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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|-------------------------|---|------------|
| IN THE MATTER OF: |) | |
| |) | |
| DAVID AND SUSI SHELTON |) | |
| |) | |
| Complainants, |) | |
| |) | |
| vs. |) | PCB# 96-53 |
| |) | VOLUME II |
| STEVEN AND NANCY CROWN, |) | |
| |) | |
| Respondents. |) | |

REPORT OF PROCEEDINGS taken in the above-entitled matter, taken before Ms. June Edvenson, Hearing Officer for the Illinois Pollution Control Board, commencing on the 2nd day of July, A.D., 1996 at the offices of the Illinois Pollution Control Board, 100 W. Randolph, Chicago, Illinois, a approximately 9:00 a.m.

1 PRESENT:

2

3

THE JEFF DIVER GROUP

4

MR. JEFFREY R. DIVER &

5

MR. STEVEN KAISER

6

45 South Park Blvd.

7

Glen Ellyn, Il 60137

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For Complainants;

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11

GOULD & RATNER

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MR. RICHARD ELLEDGE&

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MR. ROBERT CARSON

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222 N. LaSalle Street

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Chicago, IL 60601

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For Respondents.

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I N D E X

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1 HEARING OFFICER: The Complainant's case
2 continues, and the Complainant calls Bradley
3 Mautner as their 3rd witness.

4 (Witness sworn)

5 MR. LAURI: I'd like to interject.
6 My name is Ty Lauri, I'm the counsel for Mr.
7 Mautner, present today.

8 HEARING OFFICER: Would you spell your
9 name?

10 MR. LAURI: T-y, L-a-u-r-i.

11 B R A D L E Y E D W A R D M A U T N E R,
12 after having been first duly sworn on oath,
13 deposes and testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. DIVER:

16 Q. Would you state your full name, please?

17 A. Bradley Edward Mautner, M-a-u-t-n-e-r.

18 Q. Mr. Mautner, would you tell us what your
19 current relationship is to a company by the name
20 of Mid/Res, Inc.?

21 A. I'm currently the Chief Executive
22 Officer.

23 Q. During the period, essentially 1991
24 through the middle of 1996, what was your

1 relationship, if any, with that corporation?

2 A. From 1991 until early 1996, I was the
3 President of that company.

4 Q. Mr. Mautner, prior to testifying today,
5 did you have occasion to meet with Mr. Elledge and
6 Mr. Carson, counsel for Mr. Crown concerning the
7 nature of your testimony today?

8 A. Yes.

9 Q. And, did you, prior to today's testimony,
10 either this morning or at an earlier time, meet
11 with Mr. Crown himself to discuss the subject
12 matter of your testimony today?

13 A. No.

14 Q. Have you talked with Mr. Crown this
15 morning at all about the subject matter of your
16 testimony?

17 A. No. About the subject matter of the
18 testimony, no.

19 Q. What is your relationship, on a social or
20 personal level, with Steven Crown?

21 A. Well, I know Steve Crown since we were
22 teenagers or earlier. And, we talk occasionally,
23 but we don't attend social functions together.

24 Q. Okay. But, you were schoolmates at an

1 earlier time in life?

2 A. Yes.

3 Q. At a point in time in 1991, was Mid/Res
4 retained to provide for the design of a HVAC
5 system for Mr. Crown?

6 A. Yes.

7 Q. And, I'm showing you now what I'm marking
8 Exhibit 55, Madam Hearing Officer. I will
9 indicate that I've already provided a complete set
10 of these exhibits to Mr. Elledge already.

11 I ask you to review that document, if you
12 would. Please tell us whether or not that was the
13 contract that Mid/Res had with respect to the
14 design of the HVAC system for Mr. Crown's
15 residence on Ardsley Road in Winnetka?

16 A. Yes.

17 MR. DIVER: Move the admission of this
18 Exhibit 55, Madam Hearing Officer.

19 MR. ELLEDGE: No objection.

20 HEARING OFFICER: Is there any objection?

21 MR. ELLEDGE: No objection.

22 MR. DIVER: The originals today, I will
23 indicate for the record, today's exhibit numbers
24 are all on a white exhibit sticker. Yesterday,

1 exhibit numbers were all on yellow exhibit
2 stickers. So, if a yellow sticker is shown, it
3 was one that we stipulated to yesterday with
4 respect to authenticity, with respect to most of
5 the documents. But, those documents have not yet
6 necessarily been stipulated to with respect to
7 their admissibility.

8 MR. ELLEDGE: That's correct.

9 HEARING OFFICER: The stipulations are
10 going to be submitted later, correct?

11 MR. CARSON: Yes.

12 MR. DIVER: To the extent that there are
13 documents that Madam Hearing Officer has not
14 already ruled upon with respect to the
15 admissibility there will be stipulations with
16 respect to some.

17 A. Excuse me, one other thing, that
18 document, which is a copy, doesn't show the
19 reverse of Page 1, which may or may not contain
20 terms, other terms and conditions.

21 Q. Those other terms and conditions would be
22 standard pre-printed terms and conditions, would
23 they not?

24 A. Yes, and I don't know, without seeing the

1 original, of course, whether or not those terms
2 and conditions were part of that proposal.

3 Q. That's fair. But, what we would call the
4 manuscript terms; that is those that were specific
5 to this contract, are the typewritten language
6 that's shown on Page 1 and Page 2 of the document
7 that you just identified, correct?

8 A. Yes.

9 Q. Thank you.

10 HEARING OFFICER: And, Mr. Mautner,
11 you're indicating that these were accompanied by a
12 standard contract agreement form?

13 A. There may be standard terms and
14 conditions on the reversal of the first page.

15 HEARING OFFICER: On the reverse of the
16 first page of the letter, even though the second
17 page of the letter is entitled Page 2?

18 A. Yes.

19 HEARING OFFICER: Okay. Would we be
20 obtaining those?

21 MR. DIVER: Good question. I don't know
22 that we obtained them, Madam Hearing Officer.

23 A. I don't know that it matters or not, I
24 just wanted to point out that there are terms and

1 conditions that are available on the reverse of
2 that page and it may or may not have been on that
3 proposal.

4 HEARING OFFICER: Exhibit 55 is entered
5 into evidence as proposed.

6 BY MR. DIVER:

7 Q. Am I correct that the amount of your
8 contract initially for the design work was \$8,500?

9 A. Yes.

10 Q. I'm going to show you now what I've
11 marked as Exhibit 72 and ask you if you would look
12 at that, please.

13 MR. ELLEDGE: What number?

14 MR. DIVER: 72.

15 BY MR. DIVER:

16 Q. Have you had an opportunity to review
17 that document, Mr. Mautner?

18 A. Yes.

19 Q. Is that the final bill that you provided
20 to Mr. Constant, the Architect for Mr. Crown with
21 respect to your design services?

22 A. Yes.

23 Q. And that document indicates that you
24 actually compromised the fee to half the rate that

1 you had initially quoted, is that correct?

2 A. We reduced the fee by 50 percent.

3 Q. Correct.

4 MR. DIVER: Madam Hearing Officer, move
5 the admission of Exhibit 72.

6 HEARING OFFICER: Is there any objection?

7 MR. ELLEDGE: No objection.

8 HEARING OFFICER: Exhibit 72 is entered
9 into evidence.

10 BY MR. DIVER:

11 Q. Mid/Res, Inc. provides generally what
12 services to customers such as A. Steven Crown?

13 A. We provide design, installation, and
14 service and repair after the systems are installed
15 for heating, refrigeraton, air conditioning and
16 humidification systems.

17 Q. Are the people at Mid/Res acoustical
18 engineers?

19 A. No.

20 Q. Do you provide that service?

21 A. No.

22 Q. Are the people at Mid/Res sound experts?

23 MR. LAURI: Object to the term, "sound
24 experts".

1 HEARING OFFICER: Can you rephrase the
2 question, Mr. Diver?

3 MR. DIVER: Certainly.

4 BY MR. DIVER:

5 Q. Mr. Mautner, can you identify anybody who
6 was on staff at Mid/Res during the period 1991
7 through the middle of 1995 who you would
8 characterize as someone having particular
9 expertise with respect to the generation of sound,
10 the perception of sound, or the general area of
11 acoustics?

12 A. In my opinion, no.

13 Q. Is there anyone or has there been anyone
14 in Mid/Res, during that period of time, 1991
15 through the middle of 1995, with responsibility to
16 identify or evaluate sound emissions from the HVAC
17 equipment that you design or install?

18 A. No.

19 Q. At the time that you entered into this
20 agreement in October 1991, you personally,
21 however, were aware, were you not, that sound was
22 emitted from the kinds of equipment that you would
23 be called upon to design in this application?

24 A. Sound is emitted from equipment that we

1 provide for comfort cooling.

2 Q. Were you aware, at that time, at the time
3 this contract was executed and during the
4 performance of the design phase, were you aware
5 whether the manufacturers of HVAC equipment
6 publish or make available power sound levels or
7 information with respect to the raw sound or power
8 that is being emitted from their equipment?

9 A. I was not aware that they had published
10 information about this particular system.

11 Q. No. My question, though, was are you
12 aware that generally, with respect to the kinds of
13 equipment that you would be considering, that
14 sound level data is published by manufacturers of
15 such equipment?

16 A. Some is published.

17 Q. At the time that you designed the
18 particular HVAC system that you ultimately
19 provided for Mr. Crown, did you ever request the
20 manufacturer or the distributor of the equipment
21 to provide you sound level data with respect to
22 the equipment that you were proposing to be
23 installed in this particular application?

24 A. I did not.

1 Q. To your knowledge, did anyone at Mid/Res?

2 A. Not to my knowledge.

3 Q. Showing you now what has been marked as
4 Exhibit 66 consisting of, I believe, 12 pages --
5 yes, 12 pages and styled at the top, Heating,
6 Ventilation and Air Conditioning. Please just
7 indicate, for the Hearing Officer when you've
8 concluded with your review and are available for
9 questions.

10 A. You want me to read the whole thing?

11 Q. You may read as much or as little as you
12 need to in order to be able to identify the
13 document.

14 MR. CARSON: Excuse me. Just for the
15 record -- oh, I'm sorry, on my copy, Exhibit 67 is
16 attached to 66. Is it attached to the one the
17 witness has?

18 MR. DIVER: I don't believe so, it's not
19 on the witness'. The slip of stapler, I'm afraid.

20 A. Okay.

21 HEARING OFFICER: Mr. Diver, could you
22 re-propose your question?

23 MR. DIVER: I'm sorry, I was unaware
24 that the witness -- have you had an opportunity to

1 review the document?

2 A. Yes.

3 BY MR. DIVER:

4 Q. Do you recognize it as being the
5 specifications that you provided to the architect
6 in performance of your responsibilities under the
7 contract we just talked about?

8 A. No.

9 Q. Your answer is no?

10 A. No.

11 Q. Have you ever seen the specifications
12 that were developed by Mid/Res in performance of
13 that contract?

14 A. Not this specific set of specifications.

15 Q. Is it your testimony that this specific
16 set is not the set of specifications that was
17 designed, or you never saw?

18 A. No, I never saw them before they were
19 submitted.

20 MR. DIVER: Okay, that's fair. We'll
21 just hold this for another witness, Madam Hearing
22 Officer.

23 HEARING OFFICER: Okay.

24 BY MR. DIVER:

1 Q. Showing you now what has been marked as
2 Group Exhibit 85 consisting of 6 sheets having
3 been one of the set of plans that Mr. Elledge and
4 I stipulated to yesterday with respect to
5 authenticity, at least.

6 MR. ELLEDGE: That's correct.

7 Q. And ask you to review those and tell me
8 if you can identify them.

9 A. Is there a question?

10 Q. Yes. The question is, do you recognize
11 this group exhibit?

12 A. Generally, yes.

13 Q. Are those the 6 sheets of plans that
14 Mid/Res generated in the performance of the
15 contract you've just spoken about?

16 A. I believe so.

17 Q. With that, Ma'am Hearing Officer, I would
18 move the admission of Group Exhibit 85.

19 MR. ELLEDGE: No objection.

20 HEARING OFFICER: Group Exhibit 85 is
21 entered into evidence.

22 BY MR. DIVER:

23 Q. During the course of the performance of
24 your responsibilities concerning the contract for

1 design, was Mid/Res to determine the type of
2 cooling system, particularly the exterior portion
3 of the cooling system to be established at this
4 residence, exterior to house, that is?

5 A. Yes, I believe exterior and interior, the
6 whole cooling system.

7 Q. I understand, but it included what we are
8 going to be referring to throughout your testimony
9 as a chiller unit. That was part of your charge,
10 that is, to determine what kind of chiller unit,
11 of multiple kinds that you had apparently to draw
12 from, you would actually propose for this
13 application?

14 A. I think what you're saying is it was our
15 firm's responsibility to determine the type of
16 system to install for this application.

17 Q. Yes, you've done it much more artfully
18 than I, thank you.

19 HEARING OFFICER: Would you pose your
20 question?

21 BY MR. DIVER:

22 Q. Oh. Yes, the question was whether or not
23 included among the responsibilities in the
24 performance of this contract, was selection of the

1 kind of cooling system, both its interior
2 application and its exterior application?

3 A. Yes.

4 Q. In the course of selecting the type of
5 system, what were the options that you presented
6 to the person to whom you reported?

