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ILLINOIS POLLUTION CONTROL BOARD  
STATE OF ILLINOIS

- - - - -X  
DAVID SHELTON & SUSIE SHELTON :  
Plaintiffs :  
- against - : Number 96-53  
ARI STEVEN CROWN & NANCY CROWN, :  
Defendants :

- - - - -X  
VOLUME IV  
REPORT OF PROCEEDINGS, taken in the  
above-entitled cause, taken before JUNE EDVENSON, ESQ.,  
Hearing Officer for the Illinois Pollution Control Board,  
taken on the 12th day of July, A.D., 1996 at 100 West  
Randolph Street, Suite 9-031, Chicago, Illinois, taken at  
the hour of 9:00 o'clock a.m..

APPEARANCES:

JEFFREY R. DIVER, ESQ.  
STEVEN P. KAISER, ESQ.  
45 S. Park Boulevard  
Glen Ellyn, IL 60137  
Appeared on behalf of the Plaintiffs  
  
REESE ELLEDGE, ESQ.  
ROBERT A. CARSON, ESQ.  
222 North LaSalle Street  
Chicago, IL 60601  
Appeared on behalf of the Defendants

VERNITA HALSELL-POWELL  
HALSELL & HALSELL REPORTERS

00612

1

I N D E X

2 WITNESSES:

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3 John J. Gsell	613	656	664	
4 Charles A. Sheda	667	696	700	
5 Harry J. Akers	703			
6 Jack Doshi	744			
7 David R. Shelton	774			

8

E X H I B I T

		Offered	Received
9	Plaintiff's Exhibit No. 93	625	625
10	Plaintiff's Exhibit No. 79	648	649
	Plaintiff's Exhibit No. 95	651	651
11	Plaintiff's Exhibit No. 73	669	669
	Plaintiff's Exhibit No. 96	689	692
12	Plaintiff's Exhibit No. 97	693	693
	Plaintiff's Exhibit No. 80A&B	731	736
13	Plaintiff's Exhibit No. 27	748	748
	Plaintiff's Exhibit No. 26	751	752
14	Plaintiff's Exhibit No. 78	752	753
	Plaintiff's Exhibit No. 100	755	755
15	Plaintiff's Exhibit No. 101	759	760
	Plaintiff's Exhibit No. 102	761	761
16	Plaintiff's Exhibit No. 103	762	762
	Plaintiff's Exhibit No. 104	763	763
17	Plaintiff's Exhibit No. 84	765	765
	Plaintiff's Exhibit No. 106	773	773

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00613

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HEARING OFFICER: Good morning and welcome.

3

We are resuming the contested case hearing of Case Number

4

PCB 96 - 53, Sheltons versus the Crowns and this is a

5

noise enforcement action. My name is June Edvenson, I'm

6

the Board's Hearing Officer for this case and counsel for

7

the parties are here also, with the parties in attendance.

8

We'll proceed with Complainant's case.

9

MR. DIVER: The Complainant is calling their

10

next witness, John Gsell, G-s-e-l-l.

11

(Witness Sworn)

12

MR. KOLTON: For the record, my name is

13

Kevin Kolton and I represent Mid/Res and later today I

14

will be filing an appearance on behalf of myself and my

15

firm, Schiff Hardin & Waite.

16

HEARING OFFICER: Thank you.

17

PROCEEDINGS

18

WHEREUPON

19

JOHN JOSEPH GSELL,

20

having been duly sworn to tell the truth, the whole truth,

21

and nothing but the truth, was examined and testified as

22

follows:

23

DIRECT EXAMINATION

24

BY MR. DIVER:

00614

1 Q. Would you state your name, for the record,  
2 please, sir?

3 A. John Joseph Gsell.

4 Q. Mr. Gsell, what is your occupation?

5 A. Pipe fitter.

6 Q. And with whom are you currently employed?

7 A. Mid/Res, Incorporated.

8 Q. Are you also employed with Mid/Res during the  
9 period 1991 to the present?

10 A. Yes, I was.

11 MR. DIVER: I'm just handing Madam Hearing  
12 Officer some exhibits I expect to be going over with this  
13 witness. I've already given them to Mr. Elledge.

14 Q. During that period of time, '91 to the present,  
15 did you have any responsibility with respect to a certain  
16 HVAC installation at a house owned by the Crowns on  
17 Ardsley in Winnetka?

18 A. Yes.

19 Q. And do you recall approximately when in the  
20 process -- strike that -- do you recall when you began to  
21 have an involvement with that project?

22 A. Probably in January of '93.

23 Q. What was your responsibility at that project?

24 A. I installed all the heating and air

00615

1 conditioning.

2 Q. Okay. Did you install a unit which we are  
3 calling a chiller unit which was an outside unit composed  
4 of two compressors and three fans?

5 A. Yes, I did.

6 Q. And when approximately did you actually install  
7 that unit at the Crown house?

8 A. Probably beginning in like March when the  
9 weather was breaking March, April.

10 Q. And when did you conclude the actual creation  
11 of that chiller unit; hooking it up to whatever piping  
12 where it was needed?

13 A. I can only go by what we went through yesterday  
14 by my time sheets because I wouldn't remember. It would  
15 have been the beginning of July.

16 Q. When you say yesterday, you're talking about the  
17 deposition you and I attended yesterday, right?

18 A. Yes, sir.

19 Q. Your deposition?

20 A. Yes, sir.

21 Q. Okay. I'm going to show you what I've

22

23

24

00616

1 Previously marked as Exhibit 93 and ask you if you would  
2 look at that tell me whether you recognize it?

3 A. I do.

4 Q. Is that one of your time sheets?

5 A. It is.

6 Q. Is that a time sheet that you prepared in  
7 connection with the Crown project?

8 A. Yes.

9 Q. Is this form of time sheet something that you  
10 prepared generally in the performance of your duties for  
11 Mid/Res?

12 A. Yes.

13 Q. All right. This particular time sheet has a  
14 number of dates entered in the right-hand side of the  
15 document beginning with 9/13/93?

16 What does this time sheet include in terms of  
17 time? What period of time is covered by this time sheet?

18 A. 9/13 thru 9/17.

19 Q. All right that would be?

20 A. '93.

21 Q. That would be Monday thru Friday of 1993 of that  
22 period?

23 A. Yes.

24 Q. All right. Does this time sheet begin the first

00617

1 notations concerning your starting up the operation of the  
2 chiller unit?

3 A. Yes.

4 Q. Okay. Will you read into the record the first  
5 notation that you have for Monday, September 13th?

6 A. Start up primary on chiller.

7 Q. That's start up preliminary on chiller?

8 A. Yes.

9 Q. Why don't you tell us what it was that you did  
10 that you described as start up preliminary on chiller?

11 A. That's when I checked the wiring to see that the  
12 wires are secure. Check rotation on fans. Checked that  
13 the fans are clear.

14 Q. Okay. What time of the day would this have been  
15 done?

16 A. Probably in the a.m..

17 Q. Okay. You indicate on this form under a column  
18 called ST and on that particular Monday there was a three  
19 that was entered. What does that mean?

20 A. I was there on three hours on straight time.

21 Q. Okay. Did you actually start up the chiller  
22 unit that day; that is, actually begin the operation of  
23 either of the compressors or the fans?

24 A. Going by this, what I've got written here, I

00618

1 would say, yes, I did actually turn it on and turn it off.

2 I did not leave it running.

3 Q. Okay. Let's move to the next day, September  
4 14th which is Tuesday. Would you read your entry and then  
5 explain what it was that you did?

6 A. Start up, clean air handlers and filters. As I  
7 went around and cleaned all the filters that the home has,  
8 a number of air handling units and I cleaned the filters  
9 on all of them and checked them all out in preparation for  
10 start up.

11 Q. Okay. But the first two words you have on that  
12 date are start up. Did you actually start up the  
13 compressors and/or the fans that day?

14 A. No, that was starting up the air handlers.

15 Q. Okay. The air handlers are units that are  
16 inside the house, is that right?

17 A. Yes.

18 Q. Let's move to the next day, September 15th, 1993  
19 which was Wednesday. Tell us what your record indicates  
20 and then tell us what it was that it was describing?

21 A. Start up air conditioner. Met with Lynn from  
22 South Side Control. Went over control panels and start  
23 up each air handler and check out controls.

24 Q. Okay. Now, tell us what it was that you did



00619

1 that this language was intended to describe?

2 A. Okay. Now, on this I started up all the air  
3 handlers started up the outside condensing unit and then  
4 we went from air handler to air handler and checked the  
5 operation to the controls to see that the controls turned  
6 the system on and off and opened dampers, closed dampers.

7 Q. Okay. You indicate that this took you about 8  
8 hours of straight time that day?

9 A. Yes.

10 Q. What time of day would this have been done?

11 A. Started a 7:00 and gone to 3:30.

12 Q. Okay. Let me ask you when you were done at  
13 3:30, was the chiller unit in a condition at that point  
14 that it would thereafter automatically turn on if the  
15 conditions were established in the thermostat in the  
16 house?

17 A. It was if I would have left it on. I don't  
18 recall if I did or not.

19 Q. Its possible you did leave it on?

20 A. Its possible.

21 Q. Okay. Let's go to the next date, September 16th  
22 1993 and read the first two lines of your entry for that  
23 date?

24 A. Met with Mr. Crown, started up system so we

00620

1 could hear how loud the chiller is.

2 Q. Okay. Could you tell us what actually happened  
3 that day that you were describing in that sentence?

4 A. I arrived on the job and the unit was down,  
5 obviously, and I was told that it had to have been shut  
6 down because of the sound.

7 Q. You were told that by who?

8 A. Pete Keller who was the general contractor.

9 Q. Okay. Did you at some point in that day meet  
10 Mr. Crown?

11 A. Yes, he did.

12 Q. Is the Mr. Crown that you met present in the  
13 hearing room today?

14 A. Yes, he did.

15 Q. And that's the A. Steven Crown sitting at  
16 Respondent's table, correct?

17 A. It is.

18 Q. Thank you. And did Mr. Crown approach you?

19 A. Yes.

20 Q. And what, if anything, did he say to you?

21 A. As I recall he asked me to turn the system on,  
22 which I did. And then he and I walked around to different  
23 areas of the yard and in the house and observed the  
24 sound.

00621

1 Q. You listened to the sound from different places?

2 A. Yes.

3 Q. Did Mr. Crown at any time during the period that  
4 you were with him indicate to you that a neighbor had  
5 complained about noise from the chiller unit?

6 A. I don't believe he did. I believe that Pete  
7 Keller did.

8 Q. Okay. Pete Keller told you that though that a  
9 neighbor was complaining about the noise?

10 A. Yes.

11 Q. Did Mr. Crown ask you to do anything about the  
12 sound that you heard?

13 A. Mr. Crown we talked around. He asked me what it  
14 sounded like to me? I said it sounded like a normal air  
15 conditioner. And he said was there anything that could be  
16 done -- I believe he asked me was there anything could be  
17 done to--

18 Q. Quiet it?

19 A. Quiet the unit down.

20 Q. Okay? And what did you answer him?

21 A. I believe that's when I said, yes that we could  
22 possibly put sheet Armaflex inside on the panels.

23 Q. That's a-r-m-a-f-l-e-x, correct?

24 A. Correct.

00622

1 Q. Armaflex is a kind of insulation, is that  
2 correct?

3 A. Yes, it is.

4 Q. After Mr. Crown left, did he have any further  
5 conversations with Mr. Keller about the noise problem and  
6 what might be done to correct it?

7 MR. CARSON: Object to the extent that he's  
8 calling for statements made by Mr. Keller as hearsay.

9 MR. DIVER: I'm not trying to establish them  
10 for the truth of what they are, just that he said them to  
11 him.

12 HEARING OFFICER: Sustained.

13 A. I don't recall.

14 HEARING OFFICER: Would you rephrase your  
15 question?

16 Q. After Mr. Crown left, did you have further  
17 conversation with Mr. Keller concerning the noise problem?

18 A. On that day, I imagine I did. I really don't  
19 recall.

20 Q. Okay. Do you recall whether on that same day  
21 you reported meeting Mr. Crown at the site to any of your  
22 superiors?

23 A. Oh, definitely.

24 Q. Who did you report it to?

00623

1           A.     It would have been either Dick Cosentino who was  
2 my superior or if he wasn't there, I talked to Harry  
3 Akers. I don't recall which.

4           Q.     And what, if anything, did you do after  
5 reporting that information to either Mr. Cosentino or Mr.  
6 Akers concerning activities to further quiet the chiller  
7 unit?

8           A.     I don't think I did anything on that day.

9           Q.     Okay.

10          A.     I think we shut it down.

11          Q.     Did you have any further conversation with  
12 either Mr. Cosentino or Mr. Akers after that Thursday,  
13 September 16th, 1993 concerning what might be done to  
14 quiet the unit?

15          A.     Yes.

16          Q.     And were other people present during those  
17 conversations?

18          A.     I don't really recall.

19          Q.     Okay.

20          A.     I can't say.

21          Q.     Do you recall what you told Mr. Cosentino and  
22 Mr. Akers in those subsequent conversations as to what you  
23 thought ought to be done or could be done to quiet the  
24 unit?

00624

1                   MR. CARSON:    Object to the form of the  
2 question as compound; what ought to be done or could be  
3 done.

4       Q.       What could be done, Mr. Gsell?

5       A.       What could be done, yes I did.  I suggested with  
6 them I talked and asked, you know, I said that maybe the  
7 panels could be covered with Armaflex.  That was my only  
8 suggestion.  I said I don't really know what, you know,  
9 you could do with it to quiet it down.

10      Q.       Okay.  When you talk about the panels, you're  
11 talking about the sides on the actual chiller unit itself,  
12 correct?

13      A.       Yes.

14      Q.       Something sometimes we may call the cabinet, is  
15 that correct?

16      A.       Yes.

17      Q.       At some point after September 16th, 1993, were  
18 you actually present at the unit to install that kind of  
19 insulation?

20      A.       Yes.

21                   MR. DIVER:    Off the record.

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

23                   HEARING OFFICER:  On the record.

24                   MR. DIVER:    Madam Hearing Officer, with

00625

1 respect to Exhibit 93 that the witness has just been  
2 testifying about, Mr. Elledge and I have a stipulated  
3 agreement that that exhibit is the same exhibit as that  
4 previously identified and testified to by other witnesses  
5 as Exhibit 29. We're in agreement on that, are we not?

6 MR. ELLEDGE: Yes.

7 MR. DIVER: Such that when the Board reads  
8 about a witness testifying about Exhibit 29, they're  
9 talking about the same document as currently identified as  
10 93. Madam Hearing Officer, I move the introduction of  
11 Exhibit 93.

12 MR. ELLEDGE: No objection.

13 HEARING OFFICER: We are still on the record.  
14 I do not have Exhibit 29 introduced into evidence  
15 previously.

16 MR. DIVER: No, it has not been, Madam Hearing  
17 Officer. It was merely testified to by certain witnesses  
18 as being the form of document that is the regular time  
19 sheet form for Mid/Res, but I want the Board to be able to  
20 connect that testimony to a particular document.

21 HEARING OFFICER: For the record, no Exhibit  
22 29 has yet been introduced and Exhibit 93 is admitted into  
23 evidence. You may continue.

24 MR. DIVER: Thank you.

00626

1 BY MR. DIVER:

2 Q. Okay. Mr. Gsell, I'm going to show you now what  
3 has previously been marked as Exhibit 79. Mr. Gsell, the  
4 document I've just handed you, again, do you recognize  
5 that document?

6 A. I do.

7 Q. Is it in your hand?

8 A. It is.

9 Q. Is it your time sheet for the week of October 4,  
10 1993 at the Crown job?

11 A. Yes.

12 Q. It indicates on its face a Wednesday, October 6,  
13 1994. Was that actually 1994, Mr. Gsell?

14 A. No, it was 1993.

15 Q. Just an error in your entry of the date, is that  
16 correct?

17 A. Yes.

18 Q. I direct your attention to the entry on October  
19 the 6th, 1994 being Wednesday?

20 A. Yes.

21 Q. And particularly direct you to the 3rd line and  
22 4th line for that date and ask you if you would please  
23 read that for us so that we can understand what it is  
24 you've written?



00627

1           A.    Met with Harry and took noise readings.

2    Insulate around panels on air conditioner.

3           Q.    Okay.  Do you recall that on or about October 6,  
4   1994 you actually met with Harry Akers at the site?

5           A.    Yes, we're talking '93.

6           Q.    I'm sorry October 6, 1993 that you actually met  
7   with Harry Akers at the site?

8           A.    Yes.

9           Q.    And do you recall after you did noise readings  
10   at the site you actually installed the insulation that you  
11   talked about earlier?

12          A.    I did.

13          Q.    Were you able to complete the insulation on that  
14   date?

15          A.    I don't believe so, no.

16          Q.    Looking at that document?

17          A.    It tells me no.

18          Q.    You completed the insulation the next day, is  
19   that correct?

20          A.    Yes.

21          Q.    Who told you to put that insulation in the  
22   chiller unit?

23          A.    It had either been my supervisor or Harry Akers.

24          Q.    But one or the other would have told you to do

00628

1 that before you actually arrived on the job on October 6,  
2 1993, correct?

3 A. Yes, sir.

4 Q. Because you had the materials with you already.

5 A. I had picked them up.

6 Q. Tell us what you did on October 6th and October  
7 7th in terms of putting insulation in this particular  
8 chiller unit?

9 A. Well, it's sheet of half inch insulation and I  
10 take the panels off and put glue on the back of the  
11 insulation and stuck it onto the panel wherever I could  
12 find an open spot.

13 Q. Okay. Did you also put this insulation  
14 materials on the compressors themselves?

15 A. Yes, he did.

16 Q. Did you glue it to the compressors?

17 A. No, I made a, like a cover. I fabricated like a  
18 cover and just slid it over the compressor.

19 Q. Okay. On that date, October 6, 1993, tell us  
20 about the noise readings. Who actually took the readings  
21 and how did they take them?

22 A. As I recall, we, Harry and I, on the job and  
23 Harry used the meter taking the readings and I was writing  
24 down the reading from different areas on the property.

00629

1 Q. And were you next to Mr. Akers when that was  
2 going on?

3 A. Yes.

4 Q. And did you periodically look at the equipment  
5 that he was reading to assure yourself that he was reading  
6 the same numbers that you were writing down?

7 A. Well, I was looking at him because I wanted to  
8 learn about the machine.

9 Q. Okay. Did you verify that when he read you a  
10 number and you looked at the machine that the same number  
11 was present that he was telling you?

12 A. Yes.

13 Q. The document before you that's Exhibit 79  
14 indicates an entry on October 7th, Thursday, concerning  
15 noise readings. Would you read the total entries on  
16 October 7th, 1993?

17 A. Yes. Complete insulating around panels. Take  
18 noise readings again.

19 Q. Okay. So this was a second event of noise  
20 readings, correct?

21 A. Yes.

22 Q. And you were present during the second set as  
23 well, correct?

24 A. Yes.

00630

1 Q. Was Mr. Akers present for this second set of  
2 readings?

3 A. No.

4 Q. Who actually did the readings on October the  
5 7th?

6 A. I did.

7 Q. Using the same equipment that Mr. Akers used the  
8 day before?

9 A. Yes, sir.

10 Q. Did you mark down the readings that you were  
11 getting from that equipment?

12 A. Yes.

13 Q. Did you mark those readings down on a diagram of  
14 some sort?

15 A. I believe so.

16 Q. I'm showing you now what has previously been  
17 marked as Exhibit 80 which I have additionally marked as A  
18 b and c as the exhibit is a three page document. Madam  
19 Hearing Officer have I given you such a document with an  
20 A, B and a C on it.

21 HEARING OFFICER: Yes, I believe I handed it  
22 back to you.

23 MR. CARSON: Can we take just a moment to  
24 confirm what I'm looking at is the same thing.

00631

1 HEARING OFFICER: Absolutely.

2 MR. CARSON: Thank you.

3 Q. -- Mr. Gsell, I'm going to ask you to look at a  
4 diagram which is shown as page C of Exhibit 80?

5 A. Yes.

6 Q. And ask you if that is the diagram upon which  
7 you entered the numbers that you took by yourself on  
8 October the 7th?

9 A. I'm not sure if it was the 6th or the 7th.

10 Q. Let me ask the question. Do you recall that  
11 when you did make the measurements and write numbers down  
12 on October the 7th when Harry was not there that you  
13 actually wrote those numbers down on a diagram like the  
14 one in front of you on page C?

15 A. I believe I did, yes.

16 MR. ELLEDGE: Excuse me, Madam Hearing  
17 Officer. I don't know, are these two people who walked  
18 in your witnesses?

19 MR. DIVER: No they're not.

20 MR. ELLEDGE: Then fine We have no  
21 objections. Off the record.

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

23 HEARING OFFICER: Back on the record.

24

00632

1 Read the question and answer back.

2 (The record was read.)

3 Q. Now Mr. Gsell, have you seen any other drawings  
4 with numbers written down other than this document C?

5 A. Yes.

6 Q. Have you seen any other drawing in this kind of  
7 format, that is --

8 A. No.

9 Q. But it was this format that you recall that you  
10 actually marked your numbers down by yours, correct?

11 A. Correct.

12 Q. Okay. The day before when you were writing  
13 numbers down, what were you writing them on?

14 HEARING OFFICER: You can just answer to the  
15 best of your ability?

16 A. Okay. I don't remember.

17 Q. Okay. Document C is a document prepared in your  
18 hand, is it not?

19 A. It is.

20 Q. Is there any part of the information or entries  
21 on that page that is not in your hand?

22 A. Yes, there is.

23 Q. And tell us what part is not yours?

24 A. The date and the exhibit number.

00633

1 Q. All right. The exhibit number in the corner  
2 says Exhibit 80 C and up at the top 10/7/93.

3 A. Yes.

4 Q. Okay. Do you know whether that's Mr. Akers'  
5 handwriting?

6 A. No, I don't.

7 Q. Okay. The numbers that you have written here --  
8 strike that question -- I note on this Exhibit C on the  
9 left-hand side that there is an area which appears to be  
10 described as guest bedroom, am I correct?

11 A. You're correct.

12 Q. All right. Do you recall actually going into  
13 the guest bedroom above the chiller unit to take sound  
14 measurements?

15 A. Yes.

16 Q. And do you recall whether the window to the  
17 guest bedroom was open or closed when those sound  
18 measurements were made?

19 A. It was closed.

20 Q. And do you recall that you made three sets of  
21 entries of numbers, including with the unit running, with  
22 a 4 foot fence, with the unit off, and with the unit  
23 running with an 8 foot fence. Do you recall that?

24 A. Yes.

00634

1 Q. All right. Looking to the right-hand side of  
2 this diagram?

3 A. Yes.

4 Q. We see just to the right of the chiller unit its  
5 three sets of numbers, 79.9 --

6 MR. CARSON: Object to reading the numbers  
7 into the record. There's no foundation as to the accuracy  
8 of these numbers.

9 Q. I'm going to ask you whether or not the numbers  
10 that are written to the right of the chiller unit, the 3  
11 numbers that are written to the right of it are written in  
12 your hand?

13 A. Yes, they are.

14 Q. Okay, the first number is 79.9.

15 MR. CARSON: Same objection, your Honor.

16 MR. DIVER: I don't know what the objection  
17 is.

18 MR. CARSON: Objecting to reading the numbers  
19 into the record. They're not in evidence and there's no  
20 foundation as to the accuracy of the numbers.

21 MR. DIVER: At this point I'm just going to  
22 ask him where he was standing when he wrote that number.  
23 I'm not asking whether that number is true or not.

24 HEARING OFFICER: I would prefer to have some



00635

1 foundation for the test that was conducted here. Could we  
2 have some additional foundation evidence for the test?

