraw the objection.

16 BY MR. KOLAR:

17 Q. He also asked you question about your
18 current hours of operation, do you recall those
19 questions?

20 A. Yes.

21 Q. And are those hours going to remain
22 the same throughout the Christmas season?

23 A. No.

24 Q. How is there going to be a change, if

1 at all?

2 A. This Friday will be -- we will be
3 shutting down our second shift operation in
4 Bannockburn.

5 Q. So as of the day after tomorrow you're
6 stating?

7 A. Yes.

8 Q. October 18?

9 A. Correct, that's right.

10 Q. Now, you're not saying that's
11 a permanent thing, it's just right now, based on
12 business, you're shutting down the second shift?

13 A. That's correct.

14 Q. So that would mean you'd have one
15 shift that would run from what time to what time?

16 A. Approximately 6 a.m. till 2:30 p.m.
17 We do a skeleton crew of maintenance people and
18 housekeeping people that do work inside the building
19 on second shift.

20 Q. And I guess in a nutshell you're doing
21 that because you feel you can get your orders out
22 and bring the product in with one shift?

23 A. That's correct. With the addition of
24 Naperville, our volume from Bannockburn has been

1 reduced.

2 Q. And in terms of your -- again, your
3 opinion is the value of the whole site would be
4 reduced if a wall was put through your parking lot,
5 that's simply based on that prospective buyers
6 expect a certain amount of parking, right?

7 A. Yes.

8 MR. KAISER: Objection. That's way --
9 it's way beyond his area of expertise. There's no
10 foundation. He's speculating.

11 MR. HEARING OFFICER: I'll sustain it.
12 We've already gone into the area about his opinion
13 about the property's worth.

14 MR. KOLAR: All right, I don't have
15 any other questions.

16 MR. HEARING OFFICER: Thank you,
17 Mr. Kolar. Mr. Kaiser?

18 MR. KAISER: If I may briefly.

19 R E C R O S S - E X A M I N A T I O N

20 BY MR. KAISER:

21 Q. Now, you've met Dr. Schomer a number
22 of times, haven't you?

23 A. Yes.

24 Q. And you've been kind enough to escort

1 Dr. Schomer and myself around the LTD dock area?

2 A. Yes.

3 Q. And Mr. Kolar's given you a copy of
4 Dr. Schomer's April 26, 2002 report?

5 A. Yes.

6 Q. And I take it you've talked with
7 Mr. Kolar about Dr. Schomer's educational
8 background, have you not?

9 A. I've seen his resume.

10 Q. And I take it Mr. Kolar probably
11 shared with you that he's one of the foremost
12 international experts in noise reduction?

13 MR. KOLAR: Objection to what I shared
14 with my client.

15 MR. HEARING OFFICER: Sustained.

16 BY MR. KAISER:

17 Q. Are you aware from any source that
18 Dr. Schomer is one of the foremost noise reduction
19 experts in the world?

20 A. Any other source?

21 Q. From any source?

22 A. Any source? Just what I see on this
23 piece of paper that says he has a Ph.D.

24 Q. And did you talk with Tom Thunder

1 about the analysis set forth in Dr. Schomer's
2 April 26, 2002 report?

3 A. Yes.

4 Q. And did Dr. Thunder assure you
5 that, boy, it looks like Dr. Schomer got it right,
6 and those calculations can be relied on?

7 MR. KOLAR: Objection, this is beyond
8 the scope of my cross.

9 MR. HEARING OFFICER: Sustained.

10 MR. KAISER: He asked about the
11 guarantees, and, again, if we could just guarantee
12 LTD a noise wall would be effective, the implication
13 being they build it, but that up until some point in
14 time, through hearing, they have not received those
15 assurances. So I want to talk to him about his
16 impression of Dr. Schomer's opinion and the level of
17 confidence either Mr. Voigt has in it or Dr. Thunder
18 has in it.

19 MR. HEARING OFFICER: I think you were
20 pushing the envelope as far as beyond the scope, and
21 I allowed you to go on cross and a little beyond the
22 scope of direct, and it seems like you're continuing
23 to go out of bounds.