7 A. I didn't report to anyone.

8 Q. Did anyone who reported -- strike that
9 okay. Go ahead, you have something to say?

10 A. I think what needs to be pointed out here
11 is that the design of the system, the details of
12 the design of the system were performed by other
13 people in Mid/Res, and that my responsibility
14 focused solely on system concept and the business
15 relationship between our firm and Steve Crown.

16 Q. All right. As part of that business
17 relationship with Mr. Crown, did you have occasion
18 to discuss with him the options that were
19 available to him for the cooling application of
20 the HVAC system that you were designing?

21 A. Yes.

22 Q. And, what did you tell him were the
23 options that--if you would please, give us a date,
24 time and place, as best you can set it forth?

1 A. It would be in late 1991. The place
2 would have been on the phone. We didn't have any,
3 personally, about it. I don't know the exact
4 time. We discussed primarily interior system
5 concepts. And, it was my recommendation that for
6 this size structure and type of home, that we
7 proceed to install a chilled water and hot water
8 system.

9 Q. Were there other options that you
10 presented to Mr. Crown in this telephone
11 conversation, other than this, the one that you
12 ultimately fixed upon?

13 A. We discussed using a gas furnace type
14 system as opposed to chilled water versus hot
15 water. And, it was my recommendation that we
16 proceed with chilled water and hot water for this
17 application.

18 Q. Did you discuss any other options with
19 respect to this system other than the furnace
20 option?

21 A. No.

22 Q. Did you ever discuss with him or did you
23 discuss with him in this telephone conversation
24 the subject or the option of multiple units to be

1 located exterior to the house?

2 A. Yes.

3 Q. Oh, you did?

4 A. Yes.

5 Q. Would those have been chiller units?

6 A. No.

7 Q. Would those have been the gas furnaces?

8 A. No, the gas furnaces are inside the

9 house.

10 Q. That's what I thought. So, all right.

11 What did you tell Mr. Crown his options
12 were with respect to multiple units?

13 A. Well, I felt multiple units would not be
14 appropriate for this structure. We did not spend
15 much time talking about it because he seemed to
16 say, he did say to me your recommendation is what
17 we will proceed with. So, I said for this type of
18 home and this type of structure, we could not
19 achieve interior comfort conditions in terms of
20 precision and humidity control using that type of
21 system.

22 Q. Did you tell him any advantages of a
23 multiple unit system?

24 A. No.

1 Q. Did you consider there are any advantages
2 of a multiple unit system?

3 A. Not in this application, I don't believe
4 there are advantages to it, from a mechanical
5 point of view.

6 Q. Did you discuss, particularly in
7 connection with your discussion of the multiple
8 units, their generation of sound or noise?

9 A. Of multiple units?

10 Q. Yes.

11 A. No, no.

12 Q. The particular unit that you fixed upon
13 is one that's primarily used in commercial
14 applications because of its large capacity to
15 eject heat.

16 MR. CARSON: Objection, compound.

17 HEARING OFFICER: Can you separate the
18 elements of your question?

19 BY MR. DIVER:

20 Q. Mr. Mautner, the unit that you did
21 ultimately recommend is a unit primarily used in
22 commercial applications?

23 A. Yes.

24 Q. And, it's primarily used in commercial

1 applications because of its large capacity to
2 eject heat?

3 A. Yes.

4 Q. Had you ever, prior to this application,
5 recommended to a client the installation of a
6 similar chiller unit in residential applications?

7 A. Our firm has.

8 Q. All right. I believe you recommended one
9 once about 5 years ago?

10 A. I don't know the total number, number of
11 units that have been recommended of this type, but
12 there have been other recommendations to use this
13 type system on other residential applications.

14 Q. Do you recall a particular application in
15 Lake Forest about 5 years ago?

16 A. It was more than 5 years ago.

17 Q. All right. Do you recall, other than the
18 Lake Forest application, do you recall any others
19 that Mid/Res recommended to the client of a
20 residential structure, the use of a unit of the
21 type and size of the one that you ultimately
22 recommended for the Crown reconstruction?

23 A. I do not recall.

24 Q. The particular application that you were

1 involved in in Lake Forest was a house of about
2 the same square footage?

3 A. Approximately, yes.

4 Q. Around 17,000 square feet?

5 A. Yes, approximately.

6 Q. Your recollection of the acreage of the
7 property upon which that unit was going to be
8 located is about what?

9 A. I don't know the acreage.

10 Q. It would be about 7 acres?

11 A. I don't know.

12 Q. You really don't know the total size of
13 the property? Have you ever told me it was about
14 7 acres?

15 A. No, I think you're mixing the two
16 together. It was another project in Highland Park
17 that was recently completed, not designed by our
18 firm, that has two systems of this type.

19 Q. Located on 7 acres?

20 A. And, I believe one was approximately 7
21 acres.

22 Q. But, you don't recall the acreage of the
23 one in Lake Forest?

24 A. I don't.

1 Q. Do you recall the general distance
2 between the chiller unit in Lake Forest and its
3 closest neighboring residence?

4 A. No, I never observed it.

5 Q. Okay. You were aware, at the time of the
6 design of the Crown HVAC system, that there were
7 occupied residences nearby?

8 A. Yes.

9 Q. Had you actually been out to the site
10 during the period, from the time you got the
11 contract to the time you actually provided the
12 specs and the plans?

13 A. I was not at the site.

14 Q. When was the first time you actually went
15 to the site?

16 A. During system installation, after we had
17 begun our work.

18 Q. Were you ever advised by anyone that
19 there were residences near the property that was
20 under reconstruction by the Crowns?

21 A. No, and I am not normally advised who
22 lives nearby, existing structures.

23 Q. I understand. Not the who, but the what
24 we're talking about residential structures, not

1 who the individuals are, but whether there were
2 residential structures nearby.

3 A. No, I was not advised of that.

4 Q. And, you're saying you're usually not
5 advised those kind of things?

6 A. No.

7 Q. You usually are not advised, is that
8 correct?

9 A. No. I am not advised of those type of
10 things. I would, I'm answering as a common sense
11 answer here that this is residential neighborhood.
12 Therefore, there would be other residences near
13 this house.

14 Q. That was your understanding at the time?

15 A. It's still my understanding.

16 Q. But, it was also at the time of the
17 design, correct?

18 A. As a common sense answer, yes.

19 Q. Did you, in your conversation with Mr.
20 Crown, discuss the generation of sound and
21 possible perception of noise coming from this
22 single chiller unit that you recommended?

23 A. Yes.

24 Q. Your discussion with him concerning noise

1 focused on what, if you will tell us?

2 MR. LAURI: Objection, lack of
3 foundation, establish that there was at least one
4 conversation, but he hasn't established a time
5 frame when that took place.

6 MR. DIVER: The witness says he doesn't
7 know. Did you have more than one conversation
8 with Mr. Crown?

9 A. No.

10 BY MR. DIVER:

11 Q. Just this one telephone conversation?

12 A. Yes, about this topic, yes.

13 Q. And, that was the only conversation you
14 had with him in which you raised the subject of
15 sound or noise during the design phase of this
16 project?

17 A. Yes.

18 Q. I'll ask you again, fill us in with the
19 communication that you made to Mr. Crown
20 concerning noise from this unit?

21 A. During the conversation, we talked about
22 what you're referring to as system types. We
23 discussed the single, you referred to it as a
24 chiller, but it's an air cooled condensing unit

1 specifically. We discussed what I thought would
2 be the only limitation with respect to the unit
3 located next to his house. And, it was my opinion
4 that there may be an issue with respect to the
5 sound levels in the bedroom on the second floor
6 immediately adjacent to the house.

7 Q. All right. Sound would be generated from
8 what parts of this equipment that you had
9 designed?

10 A. Two main components; one, the
11 compressors, and two, the condensor fans.

12 Q. How many compressors were in this unit?

13 A. There are two compressors in this unit.

14 Q. And, what are the moving parts of the
15 compressor that generate sound?

16 A. There is a motor inside the compressor
17 and there's a heaticle spring device which is used
18 to compress refrigerant in gas form.

19 Q. So, it's the actual movement of gas
20 itself that is the moving part that generates
21 sound?

22 A. It's actually the rotation of the motor
23 driving the compressor mechanism.

24 Q. Okay You indicated the fans. How many

1 fans are there in this unit?

2 A. There are 3.

3 Q. And, what are the parts of the fans that
4 generate sound?

5 A. The fan blades moving air generates the
6 sound.

7 Q. Okay. Did you, at the time prior to
8 immediately prior to communicating to Mr. Crown in
9 this telephone conversation, consider that sound
10 would be generated from this particular equipment
11 in a horizontal fashion, as well as a vertical
12 fashion?

13 A. Not specifically.

14 Q. Can you think of any reason why the sound
15 from these units that you've just described would
16 not move horizontally as well as vertically?

17 MR. LAURI: I'll object, lack of
18 foundation. I don't think he's established this
19 witness' knowledge regarding the emanation of
20 sound from this type of equipment.

21 HEARING OFFICER: Could you rephrase your
22 question, Mr. Diver?

23 BY MR. DIVER:

24 Q. Certainly. Mr. Mautner, you've taken a

1 course in physics at the college level?

2 A. Yes.

3 Q. A course in physics at the high school
4 level?

5 A. Yes.

6 Q. During the course of that training, did
7 you hear about the principals of sound generation?

8 A. The basic principals, very basic
9 principles.

10 Q. In the course of those basic principals,
11 did you learn that sound, when generated, is
12 generated basically all directions from the sound
13 source?

14 A. I'll say yes, but it's a long time ago.

15 Q. All right. Given that rudimentary
16 training, did you, at the time you spoke with Mr.
17 Crown, know of any reason why the sound generated
18 from these moving parts that you've described
19 would not move horizontally as well as vertically?

20 A. No.

21 Q. Your testimony is, however, you just
22 didn't consider it?

23 A. We considered, that conversation only
24 considered, and I only considered the discussion

1 of the close proximity of the unit to the Crown
2 residence and the potential for impact.

3 Q. Behind you there are some exhibits,
4 specifically Group 52 A and B. Looking at Group
5 Exhibit 52 B, which is right here, if you'd come
6 over and have a chance to look closely at it. Mr.
7 Crown yesterday indicated in red the area that he
8 recollects what we are calling the chiller unit,
9 you're calling the condensing unit.

10 A. Yes, this is north elevation.

11 Q. Looking north, he's indicated that the
12 chiller unit is where that red mark is. Where is
13 the guest bedroom relative to that unit?

14 A. Immediately above, Window 29.

15 Q. So, the windows --

16 A. Or Window R 9.

17 Q. -- shown on the diagram. And, it was
18 that particular point of sound reception that you
19 were concerned about in your conversation with Mr.
20 Crown?

21 A. Yes.

22 Q. And, the reason you're concerned about it
23 and knew about it is because you'd seen a drawing?

24 A. I'd seen a plan view drawing.

1 Q. You had seen something similar to
2 document you've just looked at?

3 A. I had not seen the elevations, no.

4 Q. How did you know there was a guest
5 bedroom above this location?

6 A. It's on the plan drawing.

7 Q. Oh, it's on the plan drawing, in one of
8 those--

9 A. Right.

10 Q. --6 pages of the plans?

11 A. The plan view drawing shows that room.

12 Q. Okay. Thank you.

13 You've referred to this unit as an air
14 cooled condensing unit?

15 A. Yes.

16 Q. For purposes of this proceeding, we're
17 all calling it the chiller unit, and I'm wondering
18 if you can mentally adapt yourself to calling it
19 that because we've kind of stipulated that that's
20 what we'd call it, is that all right?

21 A. Yes, that's fine.

22 Q. The actual plans and specifications, to
23 the best of your knowledge, were generated and
24 given to either Mr. Constant, the Architect, or to

1 the Crowns themselves approximately when?

2 A. In late 1992 or early 1992.

3 Q. And, didn't you then, for a period of
4 time, have an agreement with the architect for
5 providing continuing engineering oversight with
6 respect to the progress of site development. I'm
7 showing you now in respect to that question,
8 Exhibit 67.

9 A. Okay.

10 Q. I'll repeat the question. Do you recall
11 that subsequent to the submission of plans and
12 specs, you actually had a continuing agreement, at
13 least for a period of time, with respect to
14 providing engineering oversight services?

15 A. No, I don't independently recall. I see
16 it here in this document.

17 Q. Have you seen the document before?

18 A. No, I don't remember seeing it before.

19 Q. Okay, we'll talk to another witness about
20 it.

21 Q. At some point in time, you entered into
22 an agreement with the architect concerning the
23 provision of construction and installation
24 services with regard to this HVAC system that you

1 had designed, is that correct?

2 A. We had a contract, I don't know if it was
3 with the architect or general contractor.

4 Q. Okay. I'm going to show you now what's
5 been marked as Exhibit 69, being a document dated
6 December 12, 1992, unsigned, appears to have been
7 prepared by a Robert J. Able, A-b-l-e. Ask you to
8 review it and tell me if you recognize the
9 document, not considering the marginal notations;
10 that is the pencil and pen notations that are on
11 it.

12 MR. CARSON: What's the exhibit number,
13 counsel?

14 MR. DIVER: It's 69, I believe.

15 HEARING OFFICER: Mr. Diver?

16 MR. DIVER: Yes, ma'am?

17 HEARING OFFICER: What is the number of
18 the document you had just withdrew?

19 MR. DIVER: The number of the document I
20 withdrew was 67.

21 HEARING OFFICER: Thank you.

22 A. You had a question?

23 BY MR. DIVER:

24 Q. Yes. My question is, have you seen this

1 document before?