3 Q. The instrument that was used to record the  
4 sound, do you know what kind of an instrument it was?

5 A. No. I know it's a sound instrument that we  
6 rented. That's all I know.

7 Q. Do you know who rented it?

8 A. My office.

9 Q. Okay. And the instrument that was used was used  
10 by both you and Harry, correct?

11 A. Yes.

12 Q. Was the instrument required to be turned on in  
13 some way?

14 A. Sure.

15 Q. How?

16 A. Probably a toggle switch.

17 Q. Okay. How did you attempt to actually measure  
18 sound with this instrument? Did you point it at  
19 something? Did you hold it up? What did you have to do  
20 in order to measure your sound?

21 A. I believe in the instructions it showed where it  
22 was measuring from, so I held it in that manner so it  
23 would be upright or whatever the instructions say.

24 Q. You followed instructions that came with the

00636

1 piece of equipment?

2 A. Exactly.

3 Q. What were you trying to do in making sound  
4 measurements that day?

5 A. Well, see if they were on the 7th, I was -- this  
6 is the sheet I was doing to see if after insulating if it  
7 made a difference from the readings we had prior.

8 Q. Okay. So, you were attempting to determine  
9 whether or not there was sound being emitted from this  
10 equipment?

11 A. From the work that I done, sure.

12 Q. And to determine whether certain things that  
13 were being done to the chiller unit or around the chiller  
14 unit were having an affect on the sound coming from that  
15 unit, is that correct?

16 A. Sure.

17 Q. Okay. In addition to the insulation that was  
18 put into the chiller unit itself, was there anything else  
19 being done during the course of these noise tests to try  
20 to stop the amount of sound being transmitted?

21 A. There were a lot of other things done, but not  
22 while he was testing. I only had that tester I think two  
23 days. There were other things we done, yes.

24 Q. All right. The document that you're looking at

00637

1 suggests that there may have been some plywood board that  
2 were being put up around the unit. Do you recall that  
3 occurring?

4 A. Yes.

5 Q. Why don't you describe for us what was actually  
6 done with those plywood boards on the first day, the day  
7 before you put the insulation up?

8 A. They put temporary posts up and put plywood  
9 around in a U shape from the building around the unit back  
10 to the building at different heights.

11 Q. Okay. And then between these posts that were  
12 set up, they put in sheet of plywood?

13 A. Yes.

14 Q. Do you recall approximately what thickness  
15 plywood?

16 A. Probably it would have been 5/8ths.

17 Q. And the plywood was cut in different heights, is  
18 that correct?

19 A. No, it comes in 4 way sheet and they set it up  
20 on the 4 foot height.

21 Q. And set it up on the 4 foot so they would turn  
22 it so it was 8 foot?

23 A. No, they would hold another one up above.

24 Q. So, they did it in 4 foot increments, is that

00638

1 right?

2 A. Yes. 4, 6 foot.

3 Q. Excuse me?

4 A. 4 and 6 foot as I got.

5 Q. Does it say 6 foot down there?

6 A. No, it doesn't say 6 foot. I'm sorry, I guess  
7 it was 4 and 8 foot.

8 Q. And did you attempt to measure the amount of  
9 sound beyond this plywood boundary after the boundary was  
10 erected?

11 A. Yes.

12 Q. And you also measured the amount of sound before  
13 the boundary was erected?

14 A. Yes.

15 Q. And your purpose in doing this was to attempt to  
16 determine how much quieter the sound emission was because  
17 of the plywood board that were being established?

18 A. Yes.

19 Q. Okay. First day that is October 6th, 1993, you  
20 didn't actually operate the sound measuring equipment, did  
21 you?

22 A. No.

23 Q. Mr. Akers did?

24 A. Yes.

00639

1 Q. But did you observe him in his operation of the  
2 equipment that day?

3 A. I did.

4 Q. And on the second day when you did the  
5 measurements, did you operate the equipment, hold it, et  
6 cetera, in the same way that he did the day before?

7 A. I tried to get proper measurements, yes.

8 Q. Had you been asked by someone in Mid/Res to make  
9 those readings the second day?

10 A. I would imagine. Although I would have wanted  
11 to do them on my own anyway after doing the changes, you  
12 want to see the difference.

13 Q. At the time that these noise measurements began  
14 on October 6th, were you advised that the intention was to  
15 find out whether or not the insulation that you did put in  
16 actually had a sound reducing effect?

17 A. Oh, certainly.

18 Q. And, therefore, you would have to make a sound  
19 measurement after the insulation had been put in, correct?

20 A. Sure.

21 Q. This document shown as Exhibit 80C, did you file  
22 this document in the record of the Crown construction  
23 project at Mid/Res?

24 A. Did I? No, I turned it over to my supervisor.

00640

1 Q. Did you know if this document is currently in  
2 the record for the Crown construction project at Mid/Res?

3 A. No, I don't know but I'm assuming it is. That's  
4 how you got it.

5 Q. When was the last time that you saw this  
6 document before yesterday?

7 A. When I turned it into Michigan supervisor.

8 Q. And who did you turn it in to?

9 A. Dick Cosentino or Harry Akers.

10 Q. Is it your recollection using your ears now as  
11 the measuring device, that the sound of this chiller unit  
12 experienced in the guest bedroom by you was less than the  
13 sound you experienced on the north side of the 8 foot  
14 plywood fence when you took the measurements there?

15 MR. CARSON: Object to the leading nature of  
16 the question.

17 A. I didn't understand the question.

18 Q. Okay.

19 HEARING OFFICER: I would like to know the  
20 exact location of the measurement also as an independent  
21 entry.

22 MR. DIVER: Okay. At this point I'm not  
23 trying to establish the number as the number, but merely  
24 where the individual was standing with respect to the

00641

1 various sound measurements that were made.

2 Q. Going back to the document again, Mr. Gsell?

3 A. Yes.

4 Q. 80 C. Looking at the numbers that you've  
5 entered to the right side of the air conditioner unit.

6 The first number that you entered being 79.9 on this  
7 document?

8 A. Yes.

9 Q. Whatever that means. Where were you standing  
10 with respect to the air conditioner unit and the plywood  
11 fence when you entered that number?

12 A. Between the two which would have been a couple  
13 of feet.

14 Q. About how far was it from the face of the  
15 chiller unit to the plywood wall?

16 A. I believe there's about 4 foot in between.

17 Q. The next number you have noted here is 70.6.  
18 Where were you standing when that number was entered?

19 A. Within two feet of the fence, plywood fence.

20 Q. But on the north side of the fence?

21 A. Yes, on the opposite side of the fence.

22 Q. Such that the fence was actually between you and  
23 the chiller unit its, correct?

24 A. Yes.

00642

1 Q. The 3rd number that you entered 67.7. Where  
2 were you standing when you entered that number?

3 A. It had to be at the property line.

4 Q. By the property line you're talking about the  
5 north property line of the Crowns?

6 A. Yes.

7 Q. Did you at any time on this day actually enter  
8 upon the Shelton property and take any noise readings on  
9 their property?

10 A. As the charts show, yes.

11 Q. And where on the Shelton property did you take  
12 those noise readings?

13 A. I went right to the corner of their building.

14 Q. That would be the corner of their house closest  
15 to the air conditioner unit?

16 A. Right. That would have been their southeast  
17 corner.

18 Q. And on this document, 80C, there appears to be a  
19 column, adj prop. Could you tell me what that column  
20 means?

21 A. Adjacent property.

22 Q. Okay. And there appears to be two numbers  
23 entered there. Were those numbers entered while you were  
24 actually at the southeast corner of the Shelton house on



00643

1 this property?

2 A. Yes, they are.

3 Q. There is an indication next to your entries  
4 concerning an 8 foot plywood fence that some numbers were  
5 entered in the condition called running and another number  
6 entered in a condition called running, all fans. What's  
7 the difference between running and running all fans?

8 A. Well, I had taken the readings where I did  
9 written down running and when I was taking the readings I  
10 realized the unit obviously had come down, the  
11 temperature, whatever in the house and so a fan or two may  
12 have cycled off. So I reset the controls to bring all the  
13 fans on so I could get the full sound.

14 Q. So the condition marked as running meant that  
15 less than all of the fans or less than all of the  
16 compressors were running?

17 A. Yes.

18 Q. All right you have a number entered above the  
19 fans?

20 A. Yes.

21 Q. Do you see that? How did you get that number?  
22 Where were you to get that number?

23 A. Climbed on top of the fan, the unit.

24 Q. You actually stood on top of the unit?

00644

1 A. Yes, sir, I did.

2 Q. All right there are a series of three numbers to  
3 the top on this diagram of the air conditioner unit or the  
4 chiller unit?

5 A. Yes.

6 Q. And I'm going to ask you again where you were  
7 standing with respect to those?

8 The first one to the top of the unit is 82.1.

9 Where would you have been standing when you recorded that  
10 number?

11 A. Between the unit and the fence.

12 Q. Again?

13 A. The fence being the west.

14 Q. All right and the fence being about four feet  
15 away from the chiller?

16 A. Yes.

17 Q. The next number 72.8. You would have been  
18 standing about how far to the west of the fence?

19 A. Within a couple of feet.

20 Q. And the number 69.2, where would you have been  
21 standing when you recorded that number?

22 A. The entrance way to the home, the Crown home.

23 Q. This would be the entrance way to the Crown  
24 home?

00645

1 A. Yes.

2 Q. The entrance way on the north face of the Crown  
3 home, is that correct?

4 A. Yes.

5 Q. Okay. Now let's look at the numbers on the  
6 bottom. The first number 79.9. Again would you have been  
7 about midway between the chiller and the fence?

8 A. Affirmative.

9 Q. 71.9, a couple of feet east of the fence?

10 A. Yes.

11 Q. And where would you have been standing when you  
12 took the measurement 67.1?

13 A. As close to the property line as I could get.

14 Q. That would be close to the east property line.

15 A. Right.

16 Q. Do you recall about how far to the east of  
17 chiller unit the east property line was?

18 A. A hundred foot.

19 Q. The numbers that you entered around the actual  
20 drawing in contrast to the numbers entered by the 4 foot  
21 plywood fence and 8 foot plywood fence. I'm just looking  
22 at the numbers on the diagram proper. Were those the  
23 numbers that were entered without any fence being erected  
24 and the numbers in the upper right-hand corner would be

00646

1 the numbers that you took when the various wall sections  
2 were erected?

3 A. Would you ask that again?

4 Q. All right. Did this diagram show what the sound  
5 measurements were with no fence erected?

6 A. No.

7 Q. All right. Then could you explain what the  
8 numbers mean in the upper right-hand portion of the  
9 document and we'll start with those under 4 foot plywood  
10 fence property line, off and running. What did those --  
11 strike that -- under what condition was the number  
12 indicated as off taken?

13 A. With the unit not running, I wanted to get just  
14 neighborhood sound, so I could have a comparison.

15 Q. Then the next entry is with the unit running,  
16 correct?

17 A. Yes, sir.

18 Q. And this would have been a reading taken at the  
19 property line, correct?

20 A. Right.

21 Q. And with a 4 foot plywood fence up?

22 A. Yes.

23 Q. And you recorded a number at the property line  
24 under that condition, correct?

00647

1 A. Yes.

2 Q. All right. That number is different from the  
3 number that is shown on the actual diagram itself?

4 A. Yes.

5 Q. And that's what I'm asking is whether the  
6 diagram itself shows numbers with a condition with no  
7 fence, just measurements at various distances without my  
8 fence being involved?

9 A. No. I have to say the fence was up when I done  
10 that.

11 Q. All right. What size fence was up when you took  
12 those measurements that are shown on the diagram itself?

13 A. It shows 4 foot fence, 4 foot plywood.

14 Q. It also shows a 8 foot plywood fence on the  
15 diagram?

16 A. Sir, I'm looking at the diagram not at the  
17 writing up above. Maybe I'm looking at the wrong thing.  
18 I was looking here this shows a 4 foot plywood fence when  
19 I took these readings.

20 Q. Okay. I see. All right.

21 A. You were referring to this.

22 Q. Do you no what the explanation is for the  
23 difference between the condition shown as running at the  
24 property line, 63.8 and the condition that you told us

00648

1 before was 67.7 at the property line?

2 A. I don't recall why there was a difference.

3 Q. All right. Now, I'm going to ask you instead of  
4 using the equipment, to recollect the sound that you  
5 experienced while you were doing these tests, I'm going to  
6 ask you to tell me whether there was a difference in the  
7 sound that you perceived when you were in the guest  
8 bedroom from the sound that you perceived when the 4 foot  
9 plywood fence was up and you were standing on the Crown  
10 north property line?

11 A. Well, I would say it was quieter in the house.  
12 If I recall, you're in the house and your windows are  
13 closed.

14 Q. After giving this document that was shown as  
15 Exhibit C to Mr. Cosentino or Mr. Akers?

16 A. Yes.

17 Q. Did you discuss it with either of those  
18 gentlemen?

19 A. I may have explained this is what I have done.  
20 This is my numbers and that's it.

21 MR. DIVER: Okay. Madam Hearing Officer, we  
22 move the introduction of Exhibit 79 being the time sheet.

23 MR. ELLEDGE: No objection to 79.

24 HEARING OFFICER: All right 79 will be entered

00649

1 into evidence.

2 (Plaintiff's Exhibit No. 79 was entered  
3 into evidence.)

4 Q. Did you at a later point in time, sometime after  
5 October of 1993, have occasion to go back inside the  
6 chiller unit to examine the insulation?

7 A. No. Not purposely to examine insulation.

8 Q. Okay. But in the course of going in, did you  
9 examine the insulation at a date subsequent to October,  
10 1993?

11 A. Yes.

12 Q. I'm going to show you now what we've marked as  
13 Plaintiff's Exhibit 95 and ask you to look at that  
14 document, if you would. Again is that one of your time  
15 sheets for the Crown job?

16 A. It is.

17 Q. And this time sheet shows an entry for July 22,  
18 1994, is that correct?

19 A. Yes.

20 Q. And can you read into the record what it is that  
21 your hand shows that you wrote on that date?

22 A. Check out chiller unit with Joe Cambola and  
23 decided it was the cover over the compressors causing the  
24 unit to go off on compressor heater protection. Remove

00650

1 cover, installed mounters on air handler 11. Start up  
2 cooling and that's it.

3 Q. You indicate remove covering. What covering are  
4 you talking about removing?

5 A. Earlier I said I made a cover out of Armaflex  
6 and put it over the compressor. That's the cover I  
7 removed.

8 Q. Okay. So you removed the covering that you did  
9 originally installed on October 6th and 7th 1993, correct?

10 A. Yes. Only over the compressor.

11 Q. Correct, understood. The other insulation that  
12 you had installed on October 6th and 7th you saw was still  
13 there?

14 A. Yes.

15 Q. Was there any other insulation that had been  
16 added to what you put in the chiller unit on October 6th  
17 and 7th?

18 A. Not that I recall. I didn't look for anything  
19 specific.

20 Q. Had somebody instructed you to remove the  
21 covering from the compressors?

22 A. No, mine and Joe's decision.

23 Q. Who did you report that decision to?

24 A. It was done -- they seen it when it was on my



00651

1 time sheet.

2 Q. Okay. Do you recall actually speaking to  
3 somebody at Mid/Res about the fact that you did removed  
4 the insulation from the compressors?

5 A. Oh, I'm sure I did. I don't recall the  
6 conversation, but I'm sure I told my supervisor I done  
7 that.

8 Q. All right. You indicated that the decision to  
9 remove it was made by you and someone else?

10 A. Me and Joe Cambola, the service man that was out  
11 there. When we decided this was what the problem was, to  
12 remedy the problem was to take that off.

13 Q. Okay. Did you ever put that insulation back on  
14 the compressors?

15 A. No.

16 Q. Did you ever put any other insulation back over  
17 the compressors?

18 A. No.

19 MR. DIVER: Madam Hearing officer, I move  
20 the introduction of Exhibit 95.

21 MR. CARSON: No objection.

22 HEARING OFFICER: Exhibit 95 is entered into  
23 evidence.

24 (Plaintiff's Exhibit No. 95 was entered

00652

1                   into evidence.)

2       Q.     I'm now showing you what I've marked as  
3 Plaintiff's Exhibit 94.  Again is that one of your time  
4 sheet, Mr. Gsell, from the Crown project?

5       A.     Yes, sir.

6       Q.     I'm going to ask you to look at your -- strike  
7 that -- is this all in your hand?

8       A.     Yes, its.

9       Q.     Okay.  I ask you to look at the entry for  
10 Friday, July 8th, 1994 if you would?

11      A.     Yes.

12      Q.     And read for us what your hand says beginning  
13 with the 3rd line of that entry.

14                   MR. CARSON:  Objection to having the witness  
15 read from a document that's not in evidence and we're  
16 going to object to the offer of the document into evidence  
17 on the basis of relevance.

18                   MR. DIVER:  We need to take what it is that  
19 he says.  I mean he has to tell us what his handwriting  
20 says first and that's what I'm asking him to do is to read  
21 his own hand and tell us what it says.

22                   MR. CARSON:  And reading from a document  
23 that's not in evidence is simply a way of putting into  
24 evidence things that don't belong there.  And for that

00653

1 reason, we're objecting, your Honor.

2 HEARING OFFICER: Okay, thank you. We'll  
3 determine its admissibility later. I'm having some  
4 difficulty reading it. If the plaintiff would like to  
5 refer to it at this point, we can have the clarification  
6 on the words on the record, so objection is overruled.  
7 Proceed.

8 Q. Go ahead, Mr. Gsell and just begin reading with  
9 the 3rd line?

10 A. Pete Keller said Crown lawyer have been told to  
11 handle this humidity problem where outside air dampers  
12 were open because they lost the kitchen floor. They just  
13 started leaving the air conditioner on 24 hours a day on  
14 the 4th of July weekend. All the other units were working  
15 as these were. All the other units were working as these  
16 were, except for outside air open. So all the outside air  
17 came through cooling coil first which had removed most of  
18 the humidity. See you in court.

19 Q. Okay. Would you tell us what that entry was  
20 about? What was the nature of the problem that you were  
21 describing in this entry?

22 A. There were --

23 MR. CARSON: Object to the form of the  
24 question. He had the witness read this hearsay into the

00654

1 record and now he's asking the witness to describe the  
2 hearsay and it calls for a narrative. It's not a proper  
3 question.

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

5 Q. Were you there that day to determine a cause for  
6 a problem with the kitchen floor?

7 A. Yes.

8 Q. And what did you determine the cause of that  
9 problem was?

10 A. I did not determine a problem with the kitchen  
11 floor.

12 Q. But you did note that a particular condition was  
13 present. And what was that condition with the air  
14 conditioning system involving the dampers?

15 A. That the dampers were open. The carpenter or  
16 the general superintendent had been told by the sheet  
17 metal man that the dampers were wide open. So when I came  
18 on the job, the superintendent jumped all over me telling  
19 me that I ruined his floor and whatnot and it was because  
20 the sheet metal man told him it was because the dampers  
21 were left open. And I told him that he didn't know what  
22 he was talking about because even if the dampers were  
23 open, the air conditioning was running and it took most of  
24 the humidity out of air that would have come in through

00655

1 them dampers anyway. And he said he was going to sue me  
2 so, I said I'll see you in court.

3 Q. After July 22nd, 1994 when we've talked  
4 about your involvement at the site on that date recorded  
5 on Exhibit 95. After that date, did you have anything to  
6 do with providing any further sound quieting devices on or  
7 at the chiller unit?

8 A. Yes.

9 Q. What?

10 A. I don't know if it was before or after that  
11 date. I don't remember the date, though Mr. Crown  
12 purchased cones to put on the fans above to try and tunnel  
13 the air up I guess. We turned the unit to try and get the  
14 sound going away from next door.

15 Q. What was your involvement with the cones?

16 A. What was my involvement with the cones?

17 Q. What did you do?

18 A. Well, nothing. You asked me if I was there when  
19 we did anything.

20 Q. All right. My question was improperly asked.  
21 Did you do anything yourself other than just be present  
22 for any additional actions taken to quiet the sound?

23 A. Turned the condensing unit.

24 Q. You actually participated in turning the

00656

1 condensing unit?

2 A. I did it myself.

3 Q. Okay. And you determined yourself that by  
4 turning the condensing unit the sound experienced by  
5 anybody coming from this chiller unit would be lessened?

6 A. I didn't pay any attention to it.

7 Q. You were just following an instruction to turn  
8 the unit, correct?

9 A. Exactly.

10 Q. Did you notice yourself whether after the unit  
11 was actually turned there was any difference in your  
12 perception of the sound coming from the unit?

13 A. I didn't look for any. I didn't.

14 MR. DIVER: No further questions of this  
15 witness.

16 HEARING OFFICER: All right, thank you. At  
17 this point we'll take our morning break of approximately  
18 five to ten minutes and we'll come back and then we'll go  
19 through to the lunch break.

20 (A brief recess was taken.)

21 HEARING OFFICER: Back on the record. And  
22 we're back on the record and we'll now have the  
23 cross-examination of Mr. Gsell.

24 CROSS EXAMINATION

00657

1 BY MR. ELLEDGE:

2 Q. Mr. Gsell, I have just a few questions for you.

3 You testified earlier about putting the Armaflex

4 insulating in the cabinet and on the cabinet, is that

5 correct?

6 A. Yes.

7 Q. And you testified that, I believe you testified

8 that you did -- that you did go back and attempt to

9 determine if there was a difference, is that correct?

10 A. Yes.

11 Q. To your ears, was there a difference after you

12 put this on? Was there a difference in the sound level

13 from the chiller unit?

14 A. Definitely because the metal noise was-- you had

15 a rattle from the fans and it muffled it down.

16 Q. So there was a definite reduction?

17 A. Yes.

18 Q. All right thank you. Now, you also talked when

19 you were doing measurements, at one point you tried to

20 determine what neighborhood sounds there were. Were there

21 any particular prominent neighborhood sounds at that time

22 when the chiller unit was off?

23 A. Yes, there were sounds. There was construction

24 going on in the neighborhood and stuff.

00658

1 Q. And where was that construction going on?

2 A. Well, down the block, but, you know, there were  
3 trucks going up and down the street and stuff like that I  
4 think. Is that what you're referring to?

5 Q. Yes, and these were not the construction trucks  
6 that were on the Crown residence, is that correct?

7 A. No.

8 Q. They were not, but they were in that particular  
9 neighborhood?

10 A. Yes.

11 Q. In that private street?

12 A. Yes.

13 Q. On some other residences?

14 A. Yes.

15 Q. At the same time that the Crown construction was  
16 going on?

17 A. Yes.

18 Q. Thank you. Now, could you hear any other air  
19 conditioners.

20 MR. DIVER: When?

21 Q. At the time you were listening for neighborhood  
22 sound?

23 MR. DIVER: What day, the 6th or 7th?

24 MR. ELLEDGE: I assume that's not an



00659

1 objection, so I'll continue. Would you answer, please.

2 HEARING OFFICER: Counsel, make it an  
3 objection and we'll have --

4 MR. DIVER: I object to the form of the  
5 question. There's no foundation as to the date, time,  
6 place, that the witness is being asked about.

7 HEARING OFFICER: Mr. Elledge, can you be more  
8 specific.

9 Q. Yes. Let me direct your attention to the day  
10 when you were doing those measurements. Could you hear  
11 any air -- do you recall hearing any air conditioning  
12 unit at that time when you were --

13 MR. DIVER: Object. I believe the witness  
14 testified to being involved in those measurements on two  
15 different days.

16 MR. ELLEDGE: I think this is reasonably  
17 close. If there is a good enough foundation for the  
18 question that's asked, your Honor.

