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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ANTHONY and KAREN ROTI,)

4

PAUL ROSENSTROCK and)

LESLIE WEBER)

5

Complainants,)

6

vs) No. PCB 99-019

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LTD COMMODITIES)

8

Respondent.)

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The following is the transcript of a hearing

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held in the above-entitled matter taken stenographically

13

by MICHELE J. LOSURDO, CSR, a notary public within and

14

for the County of DuPage and State of Illinois, before

15

JOHN KNITTLE, Hearing Officer, at 118 West Cook Avenue,

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Libertyville, Illinois, on the 1st day of November,

17

1999, A.D., commencing at 9:40 a.m.

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PRESENT:

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STEVEN P. KAISER & ASSOCIATES

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1 HEARING OFFICER KNITTLE: Hello. My name is
2 John Knittle. I'm a hearing officer with the Illinois
3 Pollution Control Board. I'm also the assigned hearing
4 officer for this case entitled Anthony and Karen Roti,
5 Paul Rosenstock, Leslie Weber versus LTD Commodities,
6 docket number PCB 1999 dash 019. It's a citizen
7 enforcement case filed on July 22nd, 1998.

8 Just for the record, there are no members of
9 the public here, and if there were, we'd be apprising
10 them that they have the opportunity to offer public
11 comment. That usually comes after both cases in chief
12 are completed, but since that's not looking to be an
13 issue, we will address it if it comes up.

14 This hearing will be conducted in accordance
15 with the Board's procedural rules specifically sections

16 103.202, order of enforcement hearings and 103.203,
17 conduct of hearing. This issue was also scheduled in
18 accordance with the Board's regulations and the notice
19 of provisions under the Environmental Protection Act.

20 Just so you both know, and I think you
21 already do, that I will not be making the ultimate
22 decision on this case. That will be made by the
23 Illinois Pollution Control Board which is a board
24 comprised of seven members situated throughout the state

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1 of Illinois. I am in -- I am charged to conduct the
2 hearing and rule on evidentiary and discovery matters
3 and to ensure a clear and concise record so that
4 hopefully the Board can reach a good decision in this
5 matter.

6 That being said, are there any preliminary
7 matters we have to address?

8 MR. KAISER: No.

9 HEARING OFFICER KNITTLE: Nothing from the
10 respondent?

11 MR. KOLAR: No.

12 HEARING OFFICER KNITTLE: Then we start with
13 opening statements if the complainant has any.

14 MR. KAISER: Yes. Thank you. Mr. Hearing
15 Officer, Mr. Kolar, members of the Board and
16 representatives of the Board, my name is Steve Kaiser.
17 I represent Leslie Weber, Paul Rosenstock and Karen and
18 Tony Roti in this matter.

19 The complainants have filed a complaint
20 before the Board. The complaint alleges that noise from
21 LTD's dock operations -- that that noise is excessive,
22 that it creates a nuisance and that the noise levels
23 that are created by LTD's dock operations are in excess
24 of the numeric standards promulgated by the Illinois

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1 Pollution Control Board.

2 We expect to demonstrate that over the course
3 of the hearing during the next few days, and at the
4 conclusion of the hearing, we will ask the board to
5 enter an order requiring LTD to take the steps necessary
6 to reduce the noise, to stop violating the Board's
7 standards and to allow the Rotis, Webers and
8 Rosenstocks to return to their homes and enjoy a
9 modicum of piece a quiet.

10 We expect to introduce a number of witnesses
11 over the next few days. Our first witness is going to

12 be Mr. Michael Hara who is present this morning.
13 Mr. Hara is the chief executive officer for LTD
14 Commodities. He's worked for LTD for almost 30 years.
15 We expect Mr. Hara will describe for the Board how LTD
16 operations some years ago were located on Devon Avenue
17 in Chicago, Illinois.

18 Requiring more space, LTD moved to Jarvis
19 Avenue in Skokie, and as their business grew and as
20 their needs for greater space continued that they looked
21 around and found a parcel of property in Bannockburn in
22 Lake County, Illinois, at roughly the intersection of
23 Illinois Route 22 and the Illinois tollway and that in
24 1986 they acquired from FMC Corporation a warehouse,

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1 which at that time had a capacity of approximately
2 100,000 square feet of storage space and had eight
3 loading docks.

4 At the time LTD purchased the property, they
5 had plans to expand and shortly after closing on the
6 sale, expanded the warehouse facilities, essentially
7 doubled the size. The warehouse capacity went from
8 approximately 100,000 square feet to 200,000 square
9 feet, and the number of docks went from the existing

10 eight to what is now 26 loading docks.

11 The testimony will show that these loading
12 docks are located on the north end of the LTD property
13 and that the loading docks face a residential
14 neighborhood which, as the facts will show, is actually
15 located in Lake Forest, so the municipal line separating
16 the LTD property, which is located in Bannockburn,
17 Illinois, Lake County, Illinois, and the Roti -- and I
18 know that Karen Roti is now in the room this morning --
19 the Roti's residence, the Weber's residence and Mr.
20 Rosenstock's residence are located in Lake Forest.

21 Testimony will show that these loading docks,
22 these 26 loading docks that face directly north towards
23 the residential neighborhood in which the Rotis, Webers
24 and Rosenstocks live, that Karen Roti's home is

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1 approximately -- well, she shares a property line with
2 LTD facilities. And these loading docks are probably
3 less than 100 yards from the south wall of her home and
4 from the south bedroom windows both of she and her
5 husband and of some of her children.

6 Testimony will show that Mr. Rosenstock's
7 home, where he lives with his nine-year-old daughter, is

8 approximately 125 yards from these docks, these 26 docks
9 that LTD operates, and that the Weber's residence is
10 further to the north and further to the east at a
11 distance of approximately 150 yards from these loading
12 docks. And Mr. Hara will describe the expansion of the
13 warehouse facilities from 100,000 square feet to 200,000
14 square feet, and then in a second addition that was
15 begun in approximately 1994, a doubling again of the
16 size of the warehouse from 200,000 square feet to
17 400,000 square feet.

18 And I believe the testimony will show that
19 during the course of the construction that there was
20 little or no thought given to the transmission of noise
21 from the dock facilities and the dock activities to the
22 residences located to the north. And that will be the
23 essence of Mr. Hara's testimony. He'll also describe in
24 some detail what it is LTD does, what products it sells

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1 so that the Board can make a determination that we'll
2 ask it to with respect to the type of land use that LTD
3 is.

4 We maintain, the complainants maintain, that
5 the LTD facility is best classified as a Class B land

6 use. You'll hear testimony, I presume, from LTD that
7 that is not the proper classification. We will take
8 testimony somewhat out of order, but we expect to hear
9 from Steve Mitchell. Steve Mitchell is an employee of
10 the Huff Company.

11 The Huff Company submitted a proposal to Mr.
12 Hara and to LTD facilities, LTD Commodities, and we
13 expect Mr. Mitchell will testify that a noise wall could
14 be built along a portion of LTD's property, that the
15 noise wall will have an average height of approximately
16 12 or 14 feet, that it would run a certain length, and
17 that if this noise wall were properly designed and
18 properly installed and properly maintained, that it
19 could substantially reduce the migration of noise from
20 the LTD dock area to the residence of the complainants.

21 We'll hear testimony this afternoon from a
22 Roger Harmon. Roger Harmon is a technician employed by
23 Acoustic Associates. LTD hired Acoustic Associates to
24 take some noise measurements. In September of 1997,

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1 Mr. Harmon went out to Karen Roti's property, set up his
2 noise instruments and made certain recordings.
3 Mr. Harmon will tell the Board what those recordings

4 were, what numbers he recorded, and we'll have testimony
5 then later in the hearing as to what should be made of
6 those numbers, how they should be interpreted.

7 Later this afternoon, we'll hear testimony
8 from Jack Voight, that's V-o-i-g-h-t. Mr. Voight is in
9 charge of warehousing and dock operations for LTD
10 Commodities. We'll talk at some length with Mr. Voight,
11 and he will describe just what products LTD sells, where
12 these products are originally shipped from and how they
13 arrive at the LTD facilities.

14 We expect Mr. Voight will tell that LTD
15 operates two shifts a day, that the first shift
16 officially begins at 6 a.m. in the morning and runs
17 until 2:30 in the afternoon, that there is then an hour
18 of transition and that the second shift begins at 3:30
19 in the afternoon and runs until 12:30 in the evening.

20 That second shift runs five and often six
21 days a week from the months of August, September,
22 October, November and much of December. We may refer to
23 those months as LTD's Christmas season. We'll hear from
24 Mr. Hara and from Mr. Voight that the volume of business

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1 that LTD does is intense and most intense during the

2 Christmas season, the months of August, September,
3 October, November and December.

4 We'll hear Mr. Voight testify about the exact
5 number of trucks that come into and pull out of LTD on a
6 given day. We'll hear Mr. Voight talk about how many
7 times those trucks -- well, he'll describe how the noise
8 is generated at the LTD dock facility. He'll also tell
9 you that it's routine for LTD to run overtime shifts and
10 that this second shift, as Ms. Roti will tell you, often
11 runs until 1:30 a.m. or even 2:30 a.m. during the
12 Christmas season.

13 So the testimony will be that from
14 essentially August 1st until December 15th of any given
15 year, the Webers, Rosenstocks and Rotis are subjected
16 to noise from the LTD dock facilities six days a week
17 from at least 6 a.m. in the morning until 1:30 or
18 2:30 a.m.

19 We'll have Greg Zak, who is a noise
20 enforcement specialist for the Illinois Environmental
21 Protection Agency, testifying. We expect to take his
22 tomorrow morning. Mr. Zak has been to the site. He has
23 observed the dock areas. He has visited the Weber,
24 Rosenstock and Roti's residences, and we expect that

1 Mr. Zak will offer an opinion to the Board and that
2 opinion will be that it is technically feasible and
3 economically reasonable for LTD to construct a wall to
4 stop and reduce the migration of noise from the LTD dock
5 area to the Weber, Rosenstock and Roti residences.

6 We'll then, of course, hear from the
7 complainants. Karen Roti will testify. Her husband,
8 Tony Roti, will testify. Karen and Tony will tell you
9 that almost three years ago, almost three years ago to
10 the day, in November of 1996, they began to notice that
11 the noise coming from the LTD facility during the
12 nighttime hours was excessive, that it was making it
13 difficult for them and their children to fall asleep,
14 that it was making it difficult for them and their
15 children to stay asleep and that they were often
16 awakened early.

17 All of the complainants will testify that the
18 noise from LTD is so constant, so persistent and so
19 intrusive that it unreasonably and substantially
20 interferes with their use and enjoyment of their homes.
21 Karen Roti will tell you how she initially began to
22 contact LTD commodities, that she contacted the village
23 of Lake Forest, that she contacted the village of
24 Bannockburn, that she met on a number of occasions with

1 Mr. Hara, with Mr. Hara's noise expert, Tom Thunder,
2 with Jack Voight and that for two and a half years, they
3 tried to work with LTD and negotiate with LTD to have
4 LTD take some significant steps that would reduce the
5 migration of noise from the LTD facility onto their
6 property.

7 It became clear in July of 1998 that LTD was
8 not going to build a noise wall, that LTD had taken all
9 the steps it was going to take and that the noise was
10 still unreasonable, that the noise from the LTD dock
11 facilities substantially and unreasonably interfered
12 with Karen and Tony Roti's use and enjoyment of their
13 property, with Leslie Weber's use and enjoyment of her
14 property.

15 MR. KOLAR: Objection. It's argumentative as
16 opposed to what the evidence will show.

17 MR. KAISER: We expect it will show that and it
18 will show that in July --

19 HEARING OFFICER KNITTLE: I'm going to let him
20 go on for a little bit, but you are cautioned that we
21 want to reserve any argument for your posthearing briefs
22 and closing statements.

23 MR. KAISER: The testimony will show that in
24 July of 1998 Karen Roti, along with the other

1 complainants, filed a complaint with the Illinois
2 Pollution Control Board and that for the last
3 essentially 14 months, 15 months, we've been involved in
4 the process of discovery and that now the hearing is
5 upon us.

6 As I say, you've heard what we expect the
7 testimony will show. We expect to hear from LTD's own
8 expert, Tom Thunder, that the noise measurements Roger
9 Harmon obtained in September of 1997 demonstrate that
10 the noise from the LTD dock facilities are in violation
11 of the Board's impulsive noise standards.

12 We expect that Tom Thunder will also concede
13 that if LTD is, in fact, a Class B land use, that the
14 noise generated from the LTD dock areas are in violation
15 of the Board's numeric standards, and we certainly
16 expect from the testimony of the complainants buttressed
17 by the observations of Greg Zak and Paul Schomer that
18 the types of noise coming from the LTD dock facility
19 could and do unreasonably and substantially interfere
20 with the use and enjoyment of the Weber, Rosenstock and
21 Roti residences.

22 At the conclusion of the hearing, we will ask

23 the Board, at a minimum, to order LTD to construct an
24 appropriately designed noise wall, and if the evidence

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1 supports it, we may ask the Board to require LTD to
2 cease operations in hours beyond 10 p.m. and through the
3 nighttime hours as the Board defines those hours of
4 10 p.m. to 7 a.m. Thank you.

5 HEARING OFFICER KNITTLE: Thank you, sir.

6 Mr. Kolar, do you have an opening?

7 MR. KOLAR: Yes. Thank you.

8 Mr. Kaiser, Ms. Roti, Mr. Knittle, one of the
9 important factors of this case and what the evidence
10 will show is the history of how everybody came to this
11 particular intersection, so to speak, Route 22 and the
12 tollway. And what the evidence will show is that
13 chronology, prior to 1980, I think 1976, FMC Corporation
14 built a warehouse and office on that northeast corner of
15 Route 22 and the tollway. And at that time, before
16 1980, there were already eight truck docks on the north
17 end of the property where the Roti, Weber and
18 Rosenstock homes would eventually be built.

19 In December 1986, after Mike Hara looked at
20 the facility with another person, LTD purchased the

21 existing FMC building with the eight truck docks. The
22 following year, the evidence will show 1987, that's when
23 LTD did its first expansion going directly east and
24 basically doubling the size of the warehouse and adding

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1 18 truck docks to bring it to 26. So that's in 1987 you
2 have all the truck docks in place and from that point on
3 never was another truck dock added by LTD up until
4 today.

5 Sometime in 1987, and you'll see on the
6 aerial photos that we have, the couple that sold their
7 home to the Rotis, the Browns, bought their lot from a
8 builder I think like a spec house. So this was in 1987
9 either at the same time LTD is putting in those
10 additional truck docks or maybe shortly after, shortly
11 before, but this is the people who own the house before
12 the Rotis so that the house is being built in 1987.

13 July 1988, the Webers buy their vacant lot,
14 so when the Webers buy their vacant lot, the LTD
15 warehouse has already been expanded and every single
16 truck dock is already in place. Mr. Rosenstock, the
17 other complainant -- and if you can picture looking
18 north from the LTD warehouse, you have the Roti house

19 first on the left, so to speak, closest to the tollway,
20 then you've got the Rosenstock house and then you have
21 the Weber house farther east. And, again, we'll point
22 that out on the aerial photo so that will be very clear
23 by the time the hearing is over.

24 So, summer 1988, Mr. Rosenstock closes on

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1 his purchase of the home, so when he moves in, again,
2 every truck dock is in place and LTD has already
3 expanded its warehouse. August 1990, the Rotis purchase
4 their home from the Browns, the people who were the
5 original owners, so now that's about three years after
6 LTD has already put in all the additional truck docks
7 and expanded the warehouse. Then in 1994 and 1995 LTD
8 expands its warehouse onto a vacant lot to the south
9 that it had acquired in 1989, but no truck docks were
10 added. That was simply an expansion to the south.

11 You'll hear from all the complainants that
12 they knew of LTD's operations before buying their lot.
13 In fact, you'll hear from Karen Roti that when she went
14 to look at this home that the Browns were living in, she
15 walked on top of the berm in her backyard and looked out
16 and saw the LTD trucking operation.

17 Leslie Weber, Mrs. Weber, who lives again in
18 the house farthest to the east, which is not even
19 touching LTD's property, the Weber house is so far east
20 that it's aligned with an office building to the east of
21 LTD. Leslie Weber discussed with her husband, the
22 evidence will show, before they bought that lot in 1988,
23 they discussed whether noise from the office building or
24 noise in the area would be a resale issue for their

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1 home, and then they bought the house anyway as I
2 indicated in the summer of 1988. And they eventually
3 built their home in 1992, so like five years after --
4 four and a half years -- I think it was January '92 --
5 four and a half years later the Webers finally built
6 their home adjacent to the existing LTD truck docks.

7 Greg Zak, who Mr. Kaiser mentioned, among
8 other things, he'll testify that LTD is suitable for
9 this particular location. This is where businesses like
10 LTD should be. The only land planner in this case was
11 hired by LTD and that's an Alan Kracower. He'll testify
12 that he agrees LTD is suitable for this particular
13 location at Route 22 and the tollway.

14 The classification issue, LTD claims and I

15 think the evidence will overwhelmingly support that LTD
16 is a Class C land use. Here's what the witnesses will
17 testify in that regard. Paul Schomer, who gave an
18 evidence deposition on Friday, he testified that back in
19 the early '70s he was the person who helped sit down and
20 actually assign classifications to the SLCUM index,
21 which is attached to the regulations, help draw those
22 lines along the sign and put the C or the A or the B.

23 He was hired by Bannockburn back in 1997
24 because he was already working with Bannockburn on the

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1 issue of tollway noise. Bannockburn had hired him to
2 analyze tollway noise to the south, so Bannockburn now
3 has the Rotis and others complaining to Bannockburn
4 about LTD. So they say, Mr. Schomer, how about taking a
5 look at the LTD situation as well.

6 He writes a letter to Bannockburn,
7 April 20th, 1997, to David Lothspeich, and he says LTD
8 is a C classification, puts it right in the letter, and
9 you'll get that. That will be a document that LTD will
10 introduce. Then July 10th and 11th, he writes, it might
11 be one letter and he just happened to put another date
12 on it, but July 10th and 11th we have letters prepared

13 by Mr. Schomer that he sent to Jack Voight at LTD. And
14 what does he say in the letter? LTD is a C
15 classification. So now we have a total of three letters
16 Mr. Schomer says LTD is a C classification. So that's
17 July 1997.

18 Then we go all the way through to January
19 1998. LTD noise consultant has completed his study,
20 finished his written report and it's dated January 8th,
21 1998. Mr. Schomer receives it, looks it over and he
22 realizes, and this is in his evidence dep, there's no
23 violation of noise regulations for a Class C to Class A.
24 He acknowledged that in his evidence dep, and you'll

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1 read that. So what does he do, changes his position.
2 LTD is a Class B now he says for the first time.
3 But you'll read in his evidence dep that
4 Mr. Schomer has never even been inside LTD's warehouse.
5 He was at the site twice and never inside the warehouse,
6 and it wasn't through LTD being uncooperative because
7 Greg Zak asked to go in the warehouse, and Greg Zak
8 toured the whole LTD facility.

9 Our land planners, again, I mentioned an
10 Allen Kracower. He'll testify that LTD is a Class C

11 land use, and he'll explain his reasonings for that.
12 Greg Zak, who, again, the complainants have brought into
13 this case, now he does say or he did say and I expect
14 him to testify that LTD is a Class B use, but if he
15 testifies consistent with his deposition, he's going to
16 say that LTD should be a Class 6376 or 6379 which is a
17 warehouse classification. The problem with that is a
18 footnote to those classifications says that it only
19 applies to public warehouses, and no one is going to
20 testify that LTD is a public warehouse because it's not.
21 It just simply is not a public warehouse. So Mr. Zak's
22 classification is simply erroneous.

23 Now, evidence on the numerical study, again,
24 LTD is the only party that hired a noise consultant to

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1 do any sort of testing and that was before the Pollution
2 Control Board complaint was even filed. LTD hired Tom
3 Thunder, and as I mentioned, Mr. Thunder will testify as
4 Mr. Schomer acknowledged that there's no violation of C
5 to A noise regulations.

6 MR. KAISER: Objection. I believe that
7 misstates both of their testimony.

8 HEARING OFFICER KNITTLE: I'm going to overrule.

9 He's, in his opening, allowed to say what he expects the
10 testimony to show, and if it proves not to be the case,
11 we can address it at a later time.

12 MR. KOLAR: And regarding Mr. Schomer at this
13 point, Mr. Schomer has never even been on the
14 complainants' street to hear noise when LTD was
15 operating its trucks. He was one Sunday at LTD when it
16 was closed down and then he went over to the
17 complainants' street, Wedgewood Drive, and sat there.
18 That was the only time he was ever on the complainants'
19 street.

20 That brings up the issue of -- the reason I
21 mentioned that, it's a segue into the nuisance issue.
22 There's no tape recordings of noise from LTD, at least
23 there weren't as of depositions and as of last week to
24 my knowledge. The only person who ever prepared a log

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1 during the history of this case until about a week ago
2 was Ms. Leslie Weber and she had for a couple days. And
3 I even -- the testimony will show that I asked all the
4 complainants, do you have a log. No, I don't have a
5 log. No, I don't have a log except for, again, Ms.
6 Weber had a minor log.

7 Well, Mr. Rosenstock finally, I guess, on
8 October 22nd decided to start keeping a log. I think
9 that will be relevant to the issue of how bad can the
10 noise be if these people never kept a log during the
11 time after they filed a Pollution Control Board
12 complaint or beginning in 1996 as apparently Ms. Roti
13 will testify when the noise started to bother her.

14 Ms. Weber will testify that her house does
15 not shake because of LTD operations. Others claim that
16 LTD somehow shakes or vibrates their house, but Ms.
17 Weber candidly will testify her house does not shake.
18 Ms. Weber and Mr. Weber, her husband, will say that one
19 of their two sons -- he sleeps through the night
20 comfortably. He never wakes up from any noise.

21 The evidence will show that there was
22 originally a Mr. Kaufman who was complaining about LTD
23 noise, but he's not a complainant, and the evidence will
24 show that Ms. Roti gave some sort of flier to people on

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1 the other side of the street asking them to join in.
2 Nobody joined in. So you have three families as the
3 complainants who are directly on the north property line
4 of LTD.

5 The evidence will show that the Rotis in 1996
6 and in 1997 listed their house for sale, and as
7 Mr. Kaiser mentioned, I guess the evidence will show
8 that Ms. Roti thought the noise started to be a problem
9 in November 1996. Well, there were two different
10 realtors that they listed the house with, a Marcia
11 Rowley first and then a Karen Dickey in 1997. And the
12 evidence will be that the Rotis listed their house
13 because they needed another bedroom. Karen Roti will
14 testify that she never mentioned to either realtors that
15 LTD noise was a problem with the house.

16 Her husband apparently says that he did, but
17 the realtors, who are under subpoena, they will come in
18 and testify that neither of the Rotis never said
19 anything to them about the LTD noise being a problem
20 with their house. And this was again the second time in
21 1997 after this big noise problem had allegedly already
22 started.

23 As you know, there's an issue of ambient
24 noise. The evidence will show clearly that you got the

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1 tollway approximately 1,000 feet to the west of the Roti
2 house. All heard -- the evidence will show all heard

3 the tollway before purchase. The tollway noise, it's a
4 constant noise, worse with a west wind, worse with wet
5 pavement on the tollway. The evidence will show that
6 there's a tollbooth immediately adjacent to the LTD
7 property, an on-ramp tollbooth to go north onto the
8 tollway.

9 Mr. Schomer wasn't aware of that tollbooth,
10 but he acknowledged that accelerating trucks and
11 accelerating cars create more noise than cars and trucks
12 going at a constant pace. So we got ambient noise issue
13 from the tollway. The evidence will show that there's
14 ambient noise from an office building directly to the
15 east of LTD. It's called Corporate 100.

16 Corporate 100 has a big fenced in garbage
17 area on its northwest corner which would be obviously
18 LTD's northeast corner, and that fenced in garbage
19 facility, the roll-out type dumpsters, and that garbage
20 facility is right next to the Rosenstock and Weber
21 homes. And the garbage trucks come there, picks up
22 garbage, clanks around garbage containers and makes a
23 backup warning beeper noise.

24 You also have the issue of Lakeside Drive.

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1 If you're familiar with the area, you know where it is.
2 If not, the maps will show that Lakeside Drive goes due
3 north off of Route 22, and Lakeside Drive is a public
4 street not owned by LTD, a public street, and that's how
5 you get to LTD. That's how you get to Corporate 100
6 North. That's how you get to the new office building
7 directly sort of southeast of Corporate 100 North and
8 that you have truck noise, vehicle noise, on Lakeside
9 Drive which, again, ambient noise LTD is not responsible
10 for.

11 Regarding the value of the complainants'
12 properties, no evidence in loss of value. In fact, the
13 only appraiser you're going to hear from is one that LTD
14 hired, a Kevin Burns, and he'll basically tell you, it's
15 probably not a controversial issue, but he'll testify
16 that any effect on value of these lots already existed
17 at the time each one of these people bought their lots,
18 that they were able to take advantage of the situation
19 that their lots were close to the tollway, close to LTD,
20 close to the office building and that they basically
21 took advantage of the depreciation that already existed.

22 So since going in there, there has been no
23 further depreciation. In fact, Ms. Weber, who's chief
24 information officer at Quill Company, and I think if I

1 recall has an MBA, a very educated woman, she just
2 flatly says LTD does not affect the value of her house.

3 So in summing up, even though we expect the
4 evidence to show no numerical violations for C to A and
5 that LTD is not a nuisance, LTD has taken steps to try
6 to be quieter. The evidence will show that it adopted a
7 good neighbor policy where it told truckers to don't
8 beep your horns, gave pamphlets to truckers and mailed
9 pamphlets to the trucking companies requesting again
10 that their truckers not rev their engines, not beep
11 their horns, not shout out loud when they're on the LTD
12 property, stay off the parking lot to the north and only
13 keep your truck down in the staging area.

14 LTD requested CTC, a company that was
15 operating a yard tractor that sort of pulls the trailers
16 around the yard to get a quieter yard tractor, and that
17 was done, and the complainants all admit that, yeah, the
18 new yard tractor is quieter.

19 Greg Zak told LTD you should fix these dock
20 levelers, you know, the thing that sits on the truck so
21 that a forklift can go in and out. LTD fixed the dock
22 levelers, and Jack Voight will mention that. LTD, again
23 under this good neighbor thing, posted a guard at the
24 entrance to its lot to enforce the fact that trucks

1 can't go up north by the complainants' property.

2 So at the conclusion of the hearing, I think
3 it will be evident that LTD was there first. Its trucks
4 docks were all there first. LTD has a beautiful
5 operation there. It's the Taj Mahal of buildings
6 like -- that do the same thing LTD does, and LTD is not
7 in violation of noise regulations for C to A.

8 We think the evidence will support that LTD
9 is not creating a nuisance, and evidence will show that
10 these people consciously bought their lots next to LTD,
11 next to an office building, next to the tollway, and
12 it's just an overall loud area because of ambient noise.
13 And for that reason, LTD shouldn't be required to build
14 a very expensive noise wall which in the end probably
15 won't satisfy the complainants anyway. Thank you.

16 HEARING OFFICER KNITTLE: Thank you, Mr. Kolar.
17 You're going to be able to start your case in chief here.
18 Let's go off for a second.

19 (Discussion had off the record.)

20 HEARING OFFICER KNITTLE: Let's go back on the
21 record. Mr. Kaiser, you can call your first witness.

22 MR. KAISER: Thank you, Mr. Knittle.

23 Complainants will call as their first witness Michael

24 Hara.

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1 HEARING OFFICER KNITTLE: Mr. Hara, could you
2 have a seat up there, and, Michele, would you swear him
3 in for me.

4 MICHAEL HARA,
5 having been first duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 by Mr. Kaiser

9 Q. Good morning, Mr. Hara. Mr. Hara, again, you
10 spell your last name H-a-r-a?

11 A. Yes.

12 Q. And what is your current title?

13 A. Chief operating officer of LTD Commodities.

14 Q. And how long have you been the chief operating
15 officer for LTD Commodities?

16 A. Probably the last three, four years.

17 Q. And how long have you worked for LTD
18 Commodities?

19 A. Twenty-nine years.

20 Q. What was your first job with LTD Commodities?

21 A. Packing and shipping.

22 Q. Where was the warehouse located that you were
23 employed by LTD as a packer and a shipper?

24 A. On Devon in Chicago.

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1 Q. Was your next position with LTD in the credit
2 office?

3 A. Yes.

4 Q. And then from there did you become an office
5 manager?

6 A. Yes.

7 Q. And for a time, did you serve as LTD's general
8 manager in running the warehouse and the office both?

9 A. Yes.

10 Q. And, again, it's your testimony you became the
11 chief operating officer in approximately 1997?

12 A. Approximately.

13 Q. Is LTD privately or publicly owned?

14 A. Privately.

15 Q. Is a person by the name of Sheldon Leibowitz the
16 principal stockholder?

17 A. He's one of the stockholders.

18 Q. And you, too, own stock in LTD, do you not?

19 A. Yes, I do.

20 Q. Could you describe for the Board just what it is
21 LTD does?

22 A. We're a mail order company that packs and
23 repacks boxes and ships it out to its customers.

24 Q. Now, I'd like to show you what I'm going to

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1 mark --

2 MR. KAISER: If we may go off the record for one
3 second.

4 HEARING OFFICER KNITTLE: Sure. Let's go off.

5 (Discussion had off the record.)

6 HEARING OFFICER KNITTLE: We're back on the
7 record, Mr. Kaiser.

8 BY MR. KAISER:

9 Q. Mr. Hara, I'm showing you what I've marked for
10 purposes of identification as Complainants' Exhibit 1
11 and 2. I'm showing C1. Do you recognize that?

12 A. Yes.

13 Q. What do you recognize that to be?

14 A. That's LTD's Valentine's Day catalog.

15 Q. And for what year?

16 A. I believe 1999.

17 Q. And I'm showing you C2. Do you recognize that?

18 A. Yes.

19 Q. What do you recognize that to be?

20 A. LTD's Christmas catalog 1998.

21 Q. And do these appear to be true and accurate --

22 these are your catalogs, right?

23 A. I believe so, yes.

24 Q. And are these, the items contained in C1 and C2,

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1 are those representative of the items that LTD sells?

2 A. Yes.

3 Q. And I take it LTD's principal revenues are

4 generated by the sales of the items in its catalogs?

5 A. Yes.

6 Q. Now, the majority of these products that LTD

7 offers for sale, are those -- does LTD manufacture any

8 of its products?

9 A. No.

10 Q. Does LTD do any manufacturing at its facility in

11 Bannockburn, Illinois?

12 A. No.

13 Q. So is it your testimony that LTD purchases its

14 products either from domestic or overseas manufacturers?

15 A. That's correct.

16 Q. And then describe -- and so in terms of the
17 functions that LTD performs at its Bannockburn
18 facilities, I take it one of the functions is freight
19 forwarding?

20 A. Yes.

21 Q. And within that term of freight forwarding --
22 well, let's back up a little bit. LTD orders the
23 products from the manufacturer and the manufacturer,
24 either through a contract carrier, delivers these

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1 products to LTD facility in Bannockburn; is that
2 correct?

3 A. Yes.

4 Q. And those products typically arrive in a truck;
5 is that right?

6 A. That's correct.

7 Q. And the trucks come up Lakeside Drive, correct?

8 A. Yes.

9 Q. And they go to the LTD dock areas on the north
10 side of the building, right?

11 A. Correct.

12 Q. And currently there are 26 dock areas on the
13 north side of LTD's facility in Bannockburn, right?

14 A. Yes.

15 Q. And I take it the products that LTD has ordered
16 come into the dock area and LTD employees unload those
17 products; is that right?