2 A. I don't remember seeing this specific
3 document, but I may have. I don't remember seeing
4 it until having read it today, but I may have.

5 MR. DIVER: Then, fine. We'll withdraw
6 this document, Madam Hearing Officer, until we can
7 find a better witness.

8 BY MR. DIVER:

9 Q. At some point in time in the early spring
10 of 1992, an agreement was reached, however, for
11 Mid/Res to engage in the construction and
12 installation of the HVAC system, is that correct?

13 A. Yes.

14 Q. What was your responsibility during what
15 we will call the construction-installation phase?

16 MR. LAURI: When you say "you", you're
17 referring to Mid/Res?

18 BY MR. DIVER:

19 Q. You, Bradley Mautner?

20 A. I think the same responsibility existed
21 for the Crown project as it did for all of the
22 projects since I was ultimately responsible for
23 the profit and loss and operations of our
24 business. But, I had no specific responsibilities

1 for the Crown project. No project management
2 responsibilities.

3 Q. What did you do during that period
4 between December, 1992 and the actual installation
5 and start up of the system?

6 A. I worked on many other projects.

7 Q. Did you do anything concerning this
8 project, any kind of superintendency, any specific
9 communications?

10 A. No. An occasional job site visit to see
11 what the progress was, the project was going
12 properly, but not as an oversight specifically.
13 We have a project manager who was responsible for
14 that.

15 Q. I'm showing you now a document consisting
16 actually of two exhibits. One is Exhibit 75,
17 being a cover transmittal sheet dated July 8,
18 1992. And, having attached to it certain
19 documents from Trane called Submittal/Selection.
20 And then another exhibit, Exhibit No. 3 with a
21 yellow sticker from yesterday being an
22 installation, operation, and maintenance manual
23 RAUC-10M-3A, and ask you to look at that combined
24 set of documents, tell me in you have seen that

1 before.

2 A. Yes, I've seen them before.

3 Q. Is that the pack of documents which
4 Mid/Res received from Trane that was to have been
5 submitted in turn to the architect?

6 A. I didn't personally, no, but I would
7 think they are.

8 Q. You have seen both of these documents,
9 this so called submittal/selection document in
10 Exhibit 75?

11 A. Yes, I've seen these subsequent to the
12 installation.

13 Q. Okay. And when did you first see the
14 submittal/selection documents in Exhibit 75?

15 A. Well, first, help me point out that I
16 haven't seen the document in its entirety.

17 Q. Okay.

18 A. But, parts of this document were given to
19 me after the system was in operation, and this was
20 a complaint by the neighbor.

21 Q. Given to you, these documents were given
22 to you by whom?

23 A. The project management department,
24 probably the project manager copied them for me.

1 Q. Who was the project manager for
2 construction/installation?

3 A. Jack Doshi, D-o-s-h-i.

4 Q. The document that's marked as Exhibit 3,
5 the IOM Manual, when did you first see it?

6 A. After there was a complaint by the
7 neighbor.

8 Q. Have you seen the complete document since
9 the complaint was made?

10 A. I have seen the complete document, but
11 reviewed only parts of it.

12 Q. When did you first receive this document
13 subsequent to the complaint?

14 A. I don't remember exactly when I got the
15 installation and operation maintenance manual, but
16 it was probably in 1994, early 1994.

17 Q. Before what we will call the first Shiner
18 test on or about July 5, 1994 or after?

19 A. I really don't know.

20 Q. But, clearly before 1995?

21 A. Yes.

22 Q. Okay. In the course of your reviewing at
23 least selected portions of this document, did you
24 review Page 5 which I've opened to your attention?

1 A. No.

2 Q. Have you ever seen Page 5 of that
3 document prior to right now?

4 A. I have seen it when I flipped through it
5 to look at other parts of the document.

6 Q. Have you ever, prior to right now, been
7 asked to read it?

8 A. I have not been asked to read this
9 specific page.

10 Q. Okay.

11 A. But, I have seen it.

12 Q. All right. Referring you specifically to
13 the diagram of a name plate on the right portion
14 of this plan, have you ever, prior to today,
15 reviewed that particular name plate form?

16 A. I have seen that prior to today.

17 Q. Oh, you have?

18 A. Yes, I've seen the page prior to today.

19 Q. Now, I'm asking you have you reviewed the
20 name plate form prior to today?

21 A. I've read it prior to today, yes.

22 Q. There's language on that form that name
23 plate form, and I ask you to read, and I'm
24 pointing to the particular language, just read it,

1 if you would.

2 A. Doesn't copy very well, but I believe it
3 says for non residential installation only.

4 Q. When was the first time that you read
5 that language on that name plate in this document?

6 A. I don't remember the first time, but it
7 was after I received this document.

8 Q. Was it before 1995?

9 A. Yes.

10 Q. Just so I understand your testimony, is
11 that the combined Exhibit 75 and Exhibit 3 are the
12 documents that Mid/Res received from Trane with
13 respect to the submittal, selection and IOM
14 manual, is that correct?

15 A. Yes.

16 MR. DIVER: Move the admission, Madam
17 Hearing Officer, of Exhibit 75 and Exhibit 3.

18 HEARING OFFICER: Are there any
19 objections?

20 MR. ELLEDGE: No objection.

21 HEARING OFFICER: They will be admitted
22 into evidence.

23 BY MR. DIVER:

24 Q. During the course of constructing and

1 installing equipment, do the Mid/Res employees
2 prepare time sheets indicating what it is that
3 they are doing on the particular client's project?

4 A. Generally, yes.

5 Q. Are the people in the field also required
6 to prepare such time sheets indicating what it is
7 that they're doing and the time that's associated
8 with it?

9 A. Generally, yes.

10 Q. Why are those time sheets prepared by
11 your employees?

12 A. The primary reason to prepare the time
13 sheet is to pay the employee for hours worked in
14 the field.

15 Q. Why is the employee advised to actually
16 provide information concerning the details of what
17 he or she is doing?

18 A. So we can monitor the progress of work
19 that he's doing.

20 Q. All right. The preparation time records
21 is not, was not unique to the Crown project, was
22 it not.

23 A. No.

24 Q. Showing you now what has been marked as

1 Exhibit 79. Asking you, for the moment, if you
2 can identify that form as being the Mid/Res form
3 used for the recordation of time by your employees
4 working on projects such as the Crown project?

5 A. Yes.

6 Q. As long as we're looking at Exhibit 79,
7 have you ever seen that particular time sheet
8 before?

9 A. Yes.

10 Q. When was the first time you saw it?

11 A. When you showed it to me.

12 Q. Just now?

13 A. In a deposition.

14 Q. Which would have been earlier this year.

15 A. And, this specific time sheet.

16 Q. In the ordinary circumstances, would you,
17 in a project such as the construction and
18 installation of the Crown project, actually
19 receive and review time sheets such as this
20 exhibit?

21 A. No.

22 Q. Who would?

23 A. The project manager.

24 Q. That would be Mr. Doshi?

1 A. Yes.

2 Q. Anyone else?

3 A. No.

4 Q. Did you actually have any other persons
5 at Mid/Res who were responsible, in a key way, for
6 the construction and installation of the HVAC
7 system at the Crown residence?

8 A. Well, I'm not sure what you mean by key.

9 Q. All right. Since that obviously didn't
10 ring a bell with you, were there other people in
11 senior management positions who had
12 responsibilities parallel to or as peers with Mr.
13 Doshi?

14 A. I think what you're trying to ask, I
15 think, is are there other people who are
16 responsible for the installation department.

17 Q. Well, I'm trying to find out if there are
18 people that do not have to report to Mr. Doshi who
19 had responsibilities as peers of his, but not
20 having to report to him or through him?

21 MR. LAURI: Report to whom?

22 MR. DIVER: Ultimately to report to
23 senior management in Mid/Res?

24 A. I'm not sure what you're trying to ask.

1 Jack Doshi, I'll try and make it as clear as I
2 can, since our corporate structure is not at issue
3 here. Jack Doshi was the project manager. He
4 works for, which is what I think you're trying to
5 get, Harry Acres, A-c-r-e-s, who is responsible
6 for all of the project managers and field
7 construction superintendents. They interact with
8 each other every day.

9 Q. Good. So, Acres was, at the time of this
10 particular project, in a superior position to Mr.
11 Doshi?

12 A. Yes.

13 Q. And Mr. Doshi reported to him?

14 A. Yes.

15 Q. Would it have been the usual circumstance
16 that Mr. Acres would see and review the time
17 sheets such as Exhibit 79, which you just looked
18 at?

19 A. No.

20 Q. Do you recall when, approximately, the
21 HVAC system was first placed on the property?
22 And, the HVAC system that I'm concerned about is
23 the chiller unit. When was the chiller unit
24 physically placed on the Crown property?

1 A. I don't know the exact time.

2 Q. Do you know the year?

3 A. 1993.

4 Q. When did the HVAC -- when did the chiller
5 unit, when did the chiller unit begin operation,
6 if you know?

7 A. I think late 1993.

8 Q. Would September, 1993 be closer?

9 A. If you think it is, sure.

10 Q. I don't know.

11 A. I don't know, late 1993, fall of 1993.

12 The exact month, I do not know.

13 Q. Were you contacted by Mr. Crown shortly
14 after the commencement of operation of the chiller
15 unit reporting a complaint?

16 A. I don't remember specifically being
17 contacted by him, but we ultimately discussed it.

18 Q. You and Mr. Crown, ultimately--

19 A. Yes.

20 Q. -- discussed a complaint associated with
21 commencement of operation of the unit?

22 A. Yes.

23 Q. And, did that complaint have to do with
24 the Sheltons, the Complainants here?

1 A. Yes.

2 Q. And an assertion of noise coming from the
3 chiller unit?

4 A. Yes.

5 Q. When did you have that conversation with
6 Mr. Crown?

7 A. I don't remember the exact time.

8 Q. Do you recall whether it was still in the
9 fall of 1993?

10 A. I don't recall. It may have been, I just
11 don't recall the exact time of the conversation.

12 Q. What did Mr. Crown tell you?

13 A. I don't remember the exact conversation
14 other than he had been advised that this was a
15 complaint by the neighbor about the sound levels
16 of the unit and had asked me to review the
17 situation, since I was not actively involved in
18 the construction portion, but to review the
19 situation to see if there was any steps we could
20 take to reduce the sound levels.

21 Q. Did you consider at this point of this
22 conversation with Mr. Crown that you were in
23 charge of the project for finding a solution to
24 the sound problem?

1 A. Well, I felt and still feel ultimately
2 that we want to participate and resolve the
3 problem. Therefore, since it's our company, I
4 would take the lead position in seeing if we could
5 find the right solution.

6 Q. Well, what I'm asking is did you take the
7 lead in trying to find a solution following that
8 conversation with Mr. Crown?

9 MR. LAURI: Object to the term "the
10 lead".

11 BY MR. DIVER:

12 Q. Did you assume the responsibility for
13 managing and directing the efforts of others at
14 Mid/Res on an active basis, to find solutions to
15 the sound problem that had been reported to you?

16 A. I've been active in trying to find a
17 solution, yes, as well as eliciting the
18 participation of any resource within our company
19 that we have.

20 Q. To whom did you delegate, if you
21 delegated, the responsibility for active
22 management of the process of finding a solution.
23 Whom did you delegate that responsibility to?

24 A. There was no specific delegation.

1 Q. Did you ever, at the time that you, at or
2 about the time you talked with Mr. Crown, ask
3 employees of Mid/Res to conduct measurements of
4 the levels of sound being emitted from this
5 chiller unit?

6 A. I don't remember asking them specifically
7 to conduct measurements.

8 Q. Do you recall that anyone, any of the
9 employees at Mid/Res reported to you at or about
10 this time that they had conducted measurements of
11 the sound emissions coming from this chiller unit?

12 A. I recall it only in regard to the fact
13 that you showed me documentation prior that you
14 did conduct the sound measurements.

15 Q. Following my showing you that document,
16 did you conduct any interrogation of people at
17 Mid/Res as to whether or not they had actually
18 conducted such a sound measurement?

19 A. No interrogation.

20 Q. Did you actually talk to anyone at
21 Mid/Res about whether or not they had
22 conducted sound measurements at or about the time
23 you spoke with Mr. Crown?

24 A. Yes.

1 Q. And, with whom did you speak?

2 A. Harry Acres.

3 Q. And, what did he tell you?

4 A. He said he conducted sound measurements
5 and that he believed that it was one of my
6 suggestions that we take preliminary readings.

7 Q. But, you don't recall having made that
8 recommendation?

9 A. I don't recall recommending it, but we
10 did meet together to discuss what steps we should
11 take. And, I don't recall specifically asking him
12 to do it, but he recalls that I did.

13 Q. Do you recall his telling you what the
14 results of his testing were?

15 A. I don't recall him telling me, I recall
16 him saying that they took readings and that they
17 really didn't know what conclusions were to come
18 from those readings.

19 Q. You recall that at or about the time that
20 readings were taken, that the report that you've
21 just described was given to you?

22 A. No, I don't recall that it was given to
23 me. I think he just said to me that they took
24 readings and I don't remember seeing the readings

1 until subsequently they've been pointed out in the
2 last deposition testimony.

3 Q. Just so I understand your testimony, your
4 testimony is that at or about the time you spoke
5 with Mr. Crown, you had heard from Mr. Acres that
6 he had conducted sound measurements?