19 I'm saying we've got a specific two  
20 different days. I'm asking about both dates. I don't see  
21 that that's any foundation problem here at all. He  
22 testified extensively about these particular -- these two  
23 dates.

24 MR. DIVER: I think, Madam Hearing Officer,

00660

1 for one I have not raised an objection to the fact that  
2 this witness did not testify who he was trying to  
3 determine what other sounds were during the course of his  
4 direct examination, but I certainly will continue my  
5 objection if he's going to ask him what other particular  
6 sounds he noted, that he be rather specific as to the date  
7 that the witness was making those observations with  
8 respect to sound presence.

9 HEARING OFFICER: Let's put the dates on the  
10 record. I believe the dates of the testimony was the  
11 dates of the testing was October 6th, 1993.

12 MR. DIVER: Madam Hearing, Officer I believe  
13 he also testified to taking tests on October 7th, on  
14 Wednesday and Thursday before the insulation and after the  
15 insulation.

16 MR. CARSON: That was what the testimony was.

17 MR. ELLEDGE: And my question was with  
18 respect to those two dates did he hear any air  
19 conditioners.

20 HEARING OFFICER: Well, if there's any  
21 difference in the testimony for two days, would you have  
22 the witness make that clear?

23 A. Sir, I cannot be sure if I heard other air  
24 conditioners on either of them dates.

00661

1 Q. During the course -- how long were you out at  
2 that site over the period of the installation?

3 A. A year and a half.

4 Q. A year and a half. And during the course of  
5 that year and a half, part of that year and a half fell  
6 during the summer time, did it not?

7 A. Yes.

8 Q. Do you recall any occasion at which you heard  
9 other air conditioners in the neighborhood?

10 A. Yes.

11 Q. Can you remember approximately what -- can you  
12 remember whether it was 1994 or 1995 or --

13 A. Probably 1993.

14 Q. '93?

15 A. The summer.

16 Q. Could you hear any air conditioners at a time  
17 during 1993 when the chiller unit had been -- was  
18 operating at the Crown unit?

19 A. Yes.

20 Q. Could you identify where that unit was that was  
21 operating -- the other air conditioning unit?

22 MR. DIVER: Objection unless again we're more  
23 specific as to the circumstances of this particular  
24 observation that it was sometime in 1993. Given that this

00662

1 witness has testified that the unit did not operate until  
2 September, 1993 is something more.

3 MR. ELLEDGE: He's testified he remembers  
4 hearing one in 1993. That is, I think, is in the record.  
5 I can ask him more questions if he can remember time and  
6 location, but I thought I'd first ask him where the  
7 location was of the air conditioner that he recalls  
8 hearing. I thought that was what my question was. I  
9 believe that's a proper question with a proper foundation.

10 HEARING OFFICER: Overruled. You may answer  
11 the question.

12 A. Yes, there -- yes, it was on the property to  
13 the north.

14 Q. The adjoining property?

15 A. Yes.

16 Q. How long have you been dealing with air  
17 conditioners -- air conditioning units?

18 A. Since 1965.

19 Q. All right. So, based on your experience, could  
20 you tell what kind of an air conditioning unit it was?

21 A. I'd say probably about a three ton, I believe it  
22 was a Carrier unit being a brand name.

23 Q. And you characterized I believe earlier the  
24 sound of the chiller unit the Crowns used as being the

00663

1 customary sound of an air conditioner, an ordinary air  
2 conditioning, is that correct?

3 A. I did.

4 Q. Would you make the same characterization with  
5 regards to the three ton unit, Carrier unit at the Shelton  
6 house.

7 A. Yes.

8 Q. Could you hear that -- did you hear that air  
9 conditioning unit operating at a time when the Crown unit  
10 was operating?

11 A. I remember one time, yes.

12 Q. And where were you standing that one time?

13 A. In between the two.

14 Q. And you could hear both?

15 A. Yes.

16 Q. Thank you. Were there any characteristics about  
17 the sound of that unit that were -- of the Shelton unit  
18 that were in any way unusual?

19 MR. DIVER: Object to the form of the  
20 question. I don't know what unusual is.

21 HEARING OFFICER: Could you clarify the  
22 question?

23 Q. Could you characterize the sound from that unit?

24 A. Yes, it didn't -- to me it's a used unit, not a

00664

1 new unit. In other words, loose parts or whatever.

2 Q. Are you saying that it was a noisy unit?

3 MR. DIVER: Objection.

4 MR. ELLEDGE: This is on cross-examination.

5 MR. DIVER: I understand its on  
6 cross-examination, but I still object to your  
7 characterizing this witness' testimony.

8 HEARING OFFICER: Overruled.

9 Q. Would you answer, please?

10 A. It sounded like a used old unit to me. I don't  
11 expect it to be quiet as a new one, so it's normal to me,  
12 yes. But it sounded like an old unit.

13 Q. And do I understand you then the older unit are  
14 louder than new unit?

15 A. Sure because parts loosen up.

16 MR. ELLEDGE: Thank you. I have no further  
17 questions.

18 MR. DIVER: I have a few questions on  
19 redirect.

20 REDIRECT EXAMINATION

21 BY MR. DIVER:

22 Q. You indicated, Mr. Gsell, that after the  
23 Armaflex insulation had been placed into the unit, you  
24 detected that there was an actual reduction in the amount

00665

1 of sound coming from that unit, is that correct?

2 A. Yes, the vibration sound, right.

3 Q. Okay. When you actually did your measurements  
4 of sound, what are the things that -- one of the things  
5 that you did was stand on top of the chiller unit,  
6 correct?

7 A. Yes, I did.

8 Q. And will you tell us what the sound was that you  
9 experienced when you stood on top of the chiller unit?

10 A. Yes, an air noise becoming straight up at me.

11 Q. Did you, after you put the Armaflex insulation  
12 into the unit, go back on top of the unit again to  
13 experience the sound that was coming from those fans?

14 A. I don't believe so because I only had one  
15 reading on my chart, so then it would have been only the  
16 one time.

17 Q. What was it that you actually did with this  
18 insulation that in your judgment would have had an effect  
19 on the amount of sound being emitted from the fans?

20 MR. CARSON: Objection, calls for  
21 speculation.

22 MR. DIVER: I'm asking this witness. This  
23 witness is the person who put the insulation on the  
24 equipment to silence it. I'm asking him what he did in

00666

1 that silencing that was intended to address the issue of  
2 the noise from the fans.

3 MR. CARSON: Your Honor, he's asking the  
4 witness to draw a conclusion and there's no foundation  
5 with respect to him being an expert in the measurement of  
6 sound or the reduction of sound and it calls for opinion  
7 and speculation.

8 HEARING OFFICER: Overruled. You may answer  
9 the question.

10 A. Repeat the question.

11 MR. DIVER: Read the question back.

12 (Whereupon the record was read by the reporter.)

13 A. I was not -- my idea was when I was insulating  
14 was not for the fans specifically. When I suggested  
15 insulating the inside was from the panels and it did help  
16 the panels very much.

17 Q. When you did your measurements at the site and  
18 experienced the sound, of all the sound that you  
19 experienced, in the bedrooms, various portions of the  
20 Crown property, on the Shelton property, and on top of the  
21 unit, where was the loudest sound that you experienced?

22 A. Standing right over the fans, of course.

23 MR. DIVER: No further questions.

24 MR. ELLEDGE: No recross.



00667

1 HEARING OFFICER: All right thank you very  
2 much, Mr. Gsell.

3 (A brief recess was taken.)

4 HEARING OFFICER: Back on the record.

5 MR. DIVER: Complainant calls as its next  
6 witness Charles Seda.

7 (Witness Sworn.)

8 PROCEEDINGS

9 WHEREUPON

10 CHARLES ALAN SHEDA,  
11 having been duly sworn to tell the truth, the whole truth,  
12 and nothing but the truth, was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. DIVER:

16 Q. Would you state your full name for the record?

17 A. Charles Alan Sheda, that's S-h-e-d-a.

18 Q. How would you -- could you state, for the  
19 record, who you're employed by?

20 A. The Tran Company.

21 Q. The Tran Company is a manufacturer of air  
22 conditioning equipment?

23 A. Correct.

24 Q. For how long have you been employed by Tran?

00668

1 A. 9 years.

2 Q. And during that entire 9 years in the same  
3 capacity?

4 A. Yes.

5 Q. And that is what?

6 A. I'm a sales engineer.

7 Q. At some point in your career did you become  
8 involved with providing equipment to Mid/Res, Inc. with  
9 respect to a project identified as the Crown project?

10 A. Yes.

11 Q. Showing you now what has been previously marked  
12 as Exhibit 73 and ask you if that is the purchase order  
13 you received for Mid/Res for a purchase of air  
14 conditioning equipment with respect to the Crown project?

15 A. Yes.

16 Q. You received that on or about the date shown,  
17 June 29th, 1992?

18 A. Yes.

19 Q. And what kind of equipment was being ordered by  
20 Mid/Res?

21 A. It's a 25 ton condensing unit air cold along  
22 with an evaporator bundle.

23 Q. Let's focus on the air cold condensing unit.  
24 Did that have a model number?

00669

1 A. Yes.

2 Q. And what is it?

3 A. RAUCC 25.

4 MR. DIVER: Madam Hearing Officer, I move  
5 the introduction of Exhibit 73.

6 MR. ELLEDGE: No objection.

7 HEARING OFFICER: Exhibit 73 is entered into  
8 evidence.

9 (Plaintiff's Exhibit No. 73 was entered  
10 into evidence.)

11 MR. CARSON: Can I raise a clarification  
12 question as because this copy, is it C 25 ton?

13 A. Yes.

14 Q. 25 ton, is that correct?

15 A. Correct.

16 MR. CARSON: The copy didn't come out  
17 clearly.

18 Q. On page 2 of that order, Mr. Sheda, you were  
19 asked to submit some documents including I believe copies  
20 of an installation operation maintenance manual, is that  
21 correct?

22 A. Correct.

23 Q. Now, I'm showing you now what has been  
24 previously admitted as Exhibit 75 and ask you to look at

00670

1 that and ask if that is your transmittal document by which  
2 you transmitted drawings as well as the installation  
3 operation maintenance manual?

4 A. This is the submittal for the installation. The  
5 operation manual is the separate book. This is the  
6 submittal data.

7 Q. Okay and--

8 A. Right.

9 Q. But this is the--

10 A. This is the cover sheet.

11 Q. I'm now showing you what's been marked as  
12 Exhibit 3 and introduced and admitted and ask you if that  
13 is the IOM manual that you sent to Mid/Res?

14 A. Yes, it is.

15 Q. You sent that to them on or about--

16 A. July 8th.

17 Q. July 8th, 1992. Showing you now what has been  
18 marked as Plaintiff's Exhibit 99. I'm going to show it to  
19 Mr. Elledge.

20 Mr. Sheda, I'm showing you now what I've  
21 marked as Plaintiff's Exhibit 99 and ask you if you can  
22 identify that particular document?

23 A. Yes, it's an engineering bulletin that addresses  
24 outdoor sound with regard to the unit in question.

00671

1 Q. Is that a document that you received from Tran?

2 A. Yes.

3 Q. At about what time?

4 A. Sometime in 1993.

5 Q. Earlier or later?

6 A. Probably middle.

7 Q. I'm showing you now what has previously been  
8 marked as Exhibit 47. I believe you have a copy of it,  
9 Reese. The Exhibit itself being a letter of July 21,  
10 1994.

11 MR. CARSON: What was the exhibit number?

12 MR. DIVER: 47, and I'm going to refer you to  
13 the three pages attached to that document and I'm going to  
14 ask whether those 3 pages that are attached to that  
15 document are true and correct copies of pages of exhibit  
16 99 that I have just tendered to you?

17 A. Yes they look to be the same.

18 Q. I'm now showing you Exhibit 43 previously marked  
19 --

20 MR. ELLEDGE: Your Honor, I'm going to raise  
21 an objection at this time, if I may, with respect to the  
22 first document identified. That is a document which was  
23 first produced at the deposition. At least it was  
24 produced at a deposition at which time I was advised that

00672

1 the document and its contents were subject to a  
2 confidentiality agreement, an agreement between counsel  
3 and the Tran Company, and based on that I don't see how  
4 this can be properly brought into this record. Obviously  
5 if a matter is not going to be brought into the record, if  
6 the document itself, and I was advised and believed that  
7 counsel was not going to introduce the document itself.  
8 It would be somewhat disingenuous then to try to pull  
9 cross identify copies of that document and which  
10 presumably is what has just been done and presumably then  
11 attempts to bring this hearsay document without foundation  
12 which we were operating under the assumption would not be  
13 submitted, brought into this record. I don't think its  
14 proper for this record. I will go to the substance of it  
15 if we wants to have a further -- if there is -- if you  
16 care to make further --

17 HEARING OFFICER: First of all, what document  
18 number are you referring to?

19 MR. ELLEDGE: The document?

20 MR. CARSON: Exhibit number 99 and there are  
21 portions of Exhibits 99 which are attached to Exhibit 43  
22 and Exhibit 47 and I think it should also be pointed out  
23 that the date that is on Exhibit Number 99 is February,  
24 1993 and if there's going to be any further reference to

00673

1 the document, we would like an opportunity to briefly voir  
2 dire the witness. He indicated applicable to this unit  
3 and I don't think he meant this unit, he meant this  
4 particular model because the bulletin came out after this  
5 unit was shipped.

6 HEARING OFFICER: Okay. You're referring to  
7 the pages. I'm just inquiring for edification purposes  
8 here. You're referring to the pages that begin with the  
9 words, with the Roman numeral 3, application  
10 considerations.

11 MR. CARSON: Yes.

12 MR. ELLEDGE: That's correct.

13 MR. DIVER: Madam Hearing Officer, if I may  
14 respond.

15 HEARING OFFICER: First of all, I think this  
16 may already be admitted into evidence.

17 MR. CARSON: It's over my objection.

18 MR. DIVER: Madam Hearing Officer, I believe  
19 that is true. Madam Hearing Officer, one of the issues  
20 has been what is this document that's attached, not is it  
21 true and correct; where did it come from and what is it?  
22 This witness can testify as to what it is and where it  
23 came from. It did not come through the device of my  
24 obtaining a copy of the engineering bulletin in toto, but

00674

1 indeed Mr. Shelton obtained copies of certain pages of  
2 that document as did Mid/Res. And I'm going to be asking  
3 him about some documents they received and those documents  
4 themselves are relevant here because they constitute  
5 transmission of information --

6 MR. ELLEDGE: Of hearsay.

7 MR. DIVER: I don't care whether it's hearsay  
8 or not. The question is it was information sent to Mr.  
9 Crown with respect to sound being emitted from this type  
10 of unit and that's all we're asking that it be considered  
11 with respect to. But we need to establish where did it  
12 come from. That this was not information just that Mr.  
13 Shelton invented off of the street. It is information  
14 that came out of a document which Tran prepared for its  
15 own sales engineers.

16 MR. CARSON: Your Honor, Exhibit 43 is  
17 addressed to Mr. Douglas Williams, the manager of the  
18 Winnetka --

19 MR. DIVER: That's a group exhibit.

20 MR. CARSON: Would you look at the first --  
21 next page, Exhibit 47 is a letter that's addressed to Mr.  
22 Alan H. Shiner.

23 MR. DIVER: And who is cc'd on that?

24 MR. CARSON: Steven Crown.



00675

1                   MR. DIVER: And this document says this is the  
2 document here, to Steven Crown that attaches the documents  
3 to it. These are documents that later testimony will  
4 establish were sent to Steven Crown on the dates that they  
5 are purported to have been sent.

6                   HEARING OFFICER: All right. If that is the  
7 purpose for which you're proposing to introduce the  
8 document, I will overruled the objection and let you  
9 proceed with your questioning at this point in time.

10           Q.       Thank you. Now Mr. Sheda again looking at the  
11 document that's marked Exhibit 43 and again in that group  
12 exhibit asking you to look at the last the pages and ask  
13 you if those are true and correct with the exception of  
14 the handwritten portions of it, whether they are true and  
15 correct copies of the Tables 1 and 2 of Group Exhibit 99.

16           A        Yes.

17                   MR. CARSON: Object to the relevance of  
18 documents that were generated after the delivery of the  
19 equipment in question.

20                   MR. DIVER: I certainly have no objection to  
21 his going into that on cross-examination, Madam Hearing  
22 Officer.

23                   HEARING OFFICER: Overruled.

24           Q.       Showing you what has been previously marked as

00676

1 Exhibit 3, Madam Hearing Officer, I believe you already  
2 have a copy of this. I'll let you see this one for  
3 information purposes at the moment. And turning to the  
4 attachments to that document again immediately prior to  
5 that sheet that appears to be a petition are two pages.  
6 I'm asking you again whether those are true and correct  
7 copies of pages 1 and 2 of Exhibit 99?

8 A. Yes.

9 Q. Showing you what has been previously admitted as  
10 Exhibit 82--

11 MR. ELLEDGE: 82 was admitted.

12 MR. DIVER: Ask you to look at that document,  
13 the second and third pages and ask you if those are true  
14 and correct copies of page 1 and page 11?

15 A. That's not page 1 that's page 10.

16 Q. I'm sorry, page 19 and page 11 of Exhibit 99?

17 A. Yes.

18 Q. Okay. There is one possible part of this that's  
19 illegible. Table 2 on the second page where it says 28 to  
20 40 ton air cold split condenser unit sound pressure level  
21 at blank feet. What is that actual number?

22 A. Actually it's 20 to 60 ton air cold split  
23 condensing unit sound pressure levels at 30 feet.

24 Q. 30 feet?

00677

1 A. Right.

2 Q. Okay.

3 MR. CARSON: Your Honor, can we interrupt the  
4 questioning just for a minute to just verify Exhibit  
5 Number 28 the counsel indicated that's in evidence and I  
6 just wanted to see if your Honor --

7 HEARING OFFICER: Off the record for a minute.  
8 I need about a minute here to classify exhibit numbers and  
9 trace my own records.

10 (A brief recess was taken.)

11 HEARING OFFICER: Back on the record.

12 Q. And last I am showing to you using the same  
13 document, I'm showing to you attachments A 1, page 1 and  
14 page 2 attached to the complaint in this proceeding and  
15 ask you if those are true and correct copies of pages 1  
16 and 2 of Exhibit 99?

17 A. Yes.

18 Q. Okay.

19 MR. CARSON: Your Honor, there's an objection  
20 and a motion we wish to make at this time with reference  
21 to a number of these exhibits. Exhibit Number 99 was  
22 identified as a Tran bulletin that bears the dates of  
23 February, 1993 and I don't think there's any question that  
24 it post dates the delivery and -- no, the delivery of the

00678

1 equipment in question and certainly the purchase of the  
2 equipment in question. There has now been, through the  
3 testimony that we've just gone through an effort to  
4 establish that portions of that bulletin which post dates  
5 the delivery of the equipment in question were sent to  
6 various people and Exhibit 43 bears on that Exhibit 7,  
7 bears on it, Exhibits 47 bears on it and Exhibit 82 bears  
8 on it. The bulletin itself and the portion of the  
9 bulletin that was sent to various people is not relevant  
10 and it contains hearsay. It contains -- it's not relevant  
11 because of the time that it was generated and it also is  
12 inadmissible because it's the statements of various Tran  
13 engineers that aren't here to testify as to the contents  
14 of the document itself. There was an offer of some of  
15 these exhibits for the limited purpose of showing notice  
16 and over our objection some of these exhibits were  
17 admitted for the limited purpose of showing notice. But  
18 what's happening now is a back door effort to introduce  
19 the opinions of some Tran engineers which is -- who are  
20 not available for our cross-examination at this hearing.  
21 And its hearsay and therefore inadmissible. And if the  
22 use of this limited purpose notice in order to get  
23 irrelevant hearsay into this record is wholly  
24 inappropriate and we therefore move to strike certainly

00679

1 the portions of these exhibits that contain this  
2 irrelevant post dated Tran bulletin and move to exclude  
3 any further reference to them in the record.

4 MR. DIVER: Madam Hearing Officer, if I may  
5 respond. The issues of the date of the document may be  
6 relevant to whether or not the information that purports  
7 to be in that document concerns this particular piece of  
8 equipment. Notwithstanding, we admit that we are seeking  
9 ultimately the admission of the documents that this  
10 witness has authenticated as being copies of a Tran  
11 document. We will be seeking to admit those documents for  
12 the purpose not of establishing the truth of what is in  
13 the Tran document substantively, but merely to establish  
14 that this was a document that came from Tran and that  
15 ultimately it went to Mr. Crown and ultimately it went to  
16 Mid/Res and ultimately it went to the other experts that  
17 Mr. Crown has retained with respect to the noise problem  
18 at his house. And for that purpose alone, this  
19 information is relevant because it establishes notice to  
20 him of having received something that was represented to  
21 him as being from Tran which is now established by their  
22 witness as being from Tran and of course a determination  
23 of what he should do with it or not obviously is something  
24 that the trier of fact will have to determine. But we're

00680

1 not asking to have this document admitted for the truth of  
2 the sound pressure levels or the sound pressure readings  
3 that are actually stated in the document itself, but  
4 merely to establish that it was a document prepared by  
5 Tran with respect to this kind of a unit, even though it  
6 came out after the actual order date, it was with respect  
7 to this what -- kind of a unit because what we're talking  
8 about ultimately is what was done after this unit was  
9 determined to have -- after this unit was determined to be  
10 presenting a noise problem, what was done to try to  
11 correct that problem and was all of the material that was  
12 available to be used, considered, consulted, looked at in  
13 making the determination of what needed to be done at this  
14 particular facility.

15                   MR. CARSON: If I may respond, your Honor.  
16 Given what we're hearing that this is simply to establish  
17 notification and given that we're not able to question any  
18 of these Tran engineers who generated this document.  
19 I think for purposes of our discussion can we refer to it  
20 as irrelevant hearsay garbage. Now why is it that one  
21 --let's just assume that for purposes of discussion. Why  
22 is it relevant to prove that irrelevant hearsay garbage  
23 waste communicated to these various people? This is an  
24 attempt to back door and prove facts that we have no

00681

1 opportunity to cross-examine these people. We don't know  
2 what this information is nor, and I think counsel has  
3 implicitly conceded here that it doesn't even apply to  
4 the equipment that's involved in this case. So, for that  
5 reason, it should be kept out. It doesn't belong here.

6 MR. DIVER: There's no concession with respect  
7 to that at all, Madam Hearing Officer, that this does not  
8 apply to this equipment. Granted the date of this  
9 document was prepared after shipment of the document, but  
10 it does not relate to the question of whether or not there  
11 are things that ought to be considered in addressing this  
12 particular kind of equipment that were being communicated  
13 to Mr. Crown through these documents. Even though we're  
14 not establishing them as the levels of sound pressure for  
15 the readings or the levels, they are being communicated as  
16 information that Mr. Shelton said was information from  
17 Tran and now we are establishing through this witness  
18 indeed that the information was from Tran. If counsel  
19 wants to argue that this was a pack of irrelevant, can  
20 scurrilous lies from Tran, fine, but I don't believe  
21 that's what he's going to be able to establish in his case  
22 or establish for the trier of fact.

23 HEARING OFFICER: Thank you, counsel. Okay,  
24 first of all, I think you've decided to answer one of my

00682

1 concerns. Could we have a stipulation on the record that  
2 the document pages in question were not -- however you  
3 would like to present it.

4 MR. CARSON: Not in existence.

5 HEARING OFFICER: Or not presented. Were not  
6 in existence or were not presented to Mr. Crown prior to  
7 his purchase of this system. Have some sort--

8 MR. DIVER: I will stipulate to that that  
9 they were not presented to Mr. Crown prior to the purchase  
10 of the system.