18 A. Yes.

19 Q. And those products, then for some period of
20 time, are stored in LTD's warehouse, right?

21 A. Yes.

22 Q. And you refer to that area -- I mean, at the LTD
23 facility, you've got an office area on the west side,
24 right?

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1 A. Yes.

2 Q. And, in fact, LTD's corporate headquarters is
3 located in that west side office complex; is that
4 correct?

5 A. Yes.

6 Q. And you were involved in negotiations with
7 Bannockburn by which LTD gained the approvals to expand
8 the warehouse both in '86 and in '94, were you not?

9 A. Yes.

10 Q. And you're aware that one of the conditions
11 Bannockburn placed on LTD was that LTD had to locate its

12 corporate offices in the Bannockburn facility; is that
13 right?

14 A. No, that's not correct. On the '86 or '87
15 addition, there was no requirements that LTD had its
16 corporate headquarters. That was with the 93-94,
17 whatever it was, time frame. The original 100,000
18 square foot addition was always spec'd out by FMC, and
19 there was a footprint of that building. That building
20 was going to be built by FMC. And basically, we just
21 took on and built what they had planned.

22 Q. All right. So at that point in the initial
23 expansion in the 87-88 time frame when LTD first
24 acquired the property, there were no conditions attached

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1 by that?

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

3 Q. But by the time LTD wanted to expand further to
4 the south and essentially double the warehouse capacity
5 from 200,000 square feet to 400,000 square feet,
6 Bannockburn expressed to LTD some concerns about what if
7 LTD pulled out and left them with an empty shell of a
8 warehouse. Do you recall that?

9 A. Yes.

10 Q. And did you understand that Bannockburn imposed
11 conditions on the approval for LTD's expansion in 1994
12 and one of those conditions was that LTD maintain its
13 corporate headquarters at the Bannockburn facility?

14 A. Yes.

15 Q. And so as we sit here today in 1999, one of the
16 functions that's performed at LTD's facility in
17 Bannockburn is to headquarter the corporate offices for
18 LTD Commodities; is that correct?

19 A. Yes.

20 Q. And, in fact, your office is at the Bannockburn
21 facility?

22 A. Yes, it is.

23 Q. And if during the course of my examination I
24 refer to the Bannockburn facility, I take it you and I,

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1 Mr. Kolar, the members of Board will understand that to
2 mean LTD's entire complex located there at 2800 North
3 Lakeside Drive in Bannockburn, Illinois?

4 A. Yes.

5 Q. So your office has been and continues to be at
6 the Bannockburn facility?

7 A. Yes.

8 Q. And, in addition, LTD employs order takers at
9 the Bannockburn facility?

10 A. Yes.

11 Q. And when the products arrive at the LTD facility
12 and are unloaded in the north dock area, it's LTD
13 employees who unload the trucks delivering the goods to
14 LTD, correct?

15 A. Yes.

16 Q. And then those goods are stored for some period
17 of time in LTD's warehouse, correct?

18 A. That's correct.

19 Q. And then in addition to receiving freight,
20 receiving the products that LTD ultimately sells, LTD
21 then also ships out the products to its customers,
22 right?

23 A. That's correct.

24 Q. And those functions you have people who you

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1 employ who are essentially order pickers who drive
2 around the warehouse and pull the orders and package
3 them and then put them on an outbound semitrailer; is
4 that right?

5 A. Yes, we have order packers.

6 Q. I'm sorry?

7 A. Order packers, yes.

8 Q. Order packers, all right. Just note for the
9 record that a hornet or a wasp of some sort just --

10 HEARING OFFICER KNITTLE: Is that going be a
11 problem for us?

12 MR. KAISER: No, I don't think so.

13 HEARING OFFICER KNITTLE: If it comes back,
14 we'll take care of it any way we need to.

15 MR. KAISER: Back on the record.

16 HEARING OFFICER KNITTLE: I think we never left.

17 BY MR. KAISER:

18 Q. Now, as I understood it, LTD has essentially two
19 principal facilities in northern Illinois, the
20 Bannockburn facility; is that right?

21 A. That's correct.

22 Q. And a facility in Aurora, Illinois; is that
23 correct?

24 A. Yes. That's correct.

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1 Q. And the facility in Aurora, Illinois, that
2 essentially got up and running when? At what time frame
3 did LTD begin operations out of the Aurora facility?

4 A. I believe it was October or November of last
5 year.
6 Q. So 1998?
7 A. That's correct.
8 Q. And at the Bannockburn facility between the
9 months of essentially August and December of 1998 or
10 1999, isn't it true that LTD employs in excess of 1,000
11 people at the Bannockburn facility?
12 A. That's correct.
13 Q. And similarly LTD employs an additional 1,000 or
14 more at its Aurora facility; is that right?
15 A. It's approximately. I'm not sure what the exact
16 number in the Aurora facility is.
17 Q. But it's in the vicinity of 1,000, right?
18 A. Yes, I believe so.
19 Q. And, in fact, at Bannockburn the number is
20 really closer to 12 or 1300 during the Christmas season,
21 isn't it?
22 A. Yes, because we have our office operations there
23 also.
24 Q. Right. The people who take the orders are in

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2 A. Yes.

3 Q. The people who fill at least half of the orders
4 are in Bannockburn, correct?

5 A. Yes.

6 Q. The corporate structure including yourself is in
7 Bannockburn?

8 A. Yes.

9 Q. Mr. Voight, who's in charge of distribution,
10 he's in Bannockburn, correct?

11 A. Yes.

12 Q. Your accounting offices, are those in
13 Bannockburn?

14 A. Part of them are, yes.

15 Q. The cafeteria for all these workers, that's in
16 Bannockburn, right?

17 A. Yes.

18 Q. And it's fair to say that over the last ten
19 years LTD has been a very successful business, has it
20 not?

21 A. Yes.

22 Q. And LTD is not arguing to the Board in this case
23 that it can't afford to build a noise wall if that's
24 what the Board determines is appropriate; is that right?

1 A. That's true.

2 Q. LTD, in fact, when they purchased the property
3 from FMC in '86 or '87, what did they pay for that
4 property?

5 A. I believe it was 6.6 million.

6 Q. And when they purchased that south parcel where
7 LTD expanded the warehouse in roughly 1994, what did LTD
8 pay for that parcel?

9 A. 3.9 million.

10 Q. And when LTD expanded from 100,000 square feet
11 of warehouse capacity to 200,000 feet of warehouse
12 capacity, what was the cost of that expansion?

13 MR. KOLAR: Objection, relevance.

14 MR. KAISER: It goes to the economic feasibility
15 and the appropriateness of asking them to spend 200,000
16 or less to build a noise wall if we find that, as I
17 expect he'll tell, they spent 2 million to expand the
18 warehouse capacity when we're comparing the costs that
19 we're imposing on them with capital costs they've
20 already expended at that facility. I think it is
21 directly relevant to its consideration.

22 HEARING OFFICER KNITTLE: Anything further?

23 Overruled.

24 BY MR. KAISER:

1 Q. Mr. Hara, do you recall the question?

2 A. Less than 2 million.

3 Q. But more than 1 million, right?

4 A. Yes.

5 Q. And, in fact, more than 1.5 million?

6 A. I believe so.

7 Q. And during that expansion in 1987 where LTD went
8 from approximately eight truck docks to 26 truck docks,
9 you were involved in that expansion, were you not?

10 A. Yes.

11 Q. And you assisted in negotiations or in
12 facilitating permits from the village of Bannockburn?

13 A. Yes.

14 Q. And you worked with the architects who LTD
15 employed?

16 A. Yes.

17 Q. And that project was, in part, your project?

18 A. Yes.

19 Q. And as I recall from your testimony during the
20 deposition, during this phase of expansion, little or no
21 thought was given to whether the noise from the dock
22 area would adversely affect either existing or future
23 residents to the north of LTD; is that right?

24 A. I don't believe there were any houses to the

1 north of us when we moved in.

2 Q. All right. But my question was did you -- do
3 you recall giving any consideration to whether noise
4 from the LTD dock area would be a problem to either
5 existing residents or future residents to the north?

6 A. No, I don't recall.

7 Q. You don't recall, or you didn't?

8 A. I don't think I did.

9 Q. And when LTD expanded the warehouse area to the
10 south in roughly 1994 and 1995, do you know how much
11 that cost?

12 A. I'm sorry. Could you repeat the question,
13 please?

14 Q. When LTD expanded the warehouse capacity to the
15 south and added the additional 200,000 square feet on
16 the south end of the building in the mid-1990s, how much
17 did that cost?

18 A. Approximately 6 million.

19 Q. And some of that cost, that 6 million that LTD
20 spent to expand the warehouse to the south, some of that
21 money was spent to create that decorative front on the
22 south end of LTD's facility; isn't that right?

23 A. It was to create the building the way it was
24 designed.

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1 Q. Well, do you recall Bannockburn insisting on
2 certain design criteria so that LTD's facility looked
3 more like an office building and less like a warehouse?

4 A. No. It was a design function that we brought to
5 them that they liked. They didn't give us any design
6 ideas whatsoever. We had brought them a proposal that
7 we had our architects design, and they liked it.

8 Q. All right. And that includes aesthetic elements
9 on the south end --

10 A. That's correct.

11 Q. -- of LTD's facility?

12 A. That's correct.

13 Q. And those aesthetic elements so that passersby
14 on Route 22, when they looked at LTD, would say that's a
15 nice looking building. Do you have any idea how much
16 those aesthetic items alone cost on the 6 million?

17 A. I have no idea.

18 Q. But, again, during the expansion of the LTD
19 facility in the mid-1990s, did LTD spend any money to
20 reduce the transmission of noise from its dock areas to

21 the residents to the north?

22 MR. KOLAR: Objection, foundation. It assumes
23 that there's noise being transmitted from their dock
24 area to the residents to the north.

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1 HEARING OFFICER KNITTLE: Mr. Kaiser?

2 MR. KAISER: I'll rephrase the question.

3 BY MR. KAISER:

4 Q. Did LTD in the mid-1990s in connection with the
5 expansion to the south end, did LTD hire anyone to do a
6 noise study to determine whether its dock activities --
7 well, to determine what level of noise its dock
8 activities were generating?

9 A. I wasn't aware that there were any dock
10 activities that were a problem at the time.

11 Q. And do I take it then that the answer will be
12 no, that in the mid-1990s LTD did not spend any money or
13 engage the services of anyone to do a study to determine
14 whether noise from its dock activities were a problem?

15 A. No.

16 Q. I'm going to show you a document that I'm
17 marking for purposes of identification as Complainants'
18 Exhibit C3. I'm handing a copy to Mr. Kolar.

17 counsel is willing to stipulate that that's what, in
18 fact, it is.

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

20 BY MR. KAISER:

21 Q. Mr. Hara, I'm going to show you what I'm now
22 marking for purposes of identification as Complainants'
23 Exhibit 4. It's a memorandum from John Schimel to Jack
24 Voight dated Wednesday, November 13th, 1996, and ask you

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1 if you recognize that?

2 A. Yes.

3 Q. Did, in fact, Jack Voight make you aware --
4 well, when did you first see this memo?

5 A. I don't remember the time frame. Jack made me
6 aware of it.

7 Q. All right. And it is, in fact, dated
8 November 13th, 1996, is it not?

9 A. Yes.

10 Q. And Jack Voight was working for you at that
11 time, wasn't he?

12 A. Yes.

13 Q. And, in fact, Jack's pretty high up in LTD
14 management, but you're the person to whom he reports; is

15 that right?

16 A. That's correct.

17 Q. And it is your recollection that Mr. Schimel had
18 received -- as you understood it from Jack Voight that
19 Mr. Schimel had talked with a William Kaufman, that
20 Mr. Schimel had advised Mr. Voight of the conversation
21 he had had with Mr. Kaufman and that Mr. Voight felt it
22 was important to bring this conversation to your
23 attention; is that your recollection?

24 A. Yes.

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1 Q. And as I believe I understood it from your
2 deposition testimony, this was roughly the first time,
3 the fall of 1996, that you personally became aware of
4 the possibility that noise from LTD's dock operations
5 were bothering residents to the north; is that correct?

6 A. This is the first time I became aware that
7 somebody was complaining about the noise, yes.

8 Q. All right. So by the middle of November 1996,
9 you, as LTD's chief executive officer, were aware that
10 at least one and perhaps more neighbors to the north
11 were complaining about LTD's dock operations; is that
12 right?

13 A. Yes.

14 Q. And what, if anything, did you do after being
15 made aware of this problem?

16 A. We started looking to some of the issues that
17 were being brought to our attention I believe.

18 Q. Now, I'd like to show you what I've marked for
19 purposes of identification as Complainants' Exhibit 5.
20 It's a letter from a William Kaufman to a Jack Voight
21 dated December 10th, 1996.

22 Did Mr. Voight either show you this letter or
23 make you aware of this letter on or about December 10th,
24 1996?

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1 A. I don't recall.

2 Q. Do you recall whether in December of 1996 you
3 were aware or remained aware of the fact that at least
4 one or perhaps more neighbors to the north were
5 complaining about LTD's dock noise?

6 A. Yes.

7 Q. And were you still in contact with Jack Voight
8 to look into this issue?

9 A. Yes.

10 Q. I'm showing you what I'm marking for purposes of

11 identification as Complainants' Exhibit C6. It's a fax
12 transmission from Acoustic Associates Limited to John
13 Schimel dated January 31st, 1997. Do you recognize
14 that?

15 MR. KOLAR: Objection. Do you mean have you
16 seen that before?

17 BY MR. KAISER:

18 Q. Have you seen that before?

19 A. No. I don't recall seeing this.

20 Q. Do you recall whether you were talking still
21 with Jack Voight about noise issues --

22 A. Yes.

23 Q. -- in January of 1997?

24 A. Yes.

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1 Q. Do you recall whether you had been in contact
2 with any representatives of the village of Bannockburn
3 in either December of 1996 or January of 1997 in
4 connection with complaints about noise from residents to
5 the north?

6 A. I don't remember the exact dates, but I remember
7 we did have meetings with the village to discuss these
8 issues.

9 Q. All right. And I'll try to show you documents
10 that may refresh your recollection. I'm sorry.

11 Mr. Hara, that last document you had in front of you,
12 what is that marked?

13 A. C6.

14 Q. I'm marking for purposes of identification as
15 Complainants' Exhibit 7 a letter from David Lothspeich,
16 L-o-t-h-s-p-e-i-c-h, of the village of Bannockburn to
17 Mike Hara dated February 7th, 1997. I'd ask you to take
18 a look at that and tell me if you've seen it before.

19 A. Yes.

20 Q. And did you receive this letter from
21 Mr. Lothspeich on or about February 7th, 1997?

22 A. Yes, I believe I did.

23 Q. And I note that the first sentence states, as
24 requested by LTD neighbor Bill Kaufman, during our

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1 January meeting, I am forwarding a copy of the noise
2 regulations pertaining to LTD.

3 Does that refresh your recollection as to
4 whether you had met in January of 1997 with village of
5 Bannockburn representatives and a Mr. Bill Kaufman?

6 A. Yes.

7 Q. And, in fact, you did meet with Mr. Kaufman and
8 Bannockburn representatives in January of 1997, right?

9 A. Yes.

10 Q. And the purpose of that meeting was to talk
11 about concerns that residents to the north had about
12 noise from LTD's dock; is that right?

13 A. Yes. Yes.

14 Q. And in particular -- and it, in fact, references
15 in addition I am forwarding to you a copy of a
16 January 31, 1997, letter from LTD neighbor Leslie Weber
17 voicing their concerns about your operation. Do you see
18 that?

19 A. Yes.

20 Q. And did you, in fact, receive a copy of
21 Ms. Weber's letter as indicated by Mr. Lothspeich?

22 A. I don't recall. There's not a copy here.

23 Q. I'll show you. I'm marking for purposes of
24 identification as C8 a letter from Ms. Weber to

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1 Mr. Lothspeich dated January 30th, 1997. I ask you if
2 you recall receiving a copy of that letter in the early
3 part of February 1997?

4 A. I don't recall seeing this.

5 Q. You don't recall seeing that?

6 A. No.

7 Q. Do you recall -- and I note that the last
8 sentence in Mr. Lothspeich's letter, which is C7, states
9 this letter, referring to Leslie Weber's letter, would
10 seem to reiterate the issues discussed regarding the,
11 quote, "yard pig," close quote, quote, "slamming," close
12 quote, into the truck trailers.

13 Do you recall during the meeting with village
14 of Bannockburn officials and Mr. Kaufman among others in
15 January of 1997 discussing in particular the noise
16 caused when the so-called yard pig would slam into truck
17 trailers?

18 A. Yes.

19 Q. And what is a yard pig?

20 A. It's a form of tractor that picks up and moves
21 the trailers around the dock areas.

22 Q. And its purpose -- I mean, this tractor is
23 driven by a dedicated driver who, at this point, is
24 employed by CTC, correct?

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1 A. Yes, it is.

2 MR. KOLAR: Objection, dedicated.

3 HEARING OFFICER KNITTLE: I'll sustain that.
4 You might want to rephrase.
5 MR. KAISER: He's very committed.
6 HEARING OFFICER KNITTLE: I'm assuming he's
7 dedicated, but we just don't know that.
8 MR. KAISER: Right.
9 BY MR. KAISER:
10 Q. LTD does not employ the yard pig driver, right?
11 A. That's correct.
12 Q. LTD contracts with, at this point, CTC to
13 provide through subcontracts the yard pig and the yard
14 pig driver, correct?
15 A. We employ CTC to pick up our boxes and
16 distribute our boxes, the packed boxes. They arrange
17 for pick up and yard pig trucks, et cetera, and drivers
18 to pick up those boxes.
19 Q. And this yard pig -- I mean, in 1996 LTD had a
20 yard pig in its dock area, correct?
21 A. I believe so.
22 Q. Well, by January of '97 you're meeting and
23 talking about yard big noise?
24 A. Yes.

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1 Q. So I'm not stretching it there, am I?

2 A. No.

3 Q. And, in fact, let's be honest, the yard pig LTD
4 was using or allowed to operate in its dock area in 1996
5 was very loud, right?

6 MR. KOLAR: Objection to -- vague, very loud.

7 HEARING OFFICER KNITTLE: Mr. Kaiser?

8 MR. KAISER: I'll rephrase the question.

9 BY MR. KAISER:

10 Q. The yard pig that LTD allowed to operate in its
11 dock area in 1996 was louder than the yard pig that is
12 currently operating at LTD?

13 A. I believe so, yes.

14 Q. Do you recall in either December of 1996,
15 November or December of 1996 or January of 1997 going
16 out into the dock area at the Bannockburn facility and
17 looking at and observing the yard pig in operation?

18 A. Yes.

19 Q. And you saw that the yard pig -- I mean, the
20 yard pig is essentially -- well, it's a semi-tractor, a
21 specialized semi-tractor, right?

22 A. Yes.

23 Q. And it's got what's called -- what is that plate
24 on the back of the yard tractor?

1 A. Some kind of pickup plate. I think they call it
2 a fifth wheel.

3 Q. Fifth wheel. And that fifth wheel engages with
4 the pin on a semitrailer, correct?

5 A. I believe so.

6 Q. Well --

7 A. I'm not -- yes, I think so.

8 Q. Well, did you ever see the yard tractor or the
9 yard pig slam into a trailer and engage a trailer and
10 then pull the trailer away?

11 MR. KOLAR: Objection to slam in. It's
12 argumentative.

13 HEARING OFFICER KNITTLE: Mr. Kaiser?

14 MR. KAISER: I think you'll hear testimony from
15 Mr. Voight that they have to slam in in order to engage,
16 so I don't think it's argumentative. I think it's
17 descriptive.

18 HEARING OFFICER KNITTLE: Anything further,
19 Mr. Kolar?

20 MR. KOLAR: No.

21 HEARING OFFICER KNITTLE: Yeah. I'll sustain
22 the objection until we hear any testimony about
23 slamming.

24 BY MR. KAISER:

1 Q. All right. Have you ever seen the yard pig
2 hitched with a trailer?

3 A. Yes.

4 Q. And how would you describe that process?

5 A. The tractor backs into the truck until it
6 engages into the pin and then he lifts up the wheels and
7 pulls it away.

8 Q. And is there any noise generated by that?

9 A. Yes.

10 Q. And that's what -- in the course of -- I mean,
11 you've been involved in this dispute for almost three
12 years now, right?

13 A. Yes.

14 Q. And one of the noises that the complainants have
15 complained about is the noise made when the yard pig
16 engages with the trailers, right?

17 A. Yes.

18 Q. And that's sometimes referred to as the fifth
19 wheel noise, right?

20 A. Engaging, yes.

21 Q. Engaging, all right. So by February 7th of
22 1997, LTD has been aware for two and almost three months
23 that neighbors to the north are complaining about noise

24 from its docks, right?

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1 A. Yes.

2 Q. And by the time LTD has received Ms. Weber's
3 letter of January 30th, 1997, also known as
4 Complainants' Exhibit 8 --

5 MR. KOLAR: Objection, no foundation.

6 MR. KAISER: I'm not moving for its admission.

7 MR. KOLAR: No, but you -- objection to LTD had
8 received Ms. Weber's letter. I think he specifically
9 said I don't recall seeing it, so I have a problem
10 with --

11 HEARING OFFICER KNITTLE: I don't have this
12 marked. Is this the January 30th, '97 letter?

13 MR. KAISER: Yes, and that would be C8.

14 HEARING OFFICER KNITTLE: Mr. Kaiser, do you
15 want to rephrase that. I could have -- I can't recall
16 the exact question. Do you want to read that back,
17 Michele?

18 MR. KAISER: Well, it may be something that
19 Mr. Kolar and I will have to work out. I mean, if
20 necessary, I'll get David Lothspeich in here to say that
21 to the best he can recall, he enclosed it in the

22 February 7th, 1997, letter to Mike Hara. And I think
23 we'll hear testimony from Jack Voight that he was aware
24 of the Weber's complaints.

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1 HEARING OFFICER KNITTLE: Right. And I don't
2 have a problem with that if it happens, but if he
3 doesn't recall this letter being received by LTD, we
4 can't make him say that.

5 MR. KAISER: Right.

6 HEARING OFFICER KNITTLE: Do you want me to read
7 back the initial question and rule on the objection, or
8 do you want to address this at a later point in time?

9 MR. KAISER: I'd like to hear the question.

10 (Record read as requested.)

11 MR. KAISER: I'll withdraw the question.

12 HEARING OFFICER KNITTLE: You could rephrase it.

13 MR. KAISER: I'll work at it in a different way
14 here.

15 BY MR. KAISER:

16 Q. If I may, Mr. Hara, I'd like to show you again
17 Complainants' Exhibit C7. I notice there are a number
18 of cc's at the bottom of that letter including village
19 counsel Victor Fillipini, Lake Forest manager Robert

20 Kiely, Mr. and Mrs. Roti at 1591 South Wedgewood Drive,
21 Mr. and Mrs. Kaufman at 1865 South Wedgewood Drive and
22 Ms. Leslie Weber at 1481 West Wedgewood Drive. Now, you
23 did receive this letter from David Lothspeich?

24 A. Yes, I believe I did.

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1 Q. And you -- when you received the letter, did you
2 look at the people who were cc'd on it?

3 A. I don't recall.

4 Q. You don't recall. Do you recall whether by
5 February 7th or thereabouts of 1997 you were aware that
6 Mr. and Mrs. Roti, Mr. and Mrs. Kaufman and Ms. Leslie
7 Weber were complaining about noise at the LTD facility?

8 A. Yes.

9 Q. Now, back in 1996, LTD was, during its Christmas
10 season, operating two shifts a day, was it not?

11 A. I believe so.

12 Q. And, again, those shifts would have begun at 6
13 a.m. and ended at 2:30 and the second shift would have
14 begun at 3:30 p.m. and concluded on an average night, an
15 ordinary night without overtime at 12:30 in the morning;
16 is that right?

17 A. Yes.

18 Q. And you heard Mr. Kolar during his opening
19 statement -- and you were here during that, right?

20 A. Yes.

21 Q. And Mr. Kolar made a big deal, frankly, out of
22 the fact that by 1987 LTD had already built all 26 docks
23 and all 26 docks were in place by 1987 or 1988. Do you
24 recall that statement during his opening?

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1 A. Yes.

2 Q. But in 1987 and 1988, LTD wasn't operating a
3 second shift, was it?

4 A. We were open nights, yes.

5 Q. You were open nights?

6 A. I don't know what year we started being open
7 nights, but, yes, we were working nights.

8 Q. But you don't know what year that was?

9 A. No, but it was in the '80s I believe, yes.

10 Q. Do you have any documents that would support
11 that?

12 A. Not that I know of.

13 Q. Do you know how many nights a week LTD operated
14 a second shift during the late 1980s?

15 A. When we initiated night shift, it was five days

16 a week, six days a week depending on the needs.

17 Q. Depending on the needs?

18 A. Yeah. It was never one or two nights. It was
19 either five always or five plus the one if Saturdays
20 were needed. We never set up a shift to work a couple
21 days a week.

22 Q. Now, would you be surprised that Jack Voight
23 doesn't recall LTD operating a second shift during the
24 early 1990s?

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1 A. We were working nights before Jack started.

2 Q. And is it your testimony that during a period
3 when Jack started in the early 1990s, that LTD stopped
4 operating nights?

5 A. I don't recall.

6 Q. Is it possible that there was a period in the
7 early 1990s where LTD was not operating nights out at
8 the Bannockburn facility?

9 A. I don't recall if we did or didn't.

10 Q. Is it fair to say that LTD -- the volume of
11 business LTD was doing grew steadily from 1988 through
12 the present?

13 A. Yes.

14 Q. And, in fact, there were some estimates that LTD
15 has been increasing its volume by approximately 20
16 percent a year. Is that roughly the rate at which LTD
17 has been growing?

18 A. Some years we did and some years we didn't.

19 Q. What is this -- in any single year between 1988
20 and the present, what's the biggest growth in volume or
21 gross sales that LTD has experienced?

22 A. Probably 25 percent.

23 Q. And what was the smallest rate of growth?

24 A. I believe we either had a flat year or a

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1 reduction year.

2 Q. What year was that?

3 A. I don't recall the year.

4 Q. Could you recall whether it was in the 1980s or
5 the 1990s?

6 A. I don't remember.

7 Q. Was there only one flat or reduction year or
8 more than one?

9 A. I think it was one.

10 Q. And the other years, what would you say -- 25
11 being the greater, what was on average the growth?

12 A. Ten to 20.

13 Q. And that increase of volume and increase of
14 traffic, that traffic and that volume was moving in and
15 out of the Bannockburn facility, correct?

16 A. Not in the last -- not this year or last year.

17 Q. Right, because during that time, you finally had
18 the Aurora facility up and running; is that right?

19 A. Yes.

20 Q. But during the years of 1988 through the latter
21 part of 1998, LTD's increase in volume was an increase
22 at the Bannockburn facility?

23 A. Yes.

24 Q. And it's fair to say, without calculating the

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1 exact number, there were far more trucks -- until the
2 Aurora facility opened in October or November of 1998,
3 there were far more trucks going in and out of the
4 Bannockburn facility in 1998 than there were in 1988?

5 MR. KOLAR: Objection, far more is vague. It's
6 probably argumentative as well.

7 HEARING OFFICER KNITTLE: Mr. Kaiser.

8 MR. KAISER: Well, pin it down, but I don't
9 think there's anything vague about it.

10 BY MR. KAISER:

11 Q. Were there more?

12 A. Yes.

13 Q. And I take it if you're increasing your sales by
14 10 or 20 percent a year, you're increasing your truck
15 traffic by a corresponding amount, are you not?

16 A. No.

17 Q. I mean, it's not a one-for-one correlation, but
18 as the volume of sales goes up and the volume of freight
19 that you're shipping out goes up, the number of trucks
20 coming in and out increases, correct?

21 A. No, that's not accurate.

22 Q. No. Why not?

23 A. Well, in one instance, first of all, a lot of
24 our volume has been increased in the spring, so it's not

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1 even during the Christmas season. Like, for example,
2 this Christmas season, our Christmas catalog might be up
3 10 percent whereas our spring may be up much more than
4 that this year.

5 The second thing is over the past number of
6 years, our average dollar cost per piece of merchandise
7 has gone up dramatically, therefore, it's reducing the

8 pieces going out of the place, but increasing the
9 volume.

10 Q. Well, I'll talk in greater detail with Jack
11 Voight about the actual truck volume, but I appreciate
12 that explanation.

13 Even given LTD's increase in sales during its
14 off-peak Christmas season, LTD continues to essentially
15 double its work shift between August 1st and
16 December 15th of each year, does it not?

17 A. Yes.

18 Q. So it's still -- the large volume and heavy
19 traffic at the LTD facility is between that period of
20 August 1st through December 15th or thereabouts, is it
21 not?

22 A. Yes, it is.

23 Q. And that would have been true in 1996, correct?

24 A. Yes.

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1 Q. And that would have been true in 1997, correct?

2 A. Yes.

3 Q. And that would have been true in 1998, correct?

4 A. Yes.

5 Q. And even that holds true so far into the fall of

6 1999, does it not?

7 A. Except in 1999, we're doing half the volume in
8 another building.

9 Q. All right.

10 A. And that was part of 1998 also.

11 Q. I'm sorry?

12 A. And part of 1998 also from our October opening
13 of Aurora, that portion of the business, a major portion
14 of the business is now being done in Aurora.

15 Q. That reduces traffic to some degree now at the
16 Bannockburn facility?

17 A. Yes.

18 Q. All right. And Mr. Voight would be better able
19 to talk about that, right?

20 A. Yes.

21 Q. And, similarly, Mr. Voight would probably have a
22 little better feel for when LTD operated a second shift
23 from the time he came on board until the present?

24 A. From the time of his employment, yes.

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1 Q. I'm going to show you now what I'm marking for
2 purposes of identification as Complainants' Exhibit 9.
3 It's a fax transmission from Jack Voight to David

4 Lothspeich. It's dated April 7th, 1997. I'd like you
5 to take a look at that tell me if you've seen that
6 before today?

7 A. I don't recall. It says it has an enclosure and
8 maybe if I had the enclosure, I could recollect what
9 this is.

10 Q. Does this at least confirm in your mind that in
11 April of 1997 Jack Voight was in touch with David
12 Lothspeich in connection with the LTD noise complaints?

13 A. Yes, he was.

14 Q. I'm showing you what I'm marking for purposes of
15 identification as Complainants' Exhibit C10. It's a
16 letter from David Lothspeich to Mike Hara dated
17 April 25th, 1997. Did you receive that letter on or
18 April 25th, 1997?

19 A. Yes, I believe I did.

20 Q. And I see that it still has the same people
21 listed on the cc's. Do you see that down there, Mr. and
22 Mrs. Roti, Mr. and Mrs. Kaufman, Ms. Leslie Weber?

23 A. Yes.

24 Q. Did you draw the conclusion that in April of

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1 1997 there was still a problem and that the neighbors to

2 the north of LTD were still concerned about noise from
3 LTD's docks?

4 A. Yes.

5 Q. And do you see that second paragraph of
6 Mr. Lothspeich's letter where he writes, it concerns me
7 that, despite several letters and phone calls requesting
8 an update on this matter, the village did not receive a
9 copy of this January 31st, 1997, proposal until
10 April 7th, 1997. This issue requires LTD's prompt
11 consideration. This latest information is being
12 provided to the concerned neighbors in an effort to keep
13 them apprised as to status of these matters?