7 A. That was after Mr. Crown.

8 Q. After Mr. Crown had communicated to you,
9 Mr. Acres then reported to you that he had
10 conducted sound measurements, and you recall that
11 communication today?

12 A. I do now, yes.

13 Q. But, you do not recall what he told you
14 in terms of what he learned?

15 A. No, I recall that he took measurements
16 and was inconclusive as to what they were to tell
17 him about the sound levels.

18 Q. Is that the terminology that he used,
19 that he said that the results are inconclusive?

20 A. No, that's my summarization of what he
21 told me.

22 Q. I'm asking what he told you, not your
23 summarization?

24 A. That's what I believe he's saying, he

1 said to me.

2 Q. Did he tell you what sound measurements
3 were actually made, what the levels of detection
4 were, using the measuring devices?

5 A. He may have mentioned numbers, I don't
6 remember the specific numbers.

7 Q. Did he give you any indication at that
8 time as to whether the measuring incident or event
9 indicated that there was, indeed, a sound problem?

10 MR. LAURI: Object. He's asked on 3
11 different occasions and the witness has said on 3
12 different times that his memory is that it was
13 inconclusive.

14 MR. DIVER: He's report that that was his
15 conclusion, and I'm trying to get to what the
16 actual information was that was communicated to
17 him as opposed to his summarization.

18 HEARING OFFICER: Objection sustained as
19 to the wording, your wording of your question.

20 BY MR. DIVER:

21 Q. When Mr. Acres reported to you on this
22 event, do you recall whether he communicated to
23 you an indication of the severity of the problem
24 as he determined it during that measuring

1 incident?

2 A. Define severity for me.

3 Q. Did he say something like hey, this is no
4 problem, this is a big problem, Brad, you should
5 forget it, don't pay any attention to it. Any
6 indication at all of the severity?

7 MR. LAURI: I will object again. He said
8 that Mr. Acres informed him that it was
9 inconclusive, that's his memory.

10 MR. DIVER: Again, it was not what -- the
11 witness is not saying that that's what Mr. Acres
12 told him, he's saying that that's what he
13 concluded or determined after hearing what Mr.
14 Acres had to say. What we're trying to find out
15 is what Mr. Acres actually had to say, what was
16 communicated, and we're having some difficulty in
17 that.

18 HEARING OFFICER: Could you rephrase your
19 question then, Mr. Diver?

20 BY MR. DIVER:

21 Q. You don't recall, as I understand it, any
22 particular numbers that Mr. Acres communicate to
23 you, is that correct?

24 A. I don't recall specifically.

1 Q. Do you recall whether Mr. Acres
2 communicated, at that time, to you that he
3 considered the problem to be of some significance
4 and needing your attention?

5 A. No, I don't recall him saying that he
6 thought the problem was so significant that it
7 needed my attention. My attention was already
8 gathered by the conversation which prompted us to
9 convene to discuss steps. I think perhaps I can
10 clear it up.

11 HEARING OFFICER: Mr. Mautner, you need
12 only answer the question as it's posed.

13 A. Okay.

14 BY MR. DIVER:

15 Q. At some point following this sound
16 measurement incident and the communication from
17 Mr. Acres, did you receive information from Trane
18 concerning sound power levels emitted from this
19 equipment?

20 A. Yes.

21 Q. You received that information sometime in
22 October of 1993, does that sound about right?

23 A. I don't remember when I received it. I
24 did get it directly from Trane.

1 Q. From whom did you get it?

2 A. Someone in our company requested it.

3 Q. Do you recall having gotten it from Mr.
4 Doshi?

5 A. I'll say that I did, but I don't
6 remember.

7 Q. I'm going to show you now a document
8 which has been marked Exhibit 82. Ask you if you
9 recognize the cover letter on that exhibit, as
10 well as the two documents that are attached?

11 A. Yes.

12 Q. You have seen that document before today?

13 A. Yes.

14 Q. Did you see that document at or about the
15 time of its date?

16 A. Yes.

17 Q. Is that the Trane Sound Power Level
18 information that you received at that time?

19 A. Yes.

20 Q. Did you review this information at that
21 time?

22 A. Yes.

23 Q. Okay.

24 MR. LAURI: I haven't reviewed the

1 document. But just for the record, it's clear
2 you're referencing to the fax dated 11-1-93?

3 A. Yes.

4 MR. DIVER: Madam Hearing Officer, move
5 the admission of Exhibit 82.

6 MR. ELLEDGE: No objection.

7 HEARING OFFICER: Okay. Let the record
8 show that it does not appear that these pages are
9 consecutive in the original, although they do
10 appear to be the pages which were sent by fax,
11 which is Exhibit 82.

12 MR. DIVER: Yes, they are Pages 1, 2,
13 and 3 of the fax.

14 MR. ELLEDGE: In the upper right hand
15 corner, the fax identification is --

16 HEARING OFFICER: Exhibit 82 is entered
17 into evidence.

18 MR. DIVER: Thank you, Madam Hearing
19 Officer.

20 HEARING OFFICER: Might we go back and
21 handle Exhibit 79, which is the time reporting for
22 Mid/Res, Incorporated.

23 MR. DIVER: Yes, Madam Hearing Officer.
24 Because I'm anticipating an objection with respect

1 to information that's shown on the form, I will,
2 at this point, all I wanted to get this witness to
3 testify that this was indeed the form that Mid/Res
4 used, I will use another witness to have this
5 document admitted.

6 HEARING OFFICER: Okay. At this point,
7 perhaps we can take our morning break. Let's go
8 off the record.

9 (WHEREUPON, a short recess was taken.)

10 AFTER RECESS

11 BY MR. DIVER:

12 Q. Mr. Mautner you realize you're still
13 under oath?

14 Showing you now what's marked as Exhibit
15 83, a single handwritten document dated January
16 14th, 1994 and ask you to look at that and tell me
17 if you've ever seen it before?

18 A. Yes.

19 Q. You have seen it before?

20 A. Uh-huh.

21 Q. Does that describe the agenda or outline
22 of decision for a meeting with Mr. Crown in
23 January of 1994?

24 A. That, I don't know.

1 Q. Were you present at a meeting with Mr.
2 Crown at or about that day in 1994?

3 A. No.

4 Q. Do you recall ever meeting with Mr. Crown
5 to discuss proposed solutions to the noise problem
6 that he had asked you to address?

7 A. On occasion, after 1994, after January of
8 1994.

9 Q. Do you recall when, with respect to the
10 commencement of the operation of the machine and
11 the complaint that was registered by the Sheltons
12 when you -- strike that -- Mid/Res came up with a
13 proposal for attenuating the amount of sound
14 coming from this chiller unit.

15 A. When Mid/Res came up with a proposal?

16 Q. Yes.

17 A. Oh, we had discussions in the winter of
18 1993 and early 1994. Yes, we made recommendations
19 subsequent to that.

20 Q. When did you first see this document
21 that's in front of you now?

22 A. This one?

23 Q. Yes.

24 A. When you showed it to me.

1 Q. Okay. As of January of 1994,
2 thereabouts, had Mid/Res concluded and determined
3 what it ought to do to correct the sound problem
4 that had been raised?

5 A. We had recommendations that we made.

6 Q. Okay. Who did you make them to?

7 A. To Steve Crown.

8 Q. Do you recall personally making them to
9 Mr. Crown?

10 A. No, I don't recall personally making the
11 specific recommendations, but we may have
12 discussed it, I just don't recall specifically.

13 Q. Who was responsible for making the
14 recommendations specifically to Mr. Crown?

15 A. No one was responsible specifically to
16 make recommendations to Mr. Crown.

17 Q. Had Mr. Crown asked you to tell him what
18 your recommendations were?

19 A. Yes, yes.

20 Q. And, I'm asking who told him what the
21 recommendations were?

22 A. We may have given our recommendations to
23 the general contractor or directly to Steve, I
24 don't remember.

1 Q. As you deliberated the options for
2 remedial action, did you discuss the options with
3 Mr. Crown?

4 A. Yes.

5 Q. What were the options that you discussed
6 with Mr. Crown as you went about the process of
7 determining those final options?

8 A. Well, there were three basic options that
9 we discussed internally that we transmitted to Mr.
10 Crown. And, they are listed on this document.

11 Q. All right. And would you me what those 3
12 options are, or were?

13 A. Three options here are compressor covers,
14 actually panels, sound panels and cones.

15 Q. The compressor covers would be something
16 euphamistically referred to as a blanket, a sound
17 blanket over the compressor?

18 A. Yes, yes.

19 Q. And, the panels would actually be
20 acoustical material applied on the interior of the
21 chiller unit casing?

22 A. Yes.

23 Q. And, the cones would be what?

24 A. Cones would be short sheet metal

1 cylindrical devices attached to the discharge of
2 the fans.

3 Q. Okay. Earlier you had indicated the
4 sources of sound of the chiller unit. What
5 sources of sound were addressed, would be
6 addressed by these cones?

7 A. The fans.

8 Q. What sources of sound would be addressed
9 by the blankets?

10 A. The compressor.

11 Q. What source of sound would be address by
12 the acoustical material on the interior casing?

13 A. Any of those sounds. It would be inside.
14 The cabinet would be dampened, so probably
15 compressors and fans.

16 Q. Were there any other recommendations --
17 strike that -- were there any other options that
18 you discussed and presented to Mr. Crown, even
19 though they didn't make the final list?

20 MR. LAURI: Objection. I don't know if
21 he's testified that he presented them to Mr.
22 Crown.

23 HEARING OFFICER: Please rephrase your
24 question, Mr. Diver.

1 MR. DIVER: All right.

2 BY MR. DIVER:

3 Q. Were there any other options that Mid/Res
4 developed other than these 3.

5 MR. LAURI: At that time?

6 MR. DIVER: At that time, yes.

7 A. Not that I'm aware of.

8 BY MR. DIVER:

9 Q. All right. With whom did Mid/Res consult
10 in terms of outside the company with respect to
11 identification of possible solutions to the sound
12 problem --

13 A. Subsequently, we consulted with Al
14 Shiner.

15 Q. -- in the development--

16 A. Oh, of these?

17 Q. -- of the options, who did you consult
18 with?

19 A. No one else I can think of.

20 Q. So, it would be an inaccurate statement
21 to say you consulted with various engineering
22 firms outside of Mid/Res. It would be inaccurate
23 to say that, is that true?

24 A. At this time, yes.

1 Q. At a point in time, you proposed a
2 contractual amendment to your undertaking with
3 respect to the Crown project to incorporate these
4 sound attenuating devices?

5 A. We may have, yes.

6 Q. Okay. I'm showing you now what I've
7 marked as Exhibit 31. This is from yesterday.
8 Ask you if you recognize that document?

9 A. Yes.

10 Q. Was that a document that Mid/Res
11 submitted to the general contractor on the project
12 with respect to the sound attenuating devices?

13 A. Yes, as well as other system changes.

14 Q. Correct. The sound attenuating devices
15 in this exhibit are the first 3; 1, 2, 3, at the
16 very center of Page 1 of the exhibit.

17 A. Yes.

18 MR. DIVER: Move the admission of Exhibit
19 31.

20 MR. ELLEDGE: No objection.

21 HEARING OFFICER: Exhibit 31 is entered
22 into evidence.

23 BY MR. DIVER:

24 Q. I'm showing you what I've marked as

1 Exhibit 32, being a document dated March 16th.

2 A. These are the same copies.

3 MR. DIVER: I'm sorry, yes, I'm sorry.

4 Do you recognize that document?

5 A. Yes.

6 BY MR. DIVER:

7 Q. Is that the document which ultimately
8 identified what the changes were that you were
9 going to make to this equipment to provide for
10 sound attenuation?

11 A. Yes.

12 MR. DIVER: Madam Hearing Officer, move
13 the introduction of Exhibit 32.

14 MR. ELLEDGE: No objection.

15 HEARING OFFICER: Is there an objection?

16 MR. DIVER: No objection was stated.

17 MR. ELLEDGE: No objection.

18 HEARING OFFICER: Exhibit 32 is entered
19 into evidence.

20 BY MR. DIVER:

21 Q. Now, the time you identified these three
22 changes to be made, what were you attempting to
23 accomplish; that is, what was your goal?

24 A. Our goal at the time was simply to reduce

1 the sound levels emitted from the unit.

2 Q. Were you trying to meet any particular
3 objectively ascertainable standard?

4 A. No.

5 Q. Had you considered meeting an objectively
6 ascertainable standard?

7 A. Not at that time.

8 Q. The three proposals, they had been
9 developed by Mid/Res itself, is that correct?

10 A. Yes.

11 Q. You did. And, I'm correct, you had not
12 sought any acoustical expertise with respect to
13 what things might be done, is that correct?

14 A. Not at that time, I don't believe so.

15 Q. Had you ever made an indication to Mr.
16 Crown as to what the effect of the establishment
17 of these three corrective devices would have with
18 respect to sound or noise?

19 A. No, I made a representation that they
20 would reduce sound levels, but we did not know by
21 how much.

22 Q. Did you tell Mr. Crown that, indeed, you
23 didn't know how much reduction sound there would
24 be at all?

1 A. I didn't know how much, yes, that's what
2 I told him.

3 Q. And, did you tell him that you didn't
4 know whether it would solve the problem that the
5 Sheltons were complaining about?