11 HEARING OFFICER: I will so stipulate. So  
12 will that answer your concern about the fact that that  
13 information was not made part of the record.

14 MR. CARSON: It was not available prior to the  
15 installation of the equipment.

16 HEARING OFFICER: All right and not available  
17 prior to the installation.

18 MR. DIVER: That part I can't stipulate to  
19 because factually the date of the document on its face is  
20 February and the installation was sometime in the late  
21 spring or summer of 1993, so.

22 HEARING OFFICER: All right. Will we be  
23 receiving testimony during Respondent's case related to  
24 that issue.



00683

1                   MR. CARSON: Well, I think we heard from this  
2 witness already that the first time he saw it was sometime  
3 in the middle of 1993.

4                   HEARING OFFICER: Could you answer my  
5 question, counsel?

6                   MR. CARSON: Will you be -- I don't know, I  
7 don't know the answer to the question.

8                   HEARING OFFICER: All right. So we have a  
9 stipulation that the information was not available or was  
10 not made available to Mr. Crown prior to his purchase of  
11 the system. The question of relevancy of the information  
12 has been raised on the objection and I believe that the  
13 objection is overruled on that aspect due to Complainant  
14 counsel's offer of proof with respect to the purposes for  
15 which the information is being introduced. With respect  
16 to it as being inadmissible for the truth of the matter  
17 asserted. It's not being offered for the truth of the  
18 matter asserted and the record should reflect that it is  
19 not to be considered for the truth of the matter asserted.  
20 It has been accepted into evidence for the limited purpose  
21 of showing notice and the Board will establish the weight  
22 of the evidence in their deliberations.

23                   MR. CARSON: Madam Hearing Officer, with  
24 respect to the offer for the purpose of notice, what

00684

1 counsel is essentially arguing is that Mr. Crown should  
2 have relied on the truth of the information in this  
3 document and there's no foundation. It hasn't been  
4 authenticated in that regard. It's a pile of hearsay and  
5 it's in essence being offered for the truth.

6 HEARING OFFICER: I'm not sure that's  
7 technically correct.

8 MR. CARSON: It's, in essence, being offered  
9 for the truth. I think his statement that it is not  
10 doesn't make it so. He's trying to argue that Mr. Crown  
11 should have read it and taken steps and notice of -- what  
12 is the question -- if he received the package of hearsay  
13 irrelevant garbage? What's he supposed to do in response  
14 to it? And I think for purposes of our analysis, we  
15 should consider it to be hearsay, irrelevant garbage.

16 HEARING OFFICER: Okay. Counsel, we do not  
17 have a motion for the introduction of this evidence on the  
18 floor at this point in time.

19 MR. DIVER: There is not a motion to have  
20 Exhibit 99 introduced as evidence itself. The other  
21 exhibits have either already been introduced into evidence  
22 or will through subsequent testimony of witnesses be  
23 offered, but not through this witness. This witness'  
24 point was merely to authenticate a particular document.

00685

1                   HEARING OFFICER: All right. I believe we had  
2 an objection. The objection is overruled and I believe we  
3 had a motion to strike and the motion to strike is denied.  
4 You may proceed.

5 BY MR. DIVER:

6 Q. Mr. Sheda, the chiller unit, is it all right if  
7 we call it a chiller unit?

8 A. Yes.

9 Q. The chiller unit that Tran delivered to Mid/Res  
10 was comprised of what parts?

11 A. The outdoor unit is comprised of a condensing  
12 section, which has the compressors. There are condenser  
13 coils and then condenser fans and then the indoor unit is  
14 merely a bundle with tubes.

15 Q. Let's focus on the outdoor unit, referring to  
16 the outdoor unit; that is, the chiller unit, if we may.

17 A. Okay.

18 Q. How many fans were in that unit that was sent to  
19 Mid/Res.

20 A. Three.

21 Q. Now, are you familiar with the operation of this  
22 particular piece of equipment?

23 A. Yes.

24 Q. Do the condensers always operate together or do

00686

1 they operate separately?

2 A. You mean the fans?

3 Q. I'm sorry, I'm talking about the compressors.

4 A. Oh, compressors.

5 Q. Compressors.

6 A. The compressors they will operate independent of  
7 one another.

8 Q. One will go on and then if necessary a second  
9 would be added.

10 A. Correct.

11 Q. And at different times the lead compressor, the  
12 first one to go on will change?

13 A. Correct.

14 Q. And during the course of a day these compressors  
15 will go on and on at various times, is that correct?

16 A. Correct.

17 Q. Could you describe for us the sound that is made  
18 when one of these compressors goes on?

19 A. I don't understand the question.

20 Q. All right. When the compressor goes on, does it  
21 go on gradually or does it begin operation in an more  
22 subtle fashion?

23 A. No, it's an on/off type compressor. There are  
24 certain compressors that unload. These don't. This

00687

1 compressor, there's two of them and if its on, its on. If  
2 its off, its off. They both operates the same way.

3 Q. Does the sound generate at the same time the  
4 unit goes on?

5 A. Yes.

6 Q. How would you characterize that sound?

7 A. It's the -- I don't know how to characterize  
8 it. Its the sound of the compressor going on. Its off,  
9 its on. If its off, its on.

10 Q. Is it hard to hear?

11 A. No, you can hear it.

12 Q. From some distance?

13 A. Of course. I mean I don't know what distance.

14 Q. 30 feet?

15 A. Probably.

16 Q. Were you ever asked to become involved in  
17 solving sound problems from this particular -- strike that  
18 -- were you ever asked to become involved in solving loud  
19 sound that were coming from the chiller unit?

20 A. I was asked what -- I was asked certain things  
21 about the equipment. For instance, I was asked can we  
22 wrap the compressors and I investigated that and gave a  
23 response and I believe I was asked questions in regard to  
24 the condenser fans and how to attenuate the sound that

00688

1 they produced, so yes.

2 Q. At about what point in time were you first  
3 apprised -- strike that -- at what point in time were you  
4 first asked to become involved in addressing a sound  
5 problem from this chiller unit?

6 A. You have to refresh my memory because I don't  
7 remember.

8 Q. I'm showing you now what's being marked as  
9 Plaintiff's Exhibit 96 and ask you to look at that and  
10 tell me whether that is a document that you prepared?

11 A. Yes, it is.

12 Q. Was this document prepared at or about the time  
13 that you were first contacted about a sound problem?

14 A. I believe so. This document doesn't refer to  
15 the equipment I sold on the original job, so I don't know.  
16 But its possible, but I don't know.

17 Q. Do you recall why it was that you prepared this  
18 information to Mid/Res? What were you asked to do?

19 A. Okay. You're right. I was asked to -- hold on,  
20 let me read it, okay? They were looking to find ought if  
21 this particular unit would work with the chiller bundle  
22 that they had at the job.

23 Q. And was sound an issue with respect to what was  
24 asked of you?

00689

1 A. Yes.

2 Q. And this document, Exhibit 96, you communicated  
3 sound information as well with respect to the unit that  
4 you had been asked to provide information on, did you not?

5 A. Yes.

6 Q. And was this in response to a request from  
7 Mid/Res?

8 A. Yes.

9 MR. DIVER: Move the introduction of  
10 Plaintiff's Exhibit 96.

11 MR. CARSON: Can we have just a moment, your  
12 Honor?

13 HEARING OFFICER: Okay.

14 (Pause in the proceedings.)

15 MR. DIVER: I'm sorry, Mr. Witness, Mr.  
16 Sheda, the date on the document is October 27th, 1993?

17 A. Yes.

18 MR. DIVER: Thank you. Again move the  
19 admission of this exhibit.

20 MR. CARSON: Your Honor, we're objecting to  
21 Plaintiff's Exhibit 96 on the basis that it contains  
22 hearsay and in particular with reference to this second  
23 two pages of the exhibit which look like they may have  
24 been taken out of a book somewhere. We don't know what

00690

1 this information is, where it came from and have no way to  
2 analyze what the credibility of this information is.

3 MR. DIVER: Madam Hearing Officer --

4 HEARING OFFICER: Okay. Do you have a  
5 response of some additional foundation for pages A and the  
6 last page which is entitled, Bels Sound Reading?

7 BY MR. DIVER:

8 Q Mr. Sheda, where did you get the two pages  
9 that are attached to your fax transmission document?

10 A. Page two is a photocopy of a page out of the  
11 catalog for this particular piece of equipment.

12 Q. The particular piece of equipment being the 25  
13 ton unit that you describe in your cover sheet?

14 A. Correct.

15 Q. And the attachments to that which is called Bels  
16 Sound Rating, where did you get that?

17 A. I got that from, I believe, from the factory  
18 that produces this piece of equipment and its a definition  
19 of Bels.

20 Q. And its a definition of a word that is used in  
21 the general data sheet, correct?

22 A. Correct.

23 Q. In the middle of that sheet it indicates ARI  
24 sound rating?



00691

1 A. Yes.

2 Q. And it shows an arrow and a circle. Did you  
3 enter those?

4 A. Yes.

5 Q. Okay. And so the attachment of Bels sound  
6 rating is merely an explanation of what the ARI sound  
7 rating bells means?

8 A. Correct.

9 HEARING OFFICER: So, we are to attach no  
10 significance to the number that is circled, that would be  
11 correct?.

12 MR. DIVER: That is correct.

13 HEARING OFFICER: All right. Counsel, would  
14 you like to respond to the objection?

15 MR. DIVER: Again, I am not introducing this  
16 document on the truth of what the sound level of power  
17 rating are for this piece of equipment that's being  
18 discussed here. Merely to indicate that as of October  
19 27th, 1993, Tran was already being enlisted buy Mr.  
20 Crown's expense to help them solve a problem that involved  
21 sound and were being communicated general information with  
22 respect to sound, but not necessarily sound with respect  
23 to the piece of equipment that Mr. Crown had at his home.  
24 But they were being communicated general information about

00692

1 sound.

2 MR. CARSON: We will be objecting to the  
3 characterization of Mr. Crown's expert, but certainly this  
4 indicates a communication between Mid/Res and Tran on the  
5 subject of sound emissions. If counsel wants a  
6 stipulation from the Respondents that they were working on  
7 the issue in October of '93. Certainly we don't have any  
8 problem with that, but that doesn't change the fact that  
9 the information contained herein is hearsay.

10 HEARING OFFICER: : Objection overruled and  
11 this will be admitted into evidence for the limited  
12 purpose of showing that the purported communications were  
13 occurring at this time.

14 Q. Mr. Sheda, at a point in time were you contacted  
15 by a representative of Mid/Res with respect to the general  
16 subject of putting insulation inside the cabinet of the  
17 chiller unit?

18 A. Insulation on the compressors or I don't  
19 understand.

20 Q. Insulation on the compressor, yes?

21 A. Yes.

22 Q. And I'm showing you now what has been marked as  
23 Plaintiff's Exhibit 97 and ask you if that is a document  
24 that you received on or by February 2, 1994 from Mid/Res?

00693

1 A. Yes.

2 Q. Do you recall talking to Mr. Doshi about this  
3 issue at about that time?

4 A. I don't recall talking to him about it. I don't  
5 know if I responded to him or to Brad Mountaineer, but I  
6 responded to somebody at Mid/Res about these questions.

7 Q. At the time you were communicated with  
8 concerning the subject of placing insulation on the  
9 compressors, were you told that there was already  
10 insulation that had been placed on the compressors?

11 A. I don't remember, I don't know.

12 MR. DIVER: Move the introduction of  
13 Plaintiff's Exhibit 97.

14 MR. CARSON: No objection to 97.

15 HEARING OFFICER: Exhibit 97 will be entered  
16 into evidence.

17 (Plaintiff's Exhibit No. 97 was received  
18 into evidence.)

19 Q. After the date of that document, February 2,  
20 1994, were you involved in any further discussions with  
21 Mid/Res concerning controls that could lessen the amount  
22 of sound being generated by this chiller unit?

23 A. Controls.

24 Q. Controls on the equipment, the equipment that

00694

1 could be put around the unit, anything that could be used  
2 to change the amount of sound being emitted from this  
3 equipment?

4 A. Yes.

5 Q. And what were the nature of those discussions?  
6 What did you discuss?

7 A. One issue was to put a barrier around the unit  
8 and then the other issue was to put a device over the fans  
9 to try to attenuate the noise that way.

10 Q. When you say put a barrier around the unit, are  
11 you talking about a barrier with some kind of acoustical  
12 lining?

13 A. Correct.

14 Q. Do you recall having discussions with Mid/Res  
15 about acoustical barriers prior to July 5, 1994?

16 A. I don't remember. It's possible, but I don't  
17 remember.

18 Q. Do you recall when you had the conversations  
19 with them about cones?

20 A. No, not when.

21 Q. Did you originate the concept of cones? Did you  
22 propose it?

23 A. No, Mid/Res sent me a document from a  
24 competitor's documentation and asked me if it was okay if

00695

1 they tried that device in our unit.

2 Q. Were you particularly solicited by anyone from  
3 Mid/Res as to your thoughts on what might be done to  
4 lessen the amount of noise coming from this unit?

5 A. No.

6 Q. Have you ever been to the Crown house on Ardsley  
7 in Winnetka?

8 A. No.

9 Q. Did you ever tell anybody at Mid/Res that the  
10 unit that had been established, the chiller unit that had  
11 been established, was one that was appropriate for  
12 location in that particular neighborhood?

13 A. No.

14 Q. Did you at that time consider that it was your  
15 responsibility to determine whether the unit that was  
16 ordered was appropriate for the neighborhood that it was  
17 placed in?

18 A. At the time when I was asked to quote this job,  
19 I didn't know it was going. I didn't know anything  
20 about the project. So the answer is no. I didn't know  
21 where it was going.

22 Q. Were you ever asked by anyone at Mid/Res about  
23 using the Tran noise model that was discussed in that  
24 Exhibit 99?

00696

1 A. No.

2 MR. DIVER: No further questions of this  
3 witness.

4 MR. CARSON: Can we have just a moment, your  
5 Honor?

6 HEARING OFFICER: Sure.

7 (A brief recess was taken.)

8 CROSS EXAMINATION

9 BY MR. ELLEDGE:

10 Q. Mr. Sheda, do you have in front of you Exhibit  
11 Number 73, the purchase order?

12 A. Yes.

13 Q. And could you read what the job name is there?

14 A. Crown residence.

15 Q. Okay. And do you have in front of you Exhibit  
16 Number 75?

17 A. No. I believe this is a copy of it?

18 Q. Oh, okay. And what is that document?

19 A. That's the submittal transmission.

20 Q. And would you give me the job title of that  
21 please?

22 A. Crown residence.

23 Q. Thank you. Now, in fact, when you bid this job,  
24 you knew it was for a residence, did you not?

00697

1           A.     I knew -- no because a residence in our industry  
2 could be a retirement center, it could be a nursing home.  
3 The word residence doesn't mean a whole lot to me, not to  
4 mention a job name doesn't mean a whole lot to me because  
5 generally contractors are very suspicious. They want to  
6 keep projects that they're doing quiet. So I, over the  
7 years, I tend to ignore job names. They don't mean  
8 anything to me.

9           Q.     Now do you recall having your deposition taken  
10 on April 18, 1996?

11          A.     Yes, I do.

12          Q.     And do you recall the following questions that  
13 were found on the transcript on page 97. Q: Since  
14 October of -- let me move back. Q: How many have you  
15 sold prior -- I'd better move back one more page than  
16 that, to page number 95.

17                   "Q. Prior to the Crown property's  
18                   use of this particular unit, this 25  
19                   ton RAUC split unit, had you ever  
20                   sold one of these units for  
21                   residential application?

                  A.     Yes.

22                   Q.     How many have you sold  
23                   prior to this June, 1992. Give me  
24                   an idea.

                  A.     I don't know if it was a  
25                   hundred or two.

                  You have to understand that  
26                   we get job names from our purchase

orders and a lot of times you can't  
tell by the name what the project is,  
so, you know, prior to June of '92



00698

1                   how many projects.

2                   Q.    How many that you knew at the  
3                   time you said okay for the 25 or  
4                   thereabout unit split system unit.  
5                   Where you actually said okay that  
6                   you actually knew it was  
7                   a residential application?

8                   A.   Okay.  I'll say five or ten.

9                   Q.    Had you ever been told  
10                  that -- had you ever been to  
11                  any of the residences to which  
12                  these units had been sold?

13                  A.   No."

14                  Moving on to page 97.

15                  "Q.  Have you, since October of 1993,  
16                  sold any of these similar size units  
17                  for the residential application?

18                  A.   Yes.

19                  Q.    How many?

20                  A.    Since October of 1993 is the  
21                  question.

22                  Q.    Yes.

23                  A.    I'd say, again, I'd say five  
24                  or ten."

25

26                  Q.    Do you recall giving that testimony?

27                  A.    Yes.

17 Q. And was that testimony accurate?

18 A. Yes.

19 MR. DIVER: I move to strike that testimony as  
20 being none impeaching of the testimony of this witness.  
21 This witness testified that he didn't know that this  
22 particular property was a residence and counsel has sought  
23 to impeach him as to whether or not he'd ever said that he  
24 had sold unit before or after for residential

00699

1 applications, but it didn't even address the subject  
2 whether he knew that this was residential.

3 HEARING OFFICER: Overruled.

4 Q. Thank you. Now, do you have in front of you  
5 Exhibit Number 3?

6 A. No.

7 Q. Would you turn to page 5, please. On the  
8 right-hand side of page 5 there is a drawing of some sort.  
9 Could you tell us what it is?

10 A. Its a picture of a name plate that's on the  
11 unit.

12 Q. And is that the name plate that you would expect  
13 to be on the unit when its actually sold to the Crown  
14 residence pursuant to the job order which is Exhibit  
15 Number 73?

16 A. Yes.

17 Q. Okay. 2/3rds of the way down from that name  
18 plate, do you see the language for non residential  
19 installation only?

20 A. Yes.

21 Q. Do you know why that is on there?

22 A. Yes.

23 Q. Could you please tell us?

24 A. When we design equipment, UL or Underwriter's

00700

1 Laboratory comes in and inspects the equipment and gives a  
2 rating of that unit. And when they look at this  
3 particular unit, they gave it a commercial rating because  
4 of the pan underneath the unit doesn't extend over --  
5 doesn't cover the complete bottom of the unit. And the  
6 fear was that somehow this unit might be installed  
7 elevated and someone could get into the unit while it was  
8 operating, into the electrical sides. So they gave it a  
9 commercial rating.

10 Q. So if I understand your testimony this, for non  
11 residential installation only has no application with  
12 regard to sound?

13 A. No.

14 MR. ELLEDGE: Thank you. I have no further  
15 questions.

16 HEARING OFFICER: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. DIVER:

19 Q. Mr. Sheda, have you ever been advised -- strike  
20 that -- I assume that in answering that last question  
21 about Underwriter's Laboratory and the rest that, the  
22 information you were reciting to us was information you'd  
23 gotten from Tran?

24 A. Correct.

00701

1 Q. Have you ever received any information from Tran  
2 that suggests that this type of a unit RAUC 25 C unit is  
3 inappropriately placed in a residential neighborhood?

4 A. No.

5 Q. You've never seen any information that suggests  
6 that because of the power of this unit in terms of the  
7 sound that there ought to be serious consideration given  
8 not to locating this unit in a residential neighborhood,  
9 approximate to residences?

10 A. Well, with the exception of the outdoor sound, I  
11 don't know if its mentioned residential neighborhood.  
12 It's mentioned occupied areas, so residential, occupied,  
13 commercial office buildings are occupied. Also, so no  
14 matter if you're in a residential neighborhood or in a  
15 commercial zone, you still have to take into consideration  
16 zoning for that particular area.

17 MR. CARSON: Your Honor, object to that last  
18 answer as to referring to the bulletin which was issued  
19 after the sale of the unit in question and I move to  
20 strike it on the same relevance grounds that we raised  
21 during direct examination.

22 MR. DIVER: I'm cross examining about an  
23 issue that they raised concerning information this witness  
24 got from Tran as to the meaning of literature suggesting

00702

1 that this unit is not for residential use. That's  
2 perfectly appropriate given the source is the very same.

3 MR. CARSON: I thought the witness was  
4 referring to Exhibit 99 in his previous answer and not to  
5 exhibit 30 -- not to Exhibit 3 as he was looking at  
6 Exhibit 99 when I was saying the outdoor sound, I'm  
7 assuming what he was referring to.

8 MR. DIVER: I asked him whether he ever got  
9 any information from Tran, the same person he got the  
10 information from about Underwriter's Labs with respect to  
11 the sound power level of this unit and the considerations  
12 that ought to be given to locating such a unit in a  
13 residential neighborhood.

14 HEARING OFFICER: Okay, thank you, counsel.  
15 Objection overruled and motion to strike denied. You may  
16 proceed with the redirect.

17 MR. DIVER: No further questions of this  
18 witness.

19 HEARING OFFICER: Is there any recross?

20 MR. ELLEDGE: No, your Honor.

21 HEARING OFFICER: All right. Thank you very  
22 much, Mr. Sheda. At this point let's take our lunch  
23 break.

24 (A lunch recess was taken at 12:30 p.m.)

00703

1 HEARING OFFICER: We're back on the record and  
2 we will continue with the next Complainant's witness.

3 MR. DIVER: Complainant calls Harry Akers as  
4 its next witness.

5 (Witness Sworn)

6 PROCEEDINGS

7 WHEREUPON

8 HARRY J. AKERS,

9 having been duly sworn to tell the truth, the whole truth,  
10 and nothing but the truth, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. DIVER:

14 Q. Would you state your full name, please, sir?

15 A. Harry J. Akers, A-k-e-r-s.

16 Q. Mr. Akers, what is your your profession?

17 A. I'm a mechanical engineer.

18 Q. Are you licensed in the State of Illinois?

19 A. Yes, I am.

20 Q. And you're currently employed by whom?

21 A. Mid/Res.

22 Q. You're employed by them as what?

23 A. My title is Vice President in charge of  
24 Construction.

00704

1 Q. During the period mid 199 -- starting with mid  
2 1992 to the present, has your job title changed at all?

3 A. I don't believe so.

4 Q. And you would have been in mid 1992 also vice  
5 president in charge of construction?

6 A. Yes.

7 HEARING OFFICER: Mr. Akers, could you speak  
8 up a little bit?

9 A. Okay.

10 HEARING OFFICER: Thank you.

11 Q. Could you tell us what the Vice President in  
12 charge of construction does?

13 A. I'm responsible for overseeing all of the  
14 engineering and installations of design and build  
15 construction projects that Mid/Res sells.

16 Q. Were you responsible for the construction of the  
17 HVAC system for the Crown project on Ardsley Road in  
18 Winnetka?

19 A. Yes, I was.

20 Q. And when did you first have involvement with  
21 respect to that project?

22 A. I believe it was sometime in mid '92 if my  
23 memory serves me.

24 Q. About the same time that the air -- or the HVAC



00705

1 system would have been ordered from Tran?

2 A. Yes, about that time.

3 Q. As the person in charge of construction, to whom  
4 do you report?

5 A. At that time I reported to Brad Mautner, the  
6 President.

7 Q. And have you, with the exception of the year  
8 1996 or did you -- strike that -- during the period from  
9 mid 1992 through 1995, did you report to Mr. Mautner as  
10 the President as well?

11 A. Yes.

12 Q. When did you stop reporting to him as the  
13 president?

14 A. When David Snudser took over as president of  
15 Mid/Res.

16 Q. And when did that occur?

17 A. I believe that occurred in February of this  
18 year.

19 Q. Of '96?

20 A. '96.

21 Q. Would it be fair to say that you were the person  
22 responsible for the construction of the HVAC system at  
23 the Crown property?