14 A. Yes.

15 Q. Do you know as you sit here today why LTD did
16 not forward Tom Thunder's proposal of January 31st,
17 1997, to the village of Bannockburn until April 7th,
18 1997?

19 A. No, I don't recall why.

20 Q. Did you agree that this issue being the noise
21 issue required LTD's prompt consideration?

22 A. Yes.

23 Q. I'm showing you what I'm marking for purposes of
24 identification as Complainants' Exhibit C11. It's a

1 letter from David Lothspeich to Mike Hara dated
2 July 11th, 1997 and ask you if you recognize that
3 letter?

4 A. Yes.

5 Q. Did you receive that letter from Mr. Lothspeich
6 on or around July 11th, 1997?

7 A. Yes.

8 Q. Is this a true and accurate copy of that letter?

9 A. I believe so.

10 Q. And, again, do you see the same people cc'd on
11 this letter?

12 A. Yes, I do.

13 Q. At that time, were you aware that the village of
14 Bannockburn had hired Schomer & Associates to assist it
15 in talking with LTD and the neighbors about a possible
16 solution to this noise problem?

17 A. I'm not sure if they hired Schomer or not. I'm
18 not sure how that all worked out.

19 Q. Even as you sit here today, you're not sure of
20 the relationship between Schomer & Associates and the
21 village of Bannockburn?

22 A. I'm not sure if they employed him or what they
23 did, how that all came about, but, yes, I know Schomer
24 is involved in this, yes.

1 Q. Well, you see that the first sentence of
2 Mr. Lothspeich's letter reads, in an effort to ensure
3 agreement between the village and LTD on the evaluation
4 of LTD's noise levels, I suggested that Jack Voight
5 contact village sound engineer Schomer & Associates to
6 meet and review Acoustic Associates proposed sound
7 analysis?

8 A. Yes.

9 Q. Do you remember reading that in July of 1997?

10 A. Yes.

11 Q. And do you see in the second paragraph Schomer &
12 Associates' attached July 10th, 1997, letter summarizes
13 the results of the July 8th, 1997, meeting between our
14 sound consultants. And did you understand that to mean
15 between Schomer & Associates and LTD's --

16 A. Yes.

17 Q. -- sound consultant --

18 A. Yes.

19 Q. -- Tom Thunder?

20 A. Yes.

21 Q. And did you understand that Tom Thunder had
22 prepared a plan for measuring noise in the vicinity of
23 the LTD dock area?

24 A. Yes.

1 Q. And was it your position in July of 1997 that
2 the noise that LTD was generating was not unreasonable?

3 A. Are you talking about after the results came
4 back from the tests?

5 Q. No. In July of 1997 because it talks about
6 evaluating LTD's noise level. So I want to know in July
7 of 1997 had you already formed a belief as to whether or
8 not the noise LTD was generating was or was not
9 unreasonable?

10 A. At that time --

11 MR. KOLAR: Objection, that's vague and calls
12 for a conclusion. I mean unreasonable.

13 HEARING OFFICER KNITTLE: Mr. Kaiser?

14 MR. KAISER: I mean, it's neither vague nor
15 unreasonable to ask him whether in his mind he thought
16 the noise that his docks were generating was reasonable
17 or unreasonable. I mean that's --

18 HEARING OFFICER KNITTLE: I'm going to overrule
19 the objection. You can answer the question if you
20 understand it.

21 BY THE WITNESS:

22 A. I'm not exactly what -- but I'll try and explain

23 it. At that time, I was concerned that the neighbors
24 had complaints and issues that they were concerned about

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1 and we were trying to address them. We were more
2 concerned at that time about being good neighbors.

3 BY MR. KAISER:

4 Q. All right. At some point did that change and
5 you became less concerned about being a good neighbor?

6 A. No, we never did.

7 Q. You're still concerned about being a good
8 neighbor?

9 A. Yes, we are.

10 Q. I'm showing you what's been marked for purposes
11 of identification as Complainants' Exhibit 12. It's a
12 letter from Bill and Linda Kaufman to Mr. Mike Hara
13 dated Wednesday, July 30th, 1997. Please take a look at
14 that.

15 A. Yes, I believe I saw this.

16 Q. And did you receive that on or about
17 July 30th --

18 A. Yes.

19 Q. -- 1997? Now, I note that Mr. and Mrs. Kaufman
20 make a request, please affirm that the following topics,

21 which we discussed at our meeting with the village and
22 LTD are addressed by the sound study.

23 Did you understand Mr. and Mrs. Kaufman to be
24 referring to the meeting that took place between the

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1 village, LTD and neighboring residents in January of
2 1997 as the meeting that Mr. and Mrs. Kaufman were
3 referring to?

4 A. Yes, I believe so.

5 Q. Do you recall whether there were any other
6 meetings involving LTD, the village of Bannockburn and
7 neighboring residents between January of 1997 and
8 July 30th of 1997?

9 A. Between what dates again, I'm sorry?

10 Q. Sometime in January of 1997, the first meeting
11 that Mr. Lothspeich referenced in his February 1997
12 letter, and then the time that this letter, Mr.
13 Kaufman's letter of July 30th, 1997.

14 A. I believe there were two meetings.

15 Q. Two in total?

16 A. Yeah, I believe so. I'm not sure exactly of the
17 number, but I believe there were two. One was the
18 initial meeting when I believe the Rotis and Mr. Kaufman

19 were there, and I think there was a subsequent meeting.
20 I'm not sure who was involved in that one. I think it
21 was a Lake Forest official at that time.

22 Q. Okay. And we may see documents that clear that
23 up?

24 A. Possibly, yes.

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1 Q. I note that Mr. Kaufman recalls that during the
2 meeting between the village representatives, the LTD
3 representatives and the neighbors in January of 1997
4 that the Rotis represented that the worse noise is the
5 trailer doors banging as LTD moves the trailers. Do you
6 remember the Rotis complaining during the January 1997
7 meeting about banging trailer doors?

8 A. Yes.

9 Q. And do you recall a person by the name of Vaughn
10 expressing the opinion that the banging noise was
11 probably confused with the noise from the trailers being
12 dropped on to their, quote, "boogie wheels," close
13 quote?

14 A. I don't recall that.

15 Q. Do you recall though some discussion about noise
16 being generated when trailers are dropped on to their

17 boogie wheels or their fifth wheel?

18 A. I remember there was an issue of when the trucks
19 backed in the banging noise that they were concerned
20 about.

21 Q. And that was -- and you were aware of that by
22 January of 1997?

23 A. Yes.

24 Q. Do you recall during January 1997 meeting that

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1 the Rotis represented that trucks' backup warning
2 devices were too loud?

3 A. Yes.

4 Q. Do you recall that Kaufman complained during the
5 January 1997 meeting that different types of vehicle's
6 engines idling or revving while above the loading dock
7 area created a low frequency noise and vibration
8 discernible from his home?

9 A. Yes. I believe that there were discussions of
10 that and that we had made sure that the trucks no longer
11 revved and they didn't sit up on top of the area by the
12 houses up there.

13 Q. And that was part of LTD's so-called good
14 neighbor policy?

15 A. Yes. Yes. As far as the beeping noise, we've
16 looked into recently and still are looking into it and
17 if somebody could assure us that there isn't any
18 liability to LTD, we would have those removed, but we're
19 concerned whether or not there's liability issues if you
20 take those beepers off.

21 Q. I mean, you'd agree, and I don't think this is
22 vague, those beepers are loud, right?

23 A. They make a noise.

24 Q. They make a noise. And they're designed to make

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1 a noise, right?

2 A. Yes.

3 Q. I mean they're warning beepers, aren't they?

4 A. Yes.

5 Q. And they're designed to warn people that a truck
6 is coming at them, right?

7 A. Is backing up.

8 Q. Is backing up. I mean, no matter how load the
9 tollway is, you could hear that back up beeper, right?

10 MR. KOLAR: Objection, foundation.

11 HEARING OFFICER KNITTLE: Mr. Kaiser?

12 BY MR. KAISER:

13 Q. You've been in the dock area at the LTD
14 Bannockburn facility?
15 A. Yes.
16 Q. And I take it when you're in the dock area, can
17 you hear noise from the tollway?
18 A. In the dock area, yes.
19 Q. And when you're in the LTD dock area, can you
20 hear ambient noise from Corporate 100?
21 A. Ambient noise from Corporate 100?
22 Q. Yes.
23 A. I don't recall anything.
24 Q. But you can hear the tollway noise in the dock

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1 area, right?
2 A. Yes.
3 Q. But despite the tollway noise in the dock area,
4 if that truck is backing up, you could hear that backup
5 beeper, right?
6 A. While I'm on the docks, yes.
7 Q. Yes. Now, yard pig noises, there's concerns
8 about yard pig noise and they were expressed during the
9 January 1997 meeting, were they not?
10 A. Yes.

11 Q. And, in particular, people described how when
12 the yard pig revs up or accelerates, it's loud?

13 A. Yes.

14 Q. So by the time you've received Mr. Kaufman's
15 letter in July or early August of 1997, there's proposal
16 in place and LTD is committed to taking noise
17 measurements, correct?

18 A. Yes.

19 Q. Were you out in the field in September of 1997
20 when Roger Harmon took the noise measurements?

21 A. No.

22 Q. I'm marking for purposes of identification as
23 Complainants' Exhibit 13 -- it's a memorandum from Tom
24 Thunder to Jack Voight dated November 2, 1997. I'm

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1 asking you if you recognize this document?

2 A. Yes.

3 Q. Did Jack Voight show you this document sometime
4 shortly after November 2nd, 1997?

5 A. Yes.

6 Q. And did you talk with Jack about the information
7 set forth in Mr. Thunder's draft report dated
8 October 31st, 1997?

9 A. Yes.

10 Q. Now, I know -- well, the second paragraph of
11 Mr. Thunder's cover memo to Jack Voight states, using
12 Class C zoning, we're able to show no violation of
13 octave ban limits. 2,000 Hz, and that's uppercase H,
14 lowercase Z, may come into question, paren, (because air
15 brakes and impact noise will affect frequencies around
16 2,000 Hz) close paren. However, cricket noise is so
17 high, no determination can be made at this time.

18 Prior to November of 1997, were you aware of
19 the distinction the Illinois Pollution Control Board
20 made between Class B uses and Class C land uses?

21 A. Prior to November 2nd.

22 Q. Yes. I mean, here we see Mr. Thunder saying
23 using Class C zoning, and as we now know, Class C zoning
24 is an important issue in this case.

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1 Did you understand in November of 1997 why
2 whether LTD was a Class C or Class B land use was
3 important?

4 A. I always knew there's a difference between
5 Class B and Class C, yes.

6 Q. What was the basis for your knowledge concerning

7 the difference between Class B and Class C land uses?

8 A. I have seen -- what do you call them --
9 regulations that explain what kind of companies are Cs
10 and what kind of companies are Bs.

11 Q. And is that that standard land use coding
12 manual?

13 A. I believe so.

14 Q. And have you seen that prior to November 2nd,
15 1997?

16 A. Yes, I believe I have.

17 Q. Do you recall had Tom Thunder showed that to
18 you?

19 A. I don't recall who showed it to me.

20 Q. Before you got involved in this issue about
21 noise with the neighbors to the north, had you ever had
22 reason to educate yourself about noise issues or the
23 standard land use coding?

24 A. I believe I have, yes.

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1 Q. Why was that?

2 A. I believe when we were doing our building
3 changes about the corporate headquarters and things like
4 that and potential uses of the company, if the building

5 was ever sold at some point in time in the future what
6 uses would be allowed.

7 Q. All right. So then you were familiar when Tom
8 Thunder tells you if we can use the Class C zoning, it
9 looks like LTD may be okay. Did you understand by
10 implication though that there might be a problem if the
11 Board determined that, in fact, LTD was a Class B use?

12 A. No. I never thought that it was an issue that
13 we would be a Class B. I always thought we were a Class
14 C operation.

15 Q. Now, do you consider yourself an expert by
16 virtue of education or experience in the application of
17 the Board's regulations?

18 A. No.

19 Q. And you've never offered your testimony to the
20 Board or any other administrative agency -- you've never
21 held yourself out as an expert on land use planning,
22 have you?

23 A. No.

24 Q. And you've never taken courses in land use

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1 planning, have you?

2 A. No.

3 Q. So you have a lay opinion concerning how LTD
4 should appropriately be classified; is that right?
5 A. Yes.
6 Q. All right. Are you aware that Dr. Schomer was
7 involved in the development of the Illinois Pollution
8 Control Board's noise regulations?
9 A. I am, yes.
10 Q. And are you aware that Dr. Schomer was one of
11 the people on the work group back in the early 1970s
12 that decided to use the standard land use coding manual
13 and to incorporate that document or parts of that
14 document into the Illinois Pollution Control Board's
15 regulations?
16 A. I'm not aware of that, no.
17 MR. KOLAR: Just for the record, you keep saying
18 manual. I think there's a distinction between the
19 manual and the appendix itself. They're two different
20 documents.
21 MR. KAISER: I would agree with you.
22 HEARING OFFICER KNITTLE: Noted.
23 BY MR. KAISER:
24 Q. All right. So by November 2nd or thereabouts,

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1 1997, you've received in draft form the results of Tom
2 Thunder's and his associates noise measurements and
3 you've talked briefly with Jack Voight about those; is
4 that correct?

5 A. Yes.

6 Q. I'm showing you what I'm marking for purposes of
7 identification as Complainants' Exhibit 14. It's a
8 memorandum from Tom Thunder to Jack Voight dated
9 November 14th, 1997. I'd ask you to take a look at that
10 and tell me if you've seen that before.

11 A. Yes.

12 Q. Did Jack Voight show you this memo sometime
13 shortly after November 14th, 1997?

14 A. Yes.

15 Q. Do you recall whether you read the first
16 sentence or the first two sentences which read as
17 follows, since your attorney indicated your land was
18 commercially zoned, I re-analyzed the data to evaluate
19 the impact of using the state's regulation for noise
20 radiated from Class B land. As seen in Figure 3A, LTD
21 would appear to violate the limits in the three bans
22 from 1,000 Hz to 4,000 Hz.

23 Do you recall reading that tentative
24 conclusion by Tom Thunder?

1 A. Yes.

2 Q. Do you recall reading the first -- well, the
3 second full paragraph which reads as follows, I am
4 working on another trucking facility project. In this
5 project, the attorney is classifying the land as Class B
6 although he's working for the residents. As in our
7 previous conversation, it is important to have your
8 attorney review the land classification system I sent to
9 you to see if Class C zoning would apply.

10 And I take it you understood at that point
11 that it was important for LTD to demonstrate that the
12 Board should consider it a Class C land use and not a
13 Class B land use; is that right?

14 A. Yes.

15 Q. Now, is it fair to say in November of 1997 you
16 and Mr. Voight and Mr. Thunder were particularly focused
17 on whether or not the data Roger Harmon had developed
18 showed a violation of the Board's numeric standards?

19 A. Yes.

20 Q. And as I understood your deposition testimony,
21 Mr. Thunder never made clear to you that in addition to
22 the numeric standards, that Board also had a more
23 general regulation that prohibited a person, and LTD for
24 these proceedings is considered a person, that

1 prohibited a person from emitting noise that would be a
2 nuisance. Did you understand that there was a general
3 Board prohibition against noise nuisances?

4 MR. KOLAR: Objection. It calls for -- I know
5 his position, but we've got legal argument that I guess
6 we'll make in closing or trial brief that the nuisance
7 provision doesn't apply.

8 HEARING OFFICER KNITTLE: Can you explain?

9 BY MR. KAISER:

10 Q. I just want to know did you in November of 1997
11 have any understanding as to whether in addition to the
12 Board's numeric limits, there was also a Board
13 prohibition against noise nuisance?

14 HEARING OFFICER KNITTLE: And Mr. Kolar?

15 MR. KOLAR: Same objection. A Board
16 prohibition, again, it's our position that the nuisance
17 regulation doesn't apply in this case, so I have a
18 problem with the question because it implies that, yes,
19 there's a nuisance regulation that applies.

20 HEARING OFFICER KNITTLE: I think you've made
21 that clear for the record. I'll let him ask the
22 question, but we're not conceding that it applies or
23 doesn't apply.

24

MR. KOLAR: Thank you.

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1 BY THE WITNESS:

2 A. I'm not aware that he brought it up at all.

3 BY MR. KAISER:

4 Q. So in November of 1997, you weren't aware of
5 whether the Board did or did not have a general
6 prohibition against noise nuisances?

7 A. That's correct.

8 Q. And did you look at the next section which had
9 to do with impact analysis?

10 A. Yes.

11 Q. And did you read Mr. Thunder's statement where
12 he wrote Figure A shows several of the more prominent
13 impacts that occurred during our sampling. On this
14 figure, I have shown the limits for Class C zoning. As
15 you can see, it appears we exceed these limits.
16 Figure B shows that two of the impulses are high
17 frequency in nature, paren, (air brakes, metal to
18 metal), close paren, while the other two are low
19 frequency, paren, (acceleration, fifth wheel), close
20 paren.

21 Do you recall reading those statements?

22 A. Yes.

23 Q. And did you understand that Tom Thunder was
24 essentially saying that with respect to impulsive sound,

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1 LTD was in violation of even the Class C standard?

2 MR. KOLAR: Objection. The document speaks for
3 itself.

4 MR. KAISER: I'm asking what he understood
5 Mr. Thunder to be saying.

6 HEARING OFFICER KNITTLE: Anything else,
7 Mr. Kolar?

8 MR. KOLAR: No.

9 BY THE WITNESS:

10 A. I didn't understand --

11 HEARING OFFICER KNITTLE: Hold. Hold. Hold.

12 THE WITNESS: I'm sorry.

13 HEARING OFFICER KNITTLE: I'm thinking. I'll
14 overrule the objection. You can answer the question
15 now, please, if you can.

16 BY THE WITNESS:

17 A. I don't recall what we thought at that time.

18 BY MR. KAISER:

19 Q. I take it given the meeting that you had

20 attended with residents in January of 1997 and various
21 letters you'd received from Mr. Lothspeich, you were not
22 surprised to hear that Mr. Thunder had attempted to
23 determine the noise emitted by the release of air from
24 air brakes?

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1 A. That's correct.

2 Q. And you've heard trucks release air from their
3 air brakes, have you not?

4 A. Yes.

5 Q. And what does that sound like when a truck
6 releases air from its air brakes?

7 A. It's a hissing sound.

8 Q. It's a rather abrupt release of air, is it not?

9 A. It's a hissing sound, yes.

10 Q. And correct me if I'm wrong, if you're filling
11 up a bicycle tire and you pull the hose off of the valve
12 and there's that's release of air from the bicycle tire,
13 that's similar to an air brake sound it, isn't it?

14 A. Yes.

15 Q. Although, is it fair to say that an air brake
16 release is substantially greater volumes of air than a
17 bicycle tire?

18 A. I believe so.

19 Q. And the air breaks -- now, even under your good
20 neighbor policy, are you aware of how often trucks
21 release air from their air brakes during the course of
22 unloading and loading at the LTD dock?

23 A. No, I'm not.

24 Q. Are you aware that under the good neighbor

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1 policy, the trucks are instructed to pull into the LTD
2 dock area and stop the truck?

3 A. I'm sorry. Can you rephrase that?

4 Q. Do you need to have the question read back?

5 A. Yes, please.

6 MR. KAISER: If you would, please.

7 (Record read as requested.)

8 BY THE WITNESS:

9 A. I believe so, yes.

10 BY MR. KAISER:

11 Q. And are you aware that when the trucks stop for
12 that first time within the LTD dock facility that they
13 customarily release the air from their air brake at that
14 point?

15 A. I'm not aware of that, no.

16 Q. When was the last time you were out and observed
17 activities in the LTD dock area?

18 A. About a week ago.

19 Q. Did you observe any trucks releasing air from
20 their air brakes during that time?

21 A. No, I did not.

22 Q. How long were you in the dock area?

23 A. About ten, 15 minutes.

24 Q. Were you there for the sole purpose of viewing

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1 operations in preparation for your testimony today?

2 A. No. I happened to be coming there, and it was
3 about 9 o'clock, and I stopped my car out there adjacent
4 to the Roti's property to see if I could hear any
5 sounds.

6 Q. And what did you hear?

7 A. It was relatively quiet. I didn't hear any of
8 the beeping sounds or anything like that. When I drove
9 further towards the docks, actually went down where you
10 could actually be alongside the trucks, that's when I
11 did hear the beeping, but could not hear the beeping
12 sound when I was adjacent to the Roti property.

13 Q. When you say adjacent, you mean in front of

14 their house?

15 A. Yes.

16 Q. Were you in your car?

17 A. Yes, with the windows open.

18 Q. Did you ever get out of your car?

19 A. Not this time, but in past, yes, I have many
20 times.

21 Q. All right. And you've been there, what, two or
22 three times you've been on Wedgewood Drive to listen to
23 the noise?

24 A. Yes.

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1 Q. And in each instance you've remained in your car
2 at that time, right?

3 A. No. I've gotten out a couple times.

4 Q. Have you ever gone into the Roti's backyard?

5 A. A long time ago, nothing recently.

6 Q. Do you remember what you heard when you were in
7 the Roti's backyard?

8 A. I didn't hear any noise that was -- you know
9 from the truck docks at that time, but this was many
10 years ago. This was nothing in the last couple years.

11 Q. All right. So let's focus -- you're saying that

12 roughly a week ago --

13 A. Yes.

14 Q. -- at 9 in the evening you were out there in the
15 vicinity of the Roti home?

16 A. Yes.

17 Q. Were you with anyone?

18 A. Mr. Voight was with me and another gentleman
19 also.

20 Q. Who was the other gentleman?

21 A. His name is Nestley.

22 Q. I'm sorry?

23 A. Nestley.

24 Q. Who is he?

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1 A. He's a -- how could I explain it. He's a real
2 estate developer.

3 Q. Why was he with you?

4 A. We were just out that night on business.

5 Q. So you're out on business with Mr. Voight and
6 Mr. Nestley and the three of you decide to drive by the
7 Roti residence?

8 A. No. We were coming back to LTD, and I asked him
9 to stop there.

10 Q. Who was driving?

11 A. Mr. Nestley.

12 Q. Did you tell him why you wanted to go into the
13 subdivision?

14 A. We were not in the subdivision. We were on
15 LTD's property.

16 Q. Oh, I see. I misunderstood. All right. So you
17 were at the north end of LTD's property?

18 A. Yes.

19 Q. You weren't on Wedgewood Drive?

20 A. No.

21 Q. I see. And this was about 9 o'clock on a
22 weekday evening?

23 A. I think it was 8 o'clock, yes.

24 Q. 8 o'clock. And how long did you stay at that

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1 location?

2 A. About ten minutes.

3 Q. And is it your testimony during that ten-minute
4 period, you did not hear any air being released from air
5 brakes?

6 A. No. We were trying to listen for the air
7 brakes, the clanging or the beeper noise and didn't hear

8 any one of the three.

9 Q. All right. That's very interesting. So in this
10 ten-minute period did you hear any trucks moving around
11 or was there no traffic?

12 A. No. There were trucks. I know there were
13 trucks. We saw trucks as we were driving in.

14 Q. But you didn't hear either air being released
15 from air brakes --

16 A. No.

17 Q. -- backup warning beepers, engaging of yard
18 tractor with the trailer?

19 A. No.

20 Q. Did you hear any trucks accelerating up the ramp
21 out of LTD's dock area?

22 A. No, I did not.

23 Q. And just so the Board has a picture, the LTD
24 dock area is below grade, is it not?

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1 A. Yes, it is.

2 Q. So trucks going into the dock area and drive
3 down a gentle incline, correct?

4 A. Yes.

5 Q. And trucks climbing out of the dock area have to

6 go back up that incline, do they not?

7 A. Yes, they do.

8 Q. And all the trucks enter and exit on the

9 northeast end there of the dock, correct?

10 A. Yes.

11 Q. Now, you've never been in the Roti's house at

12 night and tried to hear the LTD noise, have you?

13 A. No. I've never been in their house.

14 Q. And you've never been in the Rosenstock's

15 house, have you?

16 A. No.

17 Q. And you've never been in the Weber's home, have

18 you?

19 A. No.

20 Q. Though, in fairness, you've never asked any of

21 them whether you could go in their house and listen to

22 the noise, have you?

23 A. No.

24 Q. So, a week ago you were out at the north

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1 property line of LTD approximately 8 o'clock at night

2 for a period of ten minutes listening for dock noise; is

3 that right?

4 A. Yes.

5 Q. And at least two times previously you've driven
6 into the subdivision, driven onto Wedgewood Drive and
7 listened for noise from the dock, haven't you?

8 A. Yes.

9 Q. Do you recall when was the first time you did
10 that?

11 A. No. It was a while ago, several years ago.

12 Q. Was it before or after you received complaints
13 from the neighbors to the north?

14 A. I've been there before, not listening for
15 noises, just to look at the properties that were over
16 there and then after that, after the complaints had
17 started, I drove over there specifically to listen for
18 noise.

19 Q. All right. So that may have been as long ago as
20 two and a half years ago?

21 A. Correct.

22 Q. That was the first time you were over there with
23 the specific intention of listening for noise?

24 A. Correct.

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1 Q. And the most recent time was one week ago.

2 Well, you weren't over there, but you were at the north
3 property line.

4 A. That's correct.

5 Q. And as I understand it, there was one other time
6 between the first time approximately two and a half
7 years ago and the most recent time a week ago when you
8 were over in the subdivision listening for noise?

9 A. They were both approximately the same time
10 frame, you know within several months of each other.

11 Q. Probably then, and I don't mean to put words in
12 your mouth, probably winter or spring of 1997; is that
13 fair?

14 A. It was during our night operation. That's all I
15 could tell you.

16 Q. During the night operation?

17 A. Yes.

18 Q. So perhaps fall of '97?

19 A. It could have been.

20 Q. And do you recall when you were out there two
21 and a half years ago how long were you out -- how long
22 were you parked in your car?

23 A. About 15 minutes.

24 Q. And as I recall your testimony, part of that

1 time you had the windows open, part of the time you had
2 the windows closed?

3 A. I don't recall. I got out of the car also.

4 Q. And in the fall -- what we're estimating to be
5 the fall of 1997, how long were you there?

6 A. About 15 minutes.

7 Q. And then a week ago, it was ten minutes, right?

8 A. Yes.

9 Q. Those are the only three times that you've
10 specifically gone out with the intention of listening to
11 and observing the noise from the LTD docks?

12 A. No. No. I've been out on the property, many
13 times on LTD's property adjacent to the Roti property at
14 night last year during the Christmas season, many times.

15 Q. And what did you hear?

16 A. I heard from time to time some of the trucks
17 going up and down the driveway, but nothing very loud.
18 I could not hear the beepers.

19 Q. Could not hear the beepers?

20 A. No.

21 Q. And I don't mean to be facetious, but I take it
22 you do not have a hearing problem?

23 A. No.

24 Q. You've never been identified as being hard of

1 hearing?

2 A. No.

3 Q. Are you familiar with the manner in which sound
4 moves through space?

5 A. No.

6 Q. Do you know what elements cause sound waves to
7 bend?

8 A. No.

9 Q. Do you know whether it's more or less likely
10 that the noise from the LTD dock by the time it reaches
11 the Roti property is more intense at the second story
12 level than at the first story level?

13 A. No, I'm not aware.

14 Q. I'm showing you what I'm marking for purposes of
15 identification as Complainants' Exhibit 15. It's a fax
16 sheet from David Lothspeich to Jack Voight dated
17 December 1, 1997. I'd ask you to take a look at that
18 and tell me if you've seen that before.

19 A. Yes, I remember seeing this.

20 Q. Did Jack Voight show you a copy of this
21 transmittal from David Lothspeich --

22 A. Yes.

23 Q. -- sometime shortly after December 1, 1997?

24 A. Yes.

1 Q. And Mr. Lothspeich states on his fax cover sheet
2 re, November 21, 1997, letter from the Rotis, please
3 provide a copy of your sound report ASAP.

4 And do you recall Jack Voight showing you a
5 copy of Karen Roti's letter to David Lothspeich dated
6 November 21st, 1997?

7 A. This letter here?

8 Q. Yes.

9 A. Yes.

10 Q. And did you see that sometime during the early
11 part of December, 1997?

12 A. I don't remember the date, but I remember seeing
13 it.

14 Q. Well, just to put it in context, in November
15 you're meeting with Jack Voight and you're talking with
16 Tom Thunder or reviewing Tom Thunder's report and you're
17 trying to get a handle on what Roger Harmon's noise
18 measurements mean.

19 Now, on December 1, Jack Voight gets a letter
20 from David Lothspeich enclosing Karen Roti's letter of
21 November 21, 1997. Now, in early December, do you
22 recall whether Jack Voight showed you Karen Roti's

23 letter?

24 A. Yes, I remember him showing me this.

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1 Q. All right. And I note that the first two
2 paragraphs of Ms. Roti's letter read as follows, this is
3 to inform you -- and this is addressed to David
4 Lothspeich, village of Bannockburn. Dear Dave, this is
5 to inform you we are still being disturbed by noise
6 generated from LTD Commodities. They have traded in
7 their, quote, "yard pig," close quote, for a quieter
8 version with yellow flashing lights all over it. While
9 there has been some improvement, this remains a serious
10 problem for LTD neighbors. We are still disturbed at
11 all hours of the day and night by lights, air horns,
12 warning beepers, vibrations and banging.

13 Did you understand as of early December 1997
14 that despite certain steps LTD had taken to reduce noise
15 from its dock area that Ms. Roti still was complaining
16 about noise from LTD's dock?

17 A. Yes.

18 Q. I'm now showing you what I'm marking for
19 purposes of identification as Complainants' Exhibit 16.
20 It's a letter dated December 5th, 1997, from the village

21 of Bannockburn to Mike Hara signed by a Marvin Berman
22 trustee slash building commissioner. I'm asking you if
23 you've received that letter on or about December 5th,
24 1997?

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1 A. Yes.

2 Q. Did you receive this letter sometime shortly
3 after December 5, 1997?

4 A. Yes.

5 Q. Is this a true and accurate copy of the letter
6 you received from Mr. Berman?

7 A. Yes, I believe it is.

8 Q. Do you see on the second page it states, in
9 addition, I would ask that a representative from LTD
10 Commodities attend the December 8th board meeting to
11 address the issues raised by your neighbor along with
12 the parking of trucks on Lakeside Drive.

13 Do you know whether you attended the meeting
14 held by the village of Bannockburn on December 8th,
15 1997?

16 A. I don't recall, but I think I did, but I'm not
17 absolutely sure.

18 Q. Do you see down there the cc list that, again

19 this, letter was sent to Mr. and Mrs. Roti, Mr. and
20 Mrs. Kaufman and Ms. Leslie Weber?

21 A. Yes.

22 Q. Did you understand that as of December 5th,
23 1997, Mr. and Mr. Roti, Mr. and Mrs. Kaufman and
24 Ms. Leslie Weber still perceived noise from the LTD dock

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1 area as being a problem?

2 A. Yes.

3 Q. Can you describe for the Board just what steps
4 LTD had taken in the approximately 12 months in from the
5 time that you received the first notice -- you'll recall
6 earlier in your testimony you stated that at least by
7 November of 1996, you were aware that one or more
8 neighbors to the north were complaining about noise.
9 Now, by the time we're looking at Deposition Exhibit 16,
10 12 months have gone by. What, if anything, did LTD do
11 during that 12-month period to reduce noise?

12 A. We had set up our good neighbor policy. We have
13 talked to the truck drivers, given them copies of the
14 letters stating -- there were many issues. One of the
15 issues was that trucks were actually driving on the
16 upper parking lot and parking up there, and one

17 specifically, a driver was sitting up there with his
18 engine running and watching TV.