6 A. I didn't tell him that specifically, but
7 I didn't know it was a subjective complaint. So,
8 we didn't know.

9 Q. Did Mr. Crown ask you whether or not
10 doing these three things would correct the
11 Shelton's complaint?

12 A. I don't remember specifically him asking
13 me that.

14 Q. Do you recall that was his instructions
15 to you, to do what was necessary to eliminate the
16 noise about which the Sheltons were complaining?

17 A. Yes, he wanted recommendations to do what
18 was necessary to eliminate this complaint.

19 Q. And, making these recommendations, was it
20 your opinion that actually doing these three
21 things would eliminate the source of the
22 complaint?

23 MR. LAURI: Objection, asked and
24 answered. He said he didn't know.

1 HEARING OFFICER: Objection sustained.

2 MR. DIVER: Okay.

3 BY MR. DIVER:

4 Q. What did you consider of the noise
5 sources or the sound sources in this equipment,
6 which did you consider at that time to be the
7 loudest sound?

8 A. Well, at that time, I thought the most
9 sound attenuation would be achieved by the sound
10 cones.

11 Q. Did you, at that time, consider that the
12 loudest noise was from the fans?

13 A. Yes, it was my opinion that the loudest
14 noise would probably be from the fans.

15 Q. As you actually experienced the sound of
16 the system, was it your opinion that of all of the
17 sound being emitted from the various moving parts,
18 that the loudest sounds were coming from the fans?

19 A. It seemed so.

20 Q. At a point in time an instrument test was
21 made of the sound being emitted from this revised
22 chiller unit, was it not?

23 A. Yes, tests were made.

24 Q. Would that have been on or about July

1 5th, 1994?

2 A. From the documents that I've seen, I
3 would say yes. I was not present.

4 Q. Did you receive a copy within 24 hours of
5 the time of the test, of the test results?

6 A. I received a copy immediately after the
7 results were --

8 Q. Who did you receive a copy from?

9 A. I don't remember.

10 Q. Mr. Shiner?

11 A. It may have been Mr. Shiner.

12 Q. Your recollection, you don't recollect,
13 however?

14 A. Someone faxed them to us. I don't
15 remember who faxed them to us.

16 Q. And, you look at them at that time?

17 A. Yes.

18 Q. And, was it your consideration as to
19 whether or not the unit was still causing noise at
20 that time?

21 MR. CARSON: Object to the form of the
22 question. I think it's assuming facts not in
23 evidence. There's been nothing from this witness
24 that the unit was causing noise at any time prior

1 to this event.

2 HEARING OFFICER: Can you rephrase your
3 question?

4 MR. DIVER: Yes. What -- Is there a
5 difference between sound and noise?

6 MR. ELLEDGE: If you know?

7 A. Well, this is familiar territory. I
8 would assume that the subjective opinion of
9 someone is that sound which they object to would
10 be considered noise.

11 Q. Have you ever expressed, after the July
12 5, 1994 test, that the test indicated that the
13 units were still causing noise?

14 A. No, I never expressed that.

15 Q. Have you ever expressed that to anyone,
16 ever, about those units and what the test showed?

17 A. No, I have only expressed that the sound
18 levels, based on the readings, were higher than
19 the standards indicated in the letter. But, I've
20 never expressed to anyone that it was noise, it
21 was objectionable to someone else.

22 Q. I'm referring you now to your deposition
23 on April 17th, 1996. You recall having your
24 deposition taken at or about that time?

1 A. Yes.

2 Q. Referring you now to Page 100 of that
3 exhibit and I'm going to read a question that was
4 asked of you and an answer you gave and ask
5 whether or not, what the question asked and
6 answered you.

7 MR. CARSON: What page, counsel?

8 MR. DIVER: Page 100, question is,
9

10 Q. But, the first sound measurement.
11 that Al Shiner made, do you recall
12 that the data that came out as a
13 result of that indicated that
14 this air conditioning system, even
with the attenuating systems that
you had put on, was still causing
noise at the property?

15 A. Yes, it was still causing noise."
Now, I'll show you that page again and ask you
16 if that was the question that was asked and
17 whether that was the answer you gave.

18 A. Yes.

19 Q. Do you care to correct your testimony of
20 a minute ago that you've never told anybody that
21 this unit was still causing noise following that
22 test?

23 A. I told you.

24 Q. I'm also somebody.

1 A. Yes, I told you at the deposition, but I
2 never said that to Al Shiner.

3 Q. But, you did believe it?

4 A. No, I believe that the readings were over
5 the levels that he put in the letter.

6 Q. The levels that he put in the letter,
7 what were those levels as you understood them?

8 A. They were an Illinois Pollution Control
9 Board defined level of sound.

10 Q. The exceedence of which would be a
11 violation of Illinois law?

12 MR. ELLEDGE: Objection, calls for a
13 legal conclusion.

14 Q. Was that your understanding?

15 HEARING OFFICER: Objection sustained.

16 BY MR. DIVER:

17 Q. Were the measured sounds you were given
18 the results of, in July as a result of the July
19 5th test, were the numbers in excess of the
20 numbers that were shown as the Illinois standards?

21 A. Yes.

22 Q. Were they in excess in virtually every
23 octave band?

24 MR. CARSON: Best evidence, objection

1 here. The numbers are what they are. And, to ask
2 the witness what his recollection of them wouldn't
3 be the best evidence.

4 HEARING OFFICER: Sustained.

5 BY MR. DIVER:

6 Q. Looking at Exhibit 58 and Exhibit 56
7 together, showing those to you now.

8 A. Okay.

9 Q. I ask you now if you recall seeing those
10 two documents on or about the date that's
11 indicated by the cover transmittal letter?

12 A. Yes.

13 Q. On or about July 6th?

14 A. Yes.

15 Q. And, the data that's shown on the page
16 dated July 5th is the data that you received, is
17 that correct?

18 A. Yes.

19 MR. DIVER: Move the admission of Exhibit
20 56 and 58.

21 MR. ELLEDGE: I object. At this point,
22 this is all hearsay. It's a report by someone who
23 is not present.

24 MR. DIVER: I understand. I will not

1 have it admitted for truth of what's stated, but
2 merely for the fact that this witness received
3 these documents on or about July 6th, 1994.

4 MR. CARSON: For that limited purpose, we
5 object to the relevance. These are test results.
6 The one who conducted the test is going to be
7 testifying today. If you want to put it into
8 evidence, you know, it seems to us it could be
9 done through that witness.

10 MR. DIVER: In terms of putting it into
11 evidence for the purpose of stating the truth of
12 what it says, Madam Hearing Officer, that's
13 correct. With respect to establishing the fact
14 that this witness received it, this is the witness
15 that I need to have that admitted through.

16 MR. LAURI: Madam Hearing Officer, I'll
17 add that Mr. Mautner testified to that already.
18 He received it on or about the date that the cover
19 sheet bears. There is no reason to admit it into
20 evidence. He's made that testimony.

21 MR. DIVER: At this point, your Honor, no
22 one reviewing this record will understand what it
23 is that he received, unless they actually see the
24 document.

1 MR. ELLEDGE: That's correct. So comes
2 your obligation to introduce it at some point.

3 MR. DIVER: No, to establish the truth
4 of what's in it, yes. But, to establish the truth
5 of it having been received by this witness, no,
6 no. But, obviously, the person who communicated
7 it to this witness can testify to the fact that he
8 generated the data or that he sent this document.
9 But, he can't be the person who, the person that
10 testifies that this document, this cover letter
11 and this document attached were received by this
12 witness.

13 HEARING OFFICER: The objection is
14 overruled. The Exhibit will be entered into
15 evidence, Exhibit 56 and 58. Exhibit 56 is being
16 entered for the limited purpose of showing that
17 Mr. Mautner did receive this information and
18 looked at it.

19 MR. ELLEDGE: Thank you.

20 BY MR. DIVER:

21 Q. Mr. Mautner, prior to this test that was
22 ostensibly conducted by Mr. Shiner on July 5th,
23 had you contacted Mr. Shiner?

24 A. I don't know if it was prior or post, but

1 I think it was prior, yes.

2 Q. Had you retained him to perform services
3 on behalf of yourself or your client, the Crowns,
4 prior to the conduct of this test?

5 A. I don't remember when we agreed together
6 to allow him to work for both parties. I spoke
7 with Mr. Shelton specifically about that topic.

8 Q. But, your recollection is that you did
9 talk to Mr. Shiner prior to the conduct of the
10 test?

11 A. I don't recall exactly when I spoke with
12 him, but we did speak about this project and we
13 did engage him.

14 Q. Subsequent to the conduct of the test,
15 did you have occasion to be at a meeting
16 specifically on June 11th of 9 -- strike that -- a
17 meeting on or about July 11th with Mr. Keller,
18 with Mr. Shiner, with yourself at the very least
19 to discuss further solutions to the sound problem
20 from this chiller unit?

21 A. I don't remember the date, but we met to
22 discuss further solutions, yes.

23 Q. And, what was your particular role in
24 that discussion?

1 A. I was an active participant to see if I
2 could contribute or hear what the recommendations
3 were by an expert.

4 Q. Was it your role in that group at that
5 time and subsequently to develop a specific design
6 for further attenuating devices?

7 A. It was our company's role to make
8 recommendations for further attenuating. But, we
9 were working as a team to do it.

10 Q. Showing you now what has been marked as
11 Exhibit 68. Do you recognize that document?

12 A. Yes.

13 Q. And, did you actually receive a copy of
14 it handed to you at or about the time of its date,
15 July 12th?

16 A. Yes.

17 Q. The person to who it's actually faxed is
18 an employee of yours, right?

19 A. He's an employee of Mid/Res', yes.

20 Q. And, the drawing that was attached to
21 that communication, in whose hand was that, if you
22 know?

23 A. I don't know, but Al Shiner's card's on
24 it, so we'll say that it was his. But, I don't

1 know who drew this.

2 Q. Did you ever testify that that was Mr.
3 Keller's drawing?

4 A. I don't remember whether it was Pete
5 Keller's creation or Al Shiner's, but it may have
6 been Pete Keller's.

7 Q. My question was, do you recall ever
8 testifying that it was Mr. Keller's drawing.

9 MR. LAURI: You talking about his
10 deposition?

11 Q. Yes.

12 A. Why don't we just read it.

13 A. I don't recall.

14 Q. I'm asking you whether you remember
15 telling me that it was Mr. Keller's drawing in
16 that deposition?

17 A. It may have been Mr. Keller's, I don't
18 recall specifically.

19 Q. Turning to the first page of the
20 document, there are handwritten notes at the
21 bottom. Do you recognize the hand of those
22 handwritten notes?

23 A. No 4.

24 Q. The drawing that's attached, is that a

1 fair representation of the scheme that was
2 discussed at the meeting that immediately preceded
3 it, which you attended?

4 A. Yes, I would say it was a fair
5 representation.

6 Q. Okay.

7 A. Yes.

8 MR. DIVER: Move the admission of
9 Exhibit 68.

10 MR. ELLEDGE: No objection.

11 HEARING OFFICER: Is there any objection?

12 MR. DIVER: There was no objection.

13 MR. ELLEDGE: No objection.

14 HEARING OFFICER: Exhibit 68 is entered
15 into evidence.

16 BY MR. DIVER:

17 Q. Did Mr. Shiner ever make any
18 representation that you're aware of, that the
19 implementation of the design shown in that drawing
20 would allow this air conditioner to meet the
21 Illinois standards.

22 MR. LAURI: I'll object on form, is it a
23 representation to Mr. Mautner that you're
24 referring to?

1 MR. DIVER: Yes.

2 BY MR. DIVER:

3 Q. Did Mr. Shiner make that representation
4 to you?

5 A. I don't remember him making that
6 representation that it would meet the standards.
7 I remember him asking specifically whether or not,
8 after the drawing was made, whether or not that
9 was an adequate design, from a mechanical point of
10 view.

11 Q. Right, I understand. That's not my
12 question, however. My question next is did the
13 ultimate -- strike that -- the plan that was
14 ultimately implemented with respect to further
15 attenuating devices, did Mr. Shiner ever make any
16 representation to you that that system would
17 enable this facility to meet the Illinois noise
18 standards?

19 A. He never said that to me, no.

20 Q. Are you aware whether he made any
21 commitment to anyone that the ultimate attenuating
22 system that was in place after this meeting would
23 meet the Illinois standards?

24 A. I don't know if he did?

1 Q. But, he certainly never made it in your
2 presence?

3 A. Not to me.

4 Q. Has anyone ever told you that Mr. Shiner
5 had committed that the system that was ultimately
6 established would meet the Illinois standards?

7 A. No.

8 Q. Mr. Mautner, I'm handing you now what
9 has been marked as Exhibit 30, being an apparent
10 cover letter of April 11th, and a document that's
11 just been marked Exhibit 87 being, document 87
12 being a multi page invoice of the same date as the
13 letter. Is Exhibit 30 a correct copy of the
14 letter of that date that you sent to Steven Crown
15 enclosing your final invoice?

16 A. Yes.

17 Q. Fine. In the first paragraph you
18 indicate that you're also including a copy, a fax
19 that you had received from Al Shiner showing that
20 Illinois State Pollution Control Board sound
21 requirements do not apply household units, is that
22 correct; that that's in paragraph 1?

23 A. Yes, that was from Al Shiner, yes.

24 Q. You had received some document from Mr.

1 Shiner so stating?

2 A. Yes.

3 Q. Was that the first advice that you had
4 ever received from anyone that there was such an
5 exclusion or exception with respect to household
6 units?