24 A. Yes.

00706

1 Q. You were responsible for all of the paperwork  
2 involved with the project?

3 A. No, I'm not responsible for paperwork.

4 Q. Who is responsible for paperwork?

5 A. Jack Doshi who is the project manager on the  
6 particular project.

7 Q. Are you generally aware, however, of the  
8 paperwork that is generated in this kind of a project and  
9 what happens to it within Mid/Res?

10 A. Jack usually copies me with most of the paperwork  
11 involved with the project.

12 Q. Is paperwork generated in the course of a  
13 project retained by Mid/Res and filed in some fashion?

14 A. Yes.

15 Q. Are you familiar with that filing system,  
16 generally?

17 A. Pretty much. There's usually a project folder  
18 where most of the information goes in, however, I might  
19 retain my own copy of certain items.

20 Q. The project involving the Crowns, particularly  
21 as it respects the HVAC system concerned installation of  
22 what we are calling a chiller unit. I'm just giving you  
23 this as background so we all talk with the same  
24 nomenclature. The chiller unit being a complex locate

00707

1 outside the residence consisting of two compressors and  
2 three fans in principal. Is it your understanding that  
3 that chiller unit was one of the aspects of the  
4 construction for which you were responsible?

5 A. Yes.

6 Q. What was the size of that chiller unit?

7 A. I believe it was 25 tons.

8 Q. By 25 tons, that means what? Define -- tell us  
9 about that, about what the 25 tons means?

10 A. It can remove 25 tons worth of heat that is  
11 absorbed by the horse. A ton is 12,000 BTUs.

12 Q. There are two compressors, correct?

13 A. Yes.

14 Q. Are they both the same size?

15 A. I believe one is a ten ton and the other is a 15  
16 ton.

17 Q. Do they operate simultaneously or sequentially?

18 A. They operate sequentially.

19 Q. How about the fans, the three fans. Do they  
20 operate all at once or sequentially tied to compressors?

21 A. I believe that one fan is tied to the ten ton  
22 compressor and the two other fans are tied to the 15 ton  
23 compressor.

24 Q. So that I understand and the board understands.

00708

1 So when a compressor goes on, if the ten ton compressor is  
2 going on, one fan is going on in conjunction with it?

3 A. I believe that's the way it operates.

4 Q. Does one or the other compressor go on first in  
5 the sequence?

6 A. Now the ten ton compressor goes on first.

7 Q. When you say now, what was the circumstance  
8 before now?

9 A. I believe that the circumstance before was that  
10 the ten ton went on first, but I'm not sure.

11 Q. Okay. When you say now and you're sure, what  
12 time period are we talking about?

13 A. Within the last two months I believe.

14 Q. Prior to your responsibilities in charge of  
15 construction of the HVAC system at the Crowns, had you had  
16 responsibility on behalf of Mid/Res in the construction of  
17 a similarly sized unit on a -- at a residential property?

18 A. Yes.

19 Q. How many such projects had you been involved in  
20 prior to the Crown project?

21 A. Similar sized, one.

22 Q. Was that project in Lake Forest?

23 A. No.

24 Q. Where was it?

00709

1 A. It was in Downtown Chicago.

2 Q. And how long go was that downtown Chicago  
3 project?

4 A. Probably four years go, maybe five.

5 Q. The downtown Chicago project involved what  
6 tonnage of a chiller unit?

7 A. 25 tons.

8 Q. Was the chiller unit installed in that Chicago  
9 project as it was at the Crown project; that is, part of  
10 it outside the building and part inside?

11 A. Yes, it was.

12 Q. Did the chiller unit in the Chicago project, was  
13 it actually placed inside the building, the chiller unit?

14 A. Well, you said there was pieces inside or the  
15 pieces outside.

16 Q. Well, I'm asking what pieces were inside in the  
17 Chicago project?

18 A. The Chicago project had a 25 ton compressor and  
19 an evaporator bundle inside.

20 Q. All right. At the Crown property its my  
21 understanding that the two, the evaporator bundle and the  
22 chiller were separated. That the evaporator was inside  
23 and the chiller was outside, is that correct?

24 A. When you say chiller --

00710

1 Q. I'm talking about the condensing unit.

2 A. The condensing unit was located outside.

3 Q. At the Crown property?

4 A. At the Crown property.

5 Q. And where was the condenser unit located at the  
6 Chicago property?

7 A. You're confusing terminologies.

8 Q. Help me.

9 A. At the downtown Chicago project the compressor,  
10 the evaporator, were located inside the house. The  
11 condenser was located outside.

12 Q. Where is the condenser located with respect to  
13 the Crown property?

14 A. There is no condenser. There's a condensing  
15 unit located outside.

16 Q. The condensers itself as opposed to the  
17 compressors at the Chicago project located physically  
18 where with respect to the project?

19 A. Would you repeat that?

20 Q. The condenser unit at the Chicago project was  
21 outside, but where outside relative to the structure?

22 A. It was on the roof.

23 Q. Are you aware of any reason now why the  
24 compressor unit at the Crown property could not be located

00711

1 inside of the residence?

2 A. Am I aware of any reason why they can't?

3 Q. Why they cannot be?

4 A. The only reason that -- well they could be  
5 located inside, but that would require disassembling the  
6 existing equipment and modifying it and relocating the  
7 compressors inside.

8 Q. Okay. Since your involvement with the Crown  
9 project, that is since mid 1992, which is when you  
10 indicated you began with the Crown project, since that  
11 period of time, have you been involved with any other  
12 project involving an 25 ton or larger unit in a  
13 residential application other than the Crown property  
14 itself?

15 A. I believe one.

16 Q. And would that have been in Lake Forest?

17 A. That was in Lake Forest.

18 Q. And the size of the unit involved in the Lake  
19 Forest?

20 A. No, I'm sorry, that was not in Lake Forest, that  
21 was in Highland Park.

22 Q. Okay. And what was the size of the unit at that  
23 Highland Park location?

24 A. I believe that was 25 tons. I don't recall for

00712

1 {is your\sure}.

2 Q. Okay. And do you recall where the chiller unit  
3 was located at that property relative to the owner's  
4 residence?

5 A. Yes, probably a couple hundred feet away from  
6 the residence.

7 Q. You indicated yesterday about 300 feet away. Is  
8 that about right?

9 A. No, that was a different residence.

10 Q. Okay. But in the Highland Park circumstance it  
11 was a couple hundred feet away from the residence of the  
12 owner?

13 A. Yes.

14 Q. Okay. You said now there was another  
15 circumstance and I recall it from yesterday as Lake  
16 Forest?

17 A. Right.

18 Q. Did that involve a 25 ton or greater unit in a  
19 residential application?

20 A. Yes.

21 Q. And was that before or after your involvement in  
22 the Crown property?

23 A. Before.

24 Q. How long before?



00713

1 A. I'd say probably ten, 12 years ago.

2 Q. And what size unit was involved there?

3 A. I believe that was a 40 ton.

4 Q. Was there a split system also that they -- with  
5 a chiller and an evaporator unit?

6 A. No, that was a 40 ton air cold chiller.

7 Q. And where was it physically located relative to  
8 the residence?

9 A. I believe it was about 300 feet away from the  
10 residence, the main residence.

11 Q. And in locating that particular chiller unit 300  
12 feet away from the residence, did you have to consider the  
13 amount of sound that that unit was generating in order to  
14 make the determination how close it ought to be to the  
15 residence?

16 A. No, that was not the main consideration. We  
17 were trying to get it far away from the house, but the  
18 main consideration was esthetics.

19 Q. Was sound considered, though?

20 A. Yes. Yes, from my standpoint it was.

21 Q. In order to locate that unit 300 feet away from  
22 the residence, what did you do with the piping?

23 A. We ran the piping underground.

24 Q. Okay. Was there anything about that particular

00714

1 construction with the location 300 feet away and the  
2 piping underground that made that system less efficient?

3 A. Not less efficient. It was very expensive.

4 Q. It was expensive to run the pipes?

5 A. Yes, because they were chilled water lines.

6 Q. Was the maintenance cost increased at all?

7 A. No.

8 Q. In the Highland Park application where the  
9 chiller unit was located about two hundred feet, 100 or  
10 200 feet away from the residence was sound, a  
11 consideration in the location of the chiller unit?

12 A. That job was basically pre-designed before our  
13 involvement, so I'm not sure whether sound was a  
14 consideration or not.

15 Q. Again, were the pipes to the system electrical  
16 or all run underground?

17 A. Yes.

18 Q. And again was there anything about that  
19 underground construction or placement of these lines that  
20 made the system less efficient in terms of its operating  
21 amount?

22 A. I don't believe so.

23 Q. Or more costly in terms of its maintenance?

24 A. No.

00715

1 Q. When was your first knowledge of a noise  
2 complaint in connection with the Crown project?

3 A. I'm not sure of the date, but I was  
4 informed by either probably Jack that there was a  
5 complaint.

6 Q. And were you at that time -- did you at that  
7 time do anything in response to the information about the  
8 complaint?

9 A. Well, I probably had some conversations with  
10 Brad Mautner about what, how the complaint originated and  
11 what it was about.

12 Q. And did Mr. Mautner, to your knowledge, request  
13 you to do anything about the complaint or responding to  
14 the complaint?

15 A. Well, I'm not sure what the time frame was, but  
16 he did ask me to get ahold of a sound meter device and  
17 just see what the sound levels were.

18 Q. Did he tell you why he wanted that information?

19 A. Well, we thought we ought to know what levels of  
20 sound were coming from the unit.

21 Q. And in obtaining that instrumentation and in  
22 conducting any measurements, was it your intention to  
23 obtain information to assist you in responding to the  
24 complaint of noise from this system?

00716

1 A. Yeah, I think we had to know what levels it was.

2 Q. Was it your intention to rely on the  
3 instrumentation that you obtained and in determining  
4 whether or not certain levels of sound were being emitted  
5 from the air conditioning unit?

6 A. No, I think we were just curious to know what  
7 level we were at.

8 Q. Were you trying to determine a level to get to?

9 A. No, not at that time.

10 Q. Were you at some other time trying to get to  
11 some particular level?

12 A. There may have been, but I was not involved with  
13 it, so I'm not sure.

14 Q. Did you obtain the instrumentation?

15 A. No.

16 Q. Did you direct Mr. Doshi to obtain it?

17 A. Yes.

18 Q. If I'm asking you if your recollection is  
19 refreshed. I'm showing you what has been marked as  
20 Exhibit 78 being a document dated September 21, 1993  
21 purportedly from Jack Doshi to Pete Keller showing you as  
22 a carbon copy. Do you recall receiving this document at  
23 or about this time?

24 A. I don't recall receiving it, but I believe I

00717

1 did.

2 Q. And is it your recollection that you recall  
3 receiving it at or about September 21, 1994 -- strike that  
4 1993?

5 A. As I said, I don't recall receiving it but I  
6 probably did.

7 Q. Oh, all right. Okay. Did you give Mr. Doshi  
8 any particular directions with respect to where to get the  
9 instrumentation for this noise measurement?

10 A. I don't believe so.

11 Q. Did you solicit the advice of anybody in  
12 particular as to a resource for this noise  
13 instrumentation?

14 A. I don't believe so.

15 Q. Had you ever conducted noise measurements  
16 yourself before anywhere?

17 A. No.

18 Q. At a point in time did you actually conduct  
19 noise measurements at the Crown project?

20 A. Yes.

21 Q. And your intention was to measure sound coming  
22 from the chiller unit?

23 A. Yes.

24 Q. I'm showing you a collective exhibit which has

00718

1 previously been marked Exhibit 80 and it has been amended  
2 to show pages A, B and C. And I ask you to look at the  
3 first page which is designated 80 A. I ask you if you  
4 recognize that document?

5 A. Yes, I do.

6 Q. Did you prepare that document?

7 A. Yes, I did.

8 Q. On or about October 6th, 1993?

9 A. Yes.

10 Q. There are handwritten notations apparent on that  
11 document, are there not?

12 A. Yes.

13 Q. Are they in your hands?

14 A. Yes.

15 Q. The numbers that are entered on this document,  
16 were they numbers that you obtained in the course of your  
17 measuring sound at the property on October 6th, 1993?

18 A. Yes.

19 Q. Did you yourself prepare a document with raw  
20 data handwritten as to what the various numbers were as  
21 they were being obtained?

22 A. No.

23 Q. Asking you to look at page B, I ask you if that  
24 was the document containing the raw data upon which you

00719

1 relied in preparing page A?

2 A. Yes.

3 Q. All right. You will notice on page A in the  
4 sentences at the bottom it indicates sound level without  
5 unit running from 49 dbs with no wind to 57 dbs with sound  
6 of wind and leaves.

7 Q. Yes?

8 A. Yes.

9 Q. Am I correct? Where on Exhibit 80 B is that  
10 information shown?

11 A. I don't see it.

12 Q. Where did you get it?

13 A. I was taking the readings.

14 Q. Did you memorize the readings, commit them to  
15 memory or did you write down the results yourself?

16 A. I remembered what they were.

17 Q. Same thing with respect to the reading of 69  
18 decibels with airplanes passing overhead?

19 A. Yes.

20 Q. So your testimony is you did not actually record  
21 this information any where, but you did remember it?

22 A. Yes. I prepared this document within hours of  
23 doing the tests.

24 Q. Okay. Exhibit 80 C. Does that document bear

00720

1 your handwriting at any location?

2 A. Yes.

3 Q. And that would be the date in the upper  
4 righthand corner?

5 A. Yes.

6 Q. 10/7/93?

7 A. Yes.

8 Q. And it would have been on or about that date  
9 that you made that entry on that document?

10 A. Should have been.

11 Q. This sequence of documents, A, B and C, did you  
12 place these documents in the project file of the Crown  
13 project?

14 A. I'm not sure. I didn't know if they were in my  
15 filing.

16 Q. They were in your personal file?

17 A. I believe so.

18 Q. Is your personal filing also used by you in the  
19 conduct of your duties as the construction manager of the  
20 project?

21 A. My personal file is just for my reference.

22 Q. Is there a reason that you would not have put  
23 these documents in the project file?

24 A. I thought they would have been in the project



00721

1 file also.

2 Q. Did you search the project file for them?

3 A. No.

4 Q. Did you ask anyone to search the project file  
5 for them?

6 A. No.

7 Q. Do you know where they came from?

8 A. I believe they came from my file.

9 Q. Were there any documents in your personal file  
10 other than these three pages?

11 A. Yes.

12 Q. The document that is marked as 80 C you reviewed  
13 that document at or about the time you placed the dates on  
14 it?

15 A. Yes, I believe I did.

16 Q. Did you talk to anyone about the information  
17 that was shown on it?

18 A. I'm not sure.

19 Q. Did you, as a result of noise measurements on or  
20 about October 6th and 7th make any conclusions as to  
21 whether there were any -- strike that -- were you present  
22 for noise measurements on both October 6th and October  
23 7th?

24 A. No.

00722

1 Q. Which day were you present?

2 A. I was there for October 6th.

3 Q. Was it your instruction -- strike that -- when  
4 you left the job site on October 6th after conducting your  
5 noise measurements, did you leave instructions with anyone  
6 to do anything to the chiller unit itself to reduce it's  
7 sound?

8 A. I don't recall if I gave any instructions or  
9 not.

10 Q. Were you aware that John Gsell was to begin  
11 lining the interior portion of the chiller unit with  
12 Armaflex insulation beginning at or about the time you  
13 left the job site on October 6th, 1993?

14 A. Yes, I heard John say that yesterday.

15 Q. Was that the first time you'd heard that?

16 A. No, that was -- I don't believe it was the first  
17 time, but I recall now that he was instructed to do that.  
18 I don't know if I gave him those instructions.

19 Q. Who would have given him those instructions if  
20 you didn't?

21 A. I'm not sure it might have been Brad, it might  
22 have been Jack through me. It could have been me, too. I  
23 just don't recall.

24 Q. Did you know at the time that you left the job

00723

1 site on October 6th that there was going to be a  
2 subsequent noise reading on October 7th?

3 A. I didn't recall. I believe that we may have  
4 told John to put some blankets on the inside of the panels  
5 and I probably left the device with him to take additional  
6 readings.

7 Q. On the day that you recall actually being a  
8 participant in the readings, October 6th, 1993, do you  
9 recall the various placements of sizes of plywood  
10 sheeting?

11 A. Yes.

12 Q. This plywood sheeting would have been prepared  
13 around the chiller unit?

14 A. Yes.

15 Q. Describe for us what was actually done with  
16 respect to the erection of this plywood sheeting?

17 A. When I had arrived, it was, I believe 4 posts  
18 already in place at the corners of the unit about two feet  
19 away, two to three feet away from the unit and Pete Keller  
20 had a couple of his carpenters with some plywood available  
21 to erect a temporary wall around the chiller to see what  
22 effect various heights of plywood wall would have on the  
23 sound readings.

24 Q. And were you present when various heights of

00724

1 wall were erected?

2 A. Yes.

3 Q. Your understanding on October 6th is what height  
4 of walls were erected?

5 A. I thought we had a 4, 6 and 8. But as you  
6 reminded me yesterday, there were no readings for 4, so  
7 I'm not sure if there was a 4.

8 Q. But as you look at page C?

9 A. Yes, there is an 4.

10 Q. There's a 4. These readings were made by you;  
11 that is, you held the instrumentation and recorded the  
12 numbers that were presented on the instruments?

13 A. Which dates are you speaking of?

14 Q. October 6th?

15 A. Yes.

16 Q. That would be the numbers that are shown on page  
17 A?

18 A. Yes.

19 Q. All right. To whom did you send the document  
20 shown as 80 A?

21 A. I'm not sure if I sent it to anybody. I gave a  
22 copy to Brad Mautner.

23 Q. Okay. Did you give a copy to anyone other than  
24 Brad?

00725

1 A. I'm not sure.

2 Q. Did you give a copy to Brad on the same day  
3 that's on October 6th?

4 A. Yes.

5 Q. Did you and Brad discuss the numbers that you  
6 had obtained?

7 A. Yes.

8 Q. And what conclusions were reached as to what  
9 Mid/Res would do in consequence of these numbers?

10 A. I don't think we made any determination or  
11 conclusion.

12 Q. What does the language at testimony bottom of  
13 that page refer to?

14 A. Brad had asked me to investigate some compressor  
15 blankets I believe is number one. The second one is sound  
16 attenuation inside the unit and number 3 was cones.  
17 Number 4 says Tran which we were to contact Tran to see if  
18 they had any suggestions for quieting the unit.

19 Q. Okay. Were these suggestions all made during  
20 the course of your discussion with Brad on October 6th?

21 A. Yes.

22 Q. Do you know whether you had advised Brad in that  
23 meeting that indeed insulation was being put inside the  
24 unit and on the compressors even as you were speaking?

00726

1 A. I don't recall.

2 Q. From whom did the suggestion of cones come from?

3 A. Brad.

4 Q. And Tran, what were you supposed to do with  
5 Tran?

6 A. I was to get a hold of Tran and see if Tran had  
7 any suggestions for some similar type cones because I  
8 believe the cones were a Carrier product, and see if they  
9 had any type of product that could reduce the sound coming  
10 from the condensers fans.

11 Q. And what did you learn?

12 A. I had asked Jack to contact Tran to pursue that.

13 Q. Did you ask him to report back to you?

14 A. I did not ask him to report back to me.

15 Q. Did he report back to you?

16 A. I'm not sure. I believe he might have reported  
17 to Brad.

18 Q. Did you ever hear from Jack with respect to what  
19 he had learned from Tran?

20 A. He did probably send me a copy of information  
21 that he may have obtained.

22 Q. On the basis of your readings on October 6th,  
23 1993, did you come to any conclusions as to the effect on  
24 the diminution of sound that the placement of these six

00727

1 foot and eight foot plywood walls have?

2 A. I believe they had some reduction in the noise  
3 as shown.

4 Q. Did you reach any consideration at that time as  
5 to the desirability of putting a fence of six feet or  
6 eight feet around the chiller unit for purposes of  
7 reducing its sound?

8 A. Yes, we had conversation on doing something  
9 around the unit.

10 Q. When you say we, who is the we?

11 A. Mid/Res and I believe that Pete Keller was  
12 involved with those conversations.

13 Q. Did you have those conversations in this meeting  
14 with the -- of October 6th with Brad?

15 A. I believe we probably talked about that. I  
16 don't know that we were sure as to what was act -- what  
17 would actually go around the unit.

18 Q. Did you make a recommendation to him as to what  
19 should go around the unit on the basis of your readings?

20 MR. CARSON: Objection to the form as to who  
21 is the him in there?

22 Q. Did you make a recommendation to Bradley Mautner  
23 on or about October 6th with respect to what kind of  
24 enclosure you thought should go around the unit on the

00728

1 basis of your readings?

2 A. We had some conversations as to different types  
3 of enclosure that would going around the unit.

4 Q. All right. Why don't you tell me what the  
5 discussion was first? What were the alternatives being  
6 discussed?

7 A. I don't know that I can recall all of the  
8 details, but I know that we had talked about the fact that  
9 there may be already plans to have some sort of fence  
10 around the unit as well as some landscaping. We probably  
11 talked about the fact that whatever fencing was going to  
12 go up could be increased in size or dimensions so that it  
13 could produce an additional sound attenuation  
14 characteristic.

15 Q. Are you aware whether a wall other than the  
16 acoustical wall that was put up sometime in late 1994-  
17 1995 any other wall that was put around the chiller unit?

18 A. I don't believe so.

19 Q. You're not aware of any other wall?

20 A. No.

21 Q. And when was the acoustical wall put up around  
22 the facility?

23 A. I'm not sure.

24 Q. Were you involved with that at all?



00729

1 A. No, I was not.

2 Q. Who was involved with that, to the best of your  
3 knowledge?

4 A. I believe Brad was orchestrating that with Jack.

5 Q. Getting back to the discussion you had with Brad  
6 on October 6th, 1993 I believe earlier I asked a question  
7 of you whether you recommended to Brad that there be an  
8 enclosure around the chiller unit based on your  
9 conclusions from the noise readings?

10 A. I think we talked about it. I don't know  
11 whether I actually said we need to put that up. I think  
12 we talked about putting something around the unit. And we  
13 thought that there was some sort of fence going to be  
14 placed around it again.

15 Q. Did you ever learn what kind of a fence was  
16 going to be put around it?

17 A. I believe I recall seeing a sketch and I'm not  
18 sure who put it together, that showed some landscaping and  
19 a fence around the unit.

20 Q. Do you recall whether what you saw was a  
21 stockaid fence of a height of six and a half feet?

22 A. No, I saw a plan, so I wasn't sure how high the  
23 fence was.

24 Q. Did you consider it was important how high the

00730

1 fence would be in order to affect the sound reductions  
2 that you noted on October 6th?

3 A. I think we did.

4 Q. Did you indicate to Brad that you considered  
5 that it was important that it have a height of eight feet  
6 or so?

7 A. Probably.

8 Q. Do you know whether an eight foot fence was ever  
9 put around the chiller unit?

10 A. I believe there was an eight foot fence that was  
11 put around it.

12 Q. This would be the acoustical fence that was put  
13 around it?

14 A. Right, yes.

15 Q. At the time you were talking to Brad though  
16 about your understanding that a fence was going to be put  
17 around the unit, you weren't talking about an acoustical  
18 fence, were you?

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

20 Q. You were talking about an architectural fence?

21 A. Right. But we had some discussions about  
22 putting some sort of acoustical fence or structure around  
23 the unit.

24 Q. You did have such a discussion with Brad on or

00731

1 about October 6th, 1993?

2 A. I think it was after that time.

3 Q. How long after?

4 A. I don't recall.

5 Q. A year later?

6 A. No, it was less than that.

7 Q. Do you recall any noise measurements made by  
8 anybody other than yourself at this facility?

9 A. I believe there were some.

10 Q. Were you aware of sound measurements made in  
11 July of 1994?

12 A. I'm not sure when they occurred.

13 Q. Do you recall whether the discussion of an  
14 acoustical fence was held behind this other sound riding  
15 or avenue?