19 So we made it very clear that they couldn't
20 do that any more. They couldn't sit up on the upper lot
21 which was at the same level that the Roti's and the
22 Kaufman's and the other complainants' houses were on.
23 So we made sure that that didn't happen anymore.

24 We discussed with them blowing their horns.

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1 I guess there was some conversations with the actual
2 drivers that -- people have talked to us about the
3 drivers using foul language and screaming across the
4 yard. We've talked to all the drivers about that.

5 We've tried to do something about the
6 releasing of brakes. We changed the yard pig to a lower
7 sounding yard pig I guess. We've made sure that the
8 trucks are staying within the staging areas. They're
9 not going up on top and parking or sitting up there.
10 We've got a guard actually on duty all day making sure
11 that nobody goes up -- that the trucks don't go up in
12 the upper lot.

13 Q. Now, with respect to releasing air from the air
14 brakes, was LTD able to come up with any means,

15 mechanical or procedural, by which noise generated by
16 the release of air from air brakes could be reduced?

17 A. No, not that I know of.

18 Q. And while the new yard pig apparently was
19 quieter while moving about, it didn't have the loud
20 unmuffled sound that people had complained of with
21 respect to the first yard pig, was there anything LTD
22 was able to do to diminish or reduce the noise generated
23 when the yard pig would engage with a semitrailer?

24 A. Yes. There was something about raising the

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1 wheels higher so that it eliminates some of the noise
2 when the fifth wheel connected.

3 Q. Anything else?

4 A. Not that I'm aware of.

5 Q. What, if anything, had LTD done to reduce the
6 noise from the backup warning beepers between November
7 of 1996 and December of 1997?

8 A. Well, we had considered taking them off, and
9 then we were very much concerned that there is liability
10 issues if we had removed those warning beepers, so,
11 therefore, we --

12 Q. Do you have a legal opinion from an attorney

13 discussing the liability issues?

14 A. We're looking at that right now to find out if
15 there is a legal issue.

16 Q. So is it fair to say -- I mean, you just told me
17 that between November of '96 and December of '97, you
18 considered whether you could take off the warning
19 beepers and now two years later, you're still
20 considering that, is that your testimony?

21 A. Yes, it is. That has come to our attention as
22 being one of the most concerning noises. And about a
23 month or two ago, we had removed them and then had put
24 them back on because we were concerned about liability.

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1 Q. How long had you had the warning beepers
2 removed?

3 A. I don't know.

4 Q. Who would know?

5 A. Jack Voight.

6 Q. Do you have an opinion as to what causes the
7 Rotis and the Rosenstocks to feel vibration in their
8 homes?

9 A. No.

10 Q. You're aware that there are bumpers set up along

11 the north retaining wall in LTD's dock area, are you
12 not?

13 A. Yes.

14 Q. And those bumpers are sunk down -- the posts on
15 which those bumpers are fixed, those are set down into
16 the ground, are they not?

17 A. Yes.

18 Q. And have you ever seen a trailer being parked
19 against those bumpers?

20 A. No, I haven't.

21 Q. Do you have an opinion as to whether a trailer
22 being parked against those bumpers at a fast speed could
23 cause the Rotis and the Rosenstocks to feel a vibration
24 in their home?

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1 A. No, I'm not.

2 HEARING OFFICER KNITTLE: Could we go off for a
3 second?

4 (Recess taken.)

5 HEARING OFFICER KNITTLE: We're back on the
6 record continuing direct examination of Mr. Hara.

7 Mr. Hara let me remind you you're still under
8 oath.

9 THE WITNESS: Okay.

10 BY MR. KAISER:

11 Q. Mr. Hara, I'd like to show you what I've marked
12 for purposes of identification as Complainants'
13 Exhibit 17. It's a fax cover sheet from David
14 Lothspeich to Jack Voight date December 8th, 1997. I'm
15 asking you if you've seen this document before.

16 A. Yes.

17 Q. All right. And you'll note that Mr. Lothspeich
18 is essentially faxing to Jack Voight a copy of Marvin
19 Berman's letter to you dated December 5, 1997; is that
20 correct?

21 A. Yes.

22 Q. And the note from Mr. Lothspeich to Jack Voight
23 reads Trustee Berman asked that I fax you the attached
24 letter to make sure that you received it. Please call

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1 and let me know if you will be able to attend tonight's
2 meeting. Then did Jack Voight contact you after he
3 received this letter from David Lothspeich on or about
4 December 8th, 1997?

5 A. Yes, I believe he did.

6 Q. And did you form the opinion that the village of

7 Bannockburn's representatives felt it was important that
8 LTD try to send a representative to a meeting to be held
9 that night, December 8th, 1997?

10 A. Yes.

11 Q. Now, I'm showing you what I'm marking for
12 purposes of identification as Complainants' Exhibit 18.
13 It's a fax transmittal from Tom Thunder to Jack Voight
14 dated December 23rd, 1997, enclosing a draft noise study
15 report. Have you seen this document before?

16 A. Yes, I believe so.

17 Q. And did, in fact, Jack Voight show you
18 Mr. Thunder's second draft of the report sometime in the
19 latter part of December 1997?

20 A. I believe so.

21 Q. And I note that on the fax cover sheet it
22 states, here is my second draft based on our recent
23 meeting. Do you recall whether you participated in the
24 meeting Tom Thunder is referencing?

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1 A. I don't recall.

2 Q. I'm showing you what's been marked for purposes
3 of identification as Complainants' Exhibit 19. It's a
4 letter report from Tom Thunder to Jack Voight dated

5 January 8, 1998. Have you seen that document before?

6 A. Yes, I believe so.

7 Q. And you recognize this to be Tom Thunder's final
8 report concerning the measurements Roger Harmon made in
9 September of 1997, correct?

10 A. Yes.

11 Q. It states at the end of the second paragraph on
12 the first page the noise from these operations has been
13 the subject of concern from neighbors to the north. The
14 chief noise sources include accelerating and idling
15 diesel engines, the release of air from air brakes,
16 metal to metal crash impacts, and the slap impact of the
17 fifth wheel when a pick-up or pull-out procedure is
18 performed.

19 Did you read that?

20 A. Where are you at?

21 Q. The first page, bottom of the second paragraph.

22 A. Yes.

23 Q. And I left out the first sentence which states
24 the operations of this dock -- and that's referring to

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1 the LTD loading dock in Bannockburn, Illinois, is it
2 not?

3 A. Yes.

4 Q. -- include dropping off and picking up of
5 semitrailers with diesel trucks and positioning trailers
6 with the use of a diesel yard pig; is that correct?

7 A. Yes.

8 Q. And, again, that's what we talked about. All of
9 the goods that come into LTD's Bannockburn facility come
10 by diesel tractor and semitrailer?

11 A. I believe the bulk of them do, yes.

12 Q. And similarly the goods that go out, the bulk of
13 those are shipped out by semitrailer?

14 A. Yes.

15 Q. Now, I'd like to direct your attention to the
16 top of page 4 where it has the bold heading of
17 conclusion. Do you see that?

18 A. Yes.

19 Q. And it states the random impact noise events do,
20 however, appear to exceed the state's impulse noise
21 limits. The fifth wheel impact noise tends to generate
22 low frequency noise while the sudden release of air from
23 the air brakes tends to generate high frequency noise.
24 Did you read this portion of Mr. Thunder's report

1 sometime in January of 1998?

2 A. Yes.

3 Q. And what, if any, steps did LTD plan on taking
4 to reduce noise from the sudden release of air from the
5 air brakes?

6 A. I don't know what the final conclusion was, but
7 we had talked about -- one of the suggestions was made I
8 think by one of the complainants that we release the air
9 brakes before they got onto the property which wasn't
10 something you could do. They wouldn't have any brakes
11 coming in.

12 I don't know what they did regarding the air
13 brakes. Regarding the fifth wheel, we had talked to the
14 drivers and companies about them raising -- I don't know
15 what you call the wheels that sit on the ground, to a
16 higher level so that they wouldn't be lifting or
17 dropping them very far.

18 Q. All right. So with respect to the noise from
19 the fifth wheel impact, you altered the height of the
20 trailer essentially?

21 A. Right.

22 Q. But with respect to the air brakes --

23 A. I don't know --

24 Q. -- you explored possibilities, but as you sit

1 here today, you're not aware of anything LTD has done?

2 A. I'm not sure what was done or what wasn't done.

3 I don't know.

4 Q. And, again, with respect to the backup warning
5 beeper, while there was a short experiment with
6 disconnecting that beeper, as we sit here today, LTD is
7 still operating backup warning beepers on trucks and the
8 yard tractor at its Bannockburn facility?

9 A. Yes.

10 Q. I'm showing you what's been marked for purposes
11 of identification as Complainants' Exhibit 20. It's a
12 letter from Schomer & Associates to David Lothspeich
13 dated January 26th, 1998. I'm asking you if you've seen
14 that document previously?

15 A. Yes, I believe I did.

16 Q. Did you receive a copy of this letter sometime
17 in late January or early February 1998?

18 A. I've seen a copy of something like this where he
19 talked about his class of the property. I don't
20 remember if it was this exact letter. This wasn't
21 addressed to me.

22 MR. KOLAR: Just an objection for the record, I
23 don't think you're claiming that the notes on the third
24 page were part of the letter --

1 MR. KAISER: No.

2 MR. KOLAR: -- when Mr. Schomer sent it,
3 correct?

4 MR. KAISER: No. Until those are identified.
5 Does your third page copy have the notes?

6 BY MR. KAISER:

7 Q. I'm showing you what's been marked for purposes
8 of identification as Complainants' Exhibit 21. It's a
9 letter from Marvin Berman to Mike Hara dated
10 February 12th, 1998. Did you receive a copy of that
11 letter on or about February 12th, 1998?

12 A. Yes, I believe I did.

13 Q. And I note that the first sentence states in
14 response to LTD Commodities' apparent violation of noise
15 limits set by the Illinois Pollution Control Board and
16 deficiencies of your study outlined in the January 26th,
17 1998, review by village sound consultant Schomer &
18 Associates, the village is requiring that LTD address
19 these violations and deficiencies immediately. I take
20 it you read that?

21 A. Yes.

22 Q. The first paragraph -- and it references
23 exhibit -- Complainants' Exhibit 20, which is Schomer's

24 letter dated January 26, 1998. Do you recall at the

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1 time you were reading Marvin Berman's letter of
2 February 12th, 1998, which references Schomer's report
3 of January 26, 1998, whether, in fact, you'd seen
4 Schomer's report?

5 A. I don't remember when I would have seen this
6 report. I know there was a report that Schomer put out
7 talking about the classes of the property.

8 Q. And you'll note then, if you direct your
9 attention to Complainants' Exhibit 20, that Dr. Schomer
10 expresses the opinion that LTD Commodities can best be
11 described as, quote, "retail trade dash general
12 merchandise; mail order houses dash retail, which is the
13 standard system for identifying and coding land use
14 activities (SLCUM) code 532 or similar which is
15 classified as a Class B land use by IPCB." Do you see
16 that?

17 A. Yes.

18 Q. And I take it you disagreed with that
19 conclusion?

20 A. Yes. I'm not sure how he came to that
21 conclusion without meeting with us and discussing what

22 we do in our business.

23 Q. Now, you do sell, is it fair to say, household
24 items or is that too general of a classification of what

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1 you sell, you meaning LTD?

2 A. They're not specifically household, no.

3 Q. I mean, I'm just leafing through this and I see
4 products as diverse as a 12-piece kids golf pro set.

5 A. That's correct.

6 Q. A Pac Man portable arcade game; is that right?

7 A. Yes.

8 Q. A deluxe seven-in-one oak game center, is that
9 one of your items?

10 A. Yes.

11 Q. Sugar and spice wall accents?

12 A. Yes.

13 Q. Genuine leather wallets, correct?

14 A. Yes.

15 Q. So these are the types of items you sell, unisex
16 brushed fleece jackets, correct?

17 A. Yes.

18 Q. And as I understood your land use expert's
19 opinion, Alan Kracower, he's going to opine that LTD is

20 neither retail nor wholesale but something in between.

21 Is that your opinion of your --

22 MR. KOLAR: Objection to the Alan Kracower part
23 of the question. I don't think it's appropriate since
24 he hasn't been here to testify yet.

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1 BY MR. KAISER:

2 Q. All right. Do you sell any items --

3 MR. KAISER: I withdraw the question.

4 BY MR. KAISER:

5 Q. Does LTD sell any items retail?

6 A. No.

7 Q. Does LTD ever collect a sales tax on any of the
8 items it sells?

9 A. Rarely.

10 Q. How often does LTD collect sales tax on its
11 sales?

12 A. Maybe 1 percent or less.

13 Q. Now, you wouldn't disagree that LTD is a
14 mail-order house; is that right?

15 A. We're a catalog house.

16 Q. How would you distinguish a catalog house from a
17 mail-order house?

18 A. We sell through a catalog, through the catalog
19 and the internet. Mail order, the interpretation is
20 mostly -- in most cases they're retail. We're not a
21 retail operation. We don't sell to homes whatsoever.

22 Q. I understand you sell only in lots of three or
23 more, right?

24 A. We're selling to businesses only.

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1 Q. And businesses only, but principally you -- what
2 are the ways in which LTD receives its orders? You
3 mentioned over the internet.

4 A. Right. Faxes.

5 Q. Via fax.

6 A. Telephone.

7 Q. Telephone.

8 A. And some from the mail.

9 Q. Some through the mail. And you don't have a
10 showroom in the Bannockburn facility?

11 A. No.

12 Q. The way people see and are made aware of LTD's
13 products is either through the catalog or through the
14 display on the internet; is that correct?

15 A. Yes.

16 Q. But LTD's business, there's no question about
17 it, it's selling goods, correct?
18 A. Yes.
19 Q. I mean, LTD doesn't generate 50 percent or more
20 of it's income by providing freight services, does it?
21 A. No.
22 Q. Do you handle products for catalogs other than
23 LTD?
24 A. No.

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1 Q. So the products that are under your roof in
2 Bannockburn are exclusively LTD's products?
3 A. You'll have to explain what exclusively LTD
4 products is.
5 Q. Well, you don't have -- for instance, Land's End
6 doesn't have a little corner of your warehouse?
7 A. No.
8 Q. No other catalog sale organization leases space
9 from LTD?
10 A. No. No.
11 Q. The LTD facility is devoted to facilitating the
12 sale of goods to its customers?
13 A. Yes.

14 Q. I note that the last portion of the second
15 paragraph on the first page of Schomer's letter report
16 dated January 26, 1998, I believe that's Complainants'
17 Exhibit 20 ,reads as follows --

18 MR. KOLAR: I lost you. Can you direct us to
19 where you're at again?

20 MR. KAISER: Yes. I'm on Schomer's letter,
21 first page, middle of the second paragraph.

22 BY MR. KAISER:

23 Q. The measured levels produced by LTD Commodities
24 as reported in the letter report by Acoustic Associates

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1 Limited also are listed in this table referring to a
2 table on page 2.

3 This table shows that LTD Commodities exceeds
4 the IPCB limits in the 500, 1,000, 2,000 and 4,000 Hz
5 octave bans by one, five, nine and six decibels
6 respectively. At 2,000 Hz the amount by which the
7 regulation is exceeded is large. In the five octave
8 bans where the limit is met, it is met only barely.

9 Do you recall reading Professor Schomer's
10 summary of the results of Tom Thunder and Roger Harmon's
11 noise measurements?

12 A. Yes.

13 MR. KOLAR: Objection. That misstates --
14 because he's applying it to the B to A, and that's not
15 what the January 9th, 1998, report did. So it
16 misstates -- it's --

17 MR. KAISER: You're saying Dr. Schomer misstates
18 Tom Thunder's report?

19 MR. KOLAR: No, my objection is that he read it
20 and implied or specifically said that the Thunder report
21 notes violations at the 500, 1,000, et cetera, levels
22 when that's not what it did because the report was C to
23 A. Schomer's taking it and applying it to B to A and
24 that's his conclusion for B to A.

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1 HEARING OFFICER KNITTLE: With that
2 clarification on the record, do you object to the
3 question being answered?

4 MR. KOLAR: No, as long as that clarification is
5 on the record.

6 MR. KAISER: Could we have the question read
7 back?

8 (Record read as requested.)

9 BY MR. KAISER:

10 Q. And you read that portion of Dr. Schomer's
11 letter sometime by at least the middle of February 1998?

12 A. I read it, but don't agree that it represents
13 the tests that we did.

14 Q. Do you recall what your reaction was when you
15 first read it and Dr. Schomer stated his opinion that
16 LTD was in violation of the Board's numeric standard?

17 A. My reaction was that he was classifying this as
18 a B versus a C and that's not the representation that we
19 have heard.

20 Q. Who had you heard that classification from as of
21 February of 1998?

22 A. Well, originally from Dr. Schomer. He, twice in
23 letters, had sent to us that we were a C operation, and
24 then when we met with Tom Thunder, we had discussed that

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1 we're a C operation. So he's interpreting this thing
2 totally different than we believe LTD to be a C class.

3 Q. In light of -- I mean, I grant that you in
4 February of 1998 had reason to question or disagreed
5 with Dr. Schomer's opinion, but did Dr. Schomer's
6 opinion in any way cause LTD to reconsider the manner in
7 which it was going to address the noise complaints?

8 A. I don't believe so.

9 Q. I'm showing you what I'm marking for purposes of
10 identification as Complainants' Exhibit 22. It's a
11 letter from David Lothspeich to Mike Hara dated
12 February 18th, 1998, and ask you if you've seen that
13 before, Mr. Hara?

14 A. Yes.

15 Q. Did you receive a copy of this letter on or
16 about February 18th, 1998?

17 A. Yes.

18 Q. I note that the first paragraph reads as
19 follows, thank you for meeting with Lake Forest Alderman
20 Marianne Pekarek, P-e-k-a-r-e-k, Lake Forest city
21 manager Bob Kiely, K-i-e-l-y, and me on Monday,
22 February 16th, 1998, to review noise complaints against
23 LTD Commodities by Lake Forest residents. Did you, in
24 fact, meet with those individuals on Monday, February

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1 16th, 1998?

2 A. Yes.

3 Q. It states in the second paragraph that as we
4 discussed during this meeting, LTD is responsible for
5 implementing whatever operational or structural measures

6 are necessary to comply with the standards established
7 by the Illinois Pollution Control Board, paren, (IPCB),
8 close paren, in order to meet the agreed upon April 1,
9 1998, deadline that may be beneficial for our respective
10 consultants to discuss the related issues directly.

11 Was there a discussion during that meeting of
12 LTD's responsibility for implementing whatever
13 operational or structural measures were necessary to
14 comply with the standards?

15 A. There was a discussion that we were going to
16 look into doing whatever we can to resolve their issues.

17 Q. Do you remember whether during the course of
18 that meeting you challenged Dr. Schomer's conclusion
19 that Thunder's data demonstrated LTD was in violation of
20 the Board's standards?

21 A. I don't recall.

22 Q. Do you see again that on the cc list once again
23 Mr. and Mrs. Roti, Mr. and Mrs. Kaufman and Ms. Leslie
24 Weber are copied on this letter?

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1 A. Yes.

2 Q. Did you take personal responsibility for
3 developing a response, or did you delegate that

4 responsibility to Jack Voight?

5 A. I believe that with Jack myself and I think that
6 our attorneys handled the response to the village.

7 Q. And your attorney at that time was, among
8 others, Mr. Kolar?

9 A. Yes.

10 Q. I'm showing you what's been marked for purposes
11 of identification as Complainants' Exhibit 23. It's a
12 letter from Schomer & Associates to Tom Thunder dated
13 February 27th, 1998. I'm asking if you've seen that
14 before?

15 A. I don't remember if I've seen this or not. I
16 don't recall.

17 Q. I note that in paragraph 3 Dr. Schomer sets
18 forth a number of mitigation alternatives. Do you see
19 that?

20 A. Yes.

21 Q. Three-A, putting absorbing material on the north
22 wall above all the doors and on any other open wall
23 areas. To your knowledge, Mr. Hara, has LTD put
24 absorbing material on the north wall of its Bannockburn

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1 facility above all the dock doors and on any other open

2 wall areas?

3 A. No.

4 Q. Has LTD put up a barrier wall that would be
5 absorbing on its south side and located above the
6 retaining wall at the north end of LTD's dock facilities
7 in Bannockburn?

8 A. No.

9 Q. Has LTD put absorbing material on the south side
10 of the retaining wall located at the north end of LTD's
11 dock area?

12 A. No.

13 Q. I'm showing you what I'm marking for purposes of
14 identification as Complainants' Exhibit 24. It's a
15 printout of two E-mail messages from John Sejud,
16 S-e-j-u-d ,to Jack Voight, the first dated Tuesday,
17 March 3rd, the second dated Thursday, March 5th, 1998.
18 Have you seen these before?

19 A. No, I don't recall seeing them.

20 Q. Do you remember talking with Jack Voight in
21 early May of 1998 about the results of the investigation
22 Mr. Sejud had performed in an effort to find ways to
23 reduce dock noise?

24 A. I'm sorry. Could you repeat the question?

1 Q. The question was, in essence, did you talk with
2 Jack Voight about the information he had received from
3 John -- is it Sejud?

4 A. Sejud, yes.

5 Q. Sejud, S-e-j-u-d?

6 A. Uh-huh.

7 Q. Did you talk with Jack about that information?

8 A. No. I don't recall that we talked about these,
9 rubberizing the dock bumpers or anything like this.

10 Q. And John Schimel, he's one of the dock
11 supervisors, is he not?

12 A. He's one of the supervisors in the warehouse,
13 yes.

14 Q. And how about Harri, H-a-r-r-i, Broman,
15 B-r-o-m-a-n?

16 A. Yes.

17 Q. What is his position within LTD?

18 A. He's a receive -- he's an inventory manager.

19 Q. Is it fair to say that Mr. Schimel and
20 Mr. Broman were being brought into LTD's internal
21 discussions to try to find a way to reduce dock noise?

22 A. I don't know how Jack was using them.

23 Q. I'm showing you what I'm marking for purposes of
24 identification as Complainants' Exhibit 25. It's a

1 letter from you to Marvin Berman, trustee slash building
2 commissioner, village of Bannockburn dated March 9th,
3 1998. Is this a true and accurate copy of the letter
4 you wrote to Mr. Berman on or about March 9th, 1998?

5 A. Yes.

6 Q. I note that in one of the paragraphs you advise
7 Mr. Berman, quote, "the Christmas seasons of 1996 and
8 1997 did put us into a situation of increased volume
9 that required LTD to increase overtime hours and
10 increase second shift volumes."

11 Was that a true statement that, in fact,
12 increased volume required LTD to increase overtime hours
13 and increase second-shift volumes at the Bannockburn
14 facility in 1996 and 1997?

15 A. I believe it did.

16 Q. And I note it goes on to state that LTD
17 projected the Aurora facility would open during the
18 summer of 1998. Did the Aurora facility open in the
19 summer of 1998?

20 A. No. It didn't open until probably October,
21 November. We had occupancy -- we had the building in
22 our possession as of January, but we could not operate
23 it in shipping until October.

24 Q. Was that the latter part of October 1998?

1 A. Yes, I believe so, middle October.

2 Q. Finally, you close by writing, quote, "we are
3 confident that these steps --

4 MR. KOLAR: Objection. I just realized that
5 this isn't by Mike.

6 HEARING OFFICER KNITTLE: Sustained.

7 THE WITNESS: Yeah, this is by Jack.

8 MR. KAISER: My mistake.

9 THE WITNESS: Yes, I just realized that.

10 BY MR. KAISER:

11 Q. But the statements that Jack Voight -- and I
12 apologize and I didn't mean to mislead you or the Board.
13 I take it the statement though that Jack Voight included
14 in the letter to Marvin Berman that you just testified
15 to that there was this increased volume and that
16 required LTD to increase overtime hours that, in fact,
17 was a true statement?

18 A. Yes.

19 Q. I am showing you what I'm marking for purposes
20 of identification as Complainants' Exhibit 26. It's a
21 letter from the Huff Company to Jack Voight dated
22 March 10th, 1998. I want to know if you've seen this

23 before.

24 A. Yes.

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1 Q. Did you and Jack Voight discuss in March or,
2 more generally, the spring of 1998 the cost and
3 feasibility of building a noise wall along some portion
4 of the LTD property?

5 A. We had discussions of it, yes.

6 Q. And in connection with those discussions, did
7 Jack Voight show you this letter proposal from the Huff
8 Company?

9 A. We discussed this number. I don't remember if I
10 saw this particular letter.

11 Q. Do you recall whether you ever met with any
12 representatives of the Huff Company, either David
13 Mitchell or Steve Mitchell?

14 A. No, I don't believe I have.

15 Q. I'm now showing you what's been marked for
16 purposes of identification as Complainants' Exhibit 27,
17 which is a letter from Karen Roti to Mike Hara dated
18 March 21, 1998. Did you actually receive a signed copy
19 of that letter on or about March 21st, 1998?

20 A. Yes.

21 Q. Did you understand that as of March 21st, 1998,
22 Tony and Karen Roti still perceived noise from LTD's
23 dock area to be a nuisance?

24 A. Yes.

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1 Q. I'm showing you what's been marked for purposes
2 of identification as Complainants' Exhibit 28. It's a
3 letter from you to Karen Roti dated April 16th, 1998.
4 Did you, in fact, send the original of this letter to
5 Karen Roti on or about April 16th, 1998?

6 A. Yes.

7 Q. And was it true that we, meaning LTD, are
8 currently reviewing the results of extensive sound
9 studies during the month of March and are putting
10 together a plan of action which we'll advise both you
11 and the village of Bannockburn at the first available
12 meeting in May. Was LTD, in fact, working on a plan of
13 action in April of 1998?

14 A. Yes.

15 Q. Were there any new elements to that plan of
16 action?

17 A. Not that I could recall.

18 Q. I'm showing you what's been marked for purposes

19 of identification as Complainants' Exhibit 29. It's a
20 letter from Karen Roti to you dated April 20th, 1998.
21 I'll ask you to take a look at that. Did you receive
22 the original of this letter on or about April 20th,
23 1998?
24 A. Yes.

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1 Q. Did you understand that as of April 20th, 1998,
2 Karen Roti still felt that the noise from LTD's dock
3 area was a nuisance?

4 A. I was aware that she still was not happy, yes.

5 Q. Well, did you read her second paragraph where
6 she states I hope you understand that I am taking these
7 issues very seriously. They do and will continue to
8 have a serious impact on the quality of my life, my
9 family and my neighbors. Did you read that second
10 paragraph --

11 A. Yes.

12 Q. -- when you received the letter?

13 And so you understood, at least, that she was
14 taking these issues seriously, didn't you?

15 A. Yes.

16 Q. And that she felt the noise from the dock was

17 having a serious impact on the quality of her life,
18 right?

19 A. Yes.

20 Q. And the quality of life of her family?

21 A. Yes.

22 Q. I'm showing you what's been marked for purposes
23 of identification as Complainants' Exhibit 30. It's a
24 fax transmittal sheet from David Lothspeich to Mike Hara

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1 and Jack Voight dated April 23rd, 1998, and it attaches
2 a letter from Schomer & Associate to David Lothspeich
3 dated March 16th, 1998.

4 Mr. Hara, did you receive a copy of this fax
5 on or about April 23rd, 1998?

6 A. I don't recall if I received this or not.

7 Q. You're not certain if you've ever received this
8 letter?

9 A. No. I don't recall it.

10 Q. I note that on page 2 of Dr. Schomer's letter
11 that was sent to the village of Bannockburn and
12 forwarded to LTD by David Lothspeich that Dr. Schomer
13 writes as follows, and again this being March 16th,
14 1998, it is now time to mitigate the known measured

15 noise impact. The simplest means to reduce the noise
16 impact is to install noise mitigating structures like
17 barriers and to install sound absorbing materials and/or
18 to eliminate nighttime operations, paren, (after
19 10 p.m.), close paren, so that LTD Commodities would
20 only need to meet the IPCB daytime limits. A barrier
21 wall would go on the present retaining wall, and
22 absorbing material would be placed on the south side of
23 the LTD building, the north side of the retaining wall
24 and the north side of the barrier wall?

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1 MR. KOLAR: I have an objection that there's no
2 foundation David Lothspeich sent this and his question
3 says David Lothspeich sent this to LTD, et cetera, so
4 it's improper then to read a lengthy passage from the
5 letter when he hasn't established the foundation.

6 MR. KAISER: Well, let me ask -- if I may just
7 follow-up a couple of questions in aid. I want to see
8 if he --

9 HEARING OFFICER KNITTLE: Okay. We'll address
10 your -- if this doesn't rectify, you can move to strike.

11 BY MR. KAISER:

12 Q. Did you at any time, Mr. Hara, become aware that

13 Dr. Schomer was recommending LTD install noise
14 mitigation structures?
15 A. No, I wasn't aware of this.
16 Q. You weren't aware of this letter?
17 A. I don't believe so, no.
18 Q. Jack Voight never told you what Paul Schomer was
19 recommending?
20 A. Again, I don't recall this letter. There has
21 been many discussions regarding barrier walls between
22 Schomer and Thunder.
23 Q. And you're not certain whether you've seen this
24 letter?

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1 A. No.
2 Q. Now, you --
3 MR. KOLAR: Can I strike that lengthy question?
4 HEARING OFFICER KNITTLE: Are you moving to
5 strike the reading which is page 3 of this exhibit
6 starting with the simplest means to -- no -- it is now
7 time to mitigate the known measure noise impact?
8 MR. KOLAR: Right.
9 MR. KAISER: Do you have a response to that
10 Mr. Kaiser? It's the passage you read.

11 MR. KAISER: Yeah, I recognize that. I'm just
12 trying to see if there's anything within the document
13 that would allow my to --

14 BY MR. KAISER:

15 Q. What is -- do you know what the fax number is --

16 HEARING OFFICER KNITTLE: Hold on a second. Is
17 this your response?

18 MR. KAISER: Yes.

19 HEARING OFFICER KNITTLE: Are you going to
20 respond or are you seeking leave to ask some further
21 questions before I rule on this?

22 MR. KAISER: What I would like to do is
23 determine whether, in fact, this document -- whether
24 Mr. Hara can tell us whether this document was received

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1 by LTD. And what I'd like to do is ask him whether the
2 fax number that's shown up at the top is, in fact, one
3 of LTD's fax numbers.

4 HEARING OFFICER KNITTLE: Do you have any
5 response?

6 MR. KOLAR: I don't have an objection to him
7 asking that question.

8 HEARING OFFICER KNITTLE: Is that going to alter

9 your motion to strike if it is an LTD fax number?

10 MR. KOLAR: I don't think so because he said he
11 doesn't recall seeing it, so I think it's improper for
12 Steve just to read lengthy passages into the record.

13 HEARING OFFICER KNITTLE: Yeah, I agree and I'm
14 going to sustain that motion to -- grant that motion to
15 strike and instruct the Board that the passage starting
16 with, it is now time to mitigate the known, and ending,
17 I think with talk of the barrier walls be stricken. You
18 can go ahead and ask the fax question.

19 MR. KAISER: Thank you, if I may.

20 BY MR. KAISER:

21 Q. Do you see, Mr. Hara, at the top of that
22 document, which is Complainants' Exhibit 30, the fax
23 cover sheet from Lothspeich to you and Mr. Voight. That
24 fax number, (847) 945-8496, is that one of LTD's fax

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1 number?

2 A. What fax number?

3 Q. At the top, the fax confirmation. I'm just
4 trying to determine if that's Bannockburn sending number
5 or if that's your receiving number?