24 Can you wrap it up in a hurry?

1 MR. KAISER: Yeah, I can.

2 MR. HEARING OFFICER: Objection
3 overruled. Mr. Kaiser, proceed quickly.

4 MR. KAISER: Thank you, Mr. Halloran.

5 BY MR. KAISER:

6 Q. Mr. Voigt, after doing whatever due
7 diligence you felt you needed to do in connection
8 with Dr. Schomer and his opinions, as you sit here
9 today, do you have any reservations or uncertainty
10 as to whether a noise wall built to the
11 specifications identified by Dr. Schomer, that is, a
12 25 foot noise wall placed as indicated in figure
13 three of his report, whether that noise wall would
14 result in a ten decibel reduction as measured at the
15 second story of the Weber residence in the 1,000
16 kilohertz octave band?

17 A. I have no idea if that was reduced.

18 The wall would reduce that by ten
19 decibel you said?

20 Q. Yes.

21 A. I have no idea.

22 Q. Did you ask Mr. Thunder to try to find
23 out?

24 A. I would say -- again, my opinion was a

1 concern that any noise that would be emitted in the
2 evening hours, and it may not even be done by LTD,
3 it may be done by the tollway right next door, if a
4 truck backfires or whatever, that could be
5 misconstrued and it could be, you know, blamed on
6 LTD Commodities.

7 We just don't have the
8 assurance -- I don't have the assurance that a wall
9 is going to, you know, give our neighbors the
10 positive assurance that their privacy is not going
11 to be interrupted.

12 Q. And now even as you review a report
13 prepared by your neighbors, Karen Roti, who's
14 here in attendance, Leslie Weber and
15 Paul Rosenstock, now that you have their expert's
16 report, you still don't have that confidence that
17 building a wall, as recommended by your neighbor's
18 own expert, would solve the problem?

19 MR. KOLAR: Objection, asked and
20 answered.

21 MR. HEARING OFFICER: Sustained.

22 BY MR. KAISER:

23 Q. How many years has LTD been operating
24 a second shift at its Bannockburn facility?

1 A. There was a second shift when I
2 started in 1990.

3 Q. And did it continue during the holiday
4 season? Well, in 1990, LTD operated a second shift
5 at the Bannockburn facility?

6 A. Yes.

7 Q. Did LTD operate a second shift at the
8 Bannockburn facility in 1992?

9 A. Yes.

10 Q. Did it operate a second shift in 1993?

11 A. Yes.

12 Q. '94?

13 A. Yes.

14 Q. '95?

15 A. Yes.

16 Q. '96?

17 A. Yes.

18 Q. '97?

19 A. Yes.

20 Q. '98?

21 A. Yes.

22 Q. '99?

23 A. Yes.

24 Q. 2000?

1 A. Yes.

2 Q. 2001?

3 A. Yes.

4 Q. 2002 up to and including this Friday?

5 A. Yes.

6 Q. And is it your testimony that LTD is
7 discontinuing the second shift because demands are
8 falling off, or why is LTD discontinuing the second
9 shift?

10 A. Since we've opened Naperville and the
11 volume that we are at right now, it's not necessary
12 for us to run a second shift in Bannockburn from
13 this Friday. And we may start back up again. I
14 can't guarantee that it's going to stay shut down
15 for the balance of the year.

16 Q. So you can't guarantee the Board that
17 LTD will discontinue the second shift even through
18 the conclusion of this holiday season?

19 A. That's correct.

20 Q. If the volume of demand for LTD's
21 products goes up, LTD may need to re-open and re --
22 start running a second shift at Bannockburn?

23 A. Yes.

24 MR. KAISER: Thank you. I have no

1 further questions.

2 MR. HEARING OFFICER: Thank you,
3 Mr. Kaiser. Mr. Kolmar?

4 MR. KOLAR: Yeah, just one question.

5 R E D I R E C T E X A M I N A T I O N
6 BY MR. KOLAR:

7 Q. If you start up a second shift, you
8 can't tell us when it would end, it might end at
9 10 p.m., it might end after that, right?

10 A. Yes.

11 MR. KOLAR: No further questions.

12 MR. HEARING OFFICER: Thank you.
13 Mr. Kaiser?

14 R E C R O S S - E X A M I N A T I O N
15 BY MR. KAISER:

16 Q. And if you get really busy, you might
17 start running overtime on that second shift like
18 you've done in years past, right?

19 A. That's possible.

20 MR. KAISER: Thank you, no further
21 questions.

22 MR. KOLAR: No questions.

23 MR. HEARING OFFICER: Any questions
24 from the panel?

1 Thank you, you may step down, sir.

2 (Witness excused.)