16 A. No, I'm not sure.

17 Q. Was it your consideration when you left your  
18 meeting with Brad that whatever the fence was that was  
19 being proposed around this unit would be enough to effect  
20 the kind of reductions in sound that you had measured on  
21 October 6th?

22 A. There was no way for me to know.

23 MR.DIVER: Madam Hearing Officer, I move the  
24 introduction of A and B of Exhibit 80.

00732

1                   MR. CARSON: We're objection to Exhibit A and  
2 B, your Honor, on the basis of foundation. This purports  
3 to show the results of some sort of scientific test, but  
4 there's no foundation that the tester as to how the  
5 scientific test was conducted.

6                   MR. DIVER: If the objection is predicated  
7 upon the assumption that I'm introducing this to establish  
8 that indeed 67 decibels was read, the answer is I am not.  
9 I'm it to show what the relative decibel  
10 readings were, not actual decibel reading. That is  
11 comparative, without fencing, with fencing. To show  
12 reductions that would be in effect.

13                   I'm showing it also because this particular  
14 witness has established that these are -- these were  
15 documents that were prepared for use of Mid/Res in the  
16 preparation of a solution to the problem here.

17                   MR. CARSON: The purpose that's suggested by  
18 counsel, your Honor, doesn't satisfy the objection that  
19 I've raised. That is, that he's purporting to introduce  
20 the results of a scientific test. He hasn't established  
21 that anyone who conducted the test knew what they were  
22 doing, even what the equipment was used or how the tests  
23 were taken. There was no basis upon which to conclude  
24 that the tester had any expertise, one which to make the

00733

1 determination whether this numbers even for comparative  
2 purposes meaningful.

3 HEARING OFFICER: The objection is sustained.

4 I have a concern with the foundation  
5 evidence and I would like additional information on the  
6 record from this witness, if possible, as to the specific  
7 equipment that was used, the calibration of the equipment.  
8 If you have information on that, any qualifications that  
9 you have with respect to measuring sound, any experience  
10 that you have in the past with respect to measuring sound.  
11 Can we go forward with that information.

12 MR. DIVER: We can, we can. I'm afraid I know  
13 what the answer to the question is, but I will ask the  
14 question.

15 HEARING OFFICER: I would like that on the  
16 record.

17 BY MR. DIVER:

18 Q. Mr. Akers, have you ever had any experience in  
19 conducting noise measurements prior to this October 6th,  
20 1993 event?

21 A. No.

22 Q. Have you ever had any experience with  
23 instrumentation that you used?

24 A. No, I have not.

00734

1 Q. Do you know anything about that instrumentation  
2 other than its size and weight?

3 A. No, I don't.

4 Q. Do you know anything about the measurement of  
5 sound at all?

6 A. Not a great deal. It's not my area of  
7 expertise.

8 Q. That unfortunately is the level of the  
9 testimony. All right. With that background, why didn't  
10 you retain somebody who knew what they were doing in  
11 conducting the sound measurements?

12 A. That's not what I was instructed to do.

13 Q. Did you raise the issue with Mr. Mautner when he  
14 asked you to conduct sound measurements?

15 A. No, I did not.

16 Q. Did you ask him Brad, should we get somebody who  
17 knows what they're doing in conducting these sound  
18 measurements?

19 A. No, I don't think that's what the purpose of the  
20 sound measurements were. I think we just needed to get an  
21 idea how loud they were. We're not conducting a  
22 scientific experience.

23 Q. Again I would move the introduction of Exhibit  
24 80 for the very purpose of what the witness stated, to get

00735

1 an idea of what the sound levels were that were being  
2 generated by this particular piece of equipment and get an  
3 idea of what attenuated effects might be by putting  
4 various sizes of plywood enclosure around it.

5 MR. CARSON: Your Honor, we stand on our  
6 objection. The fact that the tests were conducted I think  
7 is relevant. It's already in the record, but the results  
8 are not admissible.

9 MR. DIVER: Madam Hearing Officer, we're in  
10 this quandary. The only tests that have been conducted  
11 prior to the test of July of 1994 were these. The witness  
12 has stated that they were the very tests that Mid/Res  
13 intended to conduct to try to get an idea of what the  
14 nature of the problem was.

15 A. And yet now we're saying nobody should rely on  
16 that information. Nobody should rely on the kind of  
17 information that Mid/Res says yes this is the very kind of  
18 information we rely upon in making judgments with respect  
19 to what to do about sound problems from air conditioning  
20 equipment.

21 HEARING OFFICER: Thank you, counsel.

22 All right. With respect to the  
23 objection, the objection is both sustained and overruled  
24 and with respect to the evidence I am going to admit

00736

1 exhibit 80 A and B into evidence for the limited purpose  
2 of showing that Mid/Res conducted sound level tests on  
3 October 6th. This exhibit is not admissible for the  
4 accuracy of the readings obtained. Thank you.

5 MR. DIVER: Thank you, Madam Hearing Officer.

6 Q. Were will you involved in the installation of  
7 cones on their equipment?

8 A. No, I was not.

9 Q. Have you ever seen the cones in?

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

11 Q. Were you involved personally in overseeing the  
12 installation of insulation inside the cabinet of the  
13 chiller unit?

14 A. No, I was not.

15 Q. Were you aware of whether any insulation was  
16 added after October 6th, 1993, October 7th, 1993?

17 A. I'm not sure.

18 Q. Are you aware of any changes that were made  
19 either to the equipment or with respect to devices around  
20 the equipment to quiet it?

21 A. I believe there was. I believe it was rotated.

22 Q. Is it your understanding that the rotation was  
23 done to make the unit quieter?

24 A. I don't know.



00737

1 Q. So your testimony is that the round -- is the  
2 unit was rotated?

3 A. The unit was rotated, yes. I'm not sure what  
4 the reason was.

5 Q. You've never experienced the sound before  
6 rotation or after, did you?

7 A. I experienced the sound before I was -- it was  
8 rotated.

9 Q. Okay. But you don't know what effect the  
10 rotation had on the sound?

11 A. No.

12 Q. Have you had a continuing role at Mid/Res in  
13 determining whether there are additional things that may  
14 be done to this equipment or to the location of this  
15 equipment or to sound attenuation of this equipment?

16 A. I've been involved with some discussions?

17 Q. Who have these discussions been with?

18 A. Primarily with Brad Mautner.

19 Q. Very these scheduled discussions or passing in  
20 the hallway discussions?

21 A. They were pretty informal.

22 Q. Have they ever been memorialized?

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

24 Q. Have you ever prepared a written memorialization

00738

1 of any of these discussions?

2 A. No.

3 Q. As you understand it today, what is yet to be  
4 done to make this equipment quieter, if anything?

5 A. I believe that there is still investigation  
6 going on as to other methods of making the unit quieter.

7 Q. And are you in charge of those investigations?

8 A. No.

9 Q. Who is in charge of those investigations?

10 A. I believe Brad is.

11 Q. Do you have a role with respect to those  
12 investigations?

13 A. Only if I'm asked.

14 Q. Have you been asked?

15 A. No.

16 Q. Have there been any sound attenuating devices  
17 added to the chiller unit or around the chiller unit upon  
18 your recommendation?

19 A. No.

20 Q. Showing you now what has been previously marked  
21 as Exhibit 82 being a photocopy of a fax document at  
22 11/1/93 from Tran to Jack Doshi and ask you to look at  
23 that and in particular to the notations of carbon copies  
24 ask you whether you received that document at or about the

00739

1 time of its preparation?

2 A. I probably did.

3 Q. Do you recall ever having seen that document  
4 before day?

5 A. I do not recall.

6 Q. So your recollection is that you have not seen  
7 either of the two pages that are attached to the fax cover  
8 sheet prior to today, is that correct?

9 A. I do not recall seeing that.

10 MR. CARSON: Your Honor, can we have the  
11 record reflect that with respect to our objection this  
12 morning about the Exhibit 99 the Tran bulletin, Exhibit 82  
13 also purports to include two pages from that, what I  
14 describe this morning as the post-dated bulletin. And  
15 we're moving to strike and remove Exhibit 82 and insofar  
16 as it includes that from the record and also would ask  
17 that any reference to the document with this or any other  
18 witness be excluded.

19 MR. DIVER: Madam Hearing Officer, if I may  
20 respond. My recollection is the exhibit has already been  
21 admitted into evidence. The objection that's being raised  
22 now was not raised at the time that the document was  
23 admitted into evidence and its too late.

24 MR. CARSON: The evidence that showed where

00740

1 this came from wasn't admitted in until today, your Honor.

2 MR. DIVER: If counsel was saying he would  
3 like to have that part struck, I suppose he can continue  
4 that objection because he made it this morning. With  
5 respect to these documents as it's admissibility,  
6 including the two pages that were attached I think is too  
7 late.

8 MR. CARSON: Your Honor, the record should  
9 also show the bulletin, the Tran bulletin was in the  
10 possession of the Petitioner, but Petitioner refused to  
11 show it to us because of a claim of confidentiality. I'm  
12 relying on what Mr. Elledge said this morning.

13 MR. DIVER: I will respond that that is in the  
14 vernacular poppycock. It was present. It was in Mr.  
15 Elledge's hands. I told him I could not make a copy of it  
16 for you because I committed that I wouldn't. I told him  
17 that he could have -- that he could obtain a copy of it  
18 by giving the same confidentiality agreement to Tran that  
19 I have.

20 MR. CARSON: I'll stand corrected on that last  
21 statement, Mr. Diver, thank you.

22 HEARING OFFICER: I show that Exhibit 82 was  
23 admitted into evidence on July 2nd.

24 MR. DIVER: I believe through the testimony

00741

1 of Mr. Mautner.

2 HEARING OFFICER: I don't have the transcript  
3 from that date here with us today and I entitled that fax  
4 from Tran to Mid/Res re sound application considerations.  
5 Your objection is, noted for the record, Mr. Carson.

6 MR. DIVER: If I may continue?

7 HEARING OFFICER: Please.

8 Q. Mr. Akers, at or about this time, November 1st,  
9 1993 had you given instructions to Jack Doshi to try to  
10 find information about sound levels generated by this kind  
11 of chiller unit?

12 A. I may have.

13 Q. I'm going to show you now what has been marked  
14 as Exhibit 83 and ask you if you recognize in whose hand  
15 that document is?

16 A. No, I don't.

17 Q. Do you recall attending a meeting on or about  
18 the date of January 17th, 1994 to discuss sound  
19 attenuation at the chiller unit?

20 A. I don't recall.

21 Q. Okay. At the time you conducted the noise  
22 measurements on October 6th, 1993, were you trying to  
23 compare the data to a Chicago noise ordinance standard?

24 A. I believe that we just took the readings to see

00742

1 what they were and we were aware of a Chicago sound level.

2 Q. And that Chicago sound level was what?

3 A. Was 55 DB.

4 Q. Were you trying to see how close you were  
5 getting to 55 DB with the plywood fencing?

6 A. No, I don't think so. I think we were just  
7 trying to measure what effect the plywood fencing had.

8 Q. Did you make any consideration as to what the  
9 effects of the fencing were relative to the Chicago  
10 number?

11 A. They were pretty enclose.

12 Q. And the closest number at the fenced line would  
13 have been 62?

14 A. Yes.

15 Q. Is that your recollection?

16 A. Yes.

17 Q. And the Chicago number is 55?

18 A. Yes.

19 Q. Do you have any knowledge of what the  
20 significance is of that difference of sound?

21 A. No. I'm not sure.

22 Q. Of what that means?

23 A. No.

24 Q. Are you aware or has anyone ever told you that

00743

1 decibel readings are logarithmic?

2 A. Yes.

3 Q. Meaning that they're -- strike that -- never  
4 mind.

5 MR. DIVER: No further questions.

6 HEARING OFFICER: Cross-examination?

7 MR. ELLEDGE: No questions.

8 MR. KAISER: I would ask if we could  
9 continue. Mr. Doshi is sitting out there diligently  
10 waiting.

11 HEARING OFFICER: We have no cross-  
12 examination of Mr. Akers. So Mr. Akers, I want to thank  
13 you very much for your testimony today. Thank you. Why  
14 don't we take five minutes and then we'll come back in  
15 session and then we will go until the conclusion of the  
16 afternoon session.

17 (A brief recess was taken.)

18 HEARING OFFICER: Back on the record.

19 We'll now have the testimony of the  
20 Plaintiff's next witness.

21 MR. DIVER: Yes. The Complainant calls Jack  
22 Doshi, D-o-s-h-i, as their next witness.

23 HEARING OFFICER: : Mr. Doshi, will you please  
24 be sworn.

00744

1 (Witness Sworn.)

2 HEARING OFFICER: Thank you.

3 PROCEEDINGS

4 WHEREUPON

5 JACK DOSHI,

6 having been duly sworn to tell the truth, the whole truth,

7 and nothing but the truth, was examined and testified as

8 follows:

9 DIRECT EXAMINATION

10 By Mr. Diver:

11 Q. Would you state your full name, sir?

12 A. Jack Doshi.

13 Q. Would you -- do you pronounce it Doshi?

14 A. Doshi.

15 Q. Thank you. Mr. Doshi, what is your profession?

16 A. I'm a mechanical engineering.

17 Q. Are you licensed to practice engineering in the

18 State of Illinois?

19 HEARING OFFICER: Could you repeat your first

20 answer related to your engineering status?

21 A. Mechanical HVAC engineer.

22 HEARING OFFICER: A mechanical HVAC engineer?

23 A. Right.

24 HEARING OFFICER: Thank you.



00745

1 Q. For whom are you employed, Mr. Doshi?

2 A. Now its called Mid/Res Core Services.

3 Q. How long have you been with Mid/Res?

4 A. It will be 20 years in November of this year.

5 Q. In 1991 were you also employed by Mid/Res then?

6 A. I was employed by Mid/Res.

7 Q. Yes and what was your role in 1991; what was  
8 your job at Mid/Res?

9 A. Project engineer.

10 Q. And what is the -- what was the responsibility  
11 of a project engineer at that time, the time being 1991-  
12 1992?

13 A. Generally I designed the system and I do from  
14 construction until everything is finished.

15 Q. You're responsible for all of the paperwork  
16 associated with the project?

17 A. The projects that I'm in charge of.

18 Q. Yes?

19 A. Right, not all the other projects in the  
20 company.

21 Q. Those projects for which you're the project  
22 engineer, you're responsible for paperwork, correct?

23 A. Yes.

24 Q. Were you the project engineer on the Crown

00746

1 project?

2 A. Steve Crown residence, yes, I was the project  
3 manager.

4 Q. Okay. When did you begin your work as the  
5 project engineer on the Crown project?

6 A. I do not remember the exact date without going  
7 through the job for a lot of paperwork.

8 Q. Do you remember designing the HVAC system that  
9 was to be constructed at the Crown residence?

10 A. No, I do not.

11 Q. You did not design it?

12 A. No, I did not.

13 Q. Okay. Do you know who did?

14 A. No, I do not.

15 Q. I'm going to show you what I have marked as or  
16 what has previously been marked as Exhibit 27 and ask you  
17 to look at that Mr. Doshi. Mr. Doshi, do you recognize  
18 this document?

19 A. Yes, sir.

20 Q. This is a document that you prepared to Chuck  
21 Hyams, correct?

22 A. Yes.

23 Q. What was Mr. Hyams' responsibility at the  
24 project?

00747

1           A.     I do not know. I do not know his  
2 responsibility, but that was the name of the contract  
3 person who was given to me.

4           Q.     Was he with the landscaping company?

5           A.     I do not remember Scott Vitamin is the  
6 landscaping or what. It's been so long ago, I don't  
7 remember.

8           Q.     But this document was prepared in your hand,  
9 correct?

10          A.     Yes, sir.

11          Q.     Do you remember having submitted this document  
12 to Mr. Hyams?

13          A.     Yes, I remember that.

14          Q.     Okay. And what were you asking him to give you,  
15 if anything in this document?

16          A.     I'm asking him please give the following  
17 dimensions and I'm asking him give me the construction  
18 details of the plans and I'm asking him if there will be  
19 any insulation in the walls or in the fans.

20          Q.     What kind of insulation were you asking about?

21          A.     I don't remember.

22          Q.     Well, you're a mechanical engineer. What kind  
23 of insulation could you have been talking about with  
24 respect to this fence?

00748

1 A. I don't know. I don't remember.

2 Q. Were you talking about the fence being insulated  
3 from cold or heat?

4 A. I don't remember in '92, I don't know, I mean  
5 what was my thinking at that time.

6 Q. But as you sit here, can you think of anything  
7 other than sound insulation that you could have been  
8 talking about at that time?

9 A. I don't remember.

10 MR. DIVER: Okay. Move the introduction of  
11 Exhibit 29.

12 MR. CARSON: No objection to 29 or 27 rather.

13 MR. DIVER: 27, I'm sorry.

14 HEARING OFFICER: Exhibit 27 will be entered  
15 into evidence. My only question being is this a drawing  
16 of the air conditioner unit that was planned.

17 MR. DIVER: I will ask him some further  
18 questions about this.

19 HEARING OFFICER: It doesn't say so.

20 (Plaintiff's Exhibit No. 27 was entered  
21 into evidence.)

22 Q. Mr. Doshi this drawing that's here, the unit  
23 that's shown in the center, the rectangle, was that  
24 intended to be the outline of the chiller unit at this

00749

1 project?

2 A. No. If you see this document is very carefully,  
3 it is the chiller unit. It shows the size of the concrete  
4 pad.

5 Q. Okay. So, the center rectangle is the concrete  
6 pad on which the chiller unit sits, correct?

7 A. That is correct.

8 Q. Okay. And the unit on the outside, is that some  
9 kind of fencing?

10 A. Yes.

11 Q. At this point in time did you know what kind of  
12 fencing it was?

13 A. No.

14 Q. Okay.

15 HEARING OFFICER: All right. Thank you  
16 counselor. Exhibit 27 will be entered into evidence.

17 Q. I'm going to now show you what's been marked as  
18 Exhibit 27

19 HEARING OFFICER: 26.

20 Q. Did you prepare this document?

21 A. Yes, I did.

22 Q. This all in your hand?

23 A. Yes.

24 Q. Is there anything on this document other than in

00750

1 your hand?

2 A. I'm not a hundred percent sure about 3 from the  
3 garage wall. I don't know if it's mine or not.

4 Q. You're talking about the three foot ten inch  
5 measurement shown at the bottom of the center rectangle?

6 A. Right. I'm not sure of that.

7 Q. The shaded area in the center there, is that the  
8 outline of the chiller unit?

9 A. Yeah, its the outline of what we call the  
10 condenser.

11 Q. Okay. In this proceeding, the condensing unit  
12 we're all calling the chiller unit. Is that okay with  
13 you?

14 A. If you want to use it, fine, but generally I  
15 call condenser.

16 Q. I understand. We're just trying to make sure  
17 we're all referring to it as the same thing. So when I  
18 call it the chiller unit, it's the same as the condensing  
19 unit, you're talking about.

20 A. Right.

21 Q. That condensing unit, what does it consist of?

22 A. Condensing units have compressor inside on that  
23 one and there it sucks in liquid.

24 HEARING OFFICER: Can you state that again?

00751

1           A.       The condensing unit is consist of the  
2 compressors and the refrigeration and piping connection,  
3 what we call the suction and liquid piping, right, that is  
4 what we call the condensers.

5           Q.       Thank you. Does this condensing unit also have  
6 fans?

7           A.       Yes.

8           Q.       How many?

9           A.       I do not remember right now.

10          Q.       Do you remember how many compressors it has?

11          A.       No, I do not remember.

12          Q.       Okay. This drawing that's shown on our Exhibit  
13 26, that's a drawing of the chiller unit and the concrete  
14 pad that it sits on?

15          A.       Yes.

16          Q.       And also of the fence to go around the unit?

17          A.       Yes.

18          Q.       But this is in greater detail than the document  
19 we looked at before, correct?

20          A.       That is correct.

21                   MR. DIVER:     Move the admission of Exhibit  
22 26.

23                   MR. CARSON:   One moment. We're still trying  
24 to unravel this document. Is 26 the same at the second

00752

1 page of 27?

2 MR. DIVER: 27 was also just one page.

3 HEARING OFFICER: I show 27 as one page.

4 MR. DIVER: Any objection to Exhibit 26?

5 MR. CARSON: No objection to 26.

6 HEARING OFFICER: Exhibit 26 is entered into  
7 evidence.

8 (Plaintiff's Exhibit No. 26 was entered  
9 into evidence.)

10 Q. Okay, I'm showing you what has been marked as  
11 Exhibit 78 and ask you to look at that and tell me whether  
12 that is indeed your memo to Pete Keller concerning the  
13 rental of sound measuring equipment?

14 A. Yes, it is.

15 Q. Okay. Who asked you to rents that sound  
16 measuring equipment?

17 A. My boss.

18 Q. Who is your boss?

19 A. Harry Akers.

20 MR. DIVER: Move the introduction of 78 if  
21 it hasn't already been admitted. It may have already been  
22 admitted.

23 HEARING OFFICER: Exhibit 78 has not been  
24 admitted into evidence. Is there any objection?



00753

1 MR. CARSON: No objection to 78.

2 HEARING OFFICER: All right. Exhibit 78 is  
3 entered into evidence.

4 (Plaintiff's Exhibit No. 78 was entered  
5 into evidence .)

6 Q. Did Mr. Akers give you any instruction as to  
7 where to get this sound measuring equipment?

8 A. I do not remember.

9 Q. Did Mr. Akers give you any instructions about  
10 retaining somebody with a professional background in  
11 conducting sound measurements?

12 A. I don't remember.

13 Q. Do you have a background in conducting sound  
14 measurements?

15 A. I do not.

16 Q. Do you recall whether you ever talked to any  
17 person about coming to serve as a consultant to Mid/Res on  
18 the measurement of sound?

19 A. I do not remember.

20 Q. Do you remember when the sound measuring  
21 equipment arrived?

22 A. In my mind I do not know the exact date, I  
23 don't.

24 Q. Exact dates aren't so important, but give me

00754

1 your best recollection?

2 A. I cannot tell you without going through the  
3 document.

4 Q. Well, your document here indicates that you were  
5 expecting it by the end of the week of September 21. Do  
6 you recall whether you got it then?

7 A. I do not know for sure.

8 Q. Did you ever see the equipment?

9 A. I don't remember.

10 Q. This Exhibit 78 indicates that you sent carbon  
11 copies to Mr. Akers. Did you send a carbon copy to Mr.  
12 Akers?

13 A. Yes, I did.

14 Q. Did Mr. Akers tell you why he wanted sound  
15 measuring equipment to be rented?

16 A. I do not remember.

17 Q. I'm showing you now what I have marked as  
18 Plaintiff's Exhibit 100 and ask you to look at that single  
19 sheet if you would?

20 A. Okay.

21 Q. This document appears to be installation  
22 instructions for some sound reduction material from  
23 Carrier, correct?

24 A. Yes.

00755

1 Q. Did you have this document in your possession on  
2 or about October 19th, 1993?

3 A. I do not know that particular time. I don't  
4 know the exact date.

5 Q. Is that your handwriting at the top, 10/19/93?

6 A. That is correct.

7 Q. Did you enter that date on or about the date  
8 that you had this document?

9 A. That is correct.

10 Q. Okay. And you show cc to Harry Akers. Was Mr.  
11 Akers copied on this document?

12 A. Yes.

13 MR. DIVER: Move the introduction of Exhibit  
14 100.

15 MR. CARSON: One moment please.

16 (Pause in the proceedings.)