6 A. I don't believe that's our number, but I don't

7 know what that number is.

8 Q. If I were to send you a fax, what number would
9 you tell me to send it to?

10 A. 604-7627.

11 Q. Thank you. Now, please correct me if I'm wrong,
12 but is it chief operating officer?

13 A. Yes.

14 Q. Chief operating officer of LTD commodities, and
15 as I understand it, the president of LTD is
16 Mr. Leibowitz, correct?

17 A. Right.

18 Q. And ultimately he's the person you report to,
19 right?

20 A. Yes.

21 Q. And if you recall your deposition testimony
22 correctly, when you were served with a copy of the
23 complaint in this action, at that point you told
24 Mr. Leibowitz about the complaints from the neighbors;

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1 is that right?

2 A. Yes.

3 Q. But other than that one communication with
4 Mr. Leibowitz, you've pretty much left him out of this

5 noise issue; is that right?

6 A. Yes.

7 Q. And really the buck stops with you on this,

8 right?

9 A. Yes.

10 Q. And if you decided that a noise wall was

11 required, you would have the authority to order a wall

12 built, right?

13 A. Yes.

14 Q. And as you sit here today, you're not persuaded

15 a noise wall is either required by law or even, if not

16 required, appropriate; is that right?

17 A. Yes.

18 Q. And you've talked with Jack Voight about the

19 decision whether to build a noise wall?

20 A. Yes.

21 Q. And you've talked with Tom Thunder about whether

22 to build a noise wall?

23 A. Yes.

24 Q. And, in part, in your discussions with

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1 Mr. Voight and Mr. Thunder, you've considered what Paul

2 Schomer says about a noise wall?

3 A. Yes.

4 Q. And I take it you've probably even given some
5 brief consideration as to what Illinois Environmental
6 Protection Agency's noise advisor, Greg Zak, thinks
7 about a noise wall; is that correct?

8 MR. KOLAR: Objection, foundation as to whether
9 he knows --

10 BY MR. KAISER:

11 Q. Do you know who Greg Zak is?

12 A. I know the name. I don't know -- I know he's
13 involved with this case.

14 Q. All right. But at least the village of
15 Bannockburn's noise consultant, Paul Schomer, you knew
16 he was involved in this case?

17 A. Yes.

18 Q. You've seen letters from Paul Schomer?

19 A. Yes.

20 Q. You saw the -- first he says it's a C and then
21 he says it's a B class, right?

22 A. Right.

23 Q. And in the January of '98 letter he says LTD is
24 in violation -- they're a Class B and they're in

1 violation of the Class B standards, right?

2 A. Yes.

3 Q. What you're telling me is that on the issue of
4 the noise wall, to the best of your knowledge, neither
5 Mr. Voight nor Mr. Thunder brought to your attention
6 Dr. Schomer's recommendations as set forth in his
7 March 16th, 1998, letter?

8 A. I told you I don't recall if he did or didn't,
9 but I don't remember seeing this letter ever.

10 Q. Well, now, about ten minutes ago I read a
11 lengthy portion of this letter into the record. You
12 recall that, right?

13 A. Yes.

14 Q. And you understood that Mr. Knittle, the Hearing
15 Officer, struck my reading, right?

16 A. Yes.

17 Q. But you had a chance as I was reading it, I
18 presume, to follow along with the text of Dr. Schomer's
19 letter of March 16th, 1998?

20 A. Yes.

21 Q. And did anything that you read while you were on
22 the stand here today cause you to reconsider your
23 position with respect to the noise wall?

24 A. As far as putting it in?

1 Q. Yes.

2 A. No.

3 Q. So if you weren't aware of Dr. Schomer's
4 recommendation in April of 1998 when David Lothspeich
5 appears to have faxed a copy of Dr. Schomer's letter and
6 recommendation to both you and Mr. Voight, you are this
7 afternoon, aware of what Dr. Schomer was recommending as
8 far back as March of 1998?

9 A. Yes.

10 Q. And you've had a chance, however briefly, to
11 Dr. Schomer's statements and recommendations?

12 A. Very briefly.

13 Q. And at least in the moment you've had to review
14 that, you're rejecting those; is that correct?

15 A. Yes.

16 HEARING OFFICER KNITTLE: Sir, what are you here
17 for?

18 MR. HARMON: I'm here for -- it's a hearing on a
19 noise problem.

20 HEARING OFFICER KNITTLE: You are in the right
21 room. This is the hearing.

22 MR. HARMON: LTD Commodities?

23 HEARING OFFICER KNITTLE: Yes, Roti, Rosenstock
24 and Weber versus LTD Commodities. What's your name,

1 sir?

2 MR. HARMON: Roger Harmon.

3 MR. KAISER: If we could just go off the record
4 for a second.

5 HEARING OFFICER KNITTLE: Let's go off the
6 record for a second.

7 (Discussion had off the record.)

8 HEARING OFFICER KNITTLE: I just want it on the
9 record -- his name again?

10 MR. KOLAR: Roger Harmon.

11 HEARING OFFICER KNITTLE: Roger Harmon, he is
12 going to be the next witness for the complainants?

13 MR. KAISER: Yes.

14 HEARING OFFICER KNITTLE: And neither party
15 wants to move to exclude this witness while the other
16 witness, Mr. Hara, is testifying?

17 MR. KOLAR: Correct.

18 HEARING OFFICER KNITTLE: Mr. Kaiser?

19 MR. KAISER: Yes, I agree. I don't need to
20 exclude him. I'm not asking you to exclude Mr. Harmon.

21 HEARING OFFICER KNITTLE: You can continue your
22 examination then of Mr. Hara. I should have noted also
23 for the record that after the lunch break, there are

24 still no members of the public here nor are there

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1 anybody else here accept for Mr. Hara and the new
2 witness who you will be testifying.

3 BY MR. KAISER:

4 Q. Mr. Hara, I'm now going to show you what's been
5 marked for purposes of identification as Complainants'
6 Exhibit 31. It's a letter from Tom Thunder to Jack
7 Voight dated May 19th, 1998. Did you ever see a copy of
8 that letter?

9 A. Yes, I believe I have.

10 Q. Do you recall whether it was on or about
11 May 19th, 1998?

12 A. I don't recall the date.

13 Q. Would it have been in that rough time frame,
14 spring of 1998?

15 A. I guess so.

16 Q. And, again, this indicates that at that time
17 LTD, at least in the person of Jack Voight, was
18 considering whether it was appropriate to construct a
19 noise wall; is that right?

20 A. Yes.

21 Q. And you also, as the final decision-maker, were

22 considering whether to construct a noise wall; is that
23 right?

24 A. Yes.

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1 Q. And you don't recall in particular whether you
2 considered the information contained in Mr. Thunder's
3 letter of May 19th in deciding whether to build a noise
4 wall?

5 A. This was part of the information that we were
6 putting together to make that decision, yes.

7 Q. All right. So you did consider it; is that
8 right?

9 A. Yes.

10 Q. And I note that that letter states the budget
11 figure of the Huff Company was based on a 15 foot high
12 by 250 feet long barrier. This figure is complete and
13 includes engineering support, panels and installation.
14 Using a budget figure of \$42 a square foot, it appears
15 that the LTD barrier would run about \$120,000; is that
16 correct?

17 A. Yes.

18 Q. Now, I'm showing you what's about to be marked
19 for purposes of identification as Complainants'

20 Exhibit --

21 HEARING OFFICER KNITTLE: 32.

22 BY MR. KAISER:

23 Q. -- 32, a letter from Tom Thunder to Jack Voight
24 dated June 5, 1998. I'm showing you that and asking you

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1 if you saw that in June of 1998?

2 A. Yes.

3 Q. And I note that it states based on a 375 foot
4 long barrier that maintains a 13 foot height relative to
5 the grade level of the staging area and an absorptive
6 side with long-term weather protection, I estimate the
7 cost to be \$115,000. Was this one of the documents you
8 considered in determining whether or not to build a
9 noise wall?

10 A. Yes.

11 Q. I'm now showing you what's been marked for
12 purposes of identification as Hara -- Complainants'
13 Exhibit 33, a letter from Michael Hara to Mike Grutza,
14 G-r-u-t-z-a, president, village of Bannockburn dated
15 June 29th, 1998. Is this, in fact, a true and accurate
16 copy of a letter you sent to Mr. Grutza on or about
17 June 29th, 1998?

18 A. Yes.

19 Q. And I note that the letter states Jack Voight
20 and I held a meeting with Mr. and Mrs. Roti on Friday,
21 June 12th in an attempt to resolve their complaint
22 regarding LTD's operations.

23 Did you, in fact, meet with Jack Voight and
24 Mr. and Mrs. Roti on Friday June 12th, 1998?

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1 A. I believe we did.

2 Q. As you sit here today, do you have a clear
3 recollection of a meeting with --

4 A. Yes.

5 Q. -- Mr. and Mrs. Roti?

6 A. Yes.

7 Q. It goes on to state, we advised the Rotis of the
8 many new policies and procedure that LTD would be
9 conducting to help resolve the situation. The policies
10 and procedures are as follows, and then you list the
11 policies and procedures one through four; is that right?

12 A. Yes.

13 Q. The final paragraph -- not the final, but the
14 next paragraph states, we also advised the Rotis that we
15 have researched into building a wall that will be

16 approximately 100 to 150,000 to install. All of the
17 contractors that we contacted would not guarantee the
18 noise level would be reduced to the Roti's satisfaction;
19 therefore, we do not plan to pursue this.

20 And was that, in fact, the conclusion you had
21 reached by June 29th of 1998?

22 A. Yes.

23 Q. And how did you -- first off, other than Tom
24 Thunder, who did you talk with about performance of the

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1 noise wall?

2 A. Tom Thunder was the only person I've talked to.

3 Q. And it was the conversations with Tom Thunder
4 that led you to the conclusion that we could not
5 guarantee the noise level would be reduced to the Roti's
6 satisfaction?

7 A. Plus the fact that we -- that we were not in
8 violation of anything and also the fact that this was
9 going to cost in excess of \$150,000 to build a wall.

10 Q. Now, I don't mean to tell LTD how to spend its
11 money, but LTD is sitting on a piece of property
12 that's -- do you have an idea of what the fair market
13 value of the LTD property is today?

14 A. No, I don't.

15 Q. All right. But you bought the northern parcel
16 with the existing warehouse back in the mid-'80's for
17 6.6 million, right?

18 A. Yes.

19 Q. And then what did you pay for the south parcel?

20 A. 3.9.

21 Q. 3.9 million. So we're about at 10.6 million
22 right there, right? And then it was your testimony that
23 the warehouse addition was an additional almost
24 2 million?

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1 A. Yes.

2 Q. Approximately \$13 million piece of property and
3 building, if we use somewhat dated numbers, right, not
4 accounting for appreciation over the last five years; is
5 that right?

6 A. Go ahead.

7 Q. Well, are my figures right or wrong?

8 A. Go ahead. I'm following you. Go ahead.

9 Q. All right. I take it you agree with those
10 figures, right?

11 A. The cost that you pointed out, yes.

12 Q. And this noise wall, they're telling you it's
13 going to cost as much as maybe 150,000, and price alone
14 was the reason you decided not to build it?

15 A. No. It was a combination of issues. One was
16 that our sound experts told us that the Rotis still
17 wouldn't notice any difference and be satisfied that
18 this would take care of any concerns they had.
19 Secondly, there was a cost, and, thirdly, we're not in
20 violation with anything to put out that kind of money.
21 And the cost that we're hearing now is not \$150,000.
22 It's as much as \$300,000.

23 Q. Well, who are you hearing that cost from?

24 A. Through Jack Voight.

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1 Q. So you don't know where Jack is getting that
2 information?

3 A. I believe he's talking to the various
4 contractors that we've been investigating with.

5 Q. And has Tom Thunder ever come back to you and
6 said, gee, Mr. Hara, I'm sorry. I think I misled you.
7 I think the noise wall would actually reduce noise
8 significantly?

9 A. No.

10 Q. Did you get the sense after your meeting with
11 the Rotis in late June of 1998 that they were
12 dissatisfied with LTD's efforts to reduce noise?

13 A. Yes.

14 Q. I'm showing you what's been marked for purposes
15 of identification as Complainants' Exhibit 34. It's a
16 copy of the complaint in this matter with a cover sheet
17 signed by Anthony and Karen Roti dated July 18th, 1998.
18 Did you receive a copy of the complaint sometime in July
19 or August of 1998?

20 A. Yes.

21 Q. I'm showing you what I'm marking for purposes of
22 identification as Complainants' Exhibit 35. It's a
23 letter from Tom Thunder to Jack Voight dated
24 September 30th, 1998.

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1 Again, the subject generally is the noise
2 wall and whether or not a noise wall would reduce
3 transmission of noise from LTD's dock area to the
4 residents to the north. Do you recall whether Jack
5 Voight forwarded a copy of Tom Thunder's September 30th,
6 1998, letter to you?

7 A. I believe I've seen this letter.

8 Q. Do you see towards the middle of what's the
9 first full paragraph, in critical cases, we recommend a
10 second opinion where another noise consultant would be
11 given the data and asked to arrive at an independent
12 assessment. If the two assessments are within a couple
13 of DB, then you ought to expect good confidence.

14 Do you understand what Mr. Thunder was
15 talking about there?

16 A. No.

17 Q. Did you ever call Mr. Thunder and say, Tom, what
18 are you talking about here in this letter of
19 September 30th?

20 A. No. Jack was handling this with him.

21 Q. But ultimately it was your decision whether or
22 not to build the wall, right?

23 A. Yes.

24 Q. Then it's my understanding of your testimony

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1 this afternoon you didn't fully understand what
2 Mr. Thunder was talking about in his letter of
3 September 30th; is that accurate?

4 A. Yes.

5 Q. I'm showing you what I'm marking for purposes of

6 identification as Complainants' Exhibit C36. It's noise
7 calculations performed by Tom Thunder in an effort to
8 determine the extent to which a noise wall would reduce
9 noise transmission from LTD's dock area to the Roti
10 property. Did you ever see this document before today?

11 A. I don't recall this one, no.

12 Q. Do you ever recall a conversation with Tom
13 Thunder where he told you, I've run some numbers and I
14 think I can tell you approximately to what degree a
15 noise wall would reduce noise transmission?

16 A. We've discussed if the wall would reduce noise
17 transmission, yes.

18 Q. And did Mr. Thunder ever tell you the results of
19 his effort to quantify just how much or how effective a
20 noise wall would be, to what degree it would reduce
21 noise transmission from LTD's dock area to the residents
22 to the north?

23 A. No. No. The only thing he said was that, you
24 know, decibels are a technical terminology, that the

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1 people would not appreciate the value of a wall being
2 put up.

3 MR. KAISER: Let the record reflect we're

4 hearing a backup warning beeper.

5 BY MR. KAISER:

6 Q. I'm showing you what's been marked for purposes
7 of identification as Complainants' Deposition
8 Exhibit 37. It's a figure showing LTD Corporation.
9 It's a one-page figure showing LTD Corporation in
10 relation to the Roti, Rosenstock and Weber households.
11 Do you see where LTD is located on this document?

12 A. Yes.

13 Q. Could I ask you, with the highlighter, to trace
14 the footprint of LTD's existing structure?

15 A. (Witness complies.)

16 MR. KOLAR: Just for the record, while he's
17 doing that, are you representing that these little
18 footprints of the houses are the three complainants'
19 houses.

20 MR. KAISER: To the best of my understanding,
21 yes.

22 HEARING OFFICER KNITTLE: And which --

23 MR. KOLAR: I think I question him on that. I
24 think he's in error on one of them.

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1 MR. KAISER: I won't go that far, but let's get

2 LTD on there.

3 THE WITNESS: You're asking me to trace our
4 building.

5 MR. KAISER: Yeah, trace LTD's building.

6 HEARING OFFICER KNITTLE: Just for the record,
7 which way is north on this?

8 THE WITNESS: North is toward the houses. The
9 building is to the south.

10 MR. KAISER: The building is south and north is
11 pointing -- if LTD is at the bottom, then north is at
12 the top of the page.

13 BY MR. KAISER:

14 Q. And could you, Mr. Hara, either with the yellow
15 marker or with the pen I'm handing you, show me where it
16 was you stood with Mr. Voight last week at approximately
17 9 p.m. to listen to LTD dock noises?

18 A. (Witness complies.)

19 Q. And could you, in some way with this pen,
20 perhaps indicate that that was where you stood in
21 October of '99, maybe note it 10/99?

22 A. October of -- just now?

23 Q. It would have been just last month, yeah, so it
24 would be 10/99. And if you could show me on this

1 diagram where it was you mentioned the two times that
2 you drove over to the vicinity of the Roti, Weber and
3 Rosenstock residences, where it was that you parked
4 your car and where it was you got out and listened to
5 the noise?

6 A. This is the road that goes in front of their
7 house?

8 Q. Yes.

9 A. (Witness complies.)

10 Q. And those again as best we can determine was
11 probably 1997; is that right?

12 A. I can't recall, yes, probably.

13 Q. Could you just put with the pen, 1997?

14 A. (Witness complies.)

15 Q. And just indicate, because we may have other
16 people mark this, if you could put your initials MH by
17 those locations?

18 A. (Witness complies.)

19 Q. And for the Board's benefit, although there will
20 be more testimony in this regard, the dock areas are
21 located along the entire essentially three-quarters of
22 the north face of LTD's building, right?

23 A. It's approximately right, yes.

24 Q. And this little area sticking out on the west

1 side, those are the offices, right?

2 A. Yes.

3 Q. And when we've talked about a parking lot, where
4 until LTD posted a guard, trucks would drive up into the
5 north parking lot, that's this area just below the
6 property line, correct?

7 A. Yes.

8 Q. And you could see on this diagram where it
9 indicates Lake Forest and Bannockburn and that hard
10 yellow line is apparently the municipal border; is that
11 right?

12 A. Yes.

13 MR. KAISER: If I may just have a minute,
14 Mr. Knittle, to review my notes.

15 HEARING OFFICER KNITTLE: Let's off the record
16 for a second.

17 (Discussion had off the record.)

18 BY MR. KAISER:

19 Q. Mr. Hara, now back to that issue of just what it
20 is LTD does. LTD does not own any semitractors; is that
21 correct?

22 A. That's correct.

23 Q. LTD does not own any semitrailers; is that
24 correct?

1 A. That's correct.

2 Q. LTD does not employ any long-haul truck drivers;
3 is that correct?

4 A. That's correct.

5 Q. LTD does not employ the driver of the yard
6 spotter or yard pig; is that correct?

7 A. That's correct.

8 Q. LTD does not lease its warehouse capacity to any
9 other entities; is that correct?

10 A. That's correct.

11 Q. LTD's principal revenues are derived by the sale
12 of the products listed either in its catalog or on its
13 web site; is that correct?

14 A. Yes.

15 Q. If LTD stops selling these products tomorrow,
16 would it have any other revenue sources?

17 A. No.

18 Q. LTD does not manufacture anything at its
19 Bannockburn facility?

20 A. That's correct.

21 Q. LTD does not contract with other catalog houses
22 to forward freight on their behalf?

23 A. No.

24 Q. The operations that take place at the

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1 Bannockburn facility are all in direct support of LTD's
2 work as a sales organization; is that correct?

3 A. Yes.

4 Q. When LTD was applying to the village of
5 Bannockburn to expand the warehouse facility back in '87
6 and '88, 1987 and 1988 --

7 A. Yes.

8 Q. -- it submitted plans that talked about a
9 warehouse expansion, did it not?

10 A. Yes.

11 Q. And in the course of your deposition testimony
12 when we talked about where the goods were stored, where
13 orders were picked, you routinely used the expression
14 the warehouse, did you not?

15 A. Yes.

16 Q. And that big area that if we look at that graph,
17 I mean, this essential cube with the bubble on the south
18 end, that is principally warehouse space, is it not?

19 A. It's packaging and distribution warehouse space,
20 yes.

21 Q. All right. And you have employees who are
22 described as warehouse supervisors, correct?

23 A. Yes.

24 Q. Do you have anyone employed by LTD whose title

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1 is freight forwarding supervisor?

2 A. No.

3 Q. Do you have anyone employed by LTD whose job it
4 is to sell freight forwarding services to entities other
5 than LTD?

6 A. No.

7 Q. When LTD submitted plans for expanding its
8 facility in 1994 and 1995, again, the architects
9 routinely refer to those plans as plans for the
10 warehouse expansion, did they not?

11 A. Yes.

12 Q. And when LTD talked with the village of
13 Bannockburn about what it was intending to do by way of
14 expansion in 1994, it told the village of Bannockburn it
15 wanted to expand its warehouse; is that right?

16 A. Yes.

17 Q. And ultimately the village of Bannockburn
18 permitted LTD to construct an addition to its warehouse

19 facility, did it not?

20 A. Yes.

21 MR. KAISER: Thank you, Mr. Hara. I have no
22 further questions at this time.

23 HEARING OFFICER KNITTLE: Let's go off for a
24 second.

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1 (Discussion had off the record.)

2 (Recess taken.)

3 CROSS-EXAMINATION

4 by Mr. Kolar

5 Q. Mike, let me show you Respondent's Exhibit 88,
6 and in the middle here above the sticker at 88, is that
7 the LTD facility?

8 A. Yes, it is.

9 Q. And to the left side sort of the darker roof,
10 that's the original building built by FMC?

11 A. Yes, it is.

12 Q. And to the right that's the 1987 addition?

13 A. That's correct.

14 Q. And to the right of the sticker, this street
15 going north and we see kind of a little circle here,
16 that's Lakeside Drive?

17 A. Yes.
18 Q. Does LTD own Lakeside Drive?
19 A. No.
20 Q. Is that public?
21 A. Yes.
22 Q. And this is Route 22 to the south, correct?
23 A. Right.
24 Q. And we have the tollway directly west, right?

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1 A. Yes, and the ramp where the tollbooth is is just
2 adjacent to the LTD property.
3 Q. Right. We'll look at the 1999 one, but to the
4 southwest of the LTD building, is there a tollbooth?
5 A. Yes.
6 Q. And that's shown here on Exhibit 88 as well,
7 right?
8 A. Yes.
9 Q. So trucks that come to your facility and leave
10 your facility they necessarily have to use Route 22?
11 A. Yes.
12 Q. And Lakeside Drive?
13 A. Right.
14 Q. And would it be accurate to state that all

15 revenues generated from the Bannockburn facility are
16 connected to trucks bringing the product to the building
17 and trucks taking the product away?

18 A. 100 percent.

19 MR. KAISER: Objection.

20 HEARING OFFICER KNITTLE: Objection, Mr. Kaiser?

21 MR. KAISER: No. I withdraw it.

22 HEARING OFFICER KNITTLE: Proceed.

23 BY MR. KOLAR:

24 Q. Now, this light colored roof on Exhibit 88,

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1 again, that's the 1987 addition, right?

2 A. That's correct.

3 Q. Did Bannockburn attach any conditions related to
4 LTD completing that 1987 addition?

5 A. No. That building was a pre-existing plan that
6 was done when FMC designed the entire site that there
7 was always going to be that addition put in at some
8 later point in time.

9 Q. And on this Exhibit 88, directly to the north we
10 can see this house here?

11 A. Yes.

12 Q. You understand that to be the house the Rotis

13 eventually bought?

14 A. Yes.

15 Q. And directly to the east of LTD, we have an
16 office building?

17 A. That's Corporate 100.

18 Q. So north of this lake is Corporate 100?

19 A. Right.

20 Q. And this parking lot north of Corporate 100, is
21 that your parking lot?

22 A. No, that's Corporate 100.

23 Q. So who else uses Lakeside Drive besides LTD
24 employees?

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1 A. Corporate 100 has a tremendous amount of cars,
2 some truck traffic and some garbage truck traffic. The
3 office building just to the south of LTD, that's that
4 white kind of like -- yes, where you're pointing to now,
5 the cross-marked area, those are low-rise office
6 buildings. They also use Lakeside Drive.

7 Q. Those are located just to the northeast of
8 Route 22 and Lakeside Drive?

9 A. Right. And today now there's a new road that's
10 just been built that's handling the office traffic for

11 another building that was just built.

12 Q. Now, let me show you another area what we've
13 marked as Respondent Exhibit 89. Again, do you
14 recognize on here the original FMC building and the 1987
15 addition?

16 A. Yes.

17 Q. And where I put the Exhibit 89 sticker, what is
18 that?

19 A. That's the new addition that was put in in 1995
20 I believe it was.

21 Q. And directly east of this lake, is there a new
22 office building now?

23 A. Yes, a brand new office building that was built
24 with a road exiting on to Lakeside Drive.

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1 Q. And that would be this building that is --

2 A. V shaped.

3 Q. -- V shaped, correct? That building is now
4 complete?

5 A. It's still in the final phases. It's not open
6 yet, no.

7 Q. And for the record, this aerial, 89, is from
8 March 1999. So the trucks that come to LTD, they come

9 down Lakeside Drive and they make this turn to the left
10 at the northeast corner of your building, right?

11 A. Correct.

12 Q. And they go down into this area where we see a
13 number of trailers, correct?

14 A. Right.

15 Q. And this is called the staging area?

16 A. That's correct.

17 Q. And these trailers, you could see the top of
18 them in this aerial?

19 A. Yes.

20 Q. Now, is that area the elevation below the
21 elevation to the parking lot to the north?

22 A. Yes, it is.

23 Q. Can you walk along the top of this staging area
24 and look down?

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1 A. Yes. There's a sidewalk up there and a
2 screening of trees to kind of hide the look of the
3 trucks.

4 Q. These little kind of dark dots are what type of
5 trees?

6 A. Like evergreens, there's a long row of them.

7 Q. And in terms of things you mentioned, good
8 neighbor policy, directly to the northeast of the
9 northeast corner of the building is that approximately
10 where you have a guard stationed now?

11 A. We have a guard, and we have also a steel gate
12 that he can raise and lower which limits any kind of
13 truck traffic from going up there as well as limits any
14 cars from going there that don't belong.

15 Q. So at one point you learned that truckers were
16 going into this auto parking lot --

17 A. Yes.

18 Q. -- to the north close to the Roti home?

19 A. Yeah, mostly at night. When the parking lot had
20 cars in it, they weren't able to do that. And at night,
21 we have very few cars in that lot, so they were pulling
22 up there and parking their trucks and leaving their
23 engines running, and we stopped that.

24 Q. So LTD took actions to make sure the truckers

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1 stayed down in this truck staging area?

2 A. Absolutely.

3 Q. Now, on Exhibit 89, this is again the 1994-95
4 expansion, right?

5 A. That's correct.

6 Q. Did Bannockburn have any conditions relating to
7 retail activities when you built that addition in 94-95?

8 A. We weren't allowed to have any retail activities
9 in the building whatsoever.

10 MR. KAISER: Objection, foundation.

11 HEARING OFFICER KNITTLE: Sustained.

12 BY MR. KOLAR:

13 Q. You recall seeing the public documents, the
14 ordinances that Bannockburn prepared relating to
15 approval of your 1994, 1995 warehouse expansion?

16 A. Yes.

17 Q. And you looked those over?

18 A. Yes.

19 Q. And in those ordinances, did you see any
20 restrictions on LTD being able to conduct retail
21 activities in the building?

22 A. Yes. We were not allowed to do retail
23 activities.

24 Q. Let's go back here to what I've marked as

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1 Respondent's Exhibit 86, which is the aerial dated
2 April 22, 1980, and that was before LTD owned the site,

3 right?

4 A. Yes.

5 Q. And in the upper left-hand corner, is that the
6 LTD building, what was the LTD building when you first
7 bought it?

8 A. It was the FMC building, yes.

9 Q. This right here?

10 A. Yes. That's the original warehouse and the
11 office.

12 Q. So where I'm writing FMC, that was the original
13 building?

14 A. The original building and the office adjacent to
15 it.

16 Q. So your office has never been expanded, right?

17 A. Correct.

18 Q. And it shows completely vacant to the north to
19 the FMC building, right?

20 MR. KAISER: Objection, leading.

21 HEARING OFFICER KNITTLE: Mr. Kolar, do you have
22 a response?

23 MR. KOLAR: No. I don't have a response. I'll
24 just restate it if you want.

1 HEARING OFFICER KNITTLE: Yeah, if you could
2 restate it and save me the trouble.
3 BY MR. KOLAR:
4 Q. Mr. Hara, do you see any houses directly north
5 of the FMC parking lot?
6 A. No. There are no houses there.
7 Q. Now, Mr. Hara, this Complainants' Exhibit 22 of
8 February 18th, 1998, letter from David Lothspeich to
9 you, do you see in the last paragraph where he says that
10 if you fail to provide empirical results by April 1,
11 1998, the village will direct Schomer & Associates to
12 perform a completely new study including recommendations
13 at LTD's cost. Do you see that?
14 A. Yes.
15 Q. Did Bannockburn ever, to your knowledge, have
16 Mr. Schomer do a completely new study and bill your
17 company for it?
18 A. No.
19 Q. Now, let's talk about the existing LTD building
20 a little more here. Using this exhibit, Exhibit 88, now
21 Mr. Kaiser asked you if you have a -- if you recall a
22 cafeteria and you said yes.
23 A. Yes.
24 Q. And the office is -- the office that you have is

1 this thing to the west of the original building, right?

2 A. That's correct.

3 Q. And this whole area, the '76 building, the '87
4 building and the '94 building, is that the warehouse?

5 A. It's our warehouse packing facility, yes.

6 Q. And in terms of square footage, does that
7 warehouse packing facility -- is that the largest
8 activity performed by LTD at the Bannockburn site in
9 terms of footage?

10 A. There's 350,000 square feet of warehouse packing
11 facility, and there's 50,000 square feet of office.

12 Q. So these trucks we see in the staging area, the
13 docks are actually to the south here, right?

14 A. Correct, all of them are.

15 Q. So when a truck is backed up against one of
16 those docks filled with merchandise, packages, what do
17 the employees do, basically?

18 A. They unload the boxes, put them in our warehouse
19 and then repackage them and ship them back out.

20 Q. So somebody will go in and pick packages?

21 A. Pick and rebox it and repack and put it back on
22 the truck to be shipped out.

23 Q. And the truck will drive away down Lakeside
24 Drive to Route 22?

1 A. And usually back to the tollway or something,
2 yes.

3 Q. And on this -- Mr. Kaiser never showed it to you
4 as an exhibit, but, at some point, did you ask my law
5 firm to prepare a response to Bannockburn regarding the
6 C classification, B classification and other things?

7 A. Yes.

8 Q. And you recall getting a copy of that letter?

9 A. Yes.

10 Q. So in the end -- let me show you Respondent's
11 Exhibit 26. I apologize. These are a little dark
12 because the stickers are brown, but the original you
13 could see.

14 HEARING OFFICER KNITTLE: Okay.

15 BY MR. KOLAR:

16 Q. Respondent's Exhibit 26, a May 4th, 1998,
17 letter, on the last page it says you've got a carbon
18 copy.

19 A. Yes.

20 Q. Did you get a carbon copy in early May 1998?

21 A. Yes, I did.

22 Q. And you directed my law firm to review the
23 situation and prepare a response to Bannockburn's

24 concerns, right?

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1 A. Yes.

2 Q. And did Bannockburn ever take any actions
3 against LTD for violation of ordinances relating to the
4 noise?

5 A. No. After they reviewed your letter --

6 MR. KAISER: Objection, foundation, calls for
7 speculation.

8 HEARING OFFICER KNITTLE: The first part of his
9 answer is not objectionable, but I'm assuming you're
10 objecting to his explanation.