7 A. Yes.

8 Q. Was this the first time that you had
9 communicated this information to Mr. Crown?

10 A. I believe so, other than the phone
11 conversation on Friday.

12 Q. Other than the phone conversation that--

13 A. That previous Friday. This was a
14 confirmation of that phone conversation.

15 Q. Thank you. The document that was shown
16 you as Exhibit 87, is that a true and correct copy
17 of the invoice that accompanied your letter of
18 April 11th to Mr. Crown?

19 A. I believe so, yes.

20 MR. DIVER: Madam Hearing Officer, move
21 the admission of Exhibits 30 and 87.

22 MR. CARSON: We can't seem to locate a
23 copy of 87. Can we just take a look at that for a
24 moment?

1 MR. DIVER: Sure can.

2 MR. CARSON: We have no objection to 87.
3 We're just concerned that it might be duplicative.
4 It looks like something that was introduced
5 yesterday, but we have no objection to 87. If it
6 turns out that it's duplicative, we can go back
7 and clean it up somehow.

8 HEARING OFFICER: There being no
9 objection to Exhibit 87 and Exhibit 30 --

10 MR. ELLEDGE: We have none.

11 HEARING OFFICER: -- they are entered
12 into evidence.

13 BY MR. DIVER:

14 Q. Mr. Mautner, recently there was a change
15 made in the operating cycle of the chiller unit in
16 the evening and nighttime hours. Are you aware of
17 that?

18 A. Yes.

19 Q. Can you describe what that operational
20 change has been?

21 A. Yes. We modified the operation of the
22 unit so that at a particular time of day,
23 programmable time of day, the system is restricted
24 such that it will only operate on one of the two

1 compressors, the smaller compressor, and cycle
2 only the fan on to accommodate the heat rejection
3 needed from that compressor.

4 Q. So, two of the fans would not then be
5 operating at that time?

6 A. Generally, no.

7 Q. And, one compressor would not be
8 operating?

9 A. Yes.

10 Q. What are the two sizes of the
11 compressors?

12 A. One is noted as a 10 ton compressor and
13 the other is a 15 ton compressor.

14 Q. When did that operational change go into
15 effect?

16 A. I don't know the exact date, but probably
17 within the last 4 to 6 weeks.

18 Q. And, at whose instance did that
19 operational change go into effect? We discussed
20 it as a result of nighttime measurements and our
21 getting a recommendation from an independent
22 person, who reviewed the situation and recommended
23 that we run only one system.

24 Q. This recommendation came from somebody

1 outside?

2 A. Yes.

3 Q. From whom?

4 A. George Camperman.

5 Q. Have you spoken to Mr. Camperman about
6 the anticipated sound generating reduction effects
7 of this operational change?

8 A. I haven't spoken to him about that
9 specifically.

10 Q. What have you spoken to him about?

11 A. About any other alternatives and changes
12 we could make to the system to reduce the sound
13 level at night.

14 Q. And, what has he told you?

15 A. It was his recommendation that, to run
16 one compressor and one fan, that would satisfy the
17 mechanical requirements, he believed that would
18 result in significant reduction in sound.

19 Q. When was that recommendation first made,
20 to your knowledge?

21 A. 6 weeks ago.

22 Q. Had you asked for this recommendation
23 from Mr. Camperman?

24 A. No.

1 Q. At the time this recommendation was
2 received from Mr. Camperman, what as Mid/Res doing
3 with respect to developing additional attenuating
4 devices or operational changes to reduce sound
5 emissions from this chiller unit?

6 MR. LAURI: We object on foundation,
7 between what period of time?

8 MR. DIVER: At or about the time of the
9 information from Mr. Camperman 4 to 6 weeks ago?

10 A. We had no other additional
11 recommendations.

12 Q. Indeed, the last recommendation that
13 Mid/Res had made was the one involving the
14 acoustical fence that was placed around the unit.

15 A. Our last recommendation was to buy a
16 specially engineered acoustical fence, that was
17 our last recommendation.

18 Q. That was sometime late 1994, early 1995?

19 A. Early 1995, late 1994, early 1995, right.

20 Q. Had Mid/Res been asked by Mr. Crown
21 subsequent to that installation to continue to
22 look for ways to reduce sound emissions?

23 A. Not specifically.

24 Q. Had he done it generally?

1 A. Yes.

2 Q. Tell me how he had done it to you
3 generally and when?

4 A. It was back in late 1994, early 1995 when
5 we were working through design of different
6 enclosures, he said to continue to look for
7 alternatives. Subsequently, we recommended the
8 purchase and installation of acoustically
9 engineered panels.

10 Q. After that installation of the
11 acoustically engineered panels, who reporting to
12 you, had you delegated the responsibility to
13 continue to think of sound reducing devices or
14 operational changes?

15 A. We had not delegated any additional
16 responsibilities.

17 Q. To the best of your knowledge, had
18 anybody spent any time considering other changes?

19 A. Other than the operational change that
20 just occurred?

21 Q. That origin was Mr. Camperman, no?

22 A. Yes.

23 Q. I'm talking about with Mid/Res. Had
24 Mid/Res personnel, yourself included, spent any

1 time thinking about those things, to the best of
2 your knowledge?

3 A. Not really, no.

4 Q. And with the exception of the general
5 instructions Mr. Crown had given you, you don't
6 recall any specific instructions subsequent to the
7 attenuation panels, to do more?

8 A. No.

9 Q. During the period 1991 to 1995, had you
10 visited the actual site of the reconstruction,
11 that is the Crown property?

12 A. Yes.

13 Q. On how many occasions?

14 A. Half a dozen.

15 Q. Okay. Pointing you to Exhibit 51, which
16 has previously been admitted, and indicating the
17 general outline of former residences and
18 expansion, and indicating in red from Mr. Crown
19 the location of the chiller unit, also indicates
20 things like construction fences around the woods
21 and property. Do you recall, in your visits, that
22 there were actual construction fences around the
23 property?

24 A. I'm not sure where you're pointing to.

1 Q. Well, showing existing construction with
2 a fence here, this fencing along the south here, I
3 mean, do you recall actually seeing fencing when
4 you arrived at the property?

5 A. No.

6 Q. Tell me the activities that you observed
7 when you visited the property the first occasion
8 or occasions?

9 A. I observed the activities inside the
10 structure.

11 Q. Okay. Did you observe when you arrived
12 at the location, activities that were ongoing
13 outside the structure?

14 A. Casually.

15 Q. Is there any demolition activities that
16 were occurring?

17 A. There may have been. I'm not aware of
18 any.

19 Q. Do you recall trucks being on the
20 premises?

21 A. Oh, yes.

22 Q. The workers?

23 A. Construction, workers, yes.

24 Q. Do you recall people living inside?

1 A. No.

2 MR. DIVER: That's all I have of this
3 witness, thank you.

4 HEARING OFFICER: Mr. Diver, I have here
5 Exhibit 83, which was introduced to the witness.
6 Do you wish to introduce this into evidence?

7 MR. DIVER: No, Madam Hearing Officer.
8 I'll withdraw for the moment until we can find
9 somebody who knows more about it.

10 (Off the record)

11 HEARING OFFICER: Back on the record.
12 And, at this time we'll have the cross-examination
13 of Mr. Mautner.

14 MR. ELLEDGE: Thank you, your Honor.

15 CROSS EXAMINATION

16 BY MR. ELLEDGE:

17 Q. Mr. Mautner, you were asked earlier with
18 respect to conversations with Mr. Crown in, I
19 believe you said 1991 or perhaps early 1992, with
20 respect the to location of the chiller?

21 A. Yes.

22 Q. And, you discussed the possibility of
23 sound impacting on a guest room, I believe you
24 said?

1 A. Yes.

2 Q. And, you were asked whether you had given
3 any consideration or had discussed the question of
4 sound impacts on, vertically on the neighborhood.

5 A. Yes.

6 Q. And --

7 MR. DIVER: I believe I said
8 horizontally.

9 BY MR. ELLEDGE:

10 Q. Horizontally, vertically, horizontally.
11 Is it customary to consider the impact of sound
12 horizontally at this point in development of a
13 project?

14 MR. DIVER: Objection, customary for
15 whom? There is no foundation that's been
16 established for that question.

17 MR. ELLEDGE: I think the foundation is
18 that he's in the business and he's talking about
19 the development of designs.

20 MR. DIVER: Is it customary for Brad
21 Mautner, is it customary for Mid/Res on its
22 projects with its customers, is it customary in
23 the industry? I think the question needs to be
24 more specific.

1 HEARING OFFICER: Can the question be
2 clarified?

3 MR. ELLEDGE: Yes.

4 BY MR. ELLEDGE:

5 Q. Have you had prior consultations with
6 other clients with regard to the development of a
7 design for air conditioning systems such as the
8 one in question here?

9 A. Yes.

10 Q. Over how long a period of years?

11 A. Me personally?

12 Q. You, personally?

13 A. Do the math, 18 years.

14 Q. And, you have had occasion to discuss or
15 develop designs many times within the period of
16 each one of those years, would that not be true?

17 A. Yes.

18 Q. Okay. Is it your custom, when dealing
19 with customers and describing or discussing the
20 aspects of such a system, is it customary to
21 discuss or consider the impact of sound from your
22 equipment on the neighbors?

23 A. No.

24 Q. Have you customarily done so?

1 A. No.

2 Q. Have you ever done so?

3 A. No.

4 Q. Okay, thank you. Now, reference was made
5 to an exhibit, Page 5 of Exhibit Number 3, I
6 believe?

7 A. Yes.

8 Q. And, there's a name plate on Page 5.

9 A. Yes.

10 Q. And, two-thirds of the way down the name
11 plate, there is language regarding residential
12 use?

13 A. Yes.

14 Q. Do you have any, do you know, have you
15 asked Trane why that statement is there?

16 MR. DIVER: Objection, rank hearsay.

17 MR. ELLEDGE: I asked him if he has
18 asked.

19 HEARING OFFICER: Objection overruled.

20 MR. DIVER: Oh, if he's asked, fine.

21 A. Yes.

22 BY MR. ELLEDGE:

23 Q. And, who were you discussing it with?

24 A. Chris Seda, S-e-d-a.

1 Q. And, when as that discussion?

2 A. After I saw this phrase.

3 MR. ELLEDGE: And, Chris Seda is under
4 subpoena in this case, as I understand it.

5 MR. KAISER: That's correct.

6 MR. DIVER: That's correct.

7 BY MR. ELLEDGE:

8 Q. Was this conversation a telephone
9 conversation or face-to-face?

10 A. Telephone.

11 Q. Did you have any follow-up conversation
12 with Mr. Seda with regard to the name plate, the
13 language there?

14 A. I believe there were two conversations.

15 Q. Okay. Could you tell me when they were?

16 A. After this was discovered, I don't
17 remember the exact time. And, the content was --

18 MR. DIVER: Objection as to the content
19 of what he was told, absolute hearsay.

20 A. No, what I said.

21 MR. DIVER: Oh, what you asked.

22 MR. ELLEDGE: Would you permit the
23 witness to answer, please?

24 MR. DIVER: Yes, I'm concerned about what

1 he --

2 MR. ELLEDGE: Let me rephrase the
3 question, if I may.

4 MR. DIVER: Please.

5 BY MR. ELLEDGE:

6 Q. Could you tell me roughly when was, what
7 was the time and circumstances of the first
8 telephone conversation with Mr. Seda, and Seda is
9 S-e-d-d-a?

10 A. S-e-d-a, I think. It was in early 1994,
11 I would guess.

12 Q. And, when was the second conversation
13 with Mr. Seda?

14 A. Sometime immediately near that time,
15 within a few months of that time.

16 Q. Have you ever discussed with anyone else
17 affiliated with Trane that particular name plate?

18 A. No.

19 Q. Okay. Do you know why that warning is on
20 the name plate; do you, yourself, know?

21 A. No, I don't know why.

22 Q. Did you ask Mr. Seda why the warning was
23 on the name plate?

24 A. Yes, that was in the first conversation.

1 Q. And, what did he tell you?

2 MR. DIVER: Objection, hearsay.

3 MR. ELLEDGE: It's not offered for the
4 truth of what Mr. Seda said, but whether Mr. Seda
5 gave him notice of any aspects, and just as for
6 the limited purpose of what was told and what the
7 warning was.

8 HEARING OFFICER: Objection sustained.

9 BY MR. ELLEDGE:

10 Q. Subsequent to that conversation with Mr.
11 Seda, did Trane send you, personally, or any
12 representative of Trane send you any further
13 documents or papers with regard to that name
14 plate?

15 A. Not with regard to the name plate, but
16 with regard to the unit.

17 Q. Okay. Let me ask this. Since this
18 project was put in and the equipment was delivered
19 in 1993, have you, has Mid/Res, to the best of
20 your knowledge, recommended the use of this size
21 equipment in a residential application -- let me
22 withdraw that question and go back. Would you --
23 references have been made throughout, I think, to
24 the question of this as being a residence. Is

1 this a customary residence?

2 A. No.

3 Q. Is it, however, of a type that's similar
4 to other residences on the north shore suburbs?

5 A. I would say similar and even larger.

6 Q. Okay. And, are you familiar with other
7 residences of this general nature throughout the
8 north shore?

9 A. Yes.

10 Q. And, are you familiar with the kinds of
11 cooling systems that are used in these residences?

12 A. Generally, yes.

13 Q. Do they -- to your knowledge, do they use
14 comparable equipment, and by equipment, I'm
15 referring to the chiller unit?