17 MR. CARSON: No objection to 100.

18 Q. Mr. Doshi, from whom did you get this document?

19 A. I do not remember.

20 Q. Do you recall being asked by Mr. Akers to try to  
21 find information about sound reduction methods or  
22 equipment?

23 A. I don't remember.

24 HEARING OFFICER: Thank you counselor.

00756

1 Exhibit 100 will be entered into evidence.

2 (Plaintiff's Exhibit No. 100 was entered  
3 into evidence.)

4 Q. I'm showing you now what has been marked Exhibit  
5 82 and ask you to look at that, if you would. This  
6 document has previously been admitted.

7 A. Okay.

8 Q. And ask you if you recall receiving this  
9 document?

10 A. Yes, I do recall.

11 Q. And ask you if you recall sending a copy of this  
12 document to Mr. Akers?

13 A. Yes, I remember.

14 MR. CARSON: Your Honor, can the record just  
15 show our continuing objection to the inquiry concerning  
16 this document which, for the grounds stated earlier.

17 HEARING OFFICER: Yes, it can.

18 Q. Did you ask Tran to send you this information?

19 A. I don't remember that.

20 Q. At or about this point in time were you on a --  
21 strike that -- at or about this point in time was it one  
22 of your responsibilities to try to find as much  
23 information out as possible about sound emissions from the  
24 type of chiller unit that had been installed at the

00757

1 Crowns?

2 A. I don't remember.

3 MR. DIVER: And if it has not already been  
4 -- I believe you said it has been admitted, Madam Hearing  
5 Officer, is that correct.

6 HEARING OFFICER: Yes.

7 Q. I'm showing you now what's been marked as  
8 Plaintiff's Exhibit 97 and with the exception of the  
9 handwriting at the bottom that begins with the word,  
10 "Theresa", is that document a document that you prepared  
11 and sent to Mr. Sheda?

12 A. Yes.

13 Q. On or about February 2, 1994?

14 A. Yes.

15 Q. And you communicated to Mr. Sheda your desire to  
16 provide some kind of insulation on the compressor unit  
17 inside the chiller, correct?

18 A. Yes.

19 Q. Did you tell Mr. Sheda at this time that the  
20 insulation had already been placed in the unit?

21 A. I don't remember.

22 Q. Do you know -- strike that -- had the insulation  
23 already been placed in the unit as of the time you wrote  
24 this letter?

00758

1 A. I don't remember.

2 Q. Again did you copy Mr. Akers on this?

3 A. Yes, I did.

4 MR. DIVER: Move the introduction -- strike  
5 that 97's already been admitted.

6 HEARING OFFICER: I'm not showing 97 as being  
7 admitted.

8 MR. DIVER: I'm sorry. I show it as being  
9 admitted in Mr. Sheda's testimony, but if not, I move its  
10 admission now.

11 HEARING OFFICER: It was not admitted as-- oh,  
12 yes it was, excuse me, it was.

13 MR. DIVER: It was admitted?

14 HEARING OFFICER: Yes.

15 MR. CARSON: My notes say a limited purpose,  
16 but I don't recall what the discussion was at the time as  
17 to what the purpose was.

18 HEARING OFFICER: 97 was not admitted for a  
19 limited purpose. That was for 96. Yes, 97 followed it is  
20 and was admitted.

21 Q. I'm showing you now Mr. Doshi, what has been  
22 marked as Plaintiff's Exhibit 101. Do you recognize this  
23 document?

24 A. Yes.

00759

1 Q. This is your document of February 2, 1994 to  
2 Chuck Hyams of Scott Byron and Company?

3 A. No, this particular document relates to Pete  
4 Keller and I sent it to Pete Keller. So when I sent it to  
5 Pete Keller, this is what I sent to her.

6 Q. What does this mean to Chuck Hyams. What does  
7 that mean?

8 A. His document was sent to Chuck Hyams on this  
9 date, but this particular document that you're showing me,  
10 it's the copy that I sent to Pete Keller.

11 Q. Okay. But this is with the exception of the  
12 circling of Pete Keller's name and with the exception of  
13 the handwriting at the bottom, attention Pete Keller. Is  
14 this the same memo that you sent to Chuck Hyams?

15 A. That is correct.

16 Q. And you indicate in this document that you're  
17 sending him a copy of your fax dated 10/5/92 regarding the  
18 clearance requirements. I'm showing you again what has  
19 been previously marked Exhibit27 being your drawing,  
20 asking you is that the fax that you sent along with your  
21 letter to Mr. Hyams?

22 A. That is correct.

23 Q. Move the introduction of Exhibit, Plaintiff's  
24 101.

00760

1 MR. CARSON: No objection.

2 HEARING OFFICER: Exhibit 101 will be entered  
3 into evidence.

4 Q. I'm showing you now what I've marked as Exhibit  
5 102 and ask you to look at that document and tell me  
6 whether you recognize it.

7 A. Yes.

8 Q. Okay. Is that your memo to Mr. Hyams of  
9 February 7th, 1994?

10 A. Yes.

11 Q. And did you copy Mr. Akers on this document?

12 A. Yes, I did.

13 Q. All right. The document itself refers in the  
14 first numbered paragraph to your fax dated 10/5/92 on  
15 dimensions. Again is this Exhibit 27 the fax that you  
16 referred to in that memorandum?

17 A. That is correct.

18 Q. Okay. Reading on you then say if you need the  
19 dimensions from AC unit, then please find attached the  
20 outdated 10/23/92. I'm showing you Exhibit 26 and ask you  
21 if that is your 10/23/92 drawing that was attached to the  
22 document?

23 A. Yes.

24 MR. DIVER: Thank you. Again move the



00761

1 introduction of Plaintiff's 102.

2 MR. CARSON: No objection.

3 HEARING OFFICER: Exhibit 102 will be entered  
4 into evidence.

5 MR. DIVER: Let the record show Exhibit 102  
6 is one page long, although the original fax identifies it  
7 as a three page document.

8 (Plaintiff's Exhibit No. 102 received  
9 into evidence.)

10 Q. Mr. Doshi, the other two pages attached to that  
11 fax would have been the October 5 drawing and the October  
12 23rd drawing, is that correct?

13 A. I don't remember.

14 Q. Okay. Mr. Doshi, did you have as of this  
15 approximate time; that is, February of 1994, receive a  
16 response from Chuck Hyams as to the detailed construction  
17 of the fence?

18 A. I don't remember.

19 Q. Did you ever receive from Mr. Hyams or anyone  
20 else a response to your question will there be insulation  
21 in this wall or fence?

22 A. I don't remember.

23 Q. Showing you now what's been marked as  
24 Plaintiff's Exhibit 103.

00762

1 A. Okay.

2 Q. Is this a copy of your memorandum of February  
3 21, 1994 to Pete Keller?

4 A. Yes.

5 Q. Does it concern your request for certain  
6 measurements with respect to the location of a turned  
7 chiller unit and a new fence?

8 A. Yes.

9 Q. Are you aware why this unit was being proposed  
10 to be turned?

11 A. I do not remember.

12 Q. Up to this point had there been a fence  
13 constructed?

14 A. I don't remember.

15 MR. DIVER: Move the introduction of 103,  
16 Madam Hearing Officer.

17 MR. CARSON: No objection to 103.

18 A. Exhibit 103 will be entered into evidence.

19 MR. CARSON: That's a two page document.

20 MR. DIVER: Yeah, two page drawing and text.

21 Q. Mr. Doshi, I'm now showing you what I've marked  
22 as Plaintiff's Exhibit 104 and ask you whether this is the  
23 response that you received from Mr. Keller to the previous  
24 request for information?

00763

1 A. That is correct.

2 MR. DIVER: Move the introduction of 104.

3 MR. CARSON: No objection.

4 HEARING OFFICER: Exhibit 104 will be entered  
5 into evidence.

6 (Plaintiff's Exhibit No. 104 was received  
7 into evidence.)

8 Q. Okay. I'm showing you now what has been  
9 previously marked as Exhibit 84. You already have a copy  
10 I believe, Mr. Elledge?

11 MR. CARSON: Which one?

12 MR. DIVER: 84. Mr. Doshi, is that a copy of  
13 your memorandum of April 29, 1994 to Pete Keller?

14 A. Yes.

15 Q. You'll not in the center of your memorandum that  
16 you discussed the sound cone for the condensing unit,  
17 correct?

18 A. That is correct.

19 Q. What was the sound cone?

20 A. Sequence of cover which goes over the top of the  
21 fan discharge.

22 Q. I'm sorry. What kind of a cover over the fan  
23 discharge?

24 A. Segments of -- sheet metal cover.

00764

1 Q. A sheet metal cover?

2 A. Right.

3 Q. Do you know what the purpose of that cone was?

4 A. I do not know.

5 Q. Were you responsible for seeing to it that it  
6 got built?

7 A. I don't remember.

8 Q. Do you know of anyone else who might have had  
9 that responsibility to see that it got built?

10 A. I don't know.

11 Q. Did you copy Mr. Akers on this memorandum as  
12 well?

13 A. Yes, I did.

14 Q. Does this refresh your recollection that as of  
15 April 29th, 1994 the sound code had not been completed?

16 A. I do not know.

17 Q. That does not refresh your recollection on that  
18 score?

19 A. I do not remember.

20 Q. All right. Does the entry that's sound, under  
21 sound cones for condensing units, does that sentence  
22 appear, "I talked to Gary about this work and we will  
23 finish this work on or about May 13th 1994." Was that  
24 your entry at that time/ did you enter that information?

00765

1 A. Yes, I did.

2 Q. Was it true at that time?

3 A. Yes, it was true at that time.

4 MR. DIVER: Move the introduction of Exhibit  
5 84.

6 MR. CARSON: No objection to 84.

7 HEARING OFFICER: Exhibit 84 will be entered  
8 into evidence.

9 (Plaintiff's Exhibit No. 84 was received  
10 into evidence.)

11 Q. Showing you now what I've marked as Exhibit 105.  
12 Have you ever seen that document before?

13 A. I do not remember.

14 Q. All right. Looking on the second page of that  
15 document, can you tell us whether the acoustical barrier  
16 built around the chiller unit was built like this drawing?

17 A. I don't remember.

18 Q. Were you involved in determining the design of  
19 the acoustical barrier around the chiller unit?

20 A. I don't remember.

21 Q. Do you recall sending a document to the material  
22 supplier ordering the material for the acoustical barrier?

23 A. Like what, I mean what is the specific question?

24 Q. I'm asking do you know whether an acoustical

00766

1 barrier was constructed around the chiller unit?

2 A. I remember we install I mean some enclosure  
3 around the condenser that I remember.

4 Q. You put an enclosure around the chiller unit?

5 A. Right.

6 Q. Was it an enclosure like a simple wood fence?

7 A. I don't remember.

8 Q. Did it have any sound proofing material on it.

9 A. I don't remember.

10 Q. I'm going to show you what I have marked as  
11 Plaintiff's Exhibit 106 and ask you if you would look at  
12 that, please?

13 A. Okay.

14 Q. Now, this document has how many pages, Mr. Doshi?

15 A. Four pages.

16 Q. Are all 4 of those pages prepared by you?

17 A. Yes, it is.

18 Q. All right. Does that show the specifications  
19 for some kind of a barrier around the chiller unit?

20 A. It does use the dimensions, not spec.

21 Q. Do you know whether the unit that was actually  
22 built was in accordance with those drawings that you sent?

23 A. I don't remember.

24 Q. As you look at the drawings there with the

00767

1 dimensions, can you tell me whether any particular wall of  
2 this unit is higher than the other walls?

3 A. I don't remember.

4 Q. Well, could you look at the document?

5 HEARING OFFICER: Mr. Doshi please answer the  
6 specific question that's being asked to the best of your  
7 ability.

8 MR. DIVER: Could we have that last question  
9 please read back?

10 (The record was read.)

11 A. Which wall are we talking about?

12 Q. I'm asking you to look at the drawing that you  
13 made and I want you to tell me whether any of the four  
14 walls -- there are four walls here, correct?

15 A. Yes.

16 Q. Tell me whether any of those four walls is  
17 higher than the other three?

18 A. This is the plane view. I do not have any  
19 information about the height, so I do not remember. But  
20 that height, higher or lower, I cannot tell you that.  
21 This is all the plane. There is nothing about the height,  
22 so I don't remember if it's higher or lower or what.

23 HEARING OFFICER: Excuse me in terms of  
24 terminology. Are you using the term plane view to

00768

1 identify the plane view?

2 A. Right.

3 Q. I'm asking you to look at page 2, the second  
4 page of your document which has the date 9/12/94. At the  
5 top it talks about panel size. Are you able to determine  
6 from the panel size information whether any one of the  
7 walls was to be constructed at a higher elevation than the  
8 other three?

9 A. Not according to the page two. The walls are  
10 all the same, so 72 inches here.

11 Q. Is it your recollection that all four of the  
12 walls of this unit were to be built to the same height?

13 A. I don't remember, I don't remember.

14 Q. On page 3 circled item two you referred to  
15 access panel's height. What's an access panel?

16 A. To service the unit we have to remove this  
17 access panel of this enclosure so we can service the unit.

18 Q. Have you ever seen this unit constructed in a  
19 fully constructed state? This barrier?

20 A. You mean another job site?

21 Q. Yes. Have you ever been to the job site.

22 \*\*A. See there it is. That's what I gave them the  
23 specs for. Yes, I can see.

24 Q. Were you actually present when it was being



00769

1 built?

2 A. No.

3 Q. How many times have you seen it?

4 A. One time.

5 Q. When?

6 A. I don't remember the date.

7 Q. Was it within 1996?

8 A. I don't remember the date.

9 Q. Was it within the last two weeks?

10 A. Not in the last two weeks, no.

11 Q. Was it within the last two months?

12 A. No.

13 Q. Was it since the beginning of January -- well,

14 from January 1, 1996 to the present?

15 A. No.

16 Q. Was it close to the time that the unit was

17 actually built?

18 A. I don't remember.

19 Q. Who was present when you saw it?

20 A. I believe I had one service man on the job at

21 that time.

22 Q. Do you remember who that was?

23 A. I don't remember.

24 Q. Do you recall the reason for your being there to

00770

1 view the barrier?

2 A. I don't remember the reason. I cannot.

3 Q. But you do remember seeing the barrier?

4 A. Yes, I remember that.

5 Q. Tell me on the basis of what you said, was any  
6 of the four walls higher than the other?

7 A. I don't remember that.

8 Q. Do you know whether that unit is still there?

9 A. I do not know as of this time and this date  
10 here.

11 Q. Starting from the middle of 1995 to the present  
12 -- okay let's say the middle is July 1, okay, July 1, 1995  
13 to the present, have you had any responsibility to  
14 identify additional methods to sound proof the chiller  
15 unit?

16 A. I don't remember.

17 Q. Do you remember during that period of time  
18 whether Mr. Mautner asked you for your advice with respect  
19 to additional sound attenuating measures that might be  
20 taken?

21 A. I don't remember.

22 Q. Do you recall whether during that period of time  
23 from the middle of 1995 to the present whether Mr. Akers  
24 requested you to provide suggestions of additional sound

00771

1 attenuation methods?

2 A. I don't remember that.

3 Q. Do you recall at any time from the beginning of  
4 your involvement on this project to now he ever mentioning  
5 -- ever making any use yourself as to something that might  
6 be done to reduce the sound coming from this unit?

7 A. I don't remember.

8 Q. When was the last time that you were on the job  
9 site?

10 A. I cannot tell you that one without going through  
11 my documents.

12 Q. Was it in 1996?

13 A. I don't know, I don't remember.

14 Q. Within the last month has Mr. Akers solicited  
15 your advice concerning things that might be done to quiet  
16 the chiller unit or to soundproof it?

17 A. No.

18 Q. Within the last month has Mr. Mautner requested  
19 your suggestions concerning those subjects?

20 A. No.

21 Q. Within the last two months has Mr. Mautner  
22 requested your suggestions on those subjects?

23 A. No.

24 Q. Do you actually recall the last time Mr. Mautner

00772

1 actually suggested -- actually asked for your suggestions?

2 A. I don't remember that.

3 Q. Do you remember him ever asking you for your  
4 suggestions?

5 A. I don't remember that.

6 Q. Have you ever prepared anything in bringing to  
7 Mr. Mautner or to Mr. Akers outlining your suggestions of  
8 what might be done to either reduce the sound from this  
9 chiller unit or attenuate the amount of sound coming from  
10 it?

11 A. I don't remember now.

12 Q. Have you ever talked to Steven Crown about the  
13 noise problems at the chiller unit?

14 A. No, I did not.

15 MR. DIVER: No further questions.

16 MR. CARSON: No questions of this witness.

17 HEARING OFFICER: There being no cross  
18 examination, I want to thank you for coming, Mr. Doshi?

19 A. Okay, thank you.

20 MR. DIVER: Madam Hearing Officer, the last  
21 witness we have is David Shelton. I see that we have  
22 about 50 minutes before the designated cutoff time and ask  
23 the Hearing Officer as well as counsel whether we should  
24 begin the process of interrogating Mr. Shelton now or put

00773

1 it over to commence with testimony on the 16th.

2 HEARING OFFICER: Off the record for just a  
3 minute to discuss it.

4 (Off the record discussion.)

5 HEARING OFFICER: On the record. We have one  
6 exhibit from our last witness, Exhibit Number 106 and do  
7 we have a motion to introduce this into evidence?

8 MR. DIVER: Yes, Madam Hearing Officer,  
9 Complainant moves for the introduction of Exhibit 106.

10 MR. CARSON: We have no objection to 106.

11 HEARING OFFICER: All right. Exhibit 106 is  
12 entered into evidence. Thank you.

13 (Plaintiff's Exhibit No. 106 was received  
14 into evidence.)

15 HEARING OFFICER: And we have at this time  
16 Complainant's next witness.

17 MR. DIVER: Yes, we do, your Honor.  
18 Complainant would next call to the stand David Shelton,  
19 one of the Complainants in this action.

20 HEARING OFFICER: Mr. Shelton, would you  
21 please be sworn?

22 (Witness sworn.)

23 PROCEEDINGS

24 WHEREUPON

00774

1                                   DAVID R. SHELTON,  
2   having been duly sworn to tell the truth, the whole truth,  
3   and nothing but the truth, was examined and testified as  
4   follows:

5                                   DIRECT EXAMINATION

6   BY MR. KAISER:

7       Q.     Mr. Shelton, could you please state your full  
8   name and spell your last name, for the court reporter's  
9   benefit?

10      A.     Yes, David R. Shelton, S-h-e-l-t-o-n.

11      Q.     Mr. Shelton, what is your date of birth?

12      A.     October 4, 1947.

13      Q.     Do you and your wife Susi Shelton own a home  
14   located at 707 Ardsley Road in Winnetka, Illinois?

15      A.     Yes.

16      Q.     How long have you owned that home?

17      A.     Since mid 1989, July of 1989.

18      Q.     And prior to -- and when did you actually move  
19   into your home on Ardsley Road in Winnetka, Illinois.

20      A.     Approximately a year later in the summer of  
21   1990.

22      Q.     And prior to moving into your home on Ardsley  
23   Road in Winnetka, Illinois, where did you live?

24      A.     887 Forest Glen East in Winnetka.

00775

1 Q. And in what proximity is 887 Forest Glen Road,  
2 Winnetka, Illinois to Tower Road in Winnetka, Illinois?

3 A. It intersects with Tower. So they're right  
4 together.

5 Q. Were you a corner lot there?

6 A. Yes.

7 Q. Were you located on a corner lot?

8 A. Yes.

9 Q. When you began to look around for a new home for  
10 your family in 1989, what were some of the considerations  
11 that entered into your mind when you were looking for a  
12 new home?

13 A. We were looking for a bigger lawn. We were on a  
14 corner lot at Forest Glen and as a result, we had two side  
15 yards, but we didn't have a back yard, so we wanted a  
16 bigger yard with a back yard. Also we were hoping to find  
17 something a little quieter. Tower Road, which ran along  
18 the south side of our house, had proven to be a busy road  
19 and we were looking for something that would be quieter.

20 Q. All right. I want to show you what's previously  
21 been marked for purposes of Identification as Exhibit  
22 Number 1 and ask you if you recognize that?

23 A. Yes, its a partial map of Winnetka and it's  
24 highlighting our lot on Ardsley Road.

00776

1 Q. And does that also show Tower Road as one of the  
2 northern most roads there on Exhibit 1?

3 A. Yes, it does.

4 Q. And approximately how far -- is it possible on  
5 that Exhibit 1 to identify approximately the location of  
6 the home you and your family lived in before you moved to  
7 Ardsley Road?

8 A. In terms of the distance or?

9 Q. Yes.

10 A. There isn't a scale here, but I would guess its  
11 less than a half a mile.

12 Q. All right. Thank you and do you recall when you  
13 first looked at the home there on Ardsley Road in  
14 Winnetka, Illinois?

15 A. I don't recall the exact day, but it was in the  
16 spring of 1989 that we first looked at it.

17 Q. And do you recall what some of the features of  
18 that home were that attracted you to that home on Ardsley  
19 Road?

20 A. Yes. The things that got us the most excited  
21 were the location and the lot. The street is a narrow,  
22 quiet street and the yard has a lot of trees and a very  
23 private yard. The house itself was a somewhat smaller  
24 house than we had been living in on Forest Glen. It was,



00777

1 in fact, an adult home, a ranch that we realized we were  
2 going to have to make additions to in order for it to be  
3 of an adequate size for our family. But the lot and the  
4 locations were the principal drivers in the selection.

5 Q. And the road, in fact Ardsley Road has been  
6 previously testified a private road, is it not?

7 A. Yes, it is.

8 Q. And access to Ardsley Road is gained by  
9 traveling to Pelham Road which is also a private road, is  
10 it not?

11 A. Yes.

12 Q. Is it fair to say that the area in which your  
13 home is located is a secluded area?

14 A. Yes, it is.

15 Q. And when you purchased your home in 1989 and  
16 shortly thereafter in 1990 did you and your wife undertake  
17 certain construction on that home?

18 A. Yes, we did. We were looking long term at  
19 making the home into our permanent home, our dream home,  
20 if you will. We anticipated two stages of additions. The  
21 first stage was to be an addition to the south of the  
22 house expanding the kitchen and putting a small basement  
23 under that part of the house. The house as it stood, did  
24 not have a basement. That's one of things that was

00778

1 missing. The other stage, stage two was to be putting a  
2 second floor onto the house so we could have some extra  
3 bedrooms. At the time, however, we weren't certain we  
4 were going to be able to do the second floor, so we  
5 thought we would do the first floor first. But we  
6 subsequently learned that, in fact, we could do the second  
7 floor, so we ended up doing that first with the plans.  
8 Then at a future date, when we could afford it, to do the  
9 first floor addition.

10 Q. So, is it your testimony that the first piece of  
11 construction that you and your wife undertook upon moving  
12 to 707 Ardsley Road was the construction of a second  
13 floor?

14 A. Yes.

15 Q. And did that second floor of your home, does  
16 that include a bedroom for your son, David Shelton?

17 A. It does.

18 Q. What other rooms are located on the second  
19 floor?

20 A. There are three bedrooms, one of which we have  
21 used primarily as a family room, if you will, in lieu of  
22 having a rec room in the basement. We use the large  
23 bedroom on the second floor as sort of a kid's family  
24 room. Then our the sons sleep in the other the bedrooms

00779

1 and then there are the bathrooms that service those  
2 bedrooms.