11 MR. KAISER: Yes.

12 MR. KOLAR: I'm just interested in the first
13 part which is I guess no.

14 BY MR. KOLAR:

15 Q. Bannockburn never took any action against LTD to
16 your knowledge?

17 A. No. They reviewed this letter and didn't take
18 any action after that.

19 Q. Now, this entire 400,000 square foot warehouse,
20 is there any foot in that warehouse that's devoted to
21 public warehousing?

22 A. No.

23 Q. Now, before this 1994 addition was built, did
24 you have any -- and before Aurora, did you have any

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1 public warehouse facilities or any other facilities that
2 helped you with storing the merchandise?

3 A. Yes.

4 Q. And where was that?

5 A. We had many different places. I don't know the
6 locations of where they were at, but we had different
7 public warehouses that supported our warehouse.

8 Q. So it would be accurate to state that before the
9 1994 addition, not every truck relating to LTD's
10 business came to the Bannockburn facility?

11 A. That's correct, probably about 50 percent of
12 them.

13 MR. KAISER: Objection.

14 BY MR. KOLAR:

15 Q. Did you ever have a facility in Libertyville
16 before the 94-95 expansion?

17 A. Yes.

18 HEARING OFFICER KNITTLE: Hold on.

19 MR. KAISER: Objection as to foundation for his

20 somewhat gratuitous and nonresponsive remark that
21 50 percent of the trucks probably didn't go to the
22 Bannockburn facility.

23 HEARING OFFICER KNITTLE: Mr. Kolar, do you have
24 anything?

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1 MR. KOLAR: No.

2 HEARING OFFICER KNITTLE: Overruled.

3 BY MR. KOLAR:

4 Q. Does LTD Commodities accept credit card sales?

5 A. No.

6 Q. Do you buy mailing lists?

7 A. Yes.

8 Q. Do you buy residential mailing lists?

9 A. Yes.

10 Q. How do you sell -- you mentioned the businesses.

11 How do you sell to businesses?

12 A. We sell through our catalog and through our web
13 site today by mailing catalogs out to businesses and
14 offering in quantities, three or more, to their business
15 for either resale or promotions within their companies,
16 but we only sell to businesses and we sell on open
17 account basis, no credit cards.

18 Q. And what does open account mean just for the
19 record?

20 A. Open account means we bill them. We ship the
21 merchandise and we send them a bill and they pay us
22 within our terms.

23 Q. And in terms of orders, I guess unless it's a
24 proprietary, is there any particular average dollar

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1 amount to an order?

2 A. The orders right now going through Christmas are
3 probably in excess of over \$100. They're over \$200
4 really.

5 Q. Your office is located in the original office
6 building, right?

7 A. That's correct.

8 Q. In fact, are you on the first floor at the far
9 northwest corner?

10 A. Yes.

11 Q. Can you hear trucking dock noise in your office?

12 A. No.

13 Q. Now, as chief operating officer of LTD, you've
14 mentioned you've had occasions to walk in the truck
15 staging area, right?

16 A. Yes.

17 Q. And have you had occasion to walk on the
18 sidewalk which is above the staging area?

19 A. Yes.

20 Q. And have you been there when a trailer has been
21 backed into the staging area?

22 A. Yes.

23 Q. And there's some like wooden and spring
24 constructed bumpers back there; is that right?

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1 A. They're backstops, yes.

2 Q. I've got some photos, but I'll show those to
3 Mr. Voight. Did you ever notice like the ground shake
4 when a trailer was backed into one of those bumpers?

5 A. No.

6 Q. Have you ever in your experience in Bannockburn
7 felt vibrations or ground shaking from your trucking
8 operations?

9 A. No.

10 Q. And when you were on the north property line
11 last week listening, did you feel any sort of vibrations
12 being created by your trucking operations?

13 A. No, none at all.

14 Q. When you were, on prior occasions, on West
15 Wedgewood Drive, did you ever feel any vibrations?
16 A. No.
17 Q. And you were out of the car on occasion?
18 A. Walking, yes.
19 Q. Now, with the yard tractor, I think you
20 mentioned you asked CTC to get a quieter yard tractor?
21 A. Yes.
22 Q. I guess there was some issue with the muffler
23 wasn't quieting the tractor?
24 A. Yes.

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1 Q. Did you get a quieter yard tractor?
2 A. Yes, we did.
3 Q. And this issue of the yard tractor engaging with
4 a trailer and creating some sort of slamming noise, to
5 your knowledge has that been alleviated by the yard
6 tractor driver being more careful in raising the fifth
7 wheel?
8 MR. KAISER: Objection, leading.
9 HEARING OFFICER KNITTLE: Mr. Kolar?
10 MR. KOLAR: No response.
11 HEARING OFFICER KNITTLE: You know, this isn't a

12 classic cross-examination situation, but he is
13 addressing your redirect. I'm going to give him some
14 leeway and let him ask some leading questions. I don't
15 think that one was too bad, so I'm going to overrule it.

16 BY MR. KOLAR:

17 Q. Do you recall it or do you want me to restate
18 it?

19 A. No. I believe it's helped a lot.

20 Q. Today if you were to walk through there and
21 watch the yard tractor operate, is there a slamming
22 noise when the yard tractor engages with a trailer?

23 MR. KAISER: Hypothetically? He's going to
24 testify -- he's going to speculate about what we would

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1 see if he was out there?

2 HEARING OFFICER KNITTLE: Is this an objection,
3 Mr. Kaiser?

4 MR. KAISER: Yes, it's an objection. It calls
5 for speculation.

6 HEARING OFFICER KNITTLE: Mr. Kolar?

7 MR. KOLAR: I'm just asking what he's observed
8 recently when he's at LTD watching the yard tractor.

9 MR. KAISER: That's a different question than

10 the one you just asked.

11 MR. KOLAR: I'll withdraw it.

12 HEARING OFFICER KNITTLE: If you could rephrase
13 that then.

14 BY MR. KOLAR:

15 Q. In the last month or two, have you been in the
16 staging area?

17 A. In the last week, I was there and didn't hear
18 any clanging or smashing at all. The only thing I heard
19 was the beeper and that was only at the lower level.

20 Q. But when you were there, did you see the yard
21 tractor operating?

22 A. Yes.

23 Q. And did you see the yard tractor pulling
24 trailers around?

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1 A. I saw him moving a trailer, yes.

2 Q. Did you hear a loud slamming noise --

3 A. No, I have not.

4 Q. -- as Mr. Kaiser described?

5 A. No, I have not.

6 Q. And regarding disconnecting the warning
7 beeper --

8 A. Yes.

9 Q. -- did you seek any sort of opinion as to
10 whether you could do that?

11 A. We initially did it on our own. We disconnected
12 it, and then I had Mr. Voight contact Mr. Kolar and he
13 told us absolutely that there's liability for us. So we
14 reconnected it.

15 We are now researching it with the trucking
16 company and trying to find out if there's any legal
17 precedent regarding that, whether you have to have it on
18 there or not. We never installed it. It wasn't, you
19 know, at our request that those were put on in the first
20 place.

21 Q. And in terms -- your company specifically asked
22 I guess me is there a liability concern of disconnecting
23 the warning beeper, right?

24 A. Yes. And Mr. Kolar stated that --

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1 MR. KAISER: Objection, hearsay.

2 HEARING OFFICER KNITTLE: Mr. Kolar?

3 MR. KOLAR: I'll withdraw it. I can't testify.

4 BY MR. KOLAR:

5 Q. And you got an opinion?

6 A. We got an opinion.

7 Q. Just yes or no.

8 A. Yes.

9 Q. And then what, if anything, did you do after

10 that?

11 A. We reconnected it immediately, and now we are

12 contacting the trucking company to find out what their

13 position is on it. We'd be happy to take it off if

14 there wasn't any liability -- if somebody could assure

15 us there's not liability to us if somebody got hit.

16 Q. Does OSHA inspect your place on occasion?

17 A. Yes.

18 Q. Now, under this good neighbor policy, is there a

19 sign attached to a wall right by the northeast entry

20 area to the truck --

21 A. Yes.

22 Q. -- dock area? I'll go through that with

23 Mr. Voight to save time, show him the photo.

24 And the guard who's posted here, what exactly

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1 is his role?

2 A. Just to make sure that the trucks don't go up on

3 top, that we don't start lining up trucks over there and

4 we don't allow cars that don't belong in the parking
5 lot.

6 Q. Now, what would the impact be on LTD's business
7 at Bannockburn if it couldn't operate the second shift?

8 A. Well, first, it would eliminate half the
9 employment of the company, and second of all, it would
10 destroy the company. We couldn't ship our orders out.
11 We don't have the capacity to ship out our orders on a
12 day shift during Christmas. Most of our business is
13 done during the Christmas season.

14 Q. Again, it's your understanding that there was
15 some nighttime business being conducted by LTD before
16 Jack Voight came?

17 A. I believe so, yes.

18 Q. Did Bannockburn, when you were doing the 1994
19 addition, require this pond here in the southeast area
20 of your lot?

21 A. I don't believe so. The ponds are required by
22 code for drainage.

23 Q. Did Bannockburn require extensive landscaping?

24 A. Yes.

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1 Q. And where was the landscaping primarily

2 installed?

3 A. All to the front of the building, basically to
4 the south facing 22 and Lakeside.

5 Q. Did Karen Roti ever invite you inside her house?

6 A. No, never.

7 Q. Did Mr. Rosenstock ever invite you inside his
8 house?

9 A. No. They've never invited me to come listen to
10 any of the sounds that they were concerned about.

11 Q. And did the Webers invite you inside their
12 house?

13 A. No.

14 Q. Was there ever any sort of -- Strike that.

15 Did the Rotis ever in a meeting with you ever
16 threaten some sort of conduct against your company if
17 you didn't take certain action?

18 A. In the last meeting we had -- we were working
19 very closely with them to try and cooperate in trying to
20 resolve their issues. And in the last meeting, they
21 started to basically threaten me with newspaper articles
22 and bad publicity which would hurt LTD.

23 Q. Did that annoy you then at that time?

24 A. Yeah, very much so since we were trying to

1 cooperate with them even though we felt we weren't in
2 violation of anything. They were now trying to pressure
3 me by using newspaper articles to hurt the company to
4 force me to do something.

5 Q. And to your knowledge, has Paul Schomer ever set
6 foot inside of your warehouse?

7 A. Not to my knowledge, no.

8 Q. And you recall one day when Greg Zak of the IEPA
9 was getting a tour around the warehouse, I think even
10 with Mr. Kaiser present?

11 A. Yes, I believe so.

12 Q. You saw Mr. Kaiser in your warehouse?

13 A. Yes.

14 Q. So whenever Mr. Kaiser or any of his people
15 wanted to get in the warehouse or come onto your parking
16 lot, what was your response?

17 A. We were open to them.

18 Q. In fact, last Friday they were there?

19 A. Yes.

20 Q. Mr. Kaiser and Mr. Schomer?

21 A. Yes.

22 Q. Does Corporate 100 have a fenced in garbage
23 facility at the northwest corner of its parking lot?

24 A. Yes, it does.

1 Q. And that's off of your property, correct?

2 A. Yes, it is.

3 Q. Back in -- Mr. Kaiser asked you about whether
4 you in any way addressed noise issues when you did the
5 94-95 expansion. Do you recall that questioning?

6 A. Yes.

7 Q. Did you have any noise complaints at all prior
8 to getting final approval for the 94-95 expansion?

9 A. No.

10 Q. And before that, all of the truck docks were in
11 place?

12 A. That's correct.

13 Q. Bannockburn asked you to hire a noise consultant
14 to study this issue, right?

15 A. Yes.

16 Q. That's why you hired Tom Thunder?

17 A. Yes.

18 Q. And that was before a complaint was filed
19 against you by the Rotis and neighbors, correct?

20 A. Yes.

21 MR. KOLAR: I don't think I have any further
22 questions for Mr. Hara.

23 HEARING OFFICER KNITTLE: You can conduct your
24 redirect.

1 MR. KAISER: Yeah, a little bit.

2 REDIRECT EXAMINATION

3 by Mr. Kaiser

4 Q. This building above the retention pond, is that
5 Corporate 100?

6 A. Yes.

7 Q. And to your knowledge, does Corporate 100
8 operate during normal business hours generally 7 a.m. in
9 the morning until 6 p.m. in the evening Monday through
10 Friday?

11 A. I'm not sure of their hours.

12 Q. You're not certain of their hours?

13 A. No.

14 Q. Do you know what time of day the garbage is
15 picked up from Corporate 100?

16 A. I've heard the middle of the night.

17 Q. You've heard?

18 A. Yeah.

19 Q. You've not been there and seen that, have you?

20 A. No, I have not.

21 Q. Now, have you ever been out to your LTD facility
22 on a Sunday?

23 A. Yes.

24 Q. Have you ever seen any -- you have seen

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1 Corporate 100 in full scale operation?

2 A. No. I've seen cars in the parking lot, but I've
3 not seen them where they've had the whole lot full on
4 Sunday, no.

5 Q. How about on a Friday night, have you ever seen
6 the whole lot full of Corporate 100's parking lot?

7 A. I haven't seen it, no. I've seen cars in there,
8 but I've not seen it full.

9 Q. Not the whole lot full though, right?

10 A. No.

11 Q. Whereas, LTD Friday night is like any other
12 night of the week, isn't it?

13 A. Our parking lot is not full, no.

14 Q. No. I'm not talking about your parking lot.
15 Your truck dock is working full speed, right?

16 A. Yes.

17 Q. Monday that truck dock, you go out there at
18 midnight, there are trucks moving in and out there,
19 aren't there?

20 MR. KOLAR: Objection, time of the year.

21 HEARING OFFICER KNITTLE: Sustained.

22 BY MR. KAISER:

23 Q. September through December, you go out to LTD's
24 truck dock midnight Monday night, you're going to see

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1 trucks moving out, right?

2 A. Not to the level it does during the day.

3 Q. We'll see if Mr. Voight agrees with your
4 testimony on that. You're going to see trucks in and
5 out?

6 A. Yes.

7 Q. Tuesday night at midnight any time between
8 September 1 and December 15th, you're going to see
9 trucks being loaded and unloaded moving in and out of
10 the dock area, correct?

11 A. Yes.

12 Q. Wednesday, 12:30 a.m., any night of the week,
13 any Wednesday between September and December 15th,
14 you're going to see trucks moving in and out of the dock
15 area being loaded and unloaded, right?

16 A. I don't know as far as the times, but your
17 answer is yes, at nights we are running trucks.

18 Q. Not only are you running trucks, you've got

19 about 500 employees in that building during the second
20 shift, don't you?

21 A. Yes.

22 Q. I mean, the idea is to have freight moving
23 smoothly first shift and second shift uniformly in and
24 out of your facility, right?

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1 A. It doesn't run that way because during the day
2 there's shipments that come in off of local drivers that
3 we don't schedule in. The only ones we can have at
4 night is what is scheduled in.

5 Q. And you schedule as many as in excess of 150
6 trucks a month in and in excess of 150 trucks a month
7 out during the months of September, October, November
8 and December, do you not?

9 A. Jack Voight could -- I don't know the numbers.

10 Q. You don't know those numbers?

11 A. No.

12 Q. Are you disagreeing with me that if I went out
13 to LTD's facility this evening Monday night,
14 November 1st at 12:30 a.m. that I wouldn't see truck
15 docks open, trucks moving in and out, the yard pig doing
16 its job shoveling trucks in and out of the docks?

17 A. No. I don't disagree. I just don't know what
18 time you're talking about. I mean if we get done at
19 12:30, the truck traffic is probably stopping prior to
20 that.

21 Q. Do you have any idea how often Jack Voight
22 schedules overtime for your workers?

23 A. Yes, I do.

24 Q. In 1998 if I had gone out there at 12:30 at

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1 night, I would have seen on most nights an extended one
2 hour shift pushing that back -- the closing time until
3 1:30, wouldn't I?

4 A. You could have.

5 Q. I would have, wouldn't I?

6 A. I don't know. I don't have the schedule in
7 front of me. I can't testify to that.

8 Q. All right. So your trouble with my question is
9 I'm saying 12:30 at night when the second shift ends; is
10 that right?

11 A. Yes.

12 Q. So if I move this back until 10:30 at night or
13 11:30 at night, we're not disagreeing, right, you're
14 busy at 10:30 and 11:30 at night?

15 A. Yes. Yes.

16 Q. Okay. I appreciate that clarification. And I
17 take it by comparison, Corporate 100 -- there's a
18 difference between Corporate 100's daytime and nighttime
19 operations?

20 A. I think so, yes.

21 Q. You've observed that, haven't you?

22 A. Yes.

23 Q. And, in fact, Corporate 100's use of its
24 building at night is less intensive than its use during

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1 the day?

2 A. I believe so.

3 Q. You believe that based on your own observations,
4 right?

5 A. Of the cars.

6 Q. Of the cars?

7 A. Yes.

8 Q. How about the lights in the building?

9 A. I haven't paid attention to them.

10 Q. But based on the cars, you formed an opinion
11 that Corporate 100's use of its building and surrounding
12 properties is less intensive at night than during the

13 day?

14 A. Yes. Yes.

15 Q. Now, with respect to the extensive landscaping
16 on the south end, you heard during Mr. Kolar's opening
17 statement he likened your facility to the Taj Mahal of
18 warehouse facilities. Did you hear that? Did you hear
19 him use that expression, Taj Mahal?

20 A. Yes.

21 Q. And you know what he's referring to, right?

22 A. I think so, yeah.

23 Q. A beautiful building in India, right, a monument
24 to love, right?

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1 A. No, it's not in India.

2 Q. I don't know what Taj Mahal you're talking
3 about.

4 A. This one's not.

5 Q. This one's not in India. This one is in
6 Bannockburn, Illinois, right?

7 A. Right.

8 Q. And this detention pond that you have on your
9 southeast corner, that's very nicely landscaped, isn't
10 it?

11 A. Yes.

12 Q. And, in fact, you have a fountain within that
13 detention pond, don't you?

14 A. Yes.

15 Q. And those amenities were added at some expense
16 to LTD, right?

17 A. Yes.

18 Q. Now, Mr. Kolar during his examination asked you
19 what would happen if the Board ordered LTD to shut down
20 during the -- or to discontinue operation during its
21 second shift. Do you recall that question?

22 A. Yes.

23 Q. And you told him that you thought it would, in
24 some ways, be bad for business?

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1 A. No. It would destroy the company.

2 Q. It would destroy the company. Have you done an
3 analysis to determine whether, in fact, LTD would be
4 destroyed if it couldn't operate a second shift out of
5 the Bannockburn facility?

6 A. I know for sure it will.

7 Q. How do you know that?

8 A. Because I know how many orders we get in per

9 day. We couldn't handle our shipping volume. There is
10 no way to ship them in our day shift. It's impossible.

11 Q. Because you ship a lot at night, right?

12 A. Yes.

13 Q. And especially during the Christmas season,
14 right?

15 A. Exclusively during Christmas, yes.

16 Q. And Christmas season in this instance means
17 essentially August 1 to December 15th, correct?

18 A. Yes.

19 Q. And that second shift is going great guns during
20 those four months, isn't it?

21 A. Yes.

22 Q. Have you done any analysis to determine whether
23 a Board order requiring LTD to operate an abbreviated
24 second shift, a second shift that ran from 3:30 p.m.

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1 until 10 p.m., would have adverse consequences on the
2 business?

3 A. It would have the same. We could not ship our
4 orders that we get in at Christmas time.

5 Q. You now have the Aurora facility?

6 A. Yes.

7 Q. Right?

8 A. That's right.

9 Q. You couldn't send the orders out of the Aurora
10 facility?

11 A. Absolutely unequivocally not.

12 Q. So you must do, and correct me if I'm wrong, but
13 LTD ships a tremendous amount of freight between 10 p.m.
14 and 12:30 at night?

15 A. Yes.

16 Q. And sometimes, when Jack Voight authorizes it,
17 between 10 p.m. and 1:30 in the morning, correct?

18 A. Yes.

19 Q. And sometimes, if Jack Voight authorizes it,
20 between 10 p.m. and 2:30 in the morning, correct?

21 A. If he authorized it, yes.

22 Q. And he's done that before, hasn't he?

23 A. Yes, not this year yet.

24 Q. But in past years he has?

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1 A. Well, before we had the Aurora operation.

2 Q. Well, you only had the Aurora operation starting
3 in late October of 1998, right?

4 A. Yes.

5 Q. So before October of 1998, Jack Voight
6 authorized shipments out of the LTD facility and into
7 the LTD facility as late as 2:30 in the morning?
8 A. Some days, yes.
9 Q. Now, do you know whether the backup warning
10 beeper is required by any OSHA regulations?
11 A. That's what we're looking into right now.
12 Q. Has Mr. Kolar provided you with any written
13 analysis of LTD's liability if it disconnected the
14 backup warning beeper?
15 A. No, but it was his opinion that --
16 Q. I just asked you did he give you a written
17 opinion?
18 A. No.
19 Q. The answer is no?
20 A. No.
21 Q. Now, during Mr. Kolar's examination, you
22 described the loud yard tractor, the one with the bad
23 muffler. Do you recall that?
24 A. Yes.

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1 Q. In 1996, LTD allowed to operate in its dock area
2 a yard tractor that had a defective muffler, that's

3 true, isn't it?

4 A. No.

5 Q. That's not true?

6 A. No. I believe -- it was a tractor. I don't
7 believe it was defective.

8 Q. It was operating properly?

9 A. I believe so.

10 Q. It was just loud?

11 A. Your interpretation was it was loud. We've
12 gotten a better one.

13 Q. That's quieter, right?

14 A. Yes.

15 Q. And it was replaced, in part, because people had
16 complained that that yard tractor was too loud?

17 A. And we were doing everything we can to take care
18 of our neighbors.

19 Q. And part of that was getting rid of the loud
20 yard tractor, correct?

21 A. The louder one, yes.

22 Q. And you didn't get rid of that loud yard tractor
23 that you allowed to operate on LTD property in September
24 and October of 1997 until you received complaints from

1 the neighbors to the north; isn't that correct?

2 A. I'm kind of lost. We got rid of it as soon as
3 we possibility could.

4 Q. My point is LTD didn't go around in their dock
5 area and determine whether there were noise problems and
6 how they could reduce the noise until they began to
7 get -- receive complaints from neighbors to the north
8 and from the village of Bannockburn?

9 A. I don't own the trucks. I don't employ the
10 trucks. The trucks come to us.

11 Q. Well, they come because they're carrying your
12 goods, aren't they, Mr. Hara?

13 A. Right, but I don't pick the yard tractor that
14 comes out to work for us nor do I have --

15 Q. Well, you --

16 A. Go ahead.

17 Q. Well, you have a contract with CTC, right?

18 A. Correct.

19 Q. And CTC, I take it they wanted to renegotiate a
20 new contract with you, didn't they?

21 A. Correct.

22 Q. I mean, you have a new contract with them that's
23 effective sometime after February 1st of 1999?

24 A. They never discussed what kind of equipment

1 they're going to use.

2 Q. Are you telling me Jack -- neither you nor Jack
3 Voight ever talked with CTC about replacing the loud
4 yard tractor?

5 A. Not until we had issues where the complainants
6 were concerned about the sound. From that point on,
7 yes.

8 Q. That's my point that you did that in response to
9 the complaints?

10 A. Yes.

11 Q. All right.

12 MR. KOLAR: You had a long question so I didn't
13 get a chance to object to his statement of complaints
14 from Bannockburn. I would move to strike that. I don't
15 think there's any evidence of complaints from
16 Bannockburn, just Bannockburn transmitting complaints
17 from his clients.

18 HEARING OFFICER KNITTLE: Any response to that,
19 sir?

20 MR. KAISER: Communications from Bannockburn
21 forwarding complaints from residents to the north.

22 HEARING OFFICER KNITTLE: Okay. That will be
23 clarified. I don't think we've shown any complaints
24 from Bannockburn either, but we will note that it's

1 communications.

2 MR. KAISER: Thank you.

3 BY MR. KAISER:

4 Q. Now, you mentioned that there were a number of
5 public warehouses that service LTD?

6 A. That's correct.

7 Q. But you don't pick orders out at the public
8 warehouses, do you?

9 A. No.

10 Q. All orders that were picked until late October
11 of 1998 were picked out of the Bannockburn facility,
12 correct?

13 A. We had a couple of other facilities that we were
14 using also.

15 Q. The Libertyville facility for a short time?

16 A. Yes.

17 Q. But the Kenosha, Wisconsin, facility, that's
18 strictly a public warehouse for storage?

19 A. Correct.

20 Q. The Bolingbrook facility, that's strictly a
21 public warehouse for storage?

22 A. Right.

23 Q. The Franklin Park facility, that's strictly a

24 public warehouse for storage?

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1 A. Right.

2 Q. The vast majority of goods that were picked for
3 delivery came out of Bannockburn's warehouse until at
4 least October of 1998, correct?

5 A. Yes.

6 Q. Now, with respect to the letter Mr. Kolar wrote
7 on your behalf, LTD's behalf, to the village of
8 Bannockburn, Respondent's Exhibit 26, the May 4th, 1998,
9 letter to Michael Grutza, you saw this letter, correct?

10 A. Yes.

11 Q. You have it front of you, right?

12 A. Yes.

13 Q. All you can really say based on your own
14 knowledge is on or about May 4th Mr. Kolar sent that
15 letter to Bannockburn, correct?

16 A. Yes.

17 Q. And by July 18th or thereabouts, Karen Roti,
18 Leslie Weber and Paul Rosenstock have filed a complaint
19 against LTD, correct?

20 A. Yes.

21 Q. And you don't know -- you have no knowledge as

22 to whether or not Bannockburn had asked its corporate
23 counsel to prepare a complaint against LTD?

24 A. I am aware that they have not.

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1 Q. How are you aware of that?

2 A. I've talked to the Board, and I've talked to the
3 president, Mike Grutza, and they are not concerned about
4 it since we're a Class C. We determined we're a Class C
5 operation, and we're not in violation.

6 MR. KAISER: I move to strike his lack of
7 foundation.

8 MR. KOLAR: I have to disagree. It was
9 responsive to his open-ended question.

10 HEARING OFFICER KNITTLE: I'll allow it to
11 stand.

12 BY MR. KAISER:

13 Q. Now, early in Mr. Kolar's --

14 MR. KOLAR: Could we go off the record?

15 HEARING OFFICER KNITTLE: Yeah.

16 (Discussion had off the record.)

17 BY MR. KAISER:

18 Q. Mr. Hara, Mr. Kolar asked you in the beginning
19 of his examination what percentage of LTD revenues were

20 tied to the trucks coming up Lakeside Drive and
21 delivering and carrying away product for LTD and to its
22 customers. Do you recall that question?

23 A. Yes.

24 Q. And your answer was 100 percent of our revenues

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1 were tied to those trucks coming up and down?

2 A. Right.

3 MR. KOLAR: I said for Bannockburn -- objection.

4 I said for Bannockburn's building.

5 MR. KAISER: For Bannockburn's building.

6 BY MR. KAISER:

7 Q. Isn't it true that if you did not have a sales
8 force, you wouldn't have any trucks coming up and down
9 Lakeside Drive?

10 A. I don't understand that question.

11 Q. If you weren't marketing the products, would you
12 have any -- I mean, the entire cycle is not trucks
13 coming in and trucks going out. There's more to your
14 business than that, isn't there?

15 A. No. If I wasn't in business, I wouldn't be
16 there, but we're in the business of selling merchandise.
17 And every dollar we make is based on shipping out of

18 that facility in Bannockburn.

19 Q. But, again, that goes to my point. Your
20 business is selling merchandise, correct?

21 A. Yes.

22 Q. I mean, you're not a trucking company, are you?

23 A. No.

24 Q. Again, we go back to the same line of questions.

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1 LTD doesn't own any trucks, right?

2 A. Right.

3 Q. LTD doesn't make money from its truck
4 operations, does it?

5 A. No. No.

6 Q. LTD makes money by selling goods?

7 A. Right.

8 Q. Correct?

9 A. Uh-huh.

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

12 HEARING OFFICER KNITTLE: Do you have a recross
13 or a reclarification I should say?

14 MR. KOLAR: Yeah, just one. I think he maybe
15 opened the door on this one. We'll found out.

16

RECROSS-EXAMINATION

17

by Mr. Kolar

18

Q. What was my oral opinion to you regarding if

19

there was any liability to LTD from disconnecting the

20

warning beeper?

21

A. Based on Mr. Kolar's past experience of handling

22

cases that he would love to be on the other side of the

23

case where somebody was hurt on our property after we

24

removed the beeper from a truck.

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1

MR. KOLAR: I don't have anything else.

2

MR. KAISER: If I may just by redirect.

3

HEARING OFFICER KNITTLE: You're limited of

4

course.

5

FURTHER REDIRECT EXAMINATION

6

by Mr. Kaiser

7

Q. You're aware that Mr. Kolar, in part, practices

8

as a personal injury plaintiffs lawyer, are you not?

9

A. Absolutely.

10

MR. KAISER: Thank you. I have nothing further.

11

HEARING OFFICER KNITTLE: Mr. Kolar?

12

MR. KOLAR: Nothing else.

13

HEARING OFFICER KNITTLE: Thank you, sir. You

14 could step down.

15 THE WITNESS: Thank you.

16 HEARING OFFICER KNITTLE: Let's go off the
17 record for a second.

18 (Discussion had off the record.)

19 HEARING OFFICER KNITTLE: We're here after a
20 short break and continuing the direct examination of the
21 complainant -- the case-in-chief of the complainant I
22 should say.

23 MR. KOLAR: For the record, my understanding at
24 least what I had was \$158,000 budget for a wall from the

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1 Huff Company and --

2 HEARING OFFICER KNITTLE: Are you referring to a
3 specific exhibit?

4 MR. KOLAR: Yes. Steve had it marked as an
5 exhibit.

6 MR. KAISER: Yes, it was exhibit -- well, that
7 will be rough. I can show you. It's in this package
8 here.

9 HEARING OFFICER KNITTLE: Actually, I can
10 probably tell you -- no, I used the gentleman's name.

11 MR. KOLAR: 26.

12 HEARING OFFICER KNITTLE: Okay. March 10th,
13 1998.

14 MR. KAISER: Right. Right.

15 MR. KOLAR: Now, my client may very will have a
16 lot of these documents, but he brought his whole file
17 and there is memos from February 13th, '99,
18 January 13th, '99, November 17th, '98, November 16th,
19 '98, just a lot of things I haven't seen, so I guess I'm
20 saying I -- I'm not going to be able to say I agree to
21 admit all these things without having had a chance maybe
22 to look them over.

23 HEARING OFFICER KNITTLE: Have they been
24 offered, or are they going to marked, is that what's

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1 going on?

2 MR. KAISER: Yes. I'll expect I'll mark these.
3 Now, Mr. Mitchell is here pursuant to subpoena that
4 complainants issued and in talking with Mr. Mitchell, I
5 asked him to bring along his file.

6 I, I think along with Mr. Kolar, had an
7 expectation that his file would contain the documents
8 that LTD had previously produced and that Tom Thunder
9 had previously produced as Mr. Huff's (sic) here as a

10 person who sells and builds noise walls. And Tom
11 Thunder had contacted the Huff Company, Mr. Mitchell's
12 employer, and there had been some exchange of proposals.

13 Now, frankly, Mr. Kolar and I thought we'd
14 seen all the documents in connection with those
15 proposals, but Mr. Mitchell arrived here approximately
16 one half hour ago and tendered his file. We see that
17 there are documents that neither Joe nor I have seen
18 before, and I do note that some of these appear to have
19 been addressed to Mr. Jack Voight, one of LTD's
20 officers.

21 And why Mr. Kolar hasn't seen them and why
22 they haven't been produced to me, I don't know, but
23 we're both at a little bit of a disadvantage. But the
24 documents appear on a cursory review to all be relevant

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1 to the issue of cost and feasibility of a noise wall in
2 the vicinity of the LTD dock area. And so I ask that I
3 be allowed to proceed.

4 HEARING OFFICER KNITTLE: Let's go ahead and
5 proceed. There really hasn't been any talk about these
6 nor have they been offered into evidence. If they are
7 offered and Mr. Kolar and you have concerns, I'd be more

8 than happy to let you address them at that point in
9 time.

10 MR. KAISER: Okay. Fine.

11 THE WITNESS: Can I make a point about them?

12 HEARING OFFICER KNITTLE: Not yet. Let's go off
13 the record for a second.

14 (Discussion had off the record.)

15 HEARING OFFICER KNITTLE: We're back on the
16 record. It's still the complainants' case-in-chief. Do
17 you have another witness to call?

18 MR. KAISER: Thank you, Mr. Hearing Officer.
19 The complainants would call Steven Mitchell.

20 HEARING OFFICER KNITTLE: Mr. Mitchell, could
21 you raise your right hand and have the court reporter
22 swear you in, please.

23 STEVEN MITCHELL,
24 having been first duly sworn, was examined and testified

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1 as follows:

2 DIRECT EXAMINATION

3 by Mr. Kaiser

4 Q. Mr. Mitchell, would you please state your full
5 name and spell your last name for the court reporter's

6 benefit?

7 A. Yes. My name is Steven L. Mitchell. That's
8 M-i-t-c-h-e-l-l.

9 Q. And by whom are you employed?

10 A. I'm employed by the Huff Company.

11 Q. What business is the Huff Company engaged in?

12 A. The Huff Company specializes in the design,
13 supply and installation of noise control products and
14 systems.

15 Q. And are you here this afternoon because you were
16 served with a subpoena and sent a modest witness fee?

17 A. That's correct.

18 Q. And as part of that subpoena, did I, as counsel
19 for the complainant, ask you to bring with you your file
20 that you've maintained or that the Huff Company has
21 maintained in connection with the proposal the Huff
22 Company made to LTD Commodities, Inc.?

23 A. Yes, you did. You asked me to bring two copies.

24 Q. And you brought those documents today, did you

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1 not?

2 A. Yes, I did.

3 Q. And what I'd like to do over the next perhaps

4 half hour is perhaps ask you some questions about those
5 documents, but before I do that, I want to get into a
6 little bit of your background. How long have you
7 worked -- what is your position with the Huff Company?

8 A. I'm president and I own the Huff Company, and I
9 also am a salesman.

10 Q. And is your brother also involved in the
11 business?

12 A. Yes. He works for the Huff Company.

13 Q. How long have you -- how long has the Huff
14 Company been in existence?

15 A. Since 1960.

16 Q. And how long have you owned the Huff Company?

17 A. Since about 1984. Before that, it was my dad
18 owned the business.

19 Q. So I take it you essentially grew up in the
20 business?

21 A. Yes.

22 Q. Is it fair to say that the Huff Company
23 represents a certain geographic area, or is it a
24 national company?

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1 A. We do sell nationally, but we have exclusive

2 representation contracts for Illinois, Wisconsin,
3 northern Indiana and eastern Iowa.

4 Q. Now, Mr. Mitchell, do you recall exactly how it
5 was -- well, you know where the LTD Commodities facility
6 is located in Bannockburn, Illinois?

7 A. Yes, I do.

8 Q. And do you recall how it was you got involved?
9 You understand that we're here today because a number of
10 residents who live just to the north of the LTD facility
11 have brought a complaint before the Illinois Pollution
12 Control Board alleging that the noise from LTD dock
13 activities are a nuisance and violate certain numeric
14 noise standards established by the Illinois Pollution
15 Control Board?

16 A. Yes, I understand that.

17 Q. Do you recall how it was you became -- the Huff
18 Company submitted at some point in time a proposal to
19 LTD to construct a noise wall, did they not?

20 A. Yes.

21 Q. And do you recall how you were brought in to
22 this matter?

23 A. Well, I'm not completely clear on it myself as I
24 looked through my files because in 1997 we actually went

1 over to LTD Commodities and met with somebody and talked
2 about a wall at that time. A year later --

3 Q. Okay. Go ahead.

4 A. A year later, my brother was contacted by a Jack
5 Voight and was asked for some information which he then
6 put into a fax that he sent out on March 10th which were
7 budget prices for a wall 15 feet by 25 feet long.

8 Q. All right. I'm going to slow you up just a
9 little bit now.

10 A. Sure.

11 Q. What I'm going to do -- I'm marking for purposes
12 of identification as Complainants' Exhibit 38A a
13 facsimile transmittal on the Huff Company letterhead to
14 a Gary Figallo, F-i-g-a-l-l-o, from Steve Mitchell dated
15 1/28/97, and it says re, LTD Commodities.

16 Now, I'm showing you this six-page document
17 and I'm asking you if you recognize that document?

18 A. Yes, I do. That's the document that I referred
19 to.

20 Q. And I'm going to have to read it along with you
21 here, Mr. Mitchell, since I don't have a third copy.
22 This is a fax transmittal, and is this your signature on
23 the first page?

24 A. Yes, it is.

1 Q. And Gary Figallo, do you know what his position
2 is with LTD Commodities?

3 A. No. Gary is with Industrial Acoustics Company.

4 Q. Industrial Acoustics Company. What is
5 Industrial Acoustics Company?

6 A. Industrial Acoustics Company is a manufacturer
7 of noise control products that we represent.

8 Q. Where are they located?

9 A. New York.

10 Q. Do they supply the components --

11 A. Yes.

12 Q. -- for a noise wall?

13 A. Right, and they would help me with the design,
14 so I was just asking him for some advice.

15 Q. All right. Now, I note it says, Gary, quote,
16 "we met with the above referenced company yesterday.
17 They would like a budget price for a barrier wall 300
18 feet long times 20 feet high for an area between their
19 truck dock and their property line. Wind load will be
20 100 miles per hour. Can you provide a quick estimate."

21 And that's essentially what you asked?

22 A. Right.

23 Q. And was it true that, in fact, that previous
24 day, January 27th, 1997, you had met with LTD

1 Commodities?

2 A. I presume it is. I don't have any notes that
3 would refute that. I just don't remember. I
4 sometimes -- there may be a day or two by the time I see
5 somebody to when I write them a memo.

6 Q. All right. And I see that there's a stamp on
7 this first page that says faxed on January 28th of 1997
8 and then faxed again February 6th, 1997. Can you
9 explain that?

10 A. Yes. Gary Figallo is not real good about
11 returning calls and returning information, so he
12 probably called me and said would you send the
13 information again. So I would suspect that I just
14 resent the same information because he responded then on
15 the 7th. He travels a lot.

16 Q. And is this his response on the second page --

17 A. Yes.

18 Q. -- of Complainants' Hearing Exhibit C38A?

19 A. Right.

20 Q. And is that simply page 2, the fax cover sheet
21 from IAC?

22 A. Yeah, that's page one of the cover sheet from

23 IAC. I just stapled my fax to his fax.

24 Q. Okay. To keep it all together?

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1 A. Right.

2 Q. The communication?

3 A. That's correct.

4 Q. And I take it it encloses this letter dated
5 February 7th, 1997, to the Huff Company --

6 A. That's correct.

7 Q. -- subject, sound barriers for LTD Commodities?

8 A. That's correct.

9 Q. All right. Now, you have your original copy
10 right there.

11 A. Yes.

12 Q. So I'm going to go back to the podium here and
13 read through this. This is a true and accurate copy of
14 the letter you received from IAC on or about
15 February 7th, 1997?

16 A. Yes, it is.

17 Q. And I note at the last page, page 4, it seems to
18 be -- well, you tell me what that is. It's a grid with
19 information. What information is entered --

20 A. That's engineering data that would tell us how

21 deep we would have to put the caissons for the various
22 options that he's given us. He's given us four options
23 on different types of wall material we could use to
24 build the wall. And they have different post spacings,

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1 and as a result, they have different caisson
2 requirements which is the foundation for the wall.

3 Q. Now, you mentioned wind speeds of up to 100
4 miles per hour?

5 A. Right.

6 Q. That this wall would have to endure speeds --

7 A. Right.

8 Q. -- of that? And it's important -- I take it you
9 don't want to put up a noise wall only to have it blow
10 down?

11 A. We'd prefer it didn't.

12 Q. Because it's a wall, obviously, it has to stand
13 up to those wind forces, correct?

14 A. Right. Right.

15 Q. Now, how many times have you been out to the LTD
16 facility?

17 A. Three or four.

18 Q. And are you aware or do you recall that the dock

19 is somewhat below grade?

20 A. Yes.

21 Q. And there is a retention wall just to the north
22 of the dock?

23 A. Right.

24 Q. And that wall is, I don't know, how high would

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1 you say?

2 A. I'd say about eight feet.

3 Q. How high?

4 A. I think about eight feet by my recollection.

5 Q. And where in relation to that wall was LTD
6 proposing or were you proposing LTD install a noise
7 wall?

8 A. There's --

9 MR. KOLAR: Objection. Proposing LTD install a
10 noise wall, I think all he is doing is giving a budget
11 initially and then a proposal later. He's not saying
12 you should install a noise wall, LTD.

13 HEARING OFFICER KNITTLE: I'll sustain that. I
14 don't think that's what you intended either.

15 MR. KAISER: Okay. I'm getting ahead of myself.

16 BY MR. KAISER:

17 Q. All right. Based on -- well, what did you do
18 next? Let's see. I see you received this information
19 in February of 1997?

20 A. I put it into a file and probably did nothing
21 with it for whatever reason. I don't have any notes on
22 this, but it's not unusual for us to see people and
23 nothing happen with a project for months or even years.
24 So I keep it, and if it comes up again, you know, then

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1 I've got some of my early record on it. So if we had
2 any voice communications with LTD, I couldn't even begin
3 to tell you if we did or didn't.

4 Q. Now, I'm going to show you what I'm marking for
5 purposes of identification as Complainants' Exhibit 38B,
6 and it's an exhibit consisting of one, two, three, four,
7 five pages. It appears to be a draft of a letter from
8 David R. Mitchell to Mr. Jack Voight dated March 10th,
9 1998. Do you have the originals of those documents in
10 front of you?

11 A. Uh-huh.

12 Q. I note that the first sentence reads as follows,
13 dear Jack -- and this is addressed to Jack Voight. Dear
14 Jack, we spoke on Monday concerning an acoustic barrier

15 wall for your facility --

16 MR. KOLAR: Just objection. Can you just lay
17 the foundation what he did with this. I object to you
18 reading --

19 BY MR. KAISER:

20 Q. Well, first off, I'm just asking did you, in
21 fact, meet with Jack Voight on the Monday prior to
22 March 10th, 1998?

23 A. I didn't. My brother did. My brother talked to
24 him. He did not go see him, but he did talk to him.

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1 Q. All right. Well, what, if anything, did the
2 Huff Company do with this March 10th, 1998, document?

3 A. This was faxed -- I don't have the original of
4 this. My brother would have the original. I got a copy
5 of it from him back in March, and he would have faxed
6 this to Mr. Voight or would have mailed it to him, one
7 or the other.

8 Q. I note that your brother states we have had
9 great success with this product, meaning the IAC
10 product, the Industrial Acoustics Company product.
11 During this last year having this --

12 MR. KOLAR: Objection. I don't know -- I know

13 we're an administrative hearing, but looking out for
14 LTD's interest, I have a problem with him reading from a
15 record that his brother prepared. No foundation.

16 HEARING OFFICER KNITTLE: Any --

17 MR. KAISER: I'll lay a foundation.

18 HEARING OFFICER KNITTLE: Yeah, I'll sustain
19 that objection.

20 BY MR. KAISER:

21 Q. Mr. Mitchell, you're president of the Huff
22 Company?

23 A. Right.

24 Q. You're aware of what it does and what projects

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1 it's involved in?

2 A. Yes.

3 Q. Has it built noise walls in the Chicagoland --
4 as of March 10th, 1998, had it built noise walls in the
5 Chicagoland area?

6 A. Yes.

7 Q. Had it built some of those noise walls within
8 the last year, that is between roughly March of 1997 and
9 March of 1998?

10 A. Yes.

11 MR. KOLAR: One second. I don't want to play
12 games. I got a copy of this. I just wanted to verify
13 that it's one that LTD, in fact, received. You've
14 marked this as another exhibit already.

15 HEARING OFFICER KNITTLE: Yes, 26.

16 MR. KAISER: No, 38B.

17 MR. KOLAR: No, but you also had --

18 HEARING OFFICER KNITTLE: Yeah, there was a --
19 Complainants' 26 was a March 10th, 1998, letter from
20 Mitchell to Voight.

21 MR. KAISER: All right. Let's take a look at
22 that.

23 MR. KOLAR: Right. We got that.

24 MR. KAISER: All right. Well, I'm going to put

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1 it in in two different ways.

2 BY MR. KAISER:

3 Q. I want to show you what's previously been marked
4 for purposes of identification as Complainants'
5 Exhibit 26, which appears to be a signed copy of what
6 I'm showing you and what you brought today, C38B. Can
7 you leaf through those and see if, in fact, what we've
8 earlier identified as --

9 A. Yeah, this is identical.

10 Q. That's identical. Okay.

11 A. I just didn't have one that my brother signed on

12 our letterhead.

13 Q. Okay. But then this would suggest to you, and

14 we'll verify it with Mr. Voight, that on or about

15 March 10th, 1998, the Huff Company sent to LTD a

16 proposal for a noise wall, is that accurate?

17 A. That's right. That's when I first became aware

18 of it, too, because I talked to my brother about it.

19 Q. You talked with your brother and, in your own

20 mind, you connected what had happened the year before

21 with this new request?

22 A. Right. That's correct.

23 Q. I'm showing you what I'm marking for purposes of

24 identification as Complainants' Exhibit 38C. It's a

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1 two-page document. The top page is a draft of a letter

2 from Tom Thunder to Jack Voight dated May 18, 1998. The

3 second page is a fax cover sheet from Tom Thunder to

4 Steve Mitchell dated 5/18/98 saying, Steve, here's a

5 draft letter to LTD. Any comments? I'd like to ask

6 Mr. Mitchell about this.

7 MR. KOLAR: I'm sorry. What's that exhibit
8 number?
9 MR. KAISER: 38C.
10 MR. KOLAR: Is that from his package here?
11 MR. KAISER: Yes, it is.
12 HEARING OFFICER KNITTLE: What date was the
13 first one?
14 MR. KAISER: It's a draft letter dated May 18th,
15 1998, and the fax transmittal sheet is also May 18th,
16 1998.
17 BY MR. KAISER:
18 Q. Do you see that?
19 A. Uh-huh.
20 Q. And I see on your original you have it in
21 yellow. Do you receive -- does the Huff Company receive
22 its faxes on canary colored paper?
23 A. Some days it's pink. Some days it's blue.
24 MR. KOLAR: This is C38C.

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1 BY THE WITNESS:
2 A. We use different colors depending what paper is
3 available.
4 BY MR. KAISER:

5 Q. Do you know -- do you recall whether you
6 provided Mr. Thunder with any comments to his draft?

7 A. Yes. I would have called him back and told him
8 that I agree with what he wrote here. I think he was
9 trying to clarify what -- he and Dave did meet at the
10 site. Dave then came back and told me what he was
11 putting together and how he was putting together the
12 budget because this would be my client and because of
13 what territory it's in.

14 Tom and I had a conversation on this and he
15 just asked if I would look at this to make sure he was
16 accurately interpreting what we had told him about the
17 budget costs. So, yes, I did have a conversation with
18 Tom about this.

19 Q. And what did you say to Tom and what did he say
20 to you?

21 A. That based on the budge pricing that you're
22 showing here, that is what we did send to Jack Voight.

23 Q. Now, I'm marking for purposes of identification
24 as Complainants' Exhibit 38D a one page fax transmittal

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1 dated June 5, 1998. Do you have this document, the
2 original of this document?

3 A. Yes, I do.

4 Q. Did you, in fact, fax this document to Jack

5 Voight on or about June 5th, 1998?

6 A. Yes.

7 Q. And I note that it states, Jack, the wall we

8 discussed in Wisconsin is on I-894 at the National

9 Avenue off ramp on the east side of the expressway.

10 Please give me a call with questions.

11 Had you and Jack Voight had a discussion on

12 or about June 5th, 1998, concerning a noise wall that

13 the Huff Company had built up in Wisconsin?

14 A. Yes.

15 Q. Do you recall whether you called Jack or Jack

16 called you?

17 A. I don't recall how the conversation came about.

18 Q. Do you recall approximately how long the

19 conversation lasted?

20 A. Probably ten minutes or so.

21 Q. Do you recall generally what you said to Jack

22 and what he said to you?

23 A. I think he was curious about this type of wall

24 panel that we were quoting and he asked if there were

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1 any examples around. And I recommended -- I asked him
2 if he ever got up to Wisconsin because we had recently
3 completed a large wall up there. He said yes. I told
4 him I would get him the directions on where it was.

5 Q. So that's what the fax was just to tell him if
6 you want to see a wall like the ones we build, you can
7 drive up to Wisconsin; is that fair?

8 A. That's correct.

9 Q. Now, I'm showing you what I'm marking for
10 purposes of identification as Complainants' Exhibit 38E.
11 It's a two-page document, and it appears to be a
12 facsimile transmittal from you to a Jim Graham at IAC
13 dated 11/10/98. Do you have that document in front of
14 you?

15 A. Right.

16 Q. And the second page is a diagram of the LTD
17 facility, is it not?

18 A. That's correct.

19 Q. For whom does Jim Graham work?

20 A. At the time, he was a vice president of the
21 industrial department, so he would be Gary Figallo's
22 boss.

23 MR. KOLAR: One second. I have to find this.

24 THE WITNESS: What I did on all this stuff is --

1 just work your way up from the bottom.

2 MR. KOLAR: Okay.

3 BY MR. KAISER:

4 Q. I note on the second page it's got a diagram of
5 LTD's dock area?

6 A. That's right.

7 Q. Do you know whose handwriting that is?

8 A. That's mine.

9 Q. And I see you've observed the retention wall,
10 and I note there it says 14 foot high wall.

11 A. That's correct.

12 Q. Does that refresh your recollection as to the
13 height of the retention wall at least directly north of
14 the truck dock holding spaces?

15 A. Well, what this is showing is that our wall,
16 which would sit on top of that retention wall, would be
17 an additional 14 feet tall. So the depth of the dock
18 I'm not sure of. My recollection is eight feet. It
19 could be five feet.

20 Q. Okay.

21 A. But that's only where the trucks are shown.
22 These are trucks -- these diagonal items here would just
23 be trucks backing in here. When we get down to this
24 level, this ramps down and this is level here. This is

1 at the dock level. There's no retention wall.

2 Q. I note, Mr. Mitchell, for the record, on the
3 second page of Exhibit 38E is showing that as a person
4 travels to the west of the LTD truck dock holding spaces
5 that that, in fact, slopes down and becomes level with
6 the ground --

7 A. Right.

8 Q. -- to the west. Is that what you were
9 indicating?

10 A. That's correct. That's correct.

11 Q. And why did you fax this information to Jim
12 Graham in November of '98?

13 A. He's always looking for large jobs that we're
14 working on, so I sent this to him and had a conversation
15 with him where I wanted to get some additional
16 engineering data on the wall placement.

17 Q. Now, at the time you faxed this note to Jim
18 Graham, November 10th, 1998, did you have any concerns
19 about whether it was feasible to construct a noise wall
20 in the location you've shown on the second page of
21 Exhibit 38E?

22 A. No. I didn't have any concerns except for cost.

23 Q. Other than cost?

24 A. Right.

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1 Q. But in terms of technical feasibility, you felt
2 it was feasible to construct a noise wall that would
3 withstand the wind forces of up to 100 miles per hour at
4 the location shown on the second page of 38E by this
5 bold line --

6 A. Yes.

7 Q. -- you've drawn in?

8 A. That's correct.

9 Q. Your opinion was it was technically feasible?

10 A. That's correct.

11 MR. KOLAR: I would object on the technical
12 feasibility part based on his opinion witness disclosure
13 for David Mitchell. I'm not complaining because it says
14 David, but for David Mitchell, he said David Mitchell
15 may opine concerning the costs and effectiveness of
16 acoustical barrier walls and related opinions consistent
17 with his letter dated March 10th, 1998, to Jack Voight
18 and conversations with Mr. Voight and Mr. Thunder.

19 And then he mentions another letter with the
20 same phrase, so I think that goes beyond his disclosure
21 to me which is that he was going to give an opinion as

22 to the cost of the wall.

23 MR. KAISER: If I may, as the Board, through
24 your office, Mr. Knittle, the Hearing Officer's office,

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1 knows we scheduled the evidence deposition of Dr. Paul
2 Schomer and took the evidence deposition of Dr. Paul
3 Schomer on Friday, October 29th with the idea that by
4 stipulating -- the parties would stipulate to the
5 admission of Dr. Schomer's evidence deposition because
6 Dr. Schomer was not able to appear before the Board
7 during this week.

8 In the course of Mr. Kolar's
9 cross-examination of Dr. Schomer, Mr. Kolar raised some
10 issues concerning the technical feasibility of anchoring
11 a wall in the vicinity of the 12 truck dock holding
12 spaces. He inquired of Dr. Schomer about the depth to
13 which you might have to put in the supports and, given
14 that there's already a retention wall in place, whether
15 a wall could be built right at that location, the
16 location that Mr. Huff (sic) has shown by the bold
17 marking on page 2 of Exhibit 38E.

18 So given that Mr. Kolar raised this issue in
19 the course of his cross-examination of Dr. Schomer, I

20 think I should be entitled, now that we have documents
21 that are more extensive than either Mr. Kolar or I had
22 been aware of, to inquire of Mr. Huff (sic) about the
23 technical feasibility.

24 I am not taking Mr. Kolar by surprise. I

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1 don't know the answer that Mr. Huff (sic) is going to
2 give. I put myself and my clients at equal risk. The
3 Board will have to make a determination whether the
4 remedy that we propose, that is, construction of a noise
5 wall is economically reasonable and technically
6 feasible.

7 And I think that Mr. Mitchell is uniquely
8 qualified to provide the Board with information about
9 its technical feasibility, and because there's really no
10 issue of surprise or advantage to one party or the other
11 since Mr. Kolar and I were given these documents at the
12 same time and since the Board will be looking into the
13 record for just this type of information, I'd ask that
14 Mr. Mitchell's opinion concerning the feasibility, the
15 technical feasibility of the wall's construction, be
16 allowed to stand.

17 HEARING OFFICER KNITTLE: And I'll let you make

18 whatever argument you want to make on the record. Do
19 you have something before I make a decision?

20 MR. KOLAR: I'm just saying I don't recall that
21 I asked Mr. Schomer that, but I guess his transcript
22 will speak for itself.

23 HEARING OFFICER KNITTLE: Right. Well, I was
24 going to say in light of the documents that have just

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1 come to light and the deposition, which if it does, in
2 fact, say that Mr. Kolar, he could call somebody to
3 rebut that testimony in his rebuttal.

4 I think these are kind of unusual
5 circumstances. I'm going to allow him to ask the
6 question, but I also want to let you know that if you
7 have any arguments, you could make them on the record
8 now or in your closing or at the posthearing brief. But
9 I think you have at least touched on it beforehand.

10 MR. KOLAR: I don't recall, but I guess the
11 transcript will speak for itself in that regard. I
12 don't know if I touched on it.

13 HEARING OFFICER KNITTLE: No. No. No. I meant
14 you touched on your objections and I'd allow you to make
15 further objections now. I have no idea what the

16 transcript will say, but he says it does and you say it
17 doesn't. If it does, I think it's a valid rebuttal
18 testimony even though we're not quite on rebuttal yet.
19 During the unusual circumstances, I'll let it go in.

20 MR. KOLAR: I don't recall.

21 HEARING OFFICER KNITTLE: Do you have anything
22 further in terms of argument that you might want the
23 Board to hear before we ask the question?

24 MR. KOLAR: No.

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1 HEARING OFFICER KNITTLE: You can go.

2 MR. KAISER: Thank you.

3 BY MR. KAISER:

4 Q. Mr. Mitchell, I'm now showing you what I've
5 marked for purposes of identification as Complainants'
6 Exhibit 38F. It's a memorandum from Jim Graham to you
7 dated Tuesday, November 10th, 1998. It's a two-page
8 document. I'm showing it to Mr. Kolar. I'm showing it
9 to you, sir, to see if you have those two pages in front
10 of you.

11 A. Now you see we switched to gray paper in the
12 machine.

13 Q. So noted. I take it this is in response to the

14 fax you sent Jim Graham, Complainant's Exhibit 38E?

15 A. Yes. After I sent the fax to Graham --

16 MR. KOLAR: This one I have an objection to, I'm
17 sorry, Mr. Mitchell, to interrupt you, because it's not
18 one of his business records. It's a record of a third
19 party coming to Mr. Mitchell.

20 HEARING OFFICER KNITTLE: You have an objection
21 to continued testimony about this document?

22 MR. KOLAR: Yes. It's hearsay. He can't use
23 the business record itself because it's not a Huff
24 Company business record.

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1 HEARING OFFICER KNITTLE: I'm going to have to
2 see it before I -- and why is this not a business
3 record?

4 MR. KOLAR: It's not a business record of his
5 company. A business record is something prepared in the
6 normal course of the business of his company kept by his
7 company in the normal course of business at or near the
8 time of the event. This is a business record of
9 Industrial Acoustics Company.

10 HEARING OFFICER KNITTLE: And do you have a
11 response, Mr. Kaiser?

12 MR. KAISER: My response is that it may be a
13 document that Mr. Huff (sic) relied on in forming his
14 opinions both as to the cost of the wall and the
15 technical feasibility of constructing the wall in the
16 location suggested on Exhibit 38E.

17 So to the extent it was a document
18 Mr. Mitchell relied upon in forming opinions as to
19 either cost or technical feasibility, it should be
20 allowed.

21 HEARING OFFICER KNITTLE: I'm going to overrule
22 the objection and allow it in. Well, it hasn't been
23 offered yet, but I'll allow you to continue questions
24 regarding this document.

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1 MR. KAISER: Thank you.

2 BY MR. KAISER:

3 Q. Again, Mr. Mitchell, you have 38F --

4 A. Yes, I do.

5 Q. -- the fax of November 10th?

6 Now, the second page has a table with
7 information on it. Can you tell the Board what
8 information is contained within that grid?

9 A. Right. Earlier we said we thought the wall

10 would have to withstand 100 mile an hour wind. In fact,
11 code in this area is 80 miles an hour. Gary Figallo
12 would have determined that off of code books that they
13 have access to.

14 So what the second chart does is it shows for
15 post spacings of 16 feet apart and a post and wall being
16 14 foot high. These are the structural calculations
17 that would show you what size steel you need and how
18 deep you have to put the caisson in the ground.

19 That does make some assumptions as to what
20 the ground is. Before we did anything like this, we
21 would have to take coarse samples to make sure that the
22 ground has the strength that matches this, but this
23 would get us in the ball park of an accurate quote.

24 Q. And can you point us to any particular place on

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1 that table on page 2 where it indicates how deep the
2 posts would have to be sunk?

3 A. No. Jim Graham told me on the cover, the cover
4 memo, to use the ten foot deep, two and a half foot
5 diameter, 30 inch diameter.

6 Q. And I see that on, again, on page 2, the bottom
7 line seems to be circled or highlighted in some way. Do

8 you know why that was highlighted?

9 A. That's just to highlight the -- Gary Figallo
10 thought that the W6 by 25, which would provide these
11 engineering characteristics, is what you would need to
12 use for the structural steel to support this wall. We
13 would then, in turn, have this checked by a professional
14 engineer registered in Illinois. So this is just a
15 preliminary -- use this for budget purpose type number.

16 Q. Now, I'm going to show you what I'm marking for
17 purposes of identification as Complainants' Exhibit 38G.
18 It's a nine-page document that on the cover has a date
19 of 11/16/98. It indicates it's from Steve Mitchell. Do
20 you see that set of documents?

21 A. Right.

22 Q. Can you tell us what are we looking at here,
23 Mr. Mitchell?

24 A. This is base plate design and description of the

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1 columns that I need. I needed 51 of them, and this
2 would be a request for quote. The reason the cover is
3 blank is that I then photocopy it and send it out to
4 four different companies to get pricing for the
5 structural steel.

6 So the additional documents are the requests
7 for quote that was sent to a company and the quote that
8 they sent back to us were from Argo Steel, Durweld, LJ
9 Iron and Williams Steel and Supply Company. So I sent
10 the same request for quote to all four people.

11 Q. And this was an effort on behalf the Huff
12 Company to get a little more detail so that it could
13 prepare a cost estimate?

14 A. We were preparing a firm bid to LTD, so this was
15 the columns that would support the wall.

16 Q. I'm marking for purposes of identification as
17 Complainants' Exhibit 38H a four-page document. The
18 cover sheet is a Huff Company, Inc., letterhead with a
19 date 11/16/98 to Tony Bronge, B-r-o-n-g-e, from Dave
20 Mitchell. Again, do you know -- can you explain to us
21 what we're looking at here?

22 A. Yes. This is a request for quote for the
23 concrete caissons that would be underneath each of the
24 columns, and I asked my brother, Dave, because he was

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1 doing some other work with Detail Concrete, if he would
2 send this fax on my behalf. So that's the first page.
3 The second page is -- how many pages do you have?

4 Q. I have four pages.

5 A. The second page is just some notes where we
6 changed the side. It was the original and then I made
7 some corrections to it. The third page is the pricing
8 we got back from Detail Concrete and then there's a note
9 on the third page from Sharron & Associates where they
10 gave me a price range of 56,947 to \$68,000 for the same
11 work.

12 Q. And, again, this was information that was going
13 to assist the Huff Company in preparing a firm bid?

14 A. That's correct.

15 Q. I'm now marking for purposes of identification
16 as Complainants' Exhibit 38I. It's a four-page
17 document, the first page of which is a facsimile
18 transmittal dated 11/17/99.

19 A. Right.

20 Q. From you to Jack Voight?

21 A. That's correct.

22 Q. Again, for the Board's benefit, would you
23 describe and tell us what that document Exhibit 38I is?

24 A. This is a firm proposal to Jack Voight for a

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1 wall that was described in that fax that I sent to Jim

2 Graham, and there's a copy of that same sketch attached
3 to this. Our original budget proposal called for a wall
4 of about 250 feet long by 15 feet high.

5 And, in fact, when we went out there and
6 actually walked off the area, it became 682 feet long,
7 and, in fact, I think Tom Thunder recommended that
8 14 feet should be the height of it. So this proposal
9 details everything that we would be including with our
10 proposal.

11 A wall like this consists of concrete
12 caissons, steel columns sitting on the caissons bolted
13 to them and wall panels that slip in between the columns
14 and, you know, some other engineering and drawing design
15 and stuff like that.

16 Q. Now, this proposal that you submitted to Jack
17 Voight on November 17th, 1998, do you know whether this
18 proposal anticipated that the south wall of the noise
19 wall, the side of the wall facing the LTD docks, whether
20 that contained noise absorbing --

21 A. Yes. This wall is a five-inch thick panel that
22 provides transmission loss that it stops noise from
23 going through it and it is absorptive, perforated
24 towards the noise source.

1 Q. Now, at the time you submitted the bid to LTD,
2 November, 17th, 1998, you understood -- why did you
3 understand LTD was interested in at least exploring the
4 cost and technical feasibility of a noise wall?