16 A. There are some that use similar
17 equipment, yes.

18 Q. Okay. Would you recommend this equipment
19 for such an application at this point?

20 A. Yes.

21 Q. Okay. You were asked with regard to the,
22 I believe one of the early times when you went out
23 to hear the unit before the first set of
24 alterations were made, what the loudest noise was

1 from that unit, do you recall that?

2 A. Yes.

3 Q. What was your, how would you assess the
4 noise that you heard at that time?

5 A. Well, the loudest noise was from the fan,
6 I believe it was from the fan systems.

7 Q. Okay. And, have you heard the -- did
8 you -- were you on site or were you in a position
9 hear the sound that was emitted from the unit
10 after the first set of corrections were made?

11 A. Oh, the sound cones?

12 Q. Yes, yes.

13 Q. And, what, if you were to describe your
14 response, what impacted those, in your judgment,
15 had, those sound cones and internal blankets had
16 on the measurement of sound from the unit?

17 MR. DIVER: Objection, foundation, He was
18 asked whether he was on the property, in a
19 position. There's been no foundation established
20 as to where he was with respect to the equipment;
21 distance, general location at all. I think that's
22 required as a foundation for him now to testify as
23 to what he experienced in terms of a sound
24 reduction, if any.

1 HEARING OFFICER: Could the question be
2 rephrased?

3 MR. ELLEDGE: I could rephrase it, but I
4 would point out that the door was opened on
5 direct, and this is within the scope of cross,
6 which I thought you were going to object to.

7 BY MR. ELLEDGE:

8 Q. As far as location, when you were asked
9 by Mr. Diver what was the loudest sound in your
10 judgment, when you first heard it, where were you
11 located?

12 A. Generally along the driveway.

13 Q. And, within what distance would you say
14 of the unit?

15 A. Everywhere from immediately adjacent to
16 the unit until approximately the property line.

17 Q. So, you were in various spots within
18 the--

19 A. Yes.

20 Q. And, was this generally on the north side
21 of the house?

22 A. Yes, all on the north side.

23 Q. All on the north side.

24 A. Yes.

1 Q. And, and at varying distances?

2 A. Yes.

3 Q. Let me take you back to the question that
4 I asked, which was with regard to your
5 observations after the cones and the baffles and
6 blankets were put on, what was your judgment as to
7 the impact of those, the attenuation achieved with
8 those?

9 A. It was my observation that the cones and
10 blankets and internal insulation made a noticeable
11 reduction in the amount of sound emitted from the
12 unit.

13 Q. Now, have you had occasion to be out on
14 that site in that same general location when the
15 equipment was operating after the installation of
16 the acoustic enclosure, the acoustic fence, I
17 believe?

18 A. Yes.

19 Q. And, on what occasions, do you remember
20 when those occasions were?

21 A. I was there at nighttime about a year ago
22 with Mr. Shiner.

23 Q. Okay. What were your observations with
24 respect to the difference in sound levels?

1 MR. DIVER: Again, no foundation as to
2 where he was.

3 BY MR. ELLEDGE:

4 Q. Where were you at that time?

5 A. In the same locations as described
6 earlier.

7 Q. Okay. And, what were your observations?

8 A. My observation is the addition of the
9 sound enclosure made a significant reduction on
10 top of the reduction that was already achieved by
11 the sound cones. At the time of the test in June
12 of 1995, Mr. Shiner recommended that we remove the
13 sound cones. And, in doing so, we achieved an
14 even further reduction in sound. It was noticed
15 near the unit.

16 Q. Okay. Have you had occasion to be on the
17 property and to, when the equipment was running,
18 subsequent to the operational change that you've
19 testified to?

20 A. Yes.

21 Q. And, where were you at that time?

22 A. In the same locations that I've described
23 earlier.

24 Q. Okay. And, approximately when was this,

1 if you recall?

2 A. About two weeks ago, a week ago.

3 Q. All right. And, did you observe any
4 difference with regard to sound levels on that
5 occasion?

6 A. With the operational changes?

7 Q. Yes.

8 A. Yes, with the operational change
9 in effect, it was a significantly reduced amount
10 of sound compared to prior operating modes.

11 Q. Okay. Did you find that sound unduly
12 intrusive at that time?

13 MR. DIVER: Objection, your Honor,
14 completely subjective with respect to this
15 witness. We're not talking about whether or not
16 this witness experienced or anybody experienced a
17 nuisance on the Crown property, we're talking
18 about the Shelton property. This is completely
19 irrelevant to this proceeding.

20 MR. ELLEDGE: Madam Hearing Officer,
21 this whole case is about subjective response and
22 measuring subjective response and observations of
23 subjective response. This witness has testified
24 he was there, he has been there numerous times.

1 He has been there in the vicinity of the machine.
2 He, too, has ears. He, too, can make observations
3 as to the nature of the observed affect which is
4 an affect that's difficult to characterize and
5 quantify.

6 HEARING OFFICER: Objection overruled.
7 I'll permit the witness to answer the question.

8 A. You want to restate the question?

9 MR. ELLEDGE: Would you read it back,
10 please?

11 (WHEREUPON, the record was read by the
12 Court Reporter.)

13 A. No, no, I did not.

14 Q. How did you find it?

15 A. I found it similar to a 10 ton unit that
16 would be operating in a normal residential
17 environment. In fact, in some locations around
18 the driveway, even quieter than other 10 ton
19 systems that I have heard operating.

20 Q. You were asked during the direct
21 examination whether you had received any specific
22 or general instructions from Mr. Crown with regard
23 to further improvements. Do you remember that
24 question?

1 A. Yes.

2 Q. And, would you care to state what your
3 answer is to that again?

4 MR. DIVER: This is cumulative. His
5 answer has already been given.

6 MR. ELLEDGE: I'm asking, I would like
7 to ask him if he cares to make any amendment or
8 modification to the question he's already given, a
9 correction.

10 MR. DIVER: I'll object to the nature of
11 that question, just a general question, would you
12 like to say anything about anything.

13 MR. ELLEDGE: Let me withdraw that
14 question.

15 HEARING OFFICER: Can you clarify your
16 question, Mr. Elledge?

17 MR. ELLEDGE: Yes, I will withdraw it and
18 make another one.

19 BY MR. ELLEDGE:

20 Q. Were you under instructions from Mr.
21 Crown to seek solutions from the period of 1991
22 on?

23 A. Yes.

24 Q. Okay. Were you under any specific

1 instructions to seek further improvements after
2 the completion of the sound fix?

3 A. No.

4 Q. But, you have an occasion to continue to
5 address it, is that not so?

6 A. Yes, when we're requested to be involved
7 we are involved, yes.

8 MR. ELLEDGE: I have no further
9 questions.

10 MR. DIVER: If I may, Madam Hearing
11 Officer--

12 HEARING OFFICER: You have any redirect?

13 MR. DIVER: Yes.

14 REDIRECT EXAMINATION

15 BY MR. DIVER:

16 Q. Let's talk about the operational change
17 that you just witnessed the effect of last week.
18 You were just testifying about that, were you not?

19 A. Yes, yes.

20 Q. Is that operational change permanent?

21 A. Yes, unless we change it. I don't know
22 what you mean by permanent.

23 Q. Somebody evaluating whether the house can
24 be cooled with that operational change?

1 A. We have not evaluated it. We are keeping
2 records to determine if that's a problem.

3 Q. You haven't even decided whether or not
4 the system can perform its function for Mr. Crown
5 inside his house with that particular operational
6 circumstance, correct?

7 A. We have not yet concluded whether that's
8 true.

9 Q. You were talking about the impacts -- Mr.
10 Mautner, I'm sorry. You were testifying about
11 your hearing the sound emitted after the
12 installation of the three changes; the blankets,
13 the acoustical interior and the sound cones,
14 correct?

15 A. Yes.

16 Q. And, you considered that and basically
17 your hearing of the event from wherever you were
18 standing at the time you experienced it, that
19 those were all significant in reducing the amount
20 of sound being emitted from this unit, correct?

21 A. They contributed in reducing the sound,
22 yes.

23 Q. Excuse me?

24 A. They contributed in reducing sound, yes,

1 I believe those items contributed.

2 Q. It was your testimony they were
3 significant contributors or just contributors?

4 A. Significant contributors.

5 Q. Are you aware that shortly after
6 experiencing that, that the blankets were removed
7 from the compressor?

8 A. Yes.

9 Q. And, isn't it true you have no idea when
10 or if they were ever replaced?

11 A. Yes.

12 Q. Have you ever stood on the Shelton's
13 property and experienced the sound being emitted
14 from the chiller unit at any time?

15 A. Not that I recall.

16 Q. Have you ever tried to sleep in the
17 vicinity of the chiller unit while it was
18 operating?

19 A. No, I have not been invited to do so.

20 Q. Have you ever tried to carry on an
21 ordinary conversation some distance from the
22 chiller unit for an extended period of time while
23 it was operating?

24 A. Yes.

1 Q. Have you ever tried to engage in any
2 quiet reflection while you were in the vicinity of
3 the chiller unit?

4 A. Not specifically.

5 Q. Have you ever attempted to talk to
6 anybody on the telephone while you were in the
7 vicinity outside of this particular unit?

8 A. I spoke on the phone, yes.

9 Q. While you were inside or outside?

10 A. Outside.

11 Q. All right. Was it when the unit was
12 operating?

13 A. Yes.

14 Q. And, when was that event, please?

15 A. Last week or whenever the test was,
16 whether it was last week or the week before.

17 Q. But, it was not, you have not attempted
18 to do it prior to last week, is that correct?

19 A. Yes. I did it also in June of 1995 when
20 Mr. Shiner was there that evening.

21 Q. Can you show us, I'm going to give you a
22 yellow highlighter. If you would show us on the
23 document on the wall where it was that you were
24 standing at the time that you experienced the

1 sound reductions that you've just testified to.
2 And, let's talk about the first time that the
3 sound reduction you experienced following the
4 three attenuating devices, where were you standing
5 when you experienced the reductions that you
6 consider to be significant?

7 A. Under all circumstances, all three
8 scenarios.

9 Q. That's fine. You were standing in the
10 same locations, basically, in all three?

11 A. Yes.

12 Q. Fine. Then, just indicate it.

13 A. I've listened to the unit under all three
14 scenarios, from this locations, just inside the
15 fence all the way along the driveway, and down and
16 behind the garage, as well as in the similar part
17 of the driveway, as well as I've listened to the
18 unit immediately adjacent, outside the enclosure
19 and inside the enclosure.

20 Q. Okay.

21 MR. CARSON: Can we just have the record
22 reflect that the witness has marked with a yellow
23 highlighter on Exhibit 51 --

24 MR. DIVER: Absolutely can, yes.

1 MR. CARSON: -- illustrating his answer
2 to the previous question.

3 MR. DIVER: So stipulated.

4 HEARING OFFICER: Yes, thank you.

5 MR. LAURI: I assume we'll have different
6 colored highlighters for different colored
7 individuals, if they testify.

8 MR. DIVER: I don't know, counsel since
9 you're leaving at 3:30, you won't know.

10 MR. LAURI: Just putting it on the
11 record.

12 BY MR. DIVER:

13 Q. Have you ever heard the term "sound
14 shadow"?

15 A. No.

16 Q. Are you aware from any training or
17 experience at all of the concept that the area
18 closest to the sound, the emission source, is
19 probably -- strike that, never mind.

20 You indicated that you are aware that
21 some residential uses along the north shore have
22 similar equipment, is that correct?

23 A. Yes.

24 Q. You have seen such similar equipment used

1 in similar residential applications along the
2 north shore, is that true?

3 A. I have seen.

4 Q. How many?

5 A. I have, I can remember specifically two
6 that I'm aware of.

7 Q. All right. And, why don't we at least
8 identify the community in which each of these two
9 is located. One is Lake Forest and one is
10 Highland Park.

11 Q. Is Lake Forest the same one that you were
12 referring to earlier being 5 or more years ago,
13 17,000 square foot house, the size of the property
14 you don't recall?

15 A. Yes.

16 Q. What was the nature of the chiller unit
17 that that circumstance --

18 A. It was a similar air cooled chiller unit.

19 Q. 25 ton unit or larger?

20 A. Yes, 25 ton or larger.

21 Q. But, your testimony was you don't recall
22 where that unit was located relative to next door
23 neighbors, is that correct?

24 A. yes, that's true.

1 Q. Let's talk about the Highland Park
2 location, I think you indicated that was, you
3 believe, a 7 acre site?

4 A. Yes.

5 Q. Where, I think you testified that there
6 were actually two, 25 ton chiller units in use at
7 that site.

8 A. Yes, that's true.

9 Q. How far was the closest distance between
10 one of those chiller units and adjoining
11 residential structures?

12 A. I would have to guess 300 feet.

13 Q. And, where were the two 25 ton units
14 located with respect to one another?

15 A. Immediately adjacent to each other.

16 Q. Okay. Have you ever gone onto the
17 property that was 300 feet away from the closest
18 chiller unit to experience the sound on that
19 property?

20 A. No.

21 Q. Although it's my understanding that your
22 involvement on this Highland Park property was
23 subsequent to the noise complaint that was made
24 with respect to the Crown property, is that

1 correct?

2 A. Yes.

3 Q. Was your not going onto that property to
4 experience the sound because you couldn't get on
5 or because you didn't care?

6 A. We had no reason to, there's been no
7 complaint.

8 Q. From your elementary study of sound, what
9 is the effect of distance on the perception of
10 sound, that is distance from the sound source?

11 A. It should be reduced as you move further
12 away.

13 Q. What is the distance between the chiller
14 unit at the Crown residence and the southern most
15 facade of of the Shelton residence?

16 A. I don't know.

17 Q. Have you ever looked?

18 A. Yes, I can give you an approximate --

19 Q. Give us an approximation.

20 A. 75 feet.

21 Q. A quarter or less of th edistance of the
22 unit in Highland Park, correct?

23 A. Mathematically, it's slighly less than a
24 third.

1 Q. 75 versus 300?

2 A. You could do the math and figure it out.

3 Q. Isn't 75 a quarter?

4 HEARING OFFICER: Could you please move
5 on?

6 BY MR. DIVER:

7 Q. Were you ever invited to be on the
8 Shelton property to experience the sound there?

9 MR. LAURI: Objection, relevance.

10 MR. DIVER: I'm trying to see whether he
11 actually wanted to perceive the sound from there
12 rather than similarly on the Crown residence.

13 MR. LAURI: Withdrawn.

14 A. I don't remember being invited.

15 BY MR. DIVER:

16 Q. You indicated that you would continue to
17 recommend equipment, HVAC equipment, chiller unit
18 equipment similar to this in additional
19 residential applications, is that correct?

20 A. Yes.

21 Q. Would there be any conditions that would
22 relate to your recommendation in terms of the
23 location of the unit vis-a-vis neighboring
24 properties?

1 A. No, we would not precondition it. There
2 may be other conditions, but not that condition.

3 Q. Would the issue of sound or noise be a
4 consideration in the determination of where to
5 locate such equipment, vis-a-vis neighboring
6 residential structures?

7 A. We would make that the responsibility of
8 the owner.

9 Q. You would make --

10 A. We would require the owner to take that
11 responsibility.

12 Q. Would you tell the owner that this unit
13 will generate rate sound that could be perceived
14 as noise by next door neighbors?

15 MR. LAURI: I'll object at this time on
16 speculation. Now, we're getting a little far
17 afield.

18 MR. DIVER: He said he'll recommend the
19 equipment. I'm asking under the conditions under
20 which he would make that recommendation.

21 A. We haven't thought out --

22 HEARING OFFICER: The objection is
23 sustained.

24 BY MR. DIVER:

1 Q. You indicated earlier that you expected
2 that the cones that were placed on this unit in
3 your first go round of attenuating devices would
4 have the greatest effect because you considered
5 the fans to be the loudest noise source, is that
6 correct?

7 A. That was my opinion, yes.

8 Q. And yet, your testimony was just a moment
9 ago that in June of 1995 when the tests were
10 conducted, the unit was actually quieter without
11 the cones than with them, is that correct?

12 A. That was after the enclosure was erected,
13 yes.

14 Q. Right. Why is that?

15 A. Because the elevation at which the noise
16 is generated is lowered and, therefore, the
17 enclosure can do a more efficient job of absorbing
18 the sound.

19 Q. Is it your testimony, then, that the
20 cones were actually raising and focusing the
21 noise?

22 A. No, it's my testimony that based Al
23 Shiner's recommendations, that the cones by
24 themselves, without an enclosure, do provide sound

1 attenuation. However, with an enclosure present,
2 the cones raise the elevation at which the noise
3 is generated and, therefore, reduce the
4 enclosure's ability to attenuate the sound. That
5 is, more sound panel area is available for sound
6 attenuation of the cones are reduced.

7 Q. All of what you've just told me is what
8 you understand Al Shiner to have told you,
9 correct?

10 A. Yes.

11 Q. Okay. You indicated that it was Mr.
12 Shiner's recommendation that these cones would be
13 an effective sound attenuating device, is that
14 correct?

15 A. No, I didn't indicate that.

16 Q. And, indeed, Mr. Shiner was not involved
17 with respect to any of the three original
18 attenuating devices.

19 A. Correct.

20 Q. You indicated in response to a question
21 by Mr. Elledge that the sound from this unit was
22 not "unduly intrusive" at the time you experienced
23 it. Is there something about that language that I
24 should be concerned about, is something unduly

1 intrusive or an -- okay, intrusive, is there some
2 level of intrusiveness, in your opinion, that's
3 acceptable?

4 MR. LAURI: Objection, form of the
5 question, it's compound it's vague?

6 MR. DIVER: I'll ask this last question.

7 BY MR. DIVER:

8 Q. Is there some form of intrusive noise
9 that you consider to be acceptable to you?

10 A. Define intrusive.

11 Q. You used the terminology, unduly
12 intrusive. What do you mean by intrusive?

13 A. Where I believe it would be objectionable
14 on a continuous basis to me.

15 Q. Is that what you mean by unduly
16 intrusive, that it would be objectionable on a
17 continuing basis to me.

18 Q. Is it your understanding that the sound
19 coming from this equipment is unduly intrusive to
20 the Shelton's.

21 MR. LAURI: Object to foundation, at what
22 period of time are we talking about now?

23 HEARING OFFICER: Sustained.

24 BY MR. DIVER:

1 Q. Are you stating that the sound that was
2 experienced, the noise that was experienced by the
3 Sheltons in the period prior to installation of
4 the three remedial devices in the summer of 1994
5 was unduly intrusive?

6 MR. LAURI: I'm sorry, I'll object again.
7 Are we talking about it's Mr. Mautner's opinion of
8 whether the Shelton's opinion is correct?

9 MR. DIVER: Yes, whether the sound that
10 was experienced by the Sheltons --

11 HEARING OFFICER: Your objection is
12 sustained. The question need not be answered.

13 BY MR. DIVER:

14 Q. You indicated that this was not a
15 customary residence.

16 A. It was not a typical residence.

17 Q. Okay, all right. What is it that makes
18 this residence atypical?

19 A. It's size.

20 Q. It's manner of construction?

21 A. Perhaps, yes.

22 Q. The amount of power that needs to be
23 delivered to it?

24 A. Just based on its size, the size of the

1 HVAC system that's used in it?

2 A. It's not typical. It's typical for this
3 size structure.

4 Q. But, this size structure is not typical
5 of a residence?

6 A. Not typical of a residence.

7 Q. With the exception of Lake Forest and the
8 Highland Park examples that you gave us, are there
9 any other locations of which you are aware in the
10 north shore that have similar equipment for their
11 chilling units?

12 A. On the north shore?

13 Q. Yes.

14 A. Not that I'm aware of, that I remember
15 now.

16 Q. Are there any other properties involving
17 residential structures having such units anywhere
18 that you are aware?

19 A. Yes.

20 Q. Where?

21 A. In the City of Chicago.

22 Q. And, indeed, you had experienced a noise
23 complaint about 10 years ago with respect to a
24 similar unit in the City of Chicago, had you not?

1 A. Not a noise complaint from a neighbor,
2 no.

3 Q. No, but a noise complaint from somebody
4 who was residing some distance away from the
5 actual unit, correct?

6 A. No, in a residence?

7 Q. No? Were these people residing, was this
8 not a condominium?

9 A. Oh, yes, I thought you meant a single
10 family residence.

11 Q. No, the condominium.

12 A. The condominium, yes.

13 Q. That was an installation that you had put
14 in in Chicago?

15 A. Yes.

16 Q. And, the people were complaining about
17 the noise being emitted from the unit?

18 A. Yes.

19 Q. And, you had to develop a sound
20 attenuating system?

21 A. That's where I met Al Shiner.

22 Q. So, even 10 years ago, you were aware of
23 noise being generated from these systems?

24 A. That's the only one that I'm aware of.

1 HEARING OFFICER: Do you have any cross?

2 MR. ELLEDGE: I have some recross, yes.

3 RECROSS EXAMINATION

4 BY MR. ELLEDGE:

5 Q. You made reference to the conversations
6 you had made when the system was in operation.
7 Let me direct your attention first to the most
8 recent time you were there.

9 A. Yes.

10 Q. Would you take this blue pen and draw an
11 X on Exhibit 51 where you were standing when you
12 made as many phone calls as you made that evening,
13 approximately where you were, if you recall?

14 A. Yes, I made two phone calls, both
15 approximately here.

16 Q. And, let the record show the witness has
17 just marked in blue felt tip an X with a circle
18 around it.

19 MR. CARSON: On Exhibit 52 or 52 B?

20 MR. ELLEDGE: On Exhibit 51, thank you.

21 BY MR. ELLEDGE:

22 Q. And, was the unit in operation at that
23 time?

24 A. Yes.

1 Q. And did you have any trouble speaking or
2 being heard?

3 A. No.

4 Q. Did the sound from the operation of
5 equipment in any way interfere with your telephone
6 conversation?

7 A. No.

8 Q. Now, were there airplanes flying overhead
9 at that time?

10 A. Not at the time of the call, but on
11 occasion there were airplanes flying over, yes.

12 Q. Would you compare the sound of airplanes
13 and the flight path with the sound of the
14 equipment as it was operating at that time.

15 MR. DIVER: Objection.

16 MR. ELLEDGE: I'm trying to establish
17 the background for this sound in the area at the
18 time that he's talking about, your Honor.

19 MR. DIVER: You're talking about a single
20 under intrusive sound source like an airplane or
21 you're talking about another continuing sound
22 source?

23 MR. ELLEDGE: I'm talking competing
24 sound sources which would be, for instance

1 airplanes or --

2 HEARING OFFICER: I'll permit the
3 witness to answer the question.

4 A. When an airplane would fly over, which
5 was on a regular cycle, it was more noticeable
6 than the sound of the unit in the operating mode
7 that we have now.

8 BY MR. ELLEDGE:

9 Q. Okay. Thank you. Now, going back to,
10 you said you had also made telephone calls when
11 you were on the site in 1995, is that right?

12 A. Yes, yes.

13 Q. And, do you remember where you were at
14 the time you made that phone call? Would you take
15 the same blue pen and mark with--

16 A. You want me to put A here?

17 MR. ELLEDGE: All right. Let the
18 record -- so, he's putting an A by the first site
19 already marked.

20 A. And, put a B by the second one.

21 MR. ELLEDGE: All right. And, let the
22 record show that he's made a similar mark on
23 Exhibit 51 and marked that with a B.

24 BY MR. ELLEDGE:

1 Q. And, could you tell me what time of the
2 day was this?

3 A. At nighttime.

4 Q. That was also at nighttime?

5 A. Yes.

6 Q. Did you make one call or more?

7 A. I made more than one phone call.

8 Q. Okay. Were they all at approximately the
9 same time?

10 A. I believe so. It may have been two
11 calls.

12 Q. Okay. And, was the equipment operating
13 at this time?

14 A. Yes.

15 Q. All right. Did you have any difficulty
16 speaking or being heard or hearing during your
17 telephone conversation, those conversations?

18 A. No.

19 Q. No problem?

20 A. No.

21 Q. You were asked just now about whether you
22 have, whether the level of understanding you have
23 at this time is whether or not this system can
24 continue to provide, continue to perform at

1 nighttime as presently programmed, do you recall
2 those questions?

3 A. Yes.

4 Q. Do you have any observations to make with
5 regard to its ability to perform at this time?

6 A. So far, all indications are that it would
7 be adequate.

8 Q. And do you have a projection to make into
9 the future when the, as the summer progresses?

10 A. I believe it will be adequate, with one
11 exception and that is if the home has a large
12 number people in it for a party, there may be a
13 problem. Under normal use, I don't believe we'll
14 have a problem with this operating mode at night.

15 Q. You were asked just now about an occasion
16 10 years ago when you worked with Al Shiner, is
17 that correct?

18 A. Yes.

19 Q. And, did you work extensively with him on
20 that occasion?

21 A. I don't know what extensive is, but we
22 worked together.

23 Q. You worked together?

24 A. Yes.

1 Q. And, is that how, is that when you first
2 met him?

3 A. Yes.

4 Q. And, did you form an opinion as to his
5 technical capabilities at that time?

6 A. As a result of his work, and we had a
7 successful outcome and, therefore, I believed he
8 was a good resource for this type of activity.

9 Q. You were also asked with regard to
10 conversations you had with him on or about the
11 first week of July in 1994.

12 A. Yes.

13 Q. Do you recall that? Did you call him on
14 or -- do you recall who originated the first
15 call -- did you have a telephone conversation?

16 MR. DIVER: This is beyond the scope of
17 the redirect, Madam Hearing Officer. There was no
18 set of questions asked during my redirect
19 examination, that was all during my direct
20 examination of this witness.

21 MR. ELLEDGE: I'll withdraw the
22 question, then.

23 HEARING OFFICER: Okay.

24 MR. ELLEDGE: I have no further

1 questions.

2 HEARING OFFICER: Okay. Mr. Mautner,
3 thank you for being a witness today, and that
4 concludes Mr. Mautner's testimony in the
5 Complainant's case. We'll go off the record.

6 (WHEREUPON, an off-the-record discussion
7 was held.)

8 HEARING OFFICER: We'll now take a lunch
9 break.

10 (WHEREUPON, the hearing was recessed at
11 12:00 noon for a one-hour lunch break.)

12 oOo

13 THE FOLLOWING PROCEEDINGS WERE REPORTED BY MS.

14 VERNITA POWELL

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CERTIFICATION

I, VERNETTA MCCREE, A Certified Shorthand Reporter doing business in the State of Illinois, certify that I reported in shorthand the testimony taken in the above-entitled matter, and that this constitutes a true and accurate transcription of my shorthand notes so taken as aforesaid.

VERNETTA MCCREE, CSR