3 MR. HEARING OFFICER: Mr. Kolar, we
4 still have Exhibits L and M.

5 MR. KOLAR: Right, I would move to
6 admit those.

7 MR. KAISER: And just so I'm clear,
8 those are the documents introduced during
9 Mr. Anderson's testimony?

10 MR. KOLAR: Right.

11 MR. HEARING OFFICER: Respondent's
12 Exhibit L and M are admitted. And Mr. Kaiser, I do
13 not have Complainant's Exhibit A, nor did I see it
14 offered.

15 MR. KAISER: Yeah, let me give you a
16 copy of that. Anything else I need to provide you?

17 MR. HEARING OFFICER: Are you going to
18 offer this in evidence?

19 MR. KAISER: Yes, I would, at this
20 time.

21 MR. HEARING OFFICER: Mr. Kolar, any
22 objection to Complainant's Exhibit A, Dr. Schomer's
23 report?

24 MR. KOLAR: No.

1 I said seven days, but we have to tighten up a
2 little bit. Respondent's response is due
3 October 25, and the mailbox rule does not apply, and
4 I'll take fax copies with hard copies to follow.

5 MR. KAISER: I'll get you a fax by the
6 21st. And the 25th -- but we can put --

7 MR. HEARING OFFICER: Hard copies in
8 the mail.

9 Before I forget, Mr. Keiser was
10 correct. I guess Karen Roti did enter the room
11 approximately 40 minutes ago.

12 Did you wish to make any statement
13 or --

14 MS. ROTI: Not right now.

15 MR. HEARING OFFICER: We can go off
16 the record again, Stacy.

17 (Whereupon, a discussion
18 was had off the record.)

19 MR. HEARING OFFICER: Mr. Kaiser?

20 MR. KAISER: Thanks, Mr. Halloran.

21 Yesterday we discussed and agreed
22 that I would be allowed to supplement the record by
23 introducing a portion of the Village of
24 Bannockburn's zoning code. I photocopied the

1 sections pertaining to amendments and special
2 approvals and I'm asking leave at this time to admit
3 it as Complainant's Exhibit G.

4 MR. HEARING OFFICER: Any objection,
5 Mr. Kolar?

6 MR. KOLAR: No.

7 MR. HEARING OFFICER: Complainant's
8 Exhibit G is admitted. And before I forget, I'm
9 supposed to make a credibility determination on the
10 witnesses that testified here today, and based on my
11 legal judgment and experience, I find that there is
12 no credibility issues with any of the witnesses that
13 testified yesterday or today.

14 We're going to go off the record
15 and try to find a date to finish up Mr. Thunder's
16 testimony.

17 (Whereupon, a discussion
18 was had off the record.)

19 (Whereupon, after a short
20 break was had, the
21 following proceedings
22 were held accordingly.)

23 MR. HEARING OFFICER: We're back on
24 the record after about a 30-minute break. We were

1 trying to get some dates set to continue this
2 hearing on record; however, we were not able to. It
3 seems Mr. Kolar's witness is unavailable.

4 So what we'll have to do,
5 according to protocol, we will not be able to
6 continue it on record. We will have to notice this
7 hearing up again. And I might add we're looking for
8 a hearing hopefully the first week of December
9 sometime. But the date and time of the hearing will
10 be noted in a notice of hearing.

11 Any further comments by counsel?

12 MR. KAISER: Nothing further.

13 MR. KOLAR: No.

14 MR. HEARING OFFICER: Thank you very
15 much. Have a safe trip home. Thank you.

16 (Which were all the proceedings
17 had in the above-entitled cause
18 on this date.)

19

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23

24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF DUPAGE)

3

4

5 I, Stacy L. Lulias, CSR, do hereby
6 state that I am a court reporter doing business in
7 the City of Chicago, County of DuPage, and State of
8 Illinois; that I reported by means of machine
9 shorthand the proceedings held in the foregoing
10 cause, and that the foregoing is a true and correct
11 transcript of my shorthand notes so taken as
12 aforesaid.

13

14

15

Stacy L. Lulias, CSR
Notary Public,
Cook County, Illinois

17

18 SUBSCRIBED AND SWORN TO
19 before me this ____ day
of _____, A.D., 2002.

20

21 _____
Notary Public

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