5 A. As I understand it, we were recommended to them
6 by Tom Thunder. He had ascertained that they had a need
7 to -- when I say need, a potential need to build a sound
8 wall.

9 Q. I note that on the diagram page 2 of 38E, which
10 is your fax to Jim Graham dated November 10th, 1998,
11 that in the diagram on page 2 that you have of the LTD
12 facility --

13 A. Right.

14 Q. -- you indicate to the west is the tollway and
15 to the north you have, I believe you testified that's
16 your handwriting, neighbor's house?

17 A. Right.

18 Q. And then in the far right corner, it seems to be
19 cut off -- well, no, I guess it's squeezed on to the far
20 corner, house.

21 A. Uh-huh.

22 Q. Did you understand -- why did you notate the LTD
23 facility map with neighbor's house and house?

24 A. Well, I imagine that they were putting the wall

1 up to protect them from -- or protect neighbors from any
2 noise they might be making.

3 Q. Did you have an opinion as of November 17th,
4 1998, when you submitted this firm proposal to Jack
5 Voight, whether construction of a noise wall of the type
6 described within the proposal, Complainants'
7 Exhibit 38I, whether a noise wall of that sort would
8 reduce migration of noise from the LTD dock area to the
9 neighbor's house and houses to the north?

10 A. I believe it will, yes.

11 Q. And what was the basis for your belief that a
12 noise wall constructed in accordance with the
13 specifications contained in your offer of November 17th,
14 1998, would reduce the transmission of noise from LTD's
15 docks to the neighbors to the north?

16 A. Well, two things, one I'm confident about the
17 effectiveness of the product, but I also knew that Tom
18 Thunder recommended a wall of that height of at least
19 partially that long. And Tom Thunder is a pretty smart
20 guy and if he says that's what it takes, I believe him.

21 Q. And you believe Tom Thunder and you believe that
22 the product that IAC provides is effective?

23 A. Yes.

24 Q. I'm showing you what's been marked for purposes

1 of identification as Complainants' Exhibit 38J. It's a
2 one page fax transmittal from you to Jack Voight dated
3 January 13th, 1999. Do you have that document in front
4 of you?

5 A. January 13th, yes.

6 Q. Yes. Did you, in fact, send this to Jack Voight
7 on or about January 13th, 1999?

8 A. Yes.

9 Q. I note that the second sentence of the first
10 paragraph reads as follows, absorption on your side of
11 the wall is critical to this application. What are you
12 referring to?

13 A. Well, if he puts a wall up -- when I say he, I
14 mean LTD. If they were to put a wall up in that
15 location that is reflective like the walls that are
16 going up along the tollway right now, noise will build
17 up and could be louder and make the condition worse.

18 So typically what we do in an area like that
19 is put absorption on the noise side. Having said that
20 though, I did want to check with Tom Thunder to make
21 sure, absolutely sure, that that was necessary because
22 at the same time, we were providing the concrete walls

23 to the tollway, and I thought it might save some money
24 if we could piggyback onto that production run.

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1 Q. So the Huff Company is under contract with the
2 Illinois Toll Authority to provide walls?

3 A. Industrial Acoustics Company is through -- they
4 have a relationship with a company called Sound Corp.,
5 and we are the rep for that. So I do not directly have
6 a contract with the contractors who's on this tollway,
7 but I'm the representative for the people who do. I
8 sold those walls.

9 Q. Now, I'm showing you what's been marked for
10 purposes of identification as Complainants' Exhibit 38K.
11 It's a three-page document, the first of which is a
12 facsimile transmittal from you to Jack Voight dated
13 February 13th, 1999. Do you have that document in front
14 of you?

15 A. Yes, I do.

16 Q. Did you, in fact, send this document to Jack
17 Voight on or about February 13th, 1999?

18 A. Yes, I did.

19 Q. Can you describe for us what the purpose of this
20 communication with Jack Voight was?

21 A. Yes. I had a conversation with Jack where he
22 asked if there was anything we could do to reduce the
23 cost of this sum. We started out one time with one
24 square foot price and then because the wall grew to be

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1 so much bigger and the cost was so much more than they
2 had anticipated, he wanted to know what had happened.

3 So I started looking at it. In fact, their
4 square foot price came down. But I did recommend that
5 we could perhaps look at making the wall not quite as
6 high if Tom Thunder thought that acoustically it could
7 still work, or two, we could maybe eliminate some of the
8 length of the wall, get back more to the size that we
9 originally talked about.

10 Q. Did you ever discuss with Tom Thunder whether
11 the wall's height could be reduced from 14 to 12 or 14
12 to ten feet?

13 A. Yes, my recollection is that I did.

14 Q. Did you provide Mr. Voight with a revised quote
15 for construction of a noise wall?

16 A. Yes. That's what this quote dated February 13th
17 is. It shows the original cost and then I showed cost
18 reduction options of going 12 foot high instead of 14,

19 ten foot high instead of 14 and then the cost to
20 eliminate each bay of panels to make the wall shorter.

21 Q. I see. Cost reduction options on the final page
22 of the document.

23 A. Right.

24 Q. You could knock off about 28,000 if you could

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1 bring it from 14 down to 12 feet?

2 A. That's right.

3 Q. Reduce it a total of 56,000 if you could reduce
4 the height from 14 to ten feet?

5 A. That's right.

6 Q. And some other reductions if you made the wall
7 shorter?

8 A. That's correct.

9 Q. I want to mark for purposes of identification
10 two other documents that were included in your file, the
11 first of which I'm marking as Complainants' Hearing
12 Exhibit 38L. It's a brochure from Industrial Acoustics
13 Company.

14 A. Right.

15 Q. Are those the types of panels you had proposed
16 LTD install?

17 A. The panels on the front are what we would show
18 to -- or what we proposed to LTD. In fact, that's the
19 wall that was up in Wisconsin that I referred Jack to.
20 On the inside, it just gives information about other
21 types of walls that we do, specifically, wood, concrete
22 and reflective metal.

23 Q. Do you have an opinion concerning -- would a
24 wood wall be cheaper?

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1 A. It could be. It might be. It wouldn't work
2 because it's not --

3 Q. Why do you say it wouldn't work?

4 A. Well, it doesn't have the same transmission loss
5 and it's not absorptive. It might be fine on the
6 tollway, but it's not for this type of application where
7 you have to guarantee results where there's apparent
8 noise violation.

9 Q. And with respect --

10 THE WITNESS: I said apparent.

11 MR. KOLAR: You said apparent, okay. How about
12 alleged?

13 THE WITNESS: Alleged, okay, whatever the word
14 is.

15 BY MR. KAISER:

16 Q. And with respect to the document I've marked as
17 Hearing Exhibit 38M, it's a two-page schematic of the
18 dock area for the LTD facility?

19 A. That's the drawing that Jack Voight gave to me.
20 I think the second drawing is the one where I drew the
21 wall in and then I reduced it so I could send it to Jim
22 Graham in New York. So that's -- those came from LTD.

23 Q. Since February 13th of 1999 when you sent Jack
24 Voight the revised cost estimate, have you had any

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1 further conversations with Mr. Voight or anyone at LTD?

2 A. Yes.

3 Q. When were those communications?

4 A. I didn't keep an exact record of it. I called
5 Jack probably two or three times just to find out the
6 status of the wall, just to find out, you know, is there
7 anything I could or should be doing, and he said, no,
8 just right now we're waiting for a hearing. And my most
9 recent conversation was I think after you contacted me,
10 out of curtesy to him as a potential customer, I told
11 him that I had been subpoenaed and was going to be
12 testifying in court.

13 Q. All right. Well, we --

14 A. Or hearing or whatever this is.

15 Q. Administrative board hearing. We appreciate
16 your time and your testimony this afternoon.

17 MR. KAISER: I have no further questions.

18 Mr. Kolar may.

19 HEARING OFFICER KNITTLE: Do you have a
20 redirect, Mr. Kolar?

21 MR. KOLAR: Yes.

22 HEARING OFFICER KNITTLE: Can I interrupt before
23 you start?

24 MR. KOLAR: Yes.

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1 HEARING OFFICER KNITTLE: Did you offer -- or
2 not offer, did you talk about another exhibit at the end
3 there? Were those two diagrams going to be
4 Complainants' 38M?

5 MR. KAISER: Yes, 38M, yes. Thank you.

6 HEARING OFFICER KNITTLE: Sorry. I didn't get
7 that.

8 MR. KAISER: And I would, at this time, move for
9 admission into evidence of Complainant's Group
10 Exhibit 38 A through M.

11 HEARING OFFICER KNITTLE: If we're going to do
12 that, let's take them one at a time, or do you want to
13 do it after you cross-examine?

14 MR. KOLAR: I think I'd rather do it afterward.

15 HEARING OFFICER KNITTLE: Is that a problem?

16 MR. KAISER: No.

17 HEARING OFFICER KNITTLE: Let's wait.

18 MR. KAISER: Thank you.

19 CROSS-EXAMINATION

20 by Mr. Kolar

21 Q. How are you doing, Mr. Mitchell?

22 A. Pretty good.

23 Q. This is Respondent's 75. Mr. Mitchell,
24 Respondent's Exhibit 75, a photograph, does that look to

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1 you like the top of the retaining wall by the truck
2 staging area at LTD?

3 A. Yes, it does.

4 Q. So the wall that you gave a proposal for, among
5 other areas, would run along this evergreen line shown
6 on this photo?

7 A. Right. We were going to be between the sidewalk
8 and the evergreens.

9 Q. And you can see in this photo that there are
10 tractor trailers backed up into the staging area?

11 A. Yes.

12 Q. Have you or anybody in your company checked with
13 a professional engineer whether there would be any
14 support issues with putting a noise wall at the top of
15 this retaining wall?

16 A. No, because we weren't looking to do it at the
17 top of the retaining wall. We were looking into doing
18 it about six feet back. I don't mean to be picky with
19 you, but in answer to that question, no.

20 Q. So regardless of six feet back, you also --

21 A. We would have it checked. We would have to take
22 coarse samples and we would check with a professional
23 engineer before we actually installed anything.

24 Q. Have you taken coarse samples?

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1 A. No.

2 Q. And have you checked with any professional
3 engineer whether this particular wall could be
4 constructed in the location shown on your documents?

5 A. No.

6 Q. And one of the main issues as indicated by the

7 100 mile an hour and 80 mile per hour wind is that you
8 have to build a wall that won't fall down, right?

9 A. That's correct. If the soil isn't suitable, we
10 may have to use a bigger caisson.

11 Q. Caisson is the concrete?

12 A. Caisson is the concrete that would be from
13 ground level and lower.

14 Q. Caisson goes ten feet into the ground, the
15 concrete goes ten feet into the ground?

16 A. Yeah, I think that's what we said.

17 Q. And then the post is attached by --

18 A. We have anchor bolts that are imbedded into the
19 concrete and then the base plate gets bolted onto that.

20 Q. So your firm proposal for the 14 foot wall going
21 that 600-some feet was \$297,000?

22 A. Roughly.

23 Q. Is that price good today?

24 A. Probably. Material cost is. I don't know,

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1 labor there might be a slight increase, but typically
2 something like that we wouldn't -- if they want to give
3 us an order today, we'd accept it. I guess that wasn't
4 an offer, huh?

5 Q. I don't have authority.

6 A. I thought I'd ask.

7 Q. Exhibit 38E your fax from you to Jim Graham, the
8 second page has the black line showing the location of
9 the wall, correct?

10 A. That's right.

11 Q. And the east side of it stops by the drive
12 leading into the parking lot?

13 A. That's correct.

14 Q. And that's intentional, correct?

15 A. Yes.

16 Q. Cars still have to be able to drive along that
17 path into the north parking lot?

18 A. Right.

19 Q. Does the wall taper down at that far east end?

20 A. Only if the ground tapers down.

21 Q. Would it be --

22 A. It's the same height wall.

23 Q. It would be 14 feet at that end?

24 A. Right, but I believe the ground starts to taper,

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1 so we're just following that. We step it down -- if you
2 go up and down the tollway, you'll notice some of the

3 walls have steps to them.

4 Q. Mentioning the tollway, you've got on the second
5 page of this Exhibit 38E the arrow pointing that the
6 tollway is directly to the west, right?

7 A. Right.

8 Q. And your company builds walls for the tollways?

9 A. Yes.

10 Q. So you know the tollway makes noise?

11 A. Oh, yes.

12 Q. The wall that you're proposing will do nothing
13 to stop tollway noise coming onto the complainants'
14 properties, right?

15 A. I would think it wouldn't.

16 Q. You're answer -- it will not?

17 A. Right, it will not. Our wall would not stop
18 tollway noise in that location.

19 Q. If you turned it so it went north to south,
20 maybe it would help a little. Let me show you
21 Respondent's Exhibit 89, an aerial photograph from
22 March 20, 1999. From the aerial, do you recognize the
23 LTD warehouse here where I put the sticker?

24 A. Yes.

1 Q. And you can see the trucks in the staging area,
2 right?

3 A. That's right.

4 Q. Or the trailers. And the wall that we're
5 describing again stops on the west side of this drive
6 which goes into the north parking lot?

7 A. It actually comes down here to angle down into
8 here.

9 Q. You said here. So we could make the record --
10 you understand this is Lakeside Drive leading from
11 Route 22?

12 A. Yes.

13 Q. As it gets up to the northeast corner of the LTD
14 building, it forks out into a Y?

15 A. Right. That's correct.

16 Q. If you go left, that takes you into the staging
17 area?

18 A. That's right.

19 Q. If you go right on the Y, that takes you to the
20 parking lot?

21 A. That's right.

22 Q. So you're saying that the wall you proposed
23 comes down the west side of the east arm of the Y?

24 A. Yes, comes right down here. It goes across, up

1 and over.

2 Q. The evidence shows that -- do you see this
3 parking lot for Corporate 100?

4 A. Yes.

5 Q. The evidence shows that this house directly
6 north of Corporate 100 is the Weber house.

7 A. All right.

8 Q. Your wall will not stop noise from trucks that
9 are on Lakeside Drive going south to Route 22? When
10 they accelerate to go to Route 22, the wall won't
11 capture that noise and prevent it from going to the
12 Webers?

13 A. That's right.

14 Q. What about here, the Rosenstrocks? They're kind
15 of right on the Corporate 100/LTD border. Is that wall
16 going to capture all trucking operation noises that
17 originate from Lakeside Drive if this is -- the
18 testimony will show that's the Rosenstock house?

19 A. It wouldn't stop it from Lakeside Drive. It
20 would stop it from the entrance ramp and in here.

21 HEARING OFFICER KNITTLE: And by in here, you
22 mean the staging area?

23 THE WITNESS: The staging area, right.

24 BY MR. KOLAR:

1 Q. So the wall -- this \$300,000 wall would provide
2 the most significant protection to the Roti house which
3 is directly north of the LTD parking lot?

4 MR. KAISER: Objection, leading. I don't think
5 he's shown that Mr. Mitchell is hostile, and I don't
6 think it's appropriate that he lead.

7 HEARING OFFICER KNITTLE: It's just
8 cross-examination. I'd overrule that. He can ask
9 leading questions.

10 BY THE WITNESS:

11 A. I would say the effect would be on that house
12 and the next house.

13 BY MR. KOLAR:

14 Q. What do you mean the next house?

15 A. The Rosen -- or whoever.

16 Q. Right. But I though I heard you say, and I
17 guess the record will speak for itself, that the noise
18 wall is not going to capture all of the -- it's not
19 going to capture noise from Lakeside Drive?

20 A. Yeah, I agree with that. I said it would
21 protect that -- what's the name again?

22 Q. Rosenstock.

23 A. The Rosenstock's house from the entrance ramp

24 and from the loading area. It's not designed where it's

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1 going to be protecting from trucks entering up Lakeside
2 Drive.

3 Q. Just so the record's clear, when you say
4 entrance ramp, what do you mean by that?

5 A. From this Y.

6 Q. The left part of the Y?

7 A. Yeah, from the left over here because this wall
8 is about 60 feet long here, so it's from here over into
9 here and it comes down to here.

10 Q. You said here, the Y --

11 A. From the joint of the Y -- from the left fork of
12 the Y to approximately the west end of the staging area
13 and the driveway out there is what the wall is designed
14 to protect so, for example, trucks that are sitting and
15 idling here.

16 MR. KAISER: For the record, indicating the
17 truck idling at the far west end of the LTD dock area.

18 BY MR. KOLAR:

19 Q. That's where you were pointing?

20 A. Yes.

21 Q. Do you agree that a tractor trailer accelerating

22 makes more noise than one at a constant speed?

23 A. I really have no idea. I don't know all the
24 noise that they've got. They have people backing up and

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1 beepers, backing into the docks.

2 Q. Allegedly?

3 A. Allegedly, right.

4 Q. Would your noise wall provide any protection
5 from a garbage truck picking up garbage at the northwest
6 corner of the Corporate 100 parking lot?

7 A. It would protect LTD.

8 Q. Will it protect the complainants from the noise?

9 A. No.

10 Q. Do you ever do cost benefit analysis in your
11 business for walls, or do you just give a proposal and
12 estimate as to what it would cost?

13 A. I'd have to say somewhere along the line I'm
14 sure we've gotten into cost benefit in terms of getting
15 people different options and saying that a solution of
16 this much money will do this for you. In terms of
17 something like this, equating it to a dollar benefit, I
18 couldn't do that and did not do that.

19 Q. And the wall again that is shown on the second

20 page of Exhibit 38E or the location for the wall, can
21 you guarantee LTD that that wall would -- that \$297,000
22 wall would eliminate noise from its trucking dock
23 operations on the complainants' properties?

24 A. Well, what we would guarantee is that this wall

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1 would -- before we accepted a purchase order, we would
2 have to see the data from Thunder and Schomer and
3 whoever, but we typically would guarantee noise results.
4 And we would not expect somebody to buy this unless it
5 was going to get them down to below the EPA limitations.
6 So would we guarantee it, yes. Before we guaranteed it
7 and accepted the purchase order, we would want to see
8 what the data is that Thunder based this wall size on.

9 Q. So as you sit here today, you could not say
10 whether you would actually give a guarantee, true?

11 A. No. I would give a guarantee once I saw the
12 data.

13 Q. Could you guarantee LTD that the neighbors
14 wouldn't complain anymore about noise from the --

15 A. No. No. I could not guarantee that. I've had
16 examples of where we've gotten people below the EPA
17 limits and people still object to the noise.

18 MR. KOLAR: I don't have anything else.

19 HEARING OFFICER KNITTLE: Do you have redirect,
20 Mr. Kaiser?

21 MR. KAISER: Briefly.

22 REDIRECT EXAMINATION

23 by Mr. Kaiser

24 Q. What data in particular would you ask Tom

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1 Thunder to provide you before you made a guarantee of
2 noise reduction?

3 A. I'd like to see octave band readings that he took
4 out there.

5 Q. I'm showing you what's previously been marked
6 for purposes of identification as Complainants'
7 Exhibit 36. While it hasn't been fully authenticated,
8 I'm going to represent to you and to the Board that when
9 Tom Thunder is called to testify, he will testify that
10 these are barrier calculations that he ran to determine
11 whether a noise wall built in the manner that the Huff
12 Company has recommended would result in reduction of
13 noise transmission from the LTD dock area to the Roti,
14 Weber and Rosenstock residences.

15 Does this look like the type of information

16 you would want to see, Mr. Mitchell?

17 A. Well, this looks to me -- this is a format it
18 would come in. I mean, I don't know what this really
19 is. He's got some estimated background noise at some
20 given time. I don't know, was that a busy day or not a
21 busy day. We're going to be affected by obviously
22 temperature and humidity conditions or are we affected
23 by how busy the tollway is.

24 But this is the kind of data that we would

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1 use to then back into a guarantee, that given this type
2 of noise level, this is what our wall could do. And we
3 could guarantee that because we could come out with
4 sound measuring equipment and sound amplifiers and
5 generate sound at these frequencies and demonstrate that
6 it works.

7 Q. And that's the sort of demonstration the Huff
8 Company has been making for the 15 years you've been its
9 president?

10 A. That's typically what we do for people where
11 they want a guarantee.

12 MR. KAISER: Thank you. I have no further
13 questions.

14 HEARING OFFICER KNITTLE: Do you have a recross?

15 MR. KOLAR: No.

16 HEARING OFFICER KNITTLE: Thank you, sir. You
17 could step down.

18 THE WITNESS: Thank you.

19 MR. KAISER: I would, before we excuse
20 Mr. Mitchell --

21 HEARING OFFICER KNITTLE: Please don't step
22 down.

23 MR. KAISER: -- move to admit into evidence
24 Group Exhibit 38 A through M and if you would like to do

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1 them one at a time, I'd be happy to.

2 HEARING OFFICER KNITTLE: Do you have any
3 objections to the group exhibit, first of all? Do you
4 want to go through them one by one, Mr. Kolar?

5 MR. KOLAR: I want to go through them one by
6 one.

7 HEARING OFFICER KNITTLE: All right. Let's take
8 38A. C38A is a fax from Huff to Figallo I guess on
9 January 28th, 1997.

10 MR. KOLAR: I object to this one. This is not
11 something that LTD got to my knowledge, and, again, it's

12 a business record at least part of a business record of
13 Industrial Acoustics Company. And it's -- Gary Figallo,
14 as I understand, is a person at IAC.

15 HEARING OFFICER KNITTLE: Any response,
16 Mr. Kaiser?

17 MR. KAISER: I believe the testimony was that
18 Mr. Mitchell -- that this is one of the documents he
19 relied upon in developing his firm proposal to LTD, and
20 it was one of the documents he relied on in determining
21 that construction of a wall was technically feasible,
22 that a wall would be effective in reducing noise and
23 that the cost to the wall ultimately coming out in the
24 vicinity of \$300,000. So for those reasons because he

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1 used the information contained in 38A to develop those
2 opinions, I would ask that it be admitted.

3 HEARING OFFICER KNITTLE: I'm going to admit it.
4 I do want to note for the record, and I'm sure you know
5 this, Mr. Kolar, that we are an administrative agency.
6 And I would probably concede that it may not be a
7 business record under state law, but if you're looking
8 at it from the administrative agency, we're going to be
9 a little more relaxed than most people are.

10 So I'm going to admit that over your
11 objection. Next is 38B. It's a letter from D. Mitchell
12 to Voight on 3/10/98.

13 MR. KOLAR: No objection.

14 HEARING OFFICER KNITTLE: That was the same as
15 26, right.

16 MR. KOLAR: Right.

17 HEARING OFFICER KNITTLE: Next is 38C. I don't
18 have a good description of this one.

19 MR. KAISER: Tom Thunder's fax to Steve Mitchell
20 dated May 18th, 1998, asking for comments on the draft
21 letter.

22 HEARING OFFICER KNITTLE: Any objection to this
23 one, Mr. Kolar?

24 MR. KOLAR: No.

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1 HEARING OFFICE KNITTLE: That will be admitted.
2 38D is a fax, June 5th, '98.

3 MR. KAISER: Correct, to Jack Voight from Steve
4 Mitchell.

5 MR. KOLAR: No objection.

6 HEARING OFFICER KNITTLE: That will be admitted.
7 38E?

8 MR. KOLAR: No objection.

9 HEARING OFFICER KNITTLE: No objection, and just
10 for the record, that's what, Jim Graham?

11 THE WITNESS: That's right.

12 HEARING OFFICER KNITTLE: From Steve Mitchell.
13 38F is another one that I don't have a copy of, and
14 that's to Steve Mitchell from Jim Graham, and I think
15 you've already objected to this one, Mr. Kolar, but you
16 may want to restate it.

17 MR. KOLAR: The same as my objections. I guess
18 the first one that this is a business record of IAC not
19 Mr. Mitchell's company. It's hearsay.

20 HEARING OFFICER KNITTLE: That's duly noted, but
21 this will also be admitted over your objection which
22 takes us to 38G, which is -- do you have an objection to
23 this one?

24 MR. KOLAR: Same objection as the last one.

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1 HEARING OFFICER KNITTLE: That, too, will be
2 admitted. 38H is dated 11/16/98 to Tony Bronge.

3 THE WITNESS: Tony Bronge, right.

4 HEARING OFFICER KNITTLE: Is there an objection
5 to this one?

6 MR. KOLAR: Same objection as I stated, the
7 business record objection.
8 HEARING OFFICER KNITTLE: That will be admitted.
9 38I?
10 MR. KAISER: From Mr. Mitchell to Mr. Voight.
11 HEARING OFFICER KNITTLE: Dated 11/17/98.
12 MR. KOLAR: No objection.
13 HEARING OFFICER KNITTLE: That will be admitted.
14 This is Complainants' 38J. Do you have a copy of that,
15 Mr. Kolar?
16 MR. KOLAR: Yes.
17 HEARING OFFICER KNITTLE: It's dated 1/13/99 to
18 Jack Voight.
19 MR. KOLAR: No objection.
20 HEARING OFFICER KNITTLE: 38K to Jack Voight
21 dated 2/13/99.
22 MR. KOLAR: It's to Jack Voight, no objection.
23 No objection to 38K.
24 HEARING OFFICER KNITTLE: And 38L is a Building

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1 the Sound Barrier brochure.
2 MR. KOLAR: Same objection on the business
3 record issue.

4 HEARING OFFICER KNITTLE: If that's the
5 objection, I will admit this one as well. 38M, these
6 are these two. Have you seen these, Mr. Kolar?

7 MR. KOLAR: Yes.

8 HEARING OFFICER KNITTLE: How would you describe
9 these, Mr. Kaiser?

10 MR. KAISER: I would say those are the diagrams
11 of the LTD dock area originally provided to the Huff
12 Company by LTD and then the Huff Company's annotation.

13 HEARING OFFICER KNITTLE: Is there an objection
14 to these, Mr. Kolar?

15 MR. KOLAR: No. I don't understand this. I
16 don't think the Board will either. Strike that from the
17 record.

18 HEARING OFFICER KNITTLE: No. We're leaving
19 that one in there. These will be admitted as well. I
20 can't speak for what the Board will or will not
21 understand. I don't understand them though. I'll say
22 that for the record.

23 All right. That's all we had. We had some
24 exhibits from the respondent, but you wanted to leave

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1 those for later.

2 MR. KOLAR: Right.

3 MR. KAISER: Well, I want to thank again

4 Mr. Mitchell for coming down. Thank you very much.

5 THE WITNESS: I'll step down.

6 HEARING OFFICER KNITTLE: Sir, you can step

7 down. Let's go off.

8 (Discussion had off the record.)

9 HEARING OFFICER KNITTLE: Why don't you just

10 tell me which one you've stipulated to.

11 MR. KOLAR: I have agreed to --

12 HEARING OFFICER KNITTLE: Let's just make it

13 clear. There's a number of complainants' exhibits that

14 have been stipulated to and that will be admitted with

15 no objection from the respondent. We're going to go

16 through those that have been stipulated to.

17 Mr. Kolar?

18 MR. KOLAR: I have agreed to Complainants' 1, 2,

19 3, 4, 6, 7, 9, 10, 11, 12, 15, 20, 21, 22.

20 HEARING OFFICER KNITTLE: Those will all be

21 admitted. Did you want to keep going from 22 and see if

22 we can finish those that you guys can stipulate to?

23 MR. KOLAR: Yeah.

24 MR. KAISER: It might help if we do it off the

1 record and then come back on when we have the agreement.

2 HEARING OFFICER KNITTLE: That's fine by me.

3 Let's go off.

4 (Discussion had off the record.)

5 MR. KOLAR: Then I would also stimulate and not
6 object to 26, 27, 28, 29, 33, 34, 35, 37.

7 HEARING OFFICER KNITTLE: Okay. Those also will
8 be admitted and that is -- I'm going to over them just
9 to make sure I have them.

10 Mr. Kolar, correct me if I make any mistakes
11 as I'm reciting.

12 MR. KOLAR: Are we going back to the beginning?

13 HEARING OFFICER KNITTLE: I'm not going to state
14 what they are. I'm just going to state the numbers.

15 MR. KOLAR: Okay. Great.

16 HEARING OFFICER KNITTLE: I've got 1, 2, 3, 4,
17 6, 7, 9, 10, 11, 12, 15, 20, 21, 22, 26, 27, 28, 29, 33,
18 34, 35 and 37; is that correct?

19 MR. KOLAR: Correct.

20 HEARING OFFICER KNITTLE: As to the rest of
21 these, we'll be willing do address those later,
22 Mr. Kaiser?

23 MR. KAISER: Yes. They're reserved pending
24 further testimony.

1 HEARING OFFICER KNITTLE: And, Mr. Kolar, your
2 exhibits that you discussed today will also be reserved?

3 MR. KOLAR: Yeah, I'll do that during my case.

4 HEARING OFFICER KNITTLE: Okay.

5 MR. KOLAR: There's one more I guess if you want
6 to address, Number 16.

7 HEARING OFFICER KNITTLE: Yes.

8 MR. KOLAR: That's from Marvin Berman to Mike
9 Hara.

10 HEARING OFFICER KNITTLE: Yes.

11 MR. KOLAR: My problem with it, as I told Steve,
12 and I guess if you want to admit it for a limited
13 purpose, that will be your decision, but it refers to a
14 Bannockburn ordinance and alleging, basically, or
15 violating a Bannockburn ordinance.

16 I think it's prejudicial to LTD, Mr. Berman's
17 allegations since Bannockburn, I think testimony has
18 shown, never did anything. I mean, Mr. Hara said he got
19 it, but, again, I have problems with the ordinance 93
20 dash 37 referenced no loading activities, et cetera.

21 HEARING OFFICER KNITTLE: But you're not
22 objecting to it on the authenticity or foundation being
23 laid?

24 MR. KOLAR: Right.

1 HEARING OFFICER KNITTLE: Mr. Kaiser, would you
2 agree to it being admitted into evidence for the limited
3 purpose excluding those --

4 MR. KAISER: I would ask that the reference to
5 ordinance 93 dash 31 remain in the event we do introduce
6 an ordinance with that number, but I don't even agree
7 that this suggests that there's a violation.

8 I think he's just pointing out that these
9 activities could be violations, but I don't think
10 there's a statement in there saying that LTD, you're in
11 violation of this ordinance, so I ask that it be
12 admitted in its entirety.

13 HEARING OFFICER KNITTLE: How about we admit it,
14 Mr. Kolar, with your stipulation that you're not
15 conceding to the fact that Bannockburn had ever alleged
16 any violations or anything like that?

17 MR. KOLAR: Fine.

18 HEARING OFFICER KNITTLE: Will that be okay,
19 Mr. Kaiser?

20 MR. KAISER: I would let it in that this letter
21 does not prove -- I would say all this letter does is
22 it's entered for notice that it was received by Mike

23 Hara on or about this time, that these concerns were
24 raised by the village. I would concede that this letter

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1 standing by itself does not even suggest much less state
2 that LTD was in violation of the ordinance referenced
3 therein.

4 HEARING OFFICER KNITTLE: Is it sufficient,
5 Mr. Kolar?

6 MR. KOLAR: That's fine.

7 HEARING OFFICER KNITTLE: That will be admitted
8 as noted on the record with the comments of both
9 parties. All right. Thank you very much. We'll meet
10 back here 9:30 tomorrow.

11 (End of proceeding.)

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

3

4 I, Michele J. Losurdo, Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at the
7 taking of said hearing, and that the foregoing is a
8 true, complete, and accurate transcript of the
9 proceedings at said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction and signed this _____ day of
12 _____, 1999.

13

14

15

16 Notary Public, DuPage County, Illinois
 CSR No. 084-004285
17 Expiration Date: May 31, 2001.

18

19

SUBSCRIBED AND SWORN TO

20

before me this _____ day

21

of _____, A.D., 1999.

22

Notary Public

23

24

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