3 Q. And as I believe your wife testified, your  
4 bedroom is located on the first floor of your home?

5 A. Yes, the northeast corner.

6 Q. And where is your daughter's bedroom located?

7 A. Her home is on the northwest corner of the  
8 house.

9 Q. And that's located on the first floor.

10 A. First floor, yes.

11 Q. Did you and your wife also undertake to expand  
12 the patio area of your home at 707 Ardsley Road?

13 A. We did. The house did not have a patio which we  
14 couldn't believe, so one of the first things we did was  
15 put a patio on it.

16 Q. And why was that one of the first things? Why  
17 was a patio important to you and your wife?

18 A. Because we do enjoy having a yard and eating  
19 outside when possible and enjoying the trees and so on.

20 Q. And can you briefly describe for the Board's  
21 benefit, the dimensions and the construction of the patio?

22 A. The patio runs from the family room to a part of  
23 the bedroom on the north so that the length would be  
24 probably 50 feet -- 40 to 50 feet and the width of it is

00780

1 probably 12 to 5 feet with a bay area that sticks out  
2 further to the east with a rounded brick wall.

3 Q. And the floor of the patio, what type of a  
4 surface is that?

5 A. It's an aggregate with a wood partitions  
6 separating the sections of the aggregate.

7 Q. And you mentioned that there is then a stone  
8 wall on the eastern edge of the patio?

9 A. Yes.

10 Q. Now, what sort of patio furniture do you have  
11 and do you have ought on the patio?

12 A. We have an eating table and four to six chairs  
13 that go with that. We have a couple of rocking types of  
14 chairs and a couple of other chairs.

15 Q. And when was the construction of the patio  
16 completed?

17 A. It was finished in 1990 if memory serves me, in  
18 the fall of 1990.

19 Q. Do you recall the summer of 1991?

20 A. Yes, I do.

21 Q. Was that the first summer during which you and  
22 your family could use the patio?

23 A. Yes.

24 Q. Do you recall whether you and your family ever

00781

1 ate out of doors during the summer of 1991?

2 A. Yes, we have eaten outdoors with some frequency  
3 during the spring and summer time and fall. Since we've  
4 been in the house; that is, up until we started having the  
5 problems with the air conditioner.

6 Q. All right. So its your testimony that with some  
7 frequency beginning in the summer of 1991 and continuing  
8 up until the time which we will define with greater  
9 precision, you began to experience problems with the air  
10 conditioner that you and your family frequently dined out  
11 of doors?

12 A. Yes.

13 MR. CARSON: Your Honor, I just want to  
14 interrupt here because counsel has a habit of restating  
15 witness' testimony after the witness has just said it and  
16 it's really a leading -- it is leading and it's  
17 repetitive and I'm objecting to that manner of  
18 questioning.

19 HEARING OFFICER: Sustained.

20 MR. KAISER: I'll try to refrain from that  
21 manner, thank you.

22 Q. Do you recall when construction began on the  
23 Crown residence located just to the south of your home on  
24 Ardsley Road in Winnetka, Illinois?

00782

1 A. Yes.

2 Q. When was that in?

3 A. In late '91.

4 Q. And I want to just, for the record, here to show  
5 you what's previously been marked for purposes of  
6 identification as Exhibit 2. I want you to take a look at  
7 that tell me if you recognize that?

8 A. Yes, I do.

9 Q. What do you recognize that to be?

10 A. Its a sketch showing the outline of the Crown  
11 house as it has been expanded in relation to the southern  
12 end of our house, the Shelton house.

13 Q. Do you know who prepared that diagram?

14 A. Yes, I did.

15 Q. And does that diagram also include a rough  
16 property line dividing your property from the Crown  
17 property?

18 A. Yes.

19 Q. And I notice that you have made some  
20 measurements here, what would appear to be from the  
21 southern wall of your home to the property line. Is that,  
22 in fact, what you did?

23 A. Yes.

24 Q. And what is the distance from the property line

00783

1 dividing your property and the Crown's property to the  
2 southern wall of your home?

3 A. 28 feet.

4 Q. And did you also -- I see that there's a box  
5 area along one of the northern walls of what is identified  
6 as the two to three story Crown house and inside that box  
7 there's an a/c. What does that stand for?

8 A. Air conditioner is what it stands for, the  
9 chiller unit.

10 Q. And is that the location of the chiller unit at  
11 the Crown residence?

12 A. Yes, it is.

13 Q. Now, again when did you say construction began  
14 on the Crown residence?

15 A. To the best I recall, it was the fall, September  
16 or thereabouts, October of 1991.

17 Q. And how did you become aware that there was  
18 construction underway at the house just to the south of  
19 your home at 707 Ardsley Road?

20 A. We became aware that the Crowns had purchased  
21 the house and planned a major renovation and expansion of  
22 it. I'm not sure how we became aware of it. It was  
23 common knowledge in the village. But we became aware of  
24 the specific construction once it started.

00784

1 Q. What things did you see or hear that let you know there  
2 was major construction underway on the property just to  
3 the south of yours?

4 A. Trucks of all kind, workers of various kinds at  
5 first doing demolition kind of work, later cement trucks  
6 poured cement, cranes hoisting steel beams and things of  
7 that sort. And in due course the various service trucks,  
8 the air conditioning heating system folks, the electrical  
9 contractors and so on.

10 Q. I want to show you what's previously been marked  
11 and admitted as Exhibit 50. It's a form letter dated  
12 December 26, 1991 from A. Steven Crown. I ask you to take  
13 a look at that and tell me if you recognize that?

14 A. Yes I do recall receiving this.

15 Q. You said you do recall receiving this. You  
16 were, I note on the mailing list. Did you, in fact,  
17 receive a copy of that letter?

18 A. Yes, we did.

19 Q. On or about the latter part of December, 1991.

20 A. Yes.

21 Q. And does that in some respects address some of  
22 the issues raised and current in the neighborhood in  
23 December of 1991 as it pertained to the construction at  
24 the Crown residence?



00785

1           A.     If I might look at it just a little bit longer,  
2 I wasn't really focusing in on it.

3                   MR. CARSON:  Can I also look at it, Steve?

4                   HEARING OFFICER:  Exhibit 50 was admitted into  
5 evidence on July 1st.

6                   MR. CARSON:  Thank you.  I wasn't focusing  
7 on it for that.

8           A.     Yes.  Certainly there was, with the very heavy  
9 traffic of construction workers and vehicles, there were a  
10 number of congestion problems when people have had  
11 difficulty getting down the street and instances of yards  
12 being backed over, that sort of thing and that was -- and  
13 that is addressed in this letter.

14          Q.     Thank you.  Did that construction continue  
15 throughout 1992?

16          A.     Yes, it did.

17          Q.     Now, during the summer of 1992, do you recall  
18 whether you and your family were able to enjoy meals out  
19 of doors at your residence at 707 Ardsley?

20          A.     Yes, we were able to.

21          Q.     Do you recall the frequency with which you took  
22 your meals out of doors during the summer months of 1992?

23          A.     A goodly portion of the family meals when we're  
24 all together we would have outside.  In fact, I would say

00786

1 a vast majority of our family meals, if the weather was  
2 adequate, we would eat outside.

3 Q. Did the construction continue through the fall  
4 of 1992?

5 A. Yes, it did.

6 Q. Did the construction then extend into the spring  
7 and summer of 1993?

8 A. Yes, it did.

9 Q. Do you recall whether you and your family were  
10 able to take your meals out of doors during the warm  
11 months of 1993?

12 A. Yes. The construction didn't interfere with us  
13 taking our meals outside because the work typically would  
14 end by 3:00 or 3:30 in the afternoon. So, it didn't  
15 interfere with our ability to enjoy our meals outside,  
16 though. I must say things were a lot dirtier than normal.  
17 There was a considerable amount of dust generated  
18 regularly by all of the construction. But while our meals  
19 weren't affected in the evening, we did have difficulties  
20 in the morning with traffic arriving as early as 6:00 in  
21 the morning.

22 Q. Now, could you tell me what your habits were,  
23 your, meaning you and your family's habit with respect to  
24 use -- you do have an air conditioning unit at your home,

00787

1 do you not?

2 A. Yes, we do.

3 Q. And what is your habit with respect or what was  
4 your habit back in 1991 with respect to usage of the air  
5 conditioning unit at your home?

6 A. We used it very infrequently. We very much,  
7 both Susi and I like open windows and we are relatively  
8 near to the lake and there are relatively few days during  
9 the summer when we found that we would have to have our  
10 air conditioner on.

11 Q. Was that your experience and habit of air  
12 conditioner usage in 1992?

13 A. Yes.

14 Q. Did that habit and pattern of usage with respect  
15 to the air conditioning system continue into 1993?

16 A. Yes.

17 Q. Do you recall that the construction -- strike  
18 that -- do you recall an evening in the early autumn of  
19 1993 when you and your wife Susi were seated in the family  
20 room of your residence at 707 Ardsley Road, Winnetka,  
21 Illinois approximately 10:00 to 10:15 p.m. when you heard  
22 a noise that you'd never heard previously?

23 A. Yes, I do. It's one of those moments that's  
24 carved in your memory.

00788

1 Q. All right. Now, where, in fact, were you seated  
2 at that time?

3 A. We were seated in our family room which extend  
4 over the southeast corner of our house and we were  
5 listening to the news. I had been out of town and arrived  
6 home earlier that evening and the kids had gone to bed, so  
7 we were watching the news.

8 Q. And again if I may direct your attention once  
9 again to what's previously been marked for purposes of  
10 identification as Exhibit 2. Can you show us on there --  
11 I'm going to give you a yellow highlighter and ask you to  
12 show us on there the approximate location of your family  
13 room.

14 A. The family room is up in this part of the house  
15 and we were seated right in the middle where the X is.

16 Q. And can you describe for the record and for the  
17 benefit -- Mr. Shelton has indicated with a fluorescent  
18 yellow marker the southeastern corner of the area that's  
19 identified on Exhibit 2 as the two story, Shelton, and it  
20 cut off but it would be residence and can you describe for  
21 the Board how many windows are in that family room?

22 A. Yes, the room is a glass room. One might call  
23 it a sun room I suppose. Some of the glass is permanent  
24 and is double paned, but there are I believe on the south

00789

1 side at least two of the four panels that have windows. I  
2 can't think of their names, but windows that you can  
3 crank. They're louver kind of windows and then a couple  
4 on the north are also that way is one or two on the north.

5 Q. And at that time nearly Autumn of 1993, was  
6 there a fence separating your property from the Crown  
7 property?

8 A. Yes, the fence was our fence, a four and a half  
9 foot old stockaid fence. There had never been put any  
10 screening up between the houses during the construction,  
11 so that was the only thing separating the houses.

12 Q. And currently there's a large wall of arbor  
13 Vitae, is there not, separating the houses?

14 A. Currently?

15 Q. Yes. Was that in place back in the early Autumn  
16 of 1993.

17 A. No, it was not.

18 Q. So, if you would continue. You and your wife  
19 were watching the evening news, you've arrived from a  
20 business trip and can you describe for the Board what you  
21 heard that evening?

22 A. There was a loud boom or bang and my wife has  
23 characterized it as an explosion. I know we've talked  
24 about it. It was quite loud and it was followed by some

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1 succeeding booms, if you will. And our initial reaction  
2 was there's some kind of a problem, something has exploded  
3 or is starting to vent and is going to explode.

4 Q. And what, if anything, did you or your wife do?

5 A. We had the Crown's number per the letter that  
6 you showed to me a little bit ago. Otherwise--

7 Q. That letter being Exhibit 50, the form letter  
8 from Steven Crown dated December 26th, 1991?

9 A. Yes. Otherwise, their phone number was unlisted  
10 because we tried to locate it. We couldn't and we  
11 couldn't find the letter right away, so we called the  
12 police to tell them that there was what sounded like an  
13 explosion, something going awry at the house at the  
14 construction site.

15 Q. And what happened next?

16 A. We went outside, although a little concerned  
17 about what it might have been, not wanting to put  
18 ourselves at risk, but we were in due course as we did go  
19 outside we were able to determine that the air  
20 conditioner, which we had not heard before, was, in fact,  
21 operating and was, in fact, making some loud noises though  
22 not as loud as the initial bangs had been. But we were  
23 able to conclude after seven or eight minutes that now  
24 that was probably the air conditioner that was doing this.

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1 We then went back inside and Susi looked through the  
2 papers and was able to find the Crown phone number and  
3 even though the hour was getting rather late, she called  
4 and told Steven that there was this strange noise and that  
5 we apologized for having called the police, but we didn't  
6 know what else to do.

7 Q. And was the unit then at some point that evening  
8 turned off?

9 A. Yes, it was.

10 Q. When was the next time you recall hearing the  
11 Crown air conditioning unit?

12 A. It didn't run during the evening that I recall  
13 during the rest of the fall though it did run some during  
14 the days. I was gone most of the time during the day, so  
15 I didn't hear it that often, but I know I was there on  
16 occasion when it ran.

17 Q. All right. I want to show you what's previously  
18 been marked for purposes of identification as Exhibit 49.  
19 It's a letter from your to Mr. Crown dated October 11,  
20 1993. I ask you to take a look at that I'm going to look  
21 over your shoulder. Tell me when you're done reviewing  
22 that letter.

23 A. Yes, I recall the letter.

24 Q. All right. Is there a letter that you, in fact,

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1 wrote to Steven Crown on or about October 11, 1993?

2 A. It is.

3 Q. I note that the second sentence of the letter  
4 states -- well, I'll read the first paragraph "After we  
5 talked with you last month" -- the reference to talking  
6 with you are A. Steven Crown last month, is that the  
7 conversation you had with Mr. Crown or Susi had with Mr.  
8 Crown on the night the AC system was first fired up?

9 A. No, that is not the conversation I was referring  
10 to. I called Steven the next day from the office and  
11 talked with him at some length in the light of day and  
12 told him that we were very concerned naturally about the  
13 noise and hoped that he was going to be taking steps to  
14 make {is your\sure} that it wasn't too much of a problem.

15 Q. If I may back up to that first night again. You  
16 said you heard these series of what sounded to be like  
17 bangs or explosions? Can you tell us the Board how long  
18 that series of sounds lasted?

19 A. I'm a little hazy as to how long the specific  
20 time might have been. It wasn't a long period of time. A  
21 minute or less.

22 Q. All right. And then what did the sound do after  
23 this initial series of bangs or explosions, what sound  
24 replaced the sound of bangs or explosions?



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1       A.     As we went outside, we heard the air  
2 conditioning.

3       Q.     And if I may stop you there.  Where exactly did  
4 you go outside?

5       A.     We went out of our family room door which is on  
6 the north of the family room.  Walked around the east end  
7 of our house onto the south side of the house.

8       Q.     Can you show us on Exhibit 27 and can you mark  
9 on Exhibit 27 where it was you stood in the Autumn of 1993  
10 on the night of the test firing?

11      A.     Yes.  I've marked it with an asterisk.

12      Q.     All right, thank you.  And approximately how  
13 long did you and your wife Susi stand at that location and  
14 listen to the sound of air conditioning unit?

15      A.     If memory serves me, just a very few minutes,  
16 three or four minutes until we realized that the air  
17 conditioner is going.  Its a very loud air conditioner.  
18 The bangs, explosions must have been connected with the  
19 air conditioning.

20      Q.     And how long was it that evening before the air  
21 conditioning unit was turned off?

22      A.     I don't recall exactly.  It wasn't very long.  
23 Within the half hour I would think but plus or minus.

24      Q.     Plus or minus how much, five, ten minutes?

00794

1 A. Fifteen minutes.

2 Q. All right. So, it was on the basis of that  
3 experience of the sound that the air conditioner that you  
4 then the next morning called Steven Crown at his office?

5 A. Yes.

6 Q. All right. Please continue where you'd left  
7 off. What did you say to him and what did he say to you?

8 A. I -- it was cordial conversation. I expressed  
9 our concerns about the magnitude of the noise and our  
10 hopes that there would be steps taken to reducing the  
11 noise. I asked him, as I recall in that conversation, the  
12 first time I asked if, in fact, they had considered  
13 relocating it. That it was, in fact, the point the  
14 perimeter in their property closest to a neighbor and that  
15 it was up against the stone wall and he indicated that,  
16 no, that wasn't an option that could be considered.

17 Q. What impact did you think location of the air  
18 conditioning unit right up against a stone wall and when  
19 you say a stone wall, you're talking about the north face  
20 of one of the wings of the Crown residence, are you not?

21 A. I am.

22 Q. And is that how many stories is that stone wall?

23 A. At that point it is, I believe, two stories.

24 Q. And what was your concern about the location of

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1 the air conditioner in such close proximity to a two story  
2 stone wall?

3 A. Echo.

4 Q. Where did you think the echo from the air  
5 conditioning unit would travel?

6 A. Directly to our house.

7 Q. Did you relate that concern to Mr. Crown?

8 A. I did, I believe I did in that conversation. I  
9 know I did in due course. I believe I did it in that  
10 conversation. We remained very concerned after that  
11 conversation and did go next door and -- in the next day  
12 and so my wife and I did and talked to Pete Keller.

13 MR. CARSON: Can I object to the form of the  
14 narrative. There wasn't any narrative. He was asked by a  
15 telephone conversation. Now he was talking about the next  
16 day. The question was what did he say to you and what did  
17 you say to him.

18 HEARING OFFICER: Was the last conversation a  
19 telephone conversation or an in person conversation?

20 Q. It was, I believe, a telephone conversation  
21 between Mr. Shelton and Mr. Crown?

22 A. Yes.

23 Q. Maybe we should finish up that telephone  
24 conversation. About how long did that telephone

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1 conversation last?

2 A. It wasn't a long conversation.

3 Q. When you say that, does that mean less than a  
4 minute, less than three minutes?

5 A. I would guess it was probably a five minute kind  
6 of conversation.

7 Q. All right. What do you do next in connection  
8 with what you were beginning to perceive as a problem with  
9 the Crown air conditioning system?

10 A. We did two things; one, I commenced talking with  
11 people who I thought might know something about air  
12 conditioners and noise. The second thing we did is to  
13 visit the Crown house and talk with Pete Keller, the  
14 general contractor or the managing contractor on the  
15 construction site.

16 Q. Who owe -- did you find Pete Keller at the Crown  
17 residence the following day?

18 A. It was either one or two days subsequent. I  
19 don't remember exactly, but, yes, we did find him.

20 Q. Did you talk with him?

21 A. Yes, we did. My wife was with me and we talked  
22 with him.

23 Q. Where did that conversation take place?

24 A. It took place near where the air conditioner was

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1 located, and what did you say to Mr. Keller. I told him  
2 that we were terribly concerned about the noise and  
3 about the ability to control the noise given the proximity  
4 to our house and the stone wall right next to it. Also  
5 related to him that initial conversation I had had with  
6 other air conditioning people and an architect had  
7 suggested that this was likely to be quite a serious  
8 problem for us and I asked him in the course of  
9 conversation if it would be possible to relocate the unit.

10 Q. And what, if anything, did Mr. Keller say in  
11 response?

12 MR. CARSON: Objection, CALLS for hearsay.

13 MR. KAISER: Madam Hearing Officer, if I may  
14 be heard. We're not offering it again to prove the truth  
15 of the matter asserted that whether, in fact, the air  
16 conditioner could be relocated. We're just trying to find  
17 out what did Pete Keller tell David Shelton in the Autumn  
18 of 1993. So I think for that purpose it can come in.

19 HEARING OFFICER: Sustained.

20 Q. You did, in fact, talk with Mr. Keller about the  
21 possibility of relocating the air conditioning unit?

22 A. We did.

23 Q. On the basis of your conversation with Mr.  
24 Keller, did you form an opinion as to the technical

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1 practicality of relocating the air conditioning unit at  
2 the Crown residence?

3 MR. CARSON: Objection, calls for -- there's  
4 no foundation.

5 MR. KAISER: The foundation for the opinion  
6 will be and is the conversation he had with Mr. Keller and  
7 that again may go to the Board may decide whether there's  
8 not a whole lot of weight given to that opinion because  
9 its only the weight of Mr. Shelton, someone who is  
10 admittedly not an air conditioning expert and it relies  
11 upon one statement by a Pete Keller who is not here. But  
12 I asked him does he have an opinion? He says he does.  
13 The basis for the opinion is conversations with Pete  
14 Keller. And now I simply want Mr. Shelton to tell me what  
15 his opinion was in early autumn of 1993 concerning where  
16 the Crown air conditioning system could be relocated. The  
17 opinion may not be worth a whole lot, but it's certainly  
18 admissible.

19 HEARING OFFICER: Overruled. The witness may  
20 answer the question as to his opinion.

21 MR. CARSON: Your Honor, I just want to add to  
22 the objection that it calls for hearsay and it's simply  
23 a way to try to back door hearsay testimony.

24 HEARING OFFICER: The objection is overruled.

00799

1 The witness may express his opinion on that.

2 Q. Thank you.

3 A. We came away with the opinion that the unit,  
4 particularly at that time early in the construction  
5 process when a lot of walls were certainly still open,  
6 could be readily relocated.

7 Q. Now, I want to get back to Exhibit 49 which is  
8 the letter you wrote to Mr. Crown dated October 11, 1993  
9 and again I note in the first sentence that you refer to a  
10 conversation you had with Mr. Crown last month and I take  
11 it that was a conversation with Mr. Crown other than the  
12 telephone conversation you just related, is that correct?

13 A. No. I was actually referring back to the  
14 telephone conversation we had the day after the unit first  
15 commenced operation.

16 HEARING OFFICER: I see, thank you. That  
17 clarifies that point. Off the record.

18 (Off the record discussion.)

19 HEARING OFFICER: Back on the record. We've  
20 come to the conclusion of our proceedings for today and I  
21 have a couple of remarks before we close.

22 I am required to make a statement on the  
23 credibility of the witnesses at the hearing.

24 As to the witnesses we have heard today, I

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1 have identified no issues of witness credibility with  
2 respect to witnesses Mr. John Gsell, Mr. Chris Sheda, Mr.  
3 Harry Akers and Mr. David Shelton. I will make a  
4 determination on the credibility of witness, Mr. Jack  
5 Doshi at a later date.

6                                 Prior to the closing of the record of  
7 the proceeding. As to the continuation schedule, the next  
8 agreed date of hearing is July 16th and we will be in room  
9 8-031 which is one floor below this, 8-031 and I will  
10 memorialize our earlier discussion and agreement as to the  
11 hearing continuation schedule by order which I will issue  
12 on Monday that will memorialize the date which we  
13 discussed to which the parties have agreed.

14                                 MR. CARSON: Do you want to set 9:00 o'clock  
15 for Tuesday?

16                                 HEARING OFFICER: Did you want to start at  
17 9:00 o'clock? That's fine.

18                                 Then we'll start at 9:00 on Tuesday,  
19 July 16th and the continuation schedule will be issued as  
20 an order on Monday the 15th. I'll fax you a copy.

21                                 This concludes the proceedings in this case  
22 for today. Thank you very much for your attendance and  
23 cooperation in our process.

24                                 MR. DIVER: Do you want to say something on



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1 the record about the stipulation that we reached early in  
2 the morning? I don't know if that got on the record. I  
3 thought we were going to wait until the end of the day.

4                   That is about the continuation of the  
5 proceeding after the 16th. If that's all on the record --

6                   HEARING OFFICER: Well, I called it the  
7 continuation schedule and I would simply issue it as an  
8 order. We did have an earlier stipulation today and I  
9 believe that was on the record. You worked that out and  
10 it didn't have to do with the schedule.

11                   Okay, thank you very much.

12                   (Whereupon the trial proceedings were  
13 adjourned for the day at 4:15 p.m.)

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C E R T I F I C A T E

I, VERNITA HALSELL-POWELL, CSR No.  
084-001831, the undersigned Notary Public in and for the  
State of Washington, do hereby certify:

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

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

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

IN WITNESS WHEREOF, I have hereunto set my and  
affixed my official seal this 23rd day of July. 1996.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington.