

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 ANTHONY and KAREN ROTI, PAUL)

3 ROSENSTROCK and LESLIE WEBER,)

4 Complainants,)

5 vs.) No. PCB 99-019

6 LTD COMMODITIES,)

7 Respondent.)

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9 The following is the transcript of

10 a hearing held in the above-entitled matter taken

11 stenographically by TARA M. PAHL, CSR, a notary

12 public within and for the County of Cook and State

13 of Illinois, before JOHN KNITTLE, Hearing Officer,

14 at 118 West Cook Avenue, Libertyville, Illinois,

15 on the 4th day of November, 1999, A.D., commencing

16 at 9:45 a.m.

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1 PRESENT:

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3 STEVEN P. KAISER & ASSOCIATES,
4 (4711 Golf Road, Suite 708,
5 Skokie, Illinois 60076), by:

6 MR. STEVEN P. KAISER,

7 appeared on behalf of the
8 Complainants;

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10 BAIZER & KOLAR,
11 (513 Central Avenue, 5th Floor,
12 Highland Park, Illinois 60035), by:

13 MR. JOSEPH E. KOLAR,

14 appeared on behalf of the Respondent.

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21 REPORTED BY: TARA M. PAHL, CSR No. 84-4268.

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1 HEARING OFFICER KNITTLE: We are back on
2 the record. Today is the 4th day of hearings in
3 PCB 99-019, Roti et al. versus LTD Commodities.
4 It is November 4 at approximately 9:45 a.m.

5 There are no members of the public
6 present. The only person present aside from
7 attorneys, court reporters and hearing officers is
8 the current witness who is Mr. Harmon.

9 Before we get started, is there
10 anything preliminarily before we get started from
11 either party?

12 MR. KAISER: No.

13 MR. KOLAR: No. Just, we mentioned before
14 Mr. Harmon is here voluntarily pursuant to an
15 agreement that the Complainant is paying him his
16 hourly rate door to door, \$150 an hour. Thank
17 you.

18 MR. KAISER: Yes, that is true. That's
19 the agreement. As we noted before, we had tried

20 to serve Mr. Harmon and frankly considered him a
21 fact witness, who if he had been served with
22 process would be entitled to the witness fee of
23 \$30 or thereabouts, but since process wasn't put
24 in his hand and we felt his testimony was

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1 necessary, yes, the complainants are paying out of
2 their pocket \$150 an hour to have Mr. Harmon
3 here.

4 Note for the record, Mr. Harmon has
5 come to the hearing location twice previously, but
6 we have not been able to squeeze in his
7 testimony. We appreciate him coming back, but I
8 assume that Mr. Harmon is also going to charge the
9 complainants \$150 an hour for his travel time on
10 those two previous days.

11 THE WITNESS: Yes.

12 HEARING OFFICER KNITTLE: That's all duly
13 noted for the record.

14 Could you swear Mr. Harmon in,
15 please?

16 (WHEREUPON, the witness was duly
17 sworn.)

18 ROGER HARMON,
19 called as a witness herein, having been first duly
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KAISER:

23 Q. Mr. Harmon, could you please state your
24 full name and spell your last name for the court

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1 reporter's benefit?

2 A. Roger Paul Harmon, H-a-r-m-o-n.

3 Q. What's your date of birth, Mr. Harmon?

4 A. November 21, 1941.

5 Q. By whom are you currently employed?

6 A. I'm self-employed, and I work as a
7 contractor with Acoustic Associates.

8 Q. How long have you had an association with
9 Acoustic Associates, Limited?

10 A. About six years now.

11 Q. How long have you been working in the
12 field of acoustics?

13 A. I did my first work for Commonwealth
14 Edison in 1963. I built the sound lab at

15 Underwriters Laboratories in 1975.

16 Q. What is your educational background?

17 A. I have a bachelor's degree in electrical
18 engineering, and I'm a registered professional
19 engineer.

20 Q. In which state are you registered as a
21 professional engineer?

22 A. The State of Illinois.

23 Q. When did you obtain your professional
24 engineer's status in the State of Illinois?

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1 A. 1968.

2 Q. Is it fair to say you've been working in
3 the field of acoustics and -- well, in the field
4 of acoustics for over 30 years?

5 A. Yes.

6 Q. What types of work do you perform for
7 Acoustic Associates, Limited?

8 A. Noise control for industrial problems,
9 noise surveys for industrial complexes and
10 environmental for neighborhood noise complaints.

11 Q. And Acoustics Associates, Limited, the
12 principal of that entity is a man by the name of

13 Tom Thunder?

14 A. Correct.

15 Q. I want to show you a document dated
16 January 31, 1997. The first page of which is a
17 fax cover sheet from Tom Thunder to John Schimel.

18 I'm checking with Mr. Knittle to see
19 whether we have previously identified this with an
20 exhibit sticker.

21 HEARING OFFICER KNITTLE: What's the
22 date?

23 MR. KAISER: 1-31-97.

24 MR. KOLAR: We definitely did.

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1 HEARING OFFICER KNITTLE: Yes, it's C-6, I
2 think. Is that Acoustic --

3 MR. KAISER: Yes.

4 BY MR. KAISER:

5 Q. This is Hearing Exhibit C-6. I'd ask you
6 to take a look at that, Mr. Harmon. Tell me if
7 you've ever seen that before?

8 A. This is a document describing the work
9 that was proposed. I believe I've seen it. I'm

10 not, you know, totally familiar with its contents.

11 Q. Did you have any -- do you recall whether
12 you had any direct involvement in -- have you ever
13 talked with John Schimel, an employee of LTD
14 Commodities?

15 A. I don't know. I don't think so.

16 Q. What I'm trying to do -- let me back up.
17 I note that on the 4th page of Hearing Exhibit --
18 Complainant's Exhibit C-6, do you see this,
19 Environmental Noise?

20 A. Okay.

21 Q. Do you see that one-page document I'm
22 pointing at? Is that in front of you?

23 A. Yes.

24 Q. Do you see in the upper right-hand corner,

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1 is that your name, Roger P. Harmon?

2 A. That is correct.

3 Q. What is that certification BSEE? What
4 does that stand for?

5 A. Bachelor of Science Degree in Electrical
6 Engineering.

7 Q. The PE then is --

8 A. Registered or Licensed Professional
9 Engineer.

10 Q. Then the lay term for what you do is noise
11 consultant; is that right?

12 A. Correct.

13 Q. Do you know whether you had anything to do
14 with the preparation of this one-page document
15 titled Environmental Noise?

16 A. No, I didn't prepare it.

17 Q. All right. Now I'd like you to flip
18 forward past Mr. Thunder's resume, which is on the
19 next page, and to the page that bears the Bates
20 stamp mark at the bottom L10006.

21 Tell me what we are looking at on
22 this page?

23 A. This essentially is my resume.

24 Q. Was that a true and accurate copy of the

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1 resume you were using back in January of 1997?

2 A. Yes.

3 Q. Do you recall when you first learned that
4 Tom Thunder was going to be doing work for LTD

5 Commodities?

6 A. Not specifically, no.

7 Q. I want to show you a document that has
8 previously been marked for purposes of
9 identification as Schomer Exhibit No. 3. It's a
10 letter from Paul Schomer to David Lothspeich dated
11 April 20, 1997.

12 I'm checking to see whether that has
13 been given a designation in this case.

14 HEARING OFFICER KNITTLE: April 20?

15 MR. KAISER: April 20, 1997.

16 HEARING OFFICER KNITTLE: Let me
17 double-check. You may want to ask Mr. Kolar.

18 MR. KOLAR: I have my Schomer file, but
19 you didn't give me 3. At the beginning of his,
20 you didn't have a couple of them, so I don't know
21 what 3 --

22 MR. KAISER: 3 is an April 20, 1997 letter
23 from Paul Schomer to David Lothspeich.

24 HEARING OFFICER KNITTLE: I don't think I

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1 have this.

2 MR. KAISER: Let's make it an exhibit.

3 Where would we be on the exhibit list, Mr.
4 Knittle? I think we are at C-52. The last
5 exhibit I have is C-51.

6 MR. KAISER: All right.

7 BY MR. KAISER:

8 Q. Mr. Harmon, I'm showing you a document
9 that's now been marked for purposes of
10 identification as Complainant's 52, also known as
11 Schomer Exhibit 3.

12 Do you see that two-page document in
13 front of you?

14 A. Yes, I do.

15 Q. Have you ever seen this document before
16 today?

17 A. I don't believe so.

18 MR. KOLAR: I have this marked as an
19 exhibit, as well, right?

20 MR. KAISER: Yes. I have it marked as
21 C-52.

22 HEARING OFFICER KNITTLE: I didn't go
23 through your list of exhibits. I just went
24 through the ones that were admitted.

1 BY MR. KAISER:

2 Q. So your testimony is you don't believe
3 you've seen this document before?

4 A. Correct

5 BY MR. KAISER:

6 Q. Mr. Harmon, I'm now showing you what I've
7 marked for purposes of identification as
8 Complainant's Exhibit 53. It's a series of
9 handwritten notes consisting of three pages.

10 Do you recognize that?

11 A. Yes, I do.

12 Q. What do you recognize that to be?

13 A. Notes that I took in the field when I was
14 making measurements on two occasions.

15 Q. What was the date of the first occasion
16 when you were making notes in the field?

17 A. September 23, 1997.

18 Q. What was the date of the second field?

19 A. March 24, 1998.

20 Q. Now, on 9-23-97, do you recall what you
21 were doing, or did the notes refresh your
22 recollection of what you were doing?

23 A. Yes, I made some various measurements late
24 into the night at the property line between the

1 LTD property and that of the complainants.

2 Q. Now, before you got out there in late
3 September, 1997, did you talk with Tom Thunder?

4 A. Yes, Tom and I talked, and we met out at
5 the site. I think there was a plant manager we
6 talked with briefly, and we looked at the layout
7 in the daytime in anticipation of the
8 measurements.

9 Q. Before you performed -- and you took noise
10 measurements that night, right?

11 A. Yes.

12 Q. You brought your instruments out?

13 A. No -- well, I'm not sure that that day was
14 the same day that I took the measurements.

15 Q. So your testimony is you went out, you
16 looked at the site and at least on September 27,
17 1997, you were out at the property line and took
18 noise measurements, right?

19 A. September 23.

20 Q. Thank you. September 23.

21 What I want to understand is what did
22 you do to prepare yourself to take the noise
23 measurements on September 23, 1997 in the
24 vicinity -- I take it when we talk about where you

1 took them, it was north of LTD's truck docks on
2 the border of Bannockburn and Lake Forest,
3 Illinois, right?

4 A. Exactly.

5 Q. What did you do in preparation? Who did
6 you talk with? What documents did you review?
7 First, who did you talk with?

8 A. Tom and I talked with I think it was the
9 plant manager, but I don't recall his name.

10 Q. Would that have been Jack Voight?

11 A. I know Jack Voight was a name that was
12 given me as a contact, but I don't know that it
13 was -- that that's who we talked to.

14 Q. Does the name Mike Hara ring a bell?

15 A. No.

16 Q. How about John Schimel?

17 A. It might have been John Schimel.

18 Q. Might it have been John Sejund,
19 S-e-j-u-n-d?

20 A. I don't think so. I think it was Schimel.

21 Q. To the best of your recollection?

22 A. (Nodding head.)

23 Q. What did Mr. Schimel say to you, and what
24 did you say to him?

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1 A. I don't recall. Tom was leading the
2 discussion, and we were surveying the layout as to
3 where I would be making the measurements.

4 Q. When Tom has a job for you, what does he
5 do, call you up and say, Roger, come on in. Let's
6 talk about something. I think I need some
7 measurements, or how does it go?

8 A. Essentially, yes. And in this case
9 because we knew it was a sensitive issue, we took
10 a trip out and looked at it together. We drove
11 around the neighborhood.

12 Q. You and Tom Thunder?

13 A. Yes.

14 Q. And this representative from LTD?

15 A. No, just Tom and myself, I believe.

16 Q. And did Tom give you any background
17 information?

18 A. Yes, that there was a noise complaint and
19 probable litigation involved.

20 Q. That's not all that unusual of a scenario
21 for you and Mr. Thunder, right?

22 A. No.

23 Q. You're usually called in because somebody
24 is complaining about noise, right?

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1 A. Exactly.

2 Q. Who did Tom Thunder tell you was
3 complaining about the noise? And if you don't
4 know by name, who generally did he tell you was
5 complaining?

6 A. The neighbor in the house to the north.
7 The left of the two -- well, there's three of them
8 circled. The left one.

9 Q. We are looking now at Respondent's Exhibit
10 88, which is an aerial photograph circa 1988 of
11 the vicinity of LTD Commodities and the homes of
12 the Rotis, Webers and Rosenstocks; is that right?

13 A. Yes.

14 Q. From where you're seated, you can see
15 Respondent's Exhibit 88?

16 A. Yes, I can.

17 Q. And you can identify the roof line of LTD
18 as it appeared back in 1988?

19 A. Yes.

20 Q. You can see the homes to the north, the
21 Roti, what was then the Rosenstock home under
22 construction or what would soon be the Rosenstock
23 home, and the lot where the Webers subsequently
24 built a home; is that right?

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1 A. Yes.

2 Q. When you say you and Tom Thunder drove
3 around, did you drive up Lakeside Drive and look
4 at the dock areas of LTD's Bannockburn facility?

5 A. Yes, we did.

6 Q. Did you also go up Telegraph Road or
7 Avenue into the subdivision down Wedgewood Drive
8 to see where the Rotis lived?

9 A. Yes, we did.

10 Q. And what sort of things are you looking
11 for when you're doing this premeasurement field
12 screening?

13 A. We are looking for the most appropriate
14 location for the placement of the instruments and

15 any unusual conditions that would necessitate
16 modifying our measurement location.

17 Q. And did you find a place that you felt was
18 an appropriate location for taking noise
19 measurements?

20 A. Yes, we did. We selected the lot line of
21 the residence. The one you're pointing to, what's
22 it called?

23 Q. Browns/Roti.

24 A. Yes. Approximately between that residence

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1 and the adjacent residence at the lot line.

2 Q. So at the lot line between the Roti --
3 what's now the Roti home and now the Rosenstock
4 home?

5 A. Yes.

6 Q. Somewhere in between those two?

7 A. At the lot line.

8 Q. What would you estimate the distance
9 between the point at which you set up your sound
10 equipment and took the measurements and the LTD
11 dock area?

12 A. Right now I would just have to -- I don't
13 honestly know. I would have to guess. It's an
14 aerial view. It could be scaled off. I don't
15 know.

16 Q. Do you have anything in your notes which
17 would indicate the distance from where you set up
18 your instruments to LTD's docks?

19 A. Not specifically that. I identified it
20 with regard to an existing fence. I believe it
21 was a wire fence -- I don't know what the fence
22 was, but it was -- we had two instruments, and one
23 was 10 feet from the fence and the other was 50
24 feet from the fence. Glancing at the chart, it

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1 appears that we are probably 300 or 400 feet from
2 the truck dock.

3 Q. But you don't have anything in your notes
4 that would allow you to tell?

5 A. No.

6 Q. Did Tom Thunder show you any letters or
7 documents either from the Village of Bannockburn
8 or from Paul Schomer in preparation for your noise
9 measurements?

10 A. If he did, it wasn't of that much interest
11 to me at the time because I knew where I had to
12 make the measurements and at what time and how to
13 go about it. That was all that concerned me.

14 Q. Those issues selecting where and what time
15 and how and the types of instrumentation, I take
16 it -- I mean, that's your profession, right?

17 A. Yes.

18 Q. Do you know who Paul Schomer is?

19 A. I believe that he's a noise consultant.

20 Q. You know who Greg Zach is?

21 A. Yes, I do.

22 Q. Have you met Greg Zach?

23 A. Yes, I have.

24 Q. But what I'm hearing is that it was your

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1 decision as to where to set up the instruments,
2 what instruments to use and the protocols with
3 respect to the noise measurement activities in
4 September of 1997; is that correct?

5 A. That's correct.

6 Q. All right. Could you describe for us now

7 how long did it take for you to do this
8 premeasurement field screening where you drove and
9 looked at LTD's dock operations, drove over to the
10 Roti/Rosenstock area, how much time did you spend
11 that day?

12 A. Probably an hour, hour and a half.

13 Q. How did you select September 23, 1997 on
14 which you would take the noise measurements?

15 A. I'm not sure if I selected the date or if
16 Tom selected the date.

17 Q. But somehow it was agreed that on
18 September 23, 1997, you would take noise
19 measurements?

20 A. Right. I believe that I was probably told
21 that any time during that week would be a good
22 time, and it probably was a convenient evening.

23 Q. Can you describe for the Board what you
24 did on the evening of September 23, 1997?

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1 A. Yes. I set up two monitoring sites, one
2 was 10 feet from the fence. Apparently -- I
3 believe that it was a wooden fence. And the one
4 was 10 feet from the fence because I wanted to be

5 as close to the lot line as I could so as to
6 maximize the amount of noise that we were picking
7 up from the facility worst case condition.

8 Then as sort of a fall back from
9 there, if there was a thought that the fence might
10 have interfered with the measurement and made the
11 measurement lower, we put a second site that was
12 50 feet back from the fence so as to minimize that
13 possibility.

14 Q. When you say you -- so what do you do, you
15 have microphones at both of those locations?

16 A. A microphone feeding into a digital audio
17 tape recorder, and on the tape which logs the date
18 and time along with the sound, we record a
19 calibration tone.

20 Q. What is a calibration tone?

21 A. It's a 1,000 hertz tone which is emitted
22 by a calibration device placed over the
23 microphone, and this is used as a benchmark in
24 analyzing the tape. In other words, when we

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1 analyze the tape, we know the level of the

2 calibration tone. We have the calibrator checked
3 on a regular basis by a calibration lab, and we
4 then adjust our instrument that does the third
5 octave analysis according to the calibration
6 tone.

7 Q. Do you know the make and model of the
8 instrument you used on September 23, 1997?

9 A. We have two sound level meters. One is a
10 Bruel and Kjaer, B-r-u-e-l, K-j-a-e-r, Type 2221.
11 The other one is a Bruel and Kjaer -- the model
12 number was documented in the report. I don't
13 recall the model number. Both of those were
14 feeding into Sony DAT recorders which are
15 documented in the report of our findings.

16 Because they're the same model and
17 it's difficult at night to differentiate between
18 them, one has a red tag on it. The other has a
19 blue, and so they're referred to as the red and
20 the blue.

21 Q. Now, are you familiar with the regulations
22 promulgated by the Illinois Pollution Control
23 Board that describe the methodology you should use
24 to obtain noise measurements for presentation to

1 the Board?

2 A. Essentially, I am. I couldn't quote
3 chapter and verse on them.

4 Q. You've read them?

5 A. Can you be specific?

6 Q. Well, do you keep those board regs in mind
7 when you go out and take measurements, or do you
8 have the Roger Harmon procedures and protocols and
9 you comply with those without reference to the
10 Illinois Pollution Control Board's methodologies?

11 A. I would say that I probably did not refer
12 specifically to the methodologies when making the
13 measurements.

14 Q. Over the last 25 years that those
15 methodologies have existed, have you looked at
16 them in the past?

17 A. Yes. Essentially, they define what items
18 should be recorded and the methods to be used.

19 Q. And you're familiar with what the
20 regulations require in terms of what should be
21 recorded and the methodologies that should be
22 used?

23 A. Essentially, yes.

24 Q. You've testified before the Board before.

1 This isn't your first time, right?

2 A. Exactly.

3 Q. You're aware that -- you told me that Tom
4 Thunder told you this case was probably going to
5 go to litigation, right?

6 A. Right.

7 Q. When you heard that, did you understand
8 that one of the places it might wind up is in
9 front of the Pollution Control Board?

10 A. Yes.

11 Q. Did you intend to develop data that would
12 be useful to the Board, or did you have the
13 intention of developing data that would be
14 unacceptable to the Board?

15 A. Well, the intention was to develop data
16 that would be useful.

17 Q. To the Board?

18 A. To the Board.

19 Q. All right. Now, to the extent you need to
20 refer to your notes, please do, but do you recall
21 approximately what time you arrived at the
22 sampling points between the Roti and Rosenstock
23 homes on September 2, 1997?

24 A. I believe I arrived there about 11:30.

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1 Q. How long does it take you to set up your
2 instrumentation?

3 A. 15 minutes or so.

4 Q. Were you by yourself, or was there anyone
5 with you?

6 A. I was by myself.

7 Q. Were there any LTD representatives with
8 you, or were you in radio or telephone contact
9 with any LTD representatives?

10 A. No, I was by myself. I was not in
11 contact.

12 Q. Once you got your instrumentation set up,
13 what did you do next?

14 A. I got out the instruments and I placed
15 them on location. I turned on both of the sound
16 level meters and started recording with the
17 recorders. I announced what the recording was
18 about and where it was being made. I recorded a
19 calibration tone on each tape. I made notes
20 regarding any conditions that seemed important at
21 the time, and then I got in my car and drove to

22 the far end of the parking lot to observe what was
23 taking place.

24 Q. When you say far end of the parking lot,

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1 can you tell us with reference to -- well, I'm
2 going to flip these aerial photos, Mr. Harmon, so
3 that you're now looking at an aerial photograph
4 that shows the Rosenstock home completed and the
5 large addition to LTD's facility completed in 1994
6 in place.

7 Can you tell me in reference to this
8 photograph, Respondent's Exhibit 89, where you
9 stood to observe LTD's dock activities?

10 A. Yes. I parked in front of the office
11 portion of the building on the west end there so I
12 could look down and see what was happening in the
13 truck docks.

14 Q. Is it fair to say that you were at the
15 west end of the truck dock, and you had an
16 unobstructed view of the entire length of the dock
17 area to the east?

18 A. That's correct.

19 Q. And is the LTD dock area lit artificially
20 at night?

21 A. Yes, it is.

22 Q. Again, just so I understand it, you have
23 your microphone set up between the Roti and
24 Rosenstock residences, you've got the tape

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1 recorder on, and then you leave the record -- the
2 measurement site and go over to LTD to observe the
3 dock activities?

4 A. Yes, except you're pointing up to the road
5 near the houses, and I walked through the bushes
6 from the parking lot to place the instruments.

7 Q. I see. So you were able to go through the
8 bushes at the southwest corner of the Roti home
9 around the fence and set up your instrumentation
10 from that vantage point?

11 A. It would actually be between the two
12 houses, and it would have been to the southeast of
13 the Roti home.

14 Q. Okay. I appreciate that clarification.

15 So you found a place in the bushes
16 separating LTD's north parking lot from the

17 residential neighborhood to the north and went
18 through those bushes and set up your equipment?

19 A. Yes, I did.

20 Q. Now, on this exhibit, your handwritten
21 notes -- where did you make these notes?

22 A. Sitting in the car in front of the office
23 portion of the building with a view of the
24 shipping dock.

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1 Q. And what was the purpose of taking the
2 notes?

3 A. To document how many events -- how many
4 trucks were coming and going and what they were --
5 what the activity was.

6 Q. And as I see it, you began recording
7 events at approximately 11:30 or 11:41 on
8 September 23, 1997?

9 A. Yes.

10 Q. And continuing until 3:01 the following
11 morning, September 24, 1997?

12 A. Yes.

13 Q. Is this a true and accurate list of the

14 activities you observed in the LTD dock areas the
15 late evening of September 23 and early morning
16 hours of September 24, 1997?

17 A. Yes.

18 Q. Did you leave anything out? Did you
19 actually see activities that you didn't write
20 down?

21 A. Not that I know of.

22 Q. These were the significant movement events
23 that you felt it was important to record?

24 A. Yes, that's true.

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1 Q. The tape that you made that evening, does
2 it still exist?

3 A. I believe so.

4 Q. Who would have the custody or control of
5 that tape?

6 A. Either Tom or myself.

7 Q. Do you know whether you do?

8 A. I don't know right now.

9 Q. I'm going to ask you when you leave the
10 hearing this morning to go to your office or your
11 home or wherever you customarily store tapes or

12 wherever you think this tape may be located and
13 look for it and report to Mr. Kolar whether it
14 exists?

15 A. I can report whether I have it in my
16 possession.

17 Q. Exactly. That's all I'm asking you to
18 do.

19 A. All right.

20 Q. All right. Thank you. At
21 approximately -- did you record the entire time
22 from roughly 11:30 p.m. to 3:01 a.m.?

23 A. I believe that there were some breaks.
24 Let me see. The tape has a total span of two

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1 hours, and I believe that I was to do some
2 recording -- I think part of the recording was
3 supposedly to be around, as it's shown here, early
4 in the evening or around midnight while the staff
5 was still there, but then I believe the intention
6 was to make some measurements after they had
7 closed up and people had gone home. And so I
8 believe there is a break there.

9 Q. And is it fair to say you went back
10 through the bushes, turned off the recorder,
11 waited, then turned it back on?

12 A. Yes.

13 Q. What's the next step then? You take your
14 equipment down, you put it in the car, you've got
15 the tape; what do you do next?

16 A. Take it back to the lab, connect the
17 output of the DAT recorder which -- to the Hewlett
18 Packard analyzer, whatever it was described in the
19 tape. We only own one. That's described in Tom's
20 report, whatever the model number was.

21 Q. I'm going to try to put a copy of that
22 report in front of you.

23 MR. KAISER: C-19.

24 HEARING OFFICER KNITTLE: C-19 has not

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1 been admitted.

2 BY MR. KAISER:

3 Q. I'm going to show you a document that's
4 previously been marked for purposes of
5 identification as Complainant's Hearing Exhibit
6 19. I think you do have that in front of you.

7 This is your file you've brought with
8 you today --

9 A. Yes, it is.

10 Q. All right. I see that one of the items in
11 your file is a letter report from Tom Thunder to
12 LTD Commodities dated January 8, 1998.

13 Do you have that in front of you?

14 A. Yes, I do.

15 Q. We have been referring to that during the
16 course of the hearing as Complainant's Exhibit
17 19.

18 Is that the report that set forth the
19 results of the measurements you made on September
20 23, 1997?

21 A. I believe so.

22 Q. And how -- could you describe for the
23 Board how we get from you having made these visual
24 observations, having made recordings of the noise,

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1 brought those recordings back to the laboratory to
2 this report; what are the steps between the
3 analysis of the data and the generation of the

4 letter report dated January 8, 1998?

5 A. Well, first I review the tape by listening
6 to the various portions, make a note of the
7 location on the tape where the calibration tone is
8 and the location of the portions of the tape that
9 we intend to analyze, then I go back and first of
10 all I'll play the calibration tone into the
11 analyzer and verify that its level is correct, in
12 other words, that the analyzer is in calibration.

13 Then I go ahead and analyze the
14 portions of the tape that are of interest, and the
15 result -- let's see. I believe in this case we
16 were running it in -- I'm trying to think of the
17 correct word, but it's a mode where we -- it does
18 a third octave spectrum every five seconds and
19 stores it to a file.

20 Q. Is that a linear integration period of
21 five seconds?

22 A. Yes, it is.

23 Q. So you run it every five seconds, store it
24 to a file; what do you do next?

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1 A. Download the file to a computer and put it

2 on a disk for Tom to incorporate it into a
3 spreadsheet or a graph.

4 Q. Did you have any discussions with Tom
5 Thunder about what you saw or how you measured?
6 How did you communicate -- did you communicate
7 with Tom Thunder?

8 A. Oh, yes, verbally.

9 Q. Do you recall what you said to Mr. Thunder
10 and what he said to you in connection with the
11 preparation of the January 8, 1998 letter report?

12 MR. KOLAR: I'm going to object to Tom
13 Thunder. I think that would be hearsay.

14 HEARING OFFICER KNITTLE: Mr. Kaiser?

15 MR. KAISER: It doesn't go to the truth of
16 the matter asserted with respect to any central
17 issue of this complaint. We are just trying to
18 get a procedure here. I don't need to prove did
19 Tom Thunder really say that to Roger Harmon on
20 this date. That's not an element of this case.
21 So I don't know that the hearsay rule would apply.

22 HEARING OFFICER KNITTLE: Mr. Kolar, do
23 you have a response to that?

24 MR. KOLAR: Tom Thunder is the opinion

1 witness. I think he would be able to, as an
2 opinion witness, state hearsay statements if they
3 support his opinions, but my understanding is
4 Mr. Harmon is here to simply say what he did,
5 taking measurements and handing over the
6 information to Tom Thunder. So I don't think he
7 should be able to testify to what Tom Thunder
8 said.

9 HEARING OFFICER KNITTLE: The objection is
10 sustained.

11 BY MR. KAISER:

12 Q. About how many times did you talk to Tom
13 Thunder in connection with preparation of the
14 January 8, 1998 report?

15 A. Probably two or three times.

16 Q. Did you ever review a draft of the January
17 8, 1998 report?

18 A. Usually I do so, I believe I did. I don't
19 specifically remember details.

20 Q. Do you have copies of the drafts in your
21 file?

22 A. I don't know.

23 Q. I represent that there were two drafts,
24 one in, I believe, November and one in December of

1 1997.

2 A. This is October of '97, so that's --

3 Q. You may have a draft I have never seen,
4 Mr. Harmon?

5 A. This is something else (indicating).

6 Q. Looking at it, it looks like it relates to
7 this case?

8 A. It's proposing what's to be done.

9 Q. May I take a look at --

10 MR. KAISER: May we go off the record? I
11 would like to take a look at Mr. Harmon's file.

12 HEARING OFFICER KNITTLE: Let's go off.

13 (Discussion off the record.)

14 BY MR. KAISER:

15 Q. Mr. Harmon, I just had an opportunity to
16 review your file, and I see that there were at
17 least one and perhaps two drafts of the January 8,
18 1998 letter report.

19 My question to you is do you
20 recall -- what role did you play in finalizing the
21 January 8, 1998 report?

22 A. Simply to read it and note whether there
23 was anything related to the work that I did that

24 was incorrect.

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1 Q. Now, showing you portions of what's
2 referred to as Complainant's Exhibit 19, for
3 instance, Figure 1 where it shows the impulse of
4 noise measured at the North Residence Property
5 9-24-97; do you have that in front of you?

6 A. Yes, I do.

7 Q. Now, I see on yours that you've even got
8 some green ink on there that doesn't show up on my
9 copy of the report.

10 What is the -- who put that green ink
11 on there?

12 A. Tom.

13 Q. Do you know what is indicated by the
14 numbers there in green ink?

15 A. Those are the exact times on the tape that
16 some impulse noises related to trucks parking,
17 backing in, whatever, disconnecting, whatever
18 occurred.

19 Q. Have you ever compared the information you
20 obtained on September 24, 1997 with the

21 information as represented pictorially on Figure 1
22 to determine that Tom Thunder accurately
23 transcribed the information you had obtained?

24 A. Yes.

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1 Q. And what was your conclusion?

2 A. That this was what we measured.

3 Q. Now, I note that on Figure 1, it shows
4 airplane, heavy truck movement impact, air brakes,
5 truck acceleration impacts, impact.

6 Do you know the source of those
7 annotations?

8 A. I believe most of them are from my notes.
9 Possibly the airplane might have been from playing
10 back the tape and listening to it.

11 Q. And the linear integration of five
12 seconds, did you select that or did Mr. Thunder
13 select that?

14 A. I believe Mr. Thunder selected that.

15 Q. In terms of the background recorded --
16 background noise sample between 3:11 and 3:21,
17 again, is that portion accurate as to what you
18 recorded on September 24, 1997?

19 A. I believe that it is. I would have to
20 spend a lot of time reviewing to know with a
21 certainty, but I believe it is.

22 Q. You believe it is?

23 A. Yes.

24 Q. I mean, they paid you money to give them

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1 accurate results, right?

2 A. That's correct.

3 Q. You did your best to give them accurate
4 results?

5 A. That's right.

6 Q. With respect to Figure 2, what role, if
7 any, did you have in the preparation of Figure 2?

8 A. I provided the raw data.

9 Q. Have you reviewed Figure 2, Figure 3 and
10 Figure 4 to determine whether Tom Thunder --

11 A. I don't have a Figure 4.

12 Q. You don't have a Figure 4 on there?

13 A. It's not here. I don't know where it is.

14 Q. All right. Do you have any reason to
15 doubt that Tom may have included a Figure 4 North

16 Residence Property impulse levels 9-24-97 in his
17 January 8, 1998?

18 A. In all likelihood it's his.

19 Q. With respect to at least Figures 1, 2 and
20 3, did you determine whether Tom Thunder took the
21 data you had developed on 9-23 and 9-24 and
22 accurately incorporated it into his January 8,
23 1998 report?

24 A. I believe he -- it's accurate. In

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1 recollection I believe that his note regarding the
2 draft had to do with questions of the integration
3 time, and we went back and reanalyzed the tape on
4 an eighth of a second.

5 Q. That is what, in fact, Figure 4 shows.
6 That's the reintegration with a fast time constant
7 of one-eighth of a second and shows the impulse
8 noise at one-eighth of a second as opposed to the
9 five-second linear integration period?

10 A. Yes. And this is the reason why we do all
11 of our measurements with a digital audio tape so
12 that in the event that someone questions the way
13 that it's been analyzed, we can analyze it later

14 in whatever method is desired.

15 Q. All right. Again, since Figure 4
16 essentially relies on the same information
17 provided in Figure 1 but analyzed at a faster
18 rate?

19 A. Yes.

20 Q. It's your opinion that the data that you
21 collected accurately measured the noise at the
22 locations you recorded it on September 23 and
23 September 24, 1997?

24 A. Yes.

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1 Q. You did not see upon your review any
2 errors where Mr. Thunder took your data and
3 transcribed it inaccurately?

4 A. It appears correct.

5 Q. Did you ever go through in the course of
6 your analysis in the lab who broke out these one
7 third octave band frequencies in hertz and
8 determined the measurement -- and it shows up
9 better on your color copy -- do you have that,
10 your original of the January 8 or even the draft?

11 A. January -- is this the one?

12 Q. I don't know that it matters. I think
13 that it's all -- on Figure 3, which of those lines
14 represents the values you obtained -- well, for
15 instance, which point within the first what I'll
16 refer to as column sets forth the number you
17 recorded for 32 hertz at the Roti/Rosenstock
18 property?

19 A. The question is ambiguous. I don't know
20 what you want.

21 Q. You recorded noise at the Roti and
22 Rosenstock residences on September 23 and
23 September 24, 1997?

24 A. Yes.

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1 Q. And you were able to analyze that noise
2 and break out what was heard in the 32-octave band
3 frequency in hertz?

4 A. That's correct.

5 Q. And you were able to determine, using an A
6 weighted -- did you use the A weighted sound
7 level?

8 A. The recording was on linear, and then the

9 A weighting was applied to the raw data directly.

10 Q. Now, what number are you ascribing -- what
11 value are you ascribing to the noise you measured
12 at the Roti/Rosenstock property in the 32-octave
13 band frequency in hertz on September 24, 1997?

14 A. Let me explain. There are three lines.
15 One is red. One is black. One is blue. The blue
16 would be the background noise, and that's just
17 simply an average over that period of time. The
18 red --

19 Q. Go ahead.

20 A. The red and the black -- the black is
21 background noise -- okay. I'm sorry. I thought
22 that there was a statistical factor here. I
23 thought this was the L-10 and the L-90, and I was
24 going to explain what that meant. The one hour

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1 sample is in red.

2 Q. The one hour sample is in red. Now, I
3 just note for the record that throughout this
4 litigation we've only had black and white copies.
5 So until I saw your file today, I've never seen

6 the red line.

7 A. It would be the one that's not dotted or
8 broken. It's a solid line with a square marker.

9 Q. Thank you. That's helpful. And this -- I
10 note that in the 32 hertz octave band frequency,
11 you have a value of what appears to be 60
12 decibels?

13 A. Yes.

14 Q. Is that an A weighted number, or is that a
15 number at a particular instant in time?

16 A. That would be the -- hang on.

17 Q. I direct you up here to the --

18 A. It would have to be the level in that
19 particular octave band.

20 Q. Averaged over one hour?

21 A. Yes.

22 Q. And averaged over one hour the noise in
23 that particular octave band on September 24, 1997,
24 and that octave band being the 32 hertz octave

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1 band was 60 decibels using an A weighted sound
2 level, right?

3 MR. KOLAR: Objection. This goes beyond

4 the disclosure of Mr. Harmon. It's my
5 understanding these are going to be questions
6 posed to Mr. Thunder. He was just going to say
7 what he did, turned his data over to Tom Thunder
8 and that's the extent of disclosure for his
9 testimony. Now we are getting into opinion
10 testimony of what, I think, basically whether
11 there are violations of numerical limits.

12 HEARING OFFICER KNITTLE: Mr. Kaiser?

13 MR. KAISER: I'm just trying to determine
14 how he got this number 60 in the 32 hertz. I'm
15 not asking an opinion. I just want to know - you
16 have that -- you know, where did that number come
17 from? Is that something you did with your
18 measurements, or isn't it? I mean, I'm not
19 looking for an opinion. I think Mr. Thunder will
20 talk about the opinions, but I'm just trying to
21 understand Mr. Harmon's role here.

22 HEARING OFFICER KNITTLE: Mr. Kolar?

23 MR. KOLAR: He said his recording was
24 linear, A weighted was added, so I don't know if

1 he added the A weighting or if that was done by
2 Mr. Thunder. I think Mr. Thunder prepared all
3 these figures.

4 THE WITNESS: He did.

5 MR. KOLAR: So then I think it goes beyond
6 what he's been disclosed as.

7 THE WITNESS: I wasn't directly involved
8 in the preparation of this.

9 HEARING OFFICER KNITTLE: If that's the
10 case, then I would sustain an objection along
11 those lines.

12 BY MR. KAISER:

13 Q. Did you do the A weighting analysis in the
14 lab, or is that something Mr. Thunder did?

15 A. It would have been done numerically in the
16 spreadsheet prior to graphing it by Mr. Thunder.

17 Q. Did Mr. Thunder ask you to take some
18 additional measurements in the vicinity of the LTD
19 facility on March 24, 1998?

20 A. Yes, he did.

21 Q. What was your understanding as to why you
22 were taking additional measurements in March of
23 1998?

24 A. I'm not entirely clear, but I think it had

1 to do with a dispute as to whether the noise came
2 from the toll road or whether it came from LTD,
3 and so we made a measurement relatively close to
4 the toll road fence and then measurements at the
5 varying distances from the toll road along the
6 property line.

7 Q. Are these notes, Page 3 and 4 of the
8 exhibit that's previously been marked as 53, did
9 you make those notes -- when did you make those
10 notes?

11 A. The first page, which is written in a blue
12 ball point pen, that was on site on the 24th. The
13 items which were written in pencil later were
14 during the analysis of the tape.

15 Q. Do you know on what date you performed the
16 analysis of the tape?

17 A. No, I don't.

18 MR. KOLAR: Can you clarify because my
19 Exhibit 53, the first page is the one that has
20 March 24, '98.

21 MR. KAISER: I think there was one that I
22 stapled --

23 MR. KOLAR: What's the --

24 MR. KAISER: The first page of this

1 exhibit is Mr. Harmon's notes of 9-23-97. The
2 second page contains his notes of 9-23, 9-24. The
3 third page are his notes of 3-24-98. Then the 4th
4 page are the notes made during the analysis.

5 MR. KOLAR: Okay.

6 THE WITNESS: Yes.

7 BY MR. KAISER:

8 Q. I note that at the top of -- is this
9 accurate that you got out to the facility or to
10 the testing area at -- is that 12:48 a.m. or
11 p.m.?

12 A. We are looking at March 24?

13 Q. Yes.

14 A. That would have been in the middle of the
15 night, so it was -- I think I originally wrote
16 p.m., and then I changed it to a.m. realizing that
17 it was nighttime, and technically it was a.m. It
18 was 48 minutes after midnight. It was dark out.

19 Q. Thank you. It was sprinkling, was it not?

20 A. Intermittently it was sprinkling, yes.

21 Q. Is it true that water on pavement makes
22 the traffic noise louder?

23 A. I don't have any direct knowledge one way
24 or the other whether it does or not. It probably

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1 does.

2 Q. I want to show you what's previously been
3 marked for purposes of identification as Schomer
4 Exhibit 11. It's a letter from Tom Thunder to LTD
5 dated May 6, 1998.

6 MR. KAISER: I don't know, Mr. Knittle,
7 whether this has been offered in evidence. If it
8 isn't, I'll give it a tag.

9 HEARING OFFICER KNITTLE: I don't think
10 so.

11 MR. KAISER: I'm marking this document for
12 purposes of identification as Complainant's
13 Exhibit 54.

14 BY MR. KAISER:

15 Q. I'd ask you to take a look at that.

16 Do you see the figures attached to
17 Tom Thunder's letter report of May 6, 1998?

18 A. Yes.

19 Q. Do you know what the source of the
20 information -- do you know where Mr. Thunder got

21 the information that's represented on Figures 1,
22 2A, 2B and 3?

23 A. They would have been the output from my
24 analysis of the tape.

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1 Q. That's the tape you made on March 28,
2 1999?

3 A. March 24.

4 Q. March 24. So then to the extent it says
5 March 28, 1999, that's an error, right?

6 A. I believe so. It should read March 24,
7 199 -- I don't know why it says '99.

8 Q. I'm sorry?

9 A. There's --

10 Q. You don't know why it says '99?

11 A. No.

12 Q. Right. I take it you don't know why it
13 says 28 rather than 24 either?

14 A. No.

15 Q. And to the best of your knowledge -- well,
16 you didn't generate these figures, right?

17 A. No, I didn't.

18 Q. But the notes here -- again, the third
19 page of your notes, those are -- that's a true and
20 accurate copy of the notes you made in the field
21 on 3-24-99?

22 A. Yes, it is.

23 Q. And during that time, you wrote down what
24 you thought were the things that were important to

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1 note; is that right?

2 A. Yes.

3 Q. Could you help the Board understand just
4 what these notes mean, the last one? What were
5 you trying to get at with that?

6 A. It was to deal with the technical problem
7 that the analyzer could only handle a file up to
8 an hour and 45 minutes long, and the tape was two
9 hours. And so I had to break it into at least two
10 segments.

11 Q. Again, the red set up is the one
12 instrument, and the blue set up is the other
13 instrument?

14 A. Correct.

15 Q. Again, in terms if I could just have you

16 look back at Tom Thunder's report of January 8,
17 1998, as I understood it where it says test
18 procedures --

19 A. January 8?

20 Q. January 8, Tom's letter report.

21 A. What's the date?

22 Q. January 8, 1998.

23 A. Okay.

24 Q. Where it describes the test procedures

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1 that you used -- and, again, this was for the
2 September 1997 sampling.

3 Have you before today reviewed the
4 description of the test procedures?

5 A. Not any time recently.

6 Q. But before this letter report was
7 finalized?

8 A. Yes.

9 Q. And I take it -- what I heard earlier on
10 direct was you looked it over and if there were
11 mistakes, you corrected them, and if there
12 weren't, you said those were the procedures I

13 used; is that right?

14 A. Yes.

15 Q. One thing I don't understand is whether
16 the data that ultimately made it into the January
17 8, 1998 report was the data that was collected at
18 the 10 foot distance from the property line or at
19 the sampling point 50 feet north of the property
20 line. Do you know?

21 A. No, I don't.

22 Q. Is there any way from looking at the
23 report that you can tell?

24 A. There are several graphs in here. Are you

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1 referring to a specific one or all of them?

2 Q. Yes, all of them. Any particular one? I
3 mean, I note that the description says, "In a
4 previous daytime visit to the site, we selected
5 two locations in the backyard of 1529 South
6 Wedgewood." And I heard you describe that. Then
7 it says, "These locations were 10 feet and 50 feet
8 north of stockade fence," and I understood that,
9 as well.

10 Oh, I see. Since the difference

11 between these locations was less than one DB, we
12 selected the closer 10-foot location for analysis,
13 so I guess we have answered the question.

14 A. Okay.

15 Q. Other than what you've described,
16 discussions with Tom Thunder in advance of taking
17 the September 1997 noise measurements, your work
18 in the lab, analyzing and putting the data in a
19 format that Mr. Thunder could use, your review of
20 drafts of the January 8, 1998 letter report, have
21 we captured your role in the preparation of the
22 January 8, 1998 letter report?

23 A. Yes.

24 Q. With respect to the May 6, 1998 letter

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1 report, the report that describes your
2 investigations of March 28, 1998, again, your role
3 was essentially take the equipment out to the
4 sampling locations in March of 1998, set up the
5 equipment, obtain measurements, take appropriate
6 notes, bring it back to the lab and put the data
7 in a format that was useful to Mr. Thunder; is

8 that correct?

9 A. Yes.

10 Q. Is there anything else that you did in
11 connection with the May 6, 1998 report?

12 A. I made a video -- on one of them I made a
13 videotape, the first one.

14 Q. And do you know where that videotape is?

15 A. Not offhand.

16 Q. Where do you think it might be?

17 A. I probably have it in my office at home.

18 Q. I would ask you, Mr. Harmon, when you
19 leave the hearing today to look in your home
20 office both for the videotape of the first
21 inspection and the audio tapes you made in both
22 September of '97 and March of '98; will you do
23 that?

24 A. Yes.

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1 Q. Will you advise Mr. Kolar whether you've
2 located either the audio or videotapes?

3 A. Yes.

4 Q. Thank you.

5 MR. KAISER: I have no further questions

6 at this time. Mr. Kolar may.

7 HEARING OFFICER KNITTLE: Mr. Kolar, do
8 you have a cross-examination?

9 MR. KOLAR: Yes. Can I take a two-minute
10 break?

11 HEARING OFFICER KNITTLE: Sure.

12 (WHEREUPON, a recess was had.)

13 CROSS-EXAMINATION

14 BY MR. KOLAR:

15 Q. Mr. Harmon, when you were observing the
16 LTD activities on September 24, 1997, you said you
17 were over on the west side of the truck staging
18 area?

19 A. Yes, I was.

20 Q. Were you able from that location to see
21 trucks entering and leaving the staging area?

22 A. Yes.

23 Q. Could you hear noise from trucks when they
24 were coming north up Lakeside Drive and ingressing

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1 into the truck staging area?

2 A. Before they got to the area, I doubt it

3 because of the noise from the toll road.

4 Q. Could you hear truck sounds from your
5 location on that date when trucks were egressing
6 the staging area and going on to Lakeside Drive?

7 A. Same answer, I doubt it.

8 Q. So were you in your car when you were
9 observing the activities?

10 A. Yes, I was.

11 Q. How was your car situated in terms of
12 which direction was the front facing?

13 A. Facing toward the loading dock.

14 Q. What kind of car did you have?

15 A. Do you really want to know?

16 Q. What kind of car did you have on that
17 date?

18 A. A Subaru Justee.

19 Q. So you would be looking through your
20 windshield to the east?

21 A. Yes.

22 Q. Is that a four-door, two-door?

23 A. It's a two-door hatchback.

24 Q. So did you have -- what windows, if any,

1 did you have down?

2 A. The left window.

3 Q. Did you have the radio on?

4 A. No.

5 Q. I think Mr. Kaiser addressed this.

6 When you got to the site on September
7 24, you parked your Subaru somewhere in the
8 northeast part of the automobile parking lot,
9 right?

10 A. Yes.

11 Q. Then you walked through the tree area to
12 set up your monitoring locations at 10 feet and 50
13 feet?

14 A. Yes.

15 Q. How were those exactly set up? Is there
16 some sort of box they were set on or right on the
17 grass?

18 A. No, the recorders themselves were
19 suspended from a strap on a tripod, and the sound
20 level meter itself was mounted on the tripod. So
21 they're both sitting on the tripod.

22 Q. There were two separate microphones?

23 A. Two tripods, two sound level meters and
24 two recorders.

1 Q. And so in the 50-foot location, that's
2 where you had a tripod, a microphone and a
3 recorder?

4 A. Correct.

5 Q. Then the same operation at the 10 foot?

6 A. Correct.

7 Q. So the microphone itself, how was that
8 situated?

9 A. The microphone is an integral part of the
10 sound level meter.

11 Q. What was hanging from the tripod again?

12 A. The case that contains the -- it's a soft
13 leatherette case with a nylon strap that contains
14 the DAT recorder. It's about the size of that
15 recorder there (indicating).

16 Q. Indicating the court reporter's walkman
17 size recording device?

18 A. Exactly. It's suspended from a nylon
19 strap on the tripod.

20 Q. Then the microphone is part of the
21 recording device?

22 A. The microphone -- the output from the
23 sound level meter is being recorded, and it's an
24 analog output. It's the amplified output from the

1 microphone.

2 Q. I'm a little confused. Is the microphone
3 part of the thing that is suspended from the
4 tripod?

5 A. The microphone is mounted -- the
6 microphone is the sound level meter. It's an
7 integral part. It's mounted on a conventional
8 camera mount on the top of the tripod, and the
9 output, it's simply -- it's being used as a
10 microphone.

11 Q. Okay.

12 A. That's all.

13 Q. I pictured something dangling from a strap
14 on a tripod, but you're saying it was on top of a
15 tripod?

16 A. The sound level meter was on top of the
17 tripod, and the recorder was hanging from a strap
18 on the tripod. I don't know why that's
19 important. They weren't moving. There was no
20 particular wind.

21 Q. So then you set up those two locations,
22 correct?

23 A. Yes.

24 Q. Then you got back in your car and you

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1 drove west across the parking lot to park your car
2 in the situation you described, right?

3 A. Yes.

4 Q. And then you stayed at that location on
5 September 24 from that period from 11:30 until
6 about 3:00 a.m.?

7 A. I think it was broken into two parts
8 because the tape isn't that long. So I think it
9 was an hour between about 11:30 and 12:30 or 12:00
10 and 1:00. And I think it was an hour from 2:00 to
11 3:00, approximately.

12 Q. Could you see Wedgewood Drive from where
13 you were situated on September 24?

14 A. No.

15 Q. So is it accurate to say that the entire
16 time the recorders were running, you were in your
17 car looking at the truck activity?

18 A. That's correct.

19 Q. Then Exhibit 53, your notes, these first

20 two pages, were made contemporaneously with you
21 hearing the sounds?

22 A. That's correct.

23 Q. So when you -- at 11:41 p.m. on September
24 23, it was your observation that the tollway noise

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1 was prominent, right?

2 A. Yes.

3 Q. And you somehow on that day determined
4 that there was a breeze from the east traveling
5 west?

6 A. Yes.

7 Q. Ten miles per hour?

8 A. Estimated.

9 Q. So even though the breeze was traveling
10 towards the tollway --

11 A. Right.

12 Q. -- you felt at that time, the tollway
13 noise was prominent?

14 A. Correct.

15 Q. Now, here to the left of 12:32 a.m., it
16 looks like it says, 53 degrees?

17 A. At O'Hare, yes.

18 Q. That's what O'Hare refers to.

19 How did you determine it was 53
20 degrees at O'Hare?

21 A. Off the Internet.

22 Q. When did you make that determination?

23 A. When I got back. You know what --

24 Q. Got back to where?

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1 A. Maybe I got that from the radio. I'm not
2 sure. I might have got that on -- I might have
3 turned on the radio and heard that. I'm not sure.

4 Q. Like a weather band or News Radio 78?

5 A. It was the 78 type of thing. Being in the
6 margin doesn't mean that that was necessarily time
7 related.

8 Q. Okay. I understand. Well, do you know
9 then when you determined that it was 53 degrees at
10 O'Hare?

11 A. No, I don't. Probably when I was setting
12 up.

13 Q. Then you made the note, "Police drive
14 past."

15 A. Right. We advised the local police that
16 we would be there, and I just simply noted that he
17 went past. I could see him from where I was. He
18 didn't see or notice me.

19 Q. The police officer drove onto the LTD
20 property?

21 A. Yes, they did.

22 Q. So are you noting a noise or just the fact
23 that the police drove by?

24 A. Just that he drove by.

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1 Q. Now, it looks like -- at the line below
2 1:00 a.m., what is that time entry where it says,
3 "Truck arrives, parks," et cetera?

4 A. This, I believe, is during the period of
5 time --

6 Q. You have your original notes, right?

7 A. Yes.

8 Q. Why don't you take a look at those and see
9 if you can figure out that original time.

10 What does that say?

11 A. "Cab idling near mule. Off approximately
12 1:15."

13 Q. Right, and then what's the time

14 immediately after that?

15 A. "1:26 truck arrives, parks."

16 Q. Then what does it say to the right of

17 that? That's a time 1:29?

18 A. He turned off the truck.

19 Q. I thought that maybe said 294. Okay.

20 That's a time right there?

21 A. Right.

22 Q. So then moving down it looks like between

23 1:43 a.m. and approximately 1:46 a.m., you made a

24 note of a noise coming from the office building to

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1 the east of LTD?

2 A. No, it's from -- this is right below that

3 note. Between 1:26:09 and 1:35:35 -- "Some noise

4 emanates from building, hard to identify, lift

5 truck noise through the roof." This was noise

6 from LTD.

7 Q. I skipped down, though. Where it says,

8 "Note, office to east, rolling noise, hand cart."

9 What does that -- what property does

10 that refer to?

11 A. Somebody from the adjacent business to the
12 east was rolling a large plastic garbage cart over
13 to the Dumpster which was in the corner of their
14 lot. You can see it. It's dark at the corner
15 there, I believe.

16 Q. In looking at the aerial Exhibit 89, the
17 garbage Dumpster, is that where we put a circle
18 and put a G?

19 A. Yes.

20 Q. So you from your location in your Subaru
21 with the left window down were able to hear
22 somebody rolling a garbage Dumpster across the
23 office building parking lot to the garbage area?

24 A. Yes.

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1 Q. That's what that note refers to?

2 A. Yes.

3 Q. How big was that garbage hand cart that
4 was being rolled across the office parking lot?

5 A. I would say maybe four, five feet long;
6 three feet high; three feet wide, something like
7 that.

8 Q. When did you learn that there was
9 garbage -- disposal area garbage containers at the
10 northwest corner of the office building parking
11 lot?

12 A. I'm not sure.

13 Q. Was it on September 24 that you at that
14 point knew that this person with the hand cart was
15 pushing it to the garbage containers at the
16 northwest corner of the office building parking
17 lot?

18 A. It had -- I'm a little confused, but I
19 believe it was that night, yes.

20 Q. So then on the second page of your notes,
21 you observe that about at 2:30, 2:39, the LTD
22 employees were leaving for the day?

23 A. Correct.

24 Q. It appeared to be the end of their work

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1 shift, and everybody was leaving the warehouse
2 facility?

3 A. Correct.

4 Q. Then on March 24, 1998, this is when you

5 took a look at the tollway ambient noise, right?
6 You made notes on March 24, 1998, right?
7 A. Now, we are over to March?
8 Q. Right.
9 A. We are changing the date?
10 Q. Right, March 24, 1998?
11 A. Okay.
12 Q. You made contemporaneous notes on that
13 date?
14 A. Yes.
15 Q. And when you set up and began making
16 observations, you said continuous sounds are
17 traffic, waterfall, clanging ropes on flagpole,
18 motor or --
19 A. Transformer.
20 Q. Transformer used in pumping waterfall?
21 A. Yes.
22 Q. What does traffic refer to?
23 A. Tollway.
24 Q. The waterfall, is that an LTD waterfall?

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1 A. Yes.
2 Q. The clanging ropes, whose flagpole?

3 A. Their flagpole.

4 Q. Were you on this occasion sitting in your
5 car again with the window down making notes?

6 A. Yes, except when it was raining.

7 Q. Now, did you purposely pick a rainy day to
8 go out there, or did it just happen to be raining?

9 A. It just happened to be raining.

10 Q. And on that particular day, the wind
11 seemed to be blowing from the east going to the
12 west again?

13 A. Yes.

14 Q. And on that particular day, you were able
15 to hear with your own ears the tollway noise?

16 A. Correct.

17 Q. Where were you sitting in your car on this
18 day, March 24?

19 A. I think I moved around some on that day.
20 I like to note that it's down hill from the
21 location close to the fence where I set up the one
22 unit. It's down hill over toward the office, and
23 I know at first I was by the office. I think that
24 I drove -- because there was two segments and I

1 had rain to deal with, so I was back and forth a
2 couple times. But I believe that I turned off the
3 engine and pushed it -- coasted it down hill most
4 of the way to the office, and I think I waited
5 near the office.

6 Q. LTD office?

7 A. Yes.

8 Q. And how many sound meters or measuring
9 devices had you set up on March 24 for the tollway
10 noise?

11 A. Two.

12 Q. Where were they located?

13 A. One was located close to the tollway. I
14 forget right now, but it was 50 or 100 feet from
15 the fence.

16 Q. From the fence between the LTD property
17 and the tollway right-of-way?

18 A. Yes.

19 Q. And the other one?

20 A. The other one we moved it to three
21 locations, and if you look at the diagram or -- I
22 mean, at the aerial photo, first it was halfway
23 between the Dumpster and the little crook in the
24 north end of the parking lot. It was halfway

1 between there, in other words, between the houses
2 at the lot line -- between the houses at the lot
3 line. Yes, right there.

4 Q. So you're talking about -- when you're
5 measuring tollway noise, at one point your second
6 measuring device was within 20 feet of where the
7 10 foot measurement was taken on September 23 and
8 24, 1997?

9 A. Yes.

10 Q. So that was one location. Where was it
11 the second time?

12 A. The second time was -- I believe it's 200
13 feet closer to the toll road.

14 Q. Going west?

15 A. Right.

16 Q. Just if we went directly west on a
17 parallel line, so to speak?

18 A. Yes. And then the third location was very
19 close to the Dumpster. It was 200 feet east of
20 the first location. The idea was to be at three
21 location distances from the tollway with the one
22 unit.

23 Q. Okay. That third location sounds the same
24 as the second location, so I'm confused where the

1 third was?

2 A. Starting in the center, we made a
3 measurement. Then we moved 200 feet towards the
4 tollway, which is about the crook in the parking
5 lot there. Then I went back 400 feet to
6 accomplish being 200 feet further east than the
7 original point. You see, I started at one point,
8 went 200 feet west, and now to get 200 feet east
9 of the original point, it was 400 feet and that
10 point was very close to the Dumpster.

11 Q. Why don't you step down here and we'll
12 write 1, 2, 3.

13 MR. KAISER: Why not put the September
14 location in, as well.

15 BY MR. KOLAR:

16 Q. For March 24, 1998 the one measuring
17 device that you moved, put No. 1 for the place
18 where it was originally; then 2 for the second
19 location; and 3 for its final location.

20 A. (Indicating.)

21 Q. Okay. And how about for -- where was

22 the -- let's put 4 where the site of the one on
23 March 24, 1998 that was stationary wasn't moved.
24 Why don't we put A and B for the 50 foot -- put an

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1 A for the 50 foot metering location on September
2 23 and 24, 1997; and B for the 10 foot location on
3 that same date. It might be a little confusing.
4 The B is sort of at the top of the 1, right?

5 A. Yes.

6 Q. So do you recall those numbers 1 to 4 and
7 the letters A to B accurately reflect where the
8 meters were located?

9 A. Yes.

10 MR. KOLAR: I don't have anything else.

11 HEARING OFFICER KNITTLE: Redirect?

12 MR. KAISER: If I may.

13 REDIRECT EXAMINATION

14 BY MR. KAISER:

15 Q. Do you have any way of knowing either by
16 recollection or by reference to your notes what
17 the temperature was during your measurements on --
18 in March of 1998?

19 A. I believe I was relying on going to the --

20 I have a weather report that comes in every day
21 that I have a cumulative ongoing record. And my
22 intention was that if it was ever needed, I could
23 go back to that.

24 Q. But as you sit here today, you don't know?

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1 A. I don't know today.

2 Q. Do you recall whether on September 23 or
3 in the early morning of September 24, 1997 it was
4 raining?

5 A. No, it wasn't raining.

6 Q. You were describing for Mr. Kolar the
7 manner in which you set up your instrumentation at
8 points A and B on September 23 and 24, 1997.

9 Do you recall that testimony?

10 A. Yes.

11 Q. At what height above the ground was the
12 microphone?

13 A. I would say five feet.

14 Q. Turning to your notes, if you would for a
15 moment. And I'm looking now at your notes of
16 September 1997. I note that in your notes, you

17 refer to something as a pony or a mule.

18 A. Right.

19 Q. What do you mean by pony --

20 A. That's a specially designed cab that moves
21 trailers around within a facility.

22 Q. And when you use the term -- have you ever
23 heard it called a yard pig or a yard tractor?

24 A. Yes.

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1 Q. But your terminology, you refer to it as a
2 mule or a pony?

3 A. Right.

4 Q. For instance, "At 12:31, mule gets trailer
5 from dock."

6 That's that yard pig getting a
7 trailer?

8 A. Exactly.

9 Q. When you say dock, are you referring to
10 this truck staging area, or are you referring to
11 the docks under roof of LTD?

12 A. When you say under roof, I don't know that
13 the roof extended that much.

14 Q. I'm just saying that you're aware that the

15 trucks actually go in under the roof and that the
16 docks where the boxes are taken off the truck,
17 that actually occurs inside the LTD facility,
18 right?

19 A. One of our reports has a photograph, and
20 it would show --

21 Q. Mr. Harmon, if you don't recall from
22 memory, it's not that important.

23 Do you recall from memory?

24 A. I have a photograph, and it's not showing

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1 a roof extending over the dock that they pull up
2 to.

3 Q. I think it's just a matter of
4 terminology.

5 You saw that yard tractor actually
6 put trailers inside the building, right?

7 A. I don't think they go inside the
8 building. I think they only pull up to the dock.

9 Q. I'm looking at your entry at 1:46 and 20
10 seconds.

11 A. Okay.

12 Q. As I'm reading that -- I'm reading that
13 as, "Truck starts and continues-air brakes," and
14 what is that word at the end?

15 A. What time are we at?

16 Q. 1:46.

17 A. Air brakes noticeable.

18 Q. And the parenthetical statement below
19 that, what does it say? Could you read that into
20 the record?

21 A. "Truck equal or louder than tollway and
22 appears to reflect off of building."

23 Q. Was that just that one truck, or was that
24 all the trucks you observed while parked in the

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1 dock area in September of 1997?

2 A. I really don't know.

3 Q. Could you read the following two lines,
4 please?

5 A. Surely. "Nonstop; continues with mule
6 plus one or two trucks, thumps, bangs, et cetera,
7 very busy at 2:00 p.m." Then I changed it to an
8 a.m. "Mule plus two or three trucks running."

9 Q. Is that a true and accurate representation

10 of what you were observing at the LTD dock area on
11 September 24, 1997 at approximately 1:46 a.m.?

12 A. Yes, it is.

13 Q. At 12:34 a.m., could you read that entry,
14 please?

15 A. I spelled the word brake -- it should have
16 been b-r-a-k-e. I spelled it wrong, but, "The
17 mule brakes, also second truck starts. Area very
18 active, nonstop." And then I made a note below
19 that, "At 12:39, no action, motors running." In
20 other words, whatever -- there was too much going
21 on to be able to note it all, but at 12:39, the
22 action had stopped, and they were sitting there
23 with motors running.

24 Q. So is it fair to say that for an

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1 approximate four-minute period, there was intense
2 action in the dock area, then it stopped?

3 A. Yes.

4 Q. Except for the motors that were left
5 running?

6 A. Yes.

7 Q. Could you read for me the entry at 1:35
8 a.m.?

9 A. "Truck arrives," and I was starting to
10 write parks, but he wasn't finished. He was
11 having a lot of difficulty because it was a long
12 trailer. I guess you asked me to read it, so I'll
13 just read it. "Parks, difficulty parking long
14 trailer. Done at 1:43."

15 Q. What did you observe during that interval
16 of time from 1:35 and 35 seconds to 1:43 and 30
17 seconds?

18 A. Forward and backward, forward and
19 backward, brakes, you know, air brakes, et cetera.

20 Q. It was during that same time that this
21 truck was trying to park that you observed this
22 plastic garbage cart being rolled across the
23 pavement in the vicinity of the office building to
24 the east of LTD?

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1 A. Yes.

2 Q. Do you think the occurrence of that event,
3 the plastic garbage cart being dragged across the
4 parking lot of the office building to the east of

5 LTD, materially affected or skewed the noise
6 measurements you obtained of the LTD dock area on
7 November 23 and 24, 1997?

8 A. Not really because a single isolated
9 incident like that averaged over time doesn't
10 change the overall average to any large degree.

11 MR. KAISER: Thank you, Mr. Harmon. I
12 have no further questions.

13 MR. KOLAR: Just a couple.

14 RE-CROSS-EXAMINATION

15 BY MR. KOLAR:

16 Q. That garbage cart being rolled across to
17 the office building parking lot to the garbage
18 area, you heard that noise during the time when
19 the truck driver was having difficulty trying to
20 park his long trailer?

21 A. Right.

22 Q. You think when there's a west wind that
23 tollway noise would reflect off the LTD office
24 building -- strike that.

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1 When there's a west wind, do you

2 think tollway noise would reflect off the LTD
3 truck dock area.

4 MR. KAISER: Excuse me. Relevance unless
5 he indicates what direction it would reflect. I
6 mean, if it reflects off the west wall of LTD and
7 reflects back westward then towards the tollway
8 again, I don't know if that would have any impact.

9 HEARING OFFICER KNITTLE: Overruled. You
10 can answer the question.

11 BY MR. KOLAR:

12 Q. So to clear my question is the truck dock
13 area, meaning the north wall.

14 Do you think tollway noise with a
15 west wind would reflect off the north wall of the
16 LTD building?

17 A. If there was a west wind of a significant
18 amount, the noise perceived at the residence would
19 be increased but not because of reflection from
20 the dock. It would be because of the effect of
21 the wind from the tollway.

22 MR. KOLAR: I don't have anything else.

23 MR. KAISER: I have nothing further.

24 HEARING OFFICER KNITTLE: Thank you, sir.

1 You can step down.

2 MR. KAISER: Thank you very much.

3 MR. KOLAR: Thanks.

4 MR. KAISER: If you could just look for
5 the video and audio tape and let Mr. Kolar know.
6 You can probably leave him a message on his voice
7 mail.

8 HEARING OFFICER KNITTLE: Off the record.

9 (WHEREUPON, a recess was had.)

10 (WHEREUPON, the witness was duly
11 sworn.)

12 HENRY WEBER,

13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. KAISER:

17 Q. Sir, could you please state your full name
18 and spell your last name for the court reporter's
19 benefit?

20 A. Henry, middle initial A, Weber, W-e-b-e-r.

21 Q. Mr. Weber, where do you live?

22 A. 1481 West Wedgewood Drive, Lake Forest,
23 Illinois.

24 Q. With whom do you live at that address?

1 A. My wife, Leslie Weber, and our two sons.

2 Q. What are your sons' names?

3 A. Scott and Christopher.

4 Q. How old is Scott?

5 A. Scott is 16. Chris is 9 years old.

6 Q. And Leslie Weber, she's one of the
7 complainants in this matter; is that right?

8 A. That's correct.

9 Q. You're looking right now at an aerial
10 photograph that's previously been marked for
11 purposes of identification as Respondent's Exhibit
12 89.

13 Can you see that from where you're
14 seated?

15 A. Yes.

16 Q. Are you able to see from where you are
17 seated the roof of LTD's Bannockburn facility?

18 A. Yes.

19 Q. Are you able to locate in relation to the
20 LTD facility the Roti home?

21 A. Yes.

22 Q. Do you see the residence occupied by
23 Mr. Rosenstock?

24 A. Yes.

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1 Q. Is this, in fact, your home just to the
2 northeast of the LTD facility?

3 A. Yes.

4 Q. How long have you lived at 1481 Wedgewood?

5 A. We had the house constructed approximately
6 eight years ago.

7 Q. Is your home a one or two-story home?

8 A. Two-story home.

9 Q. Where is your bedroom located within the
10 home?

11 A. Our bedroom is the -- you mean my wife's
12 bedroom and mine?

13 Q. Yes.

14 A. It is on the southeast corner of the home.

15 Q. When did you first begin to perceive --
16 back up if I may.

17 Back in 1992, '93, '94, did you
18 perceive noise from the LTD dock operations to be
19 bothersome or a nuisance?

20 A. No.

21 Q. When did you begin to perceive noise from

22 the LTD dock operations as bothersome or a
23 nuisance?

24 A. Approximately four years ago.

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1 Q. Do you recall what time of year it was
2 that you began to perceive approximately four
3 years ago noise from the LTD dock operations as a
4 nuisance?

5 A. On or about September 1.

6 Q. What did you hear in September of '95
7 or '96?

8 A. I started hearing it in September of '96,
9 and the noise was that of a truck moving trailers
10 throughout a -- outside their facility and
11 associated noise with the truck -- of the truck
12 itself dropping trailers, hooking up the trailers,
13 unhooking from trailers, opening trailer doors,
14 closing trailer doors.

15 Q. Were you able to hear at your residence --

16 MR. KAISER: Let's just note for the
17 record for the third day in the row, we have a
18 wasp in the hearing room.

19 (WHEREUPON, there was a short
20 interruption.)

21 HEARING OFFICER KNITTLE: Note for the
22 record that Mr. Kaiser has now killed his third
23 wasp for which we are all extremely grateful.

24 MR. KAISER: They do pose a bit of a

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1 distraction.

2 BY MR. KAISER:

3 Q. All right. Mr. Weber, you were describing
4 for us the sounds you heard from the LTD dock
5 areas in September of 1996.

6 Could you hear those sounds in the
7 backyard of your residence at 1481 Wedgewood?

8 A. Yes.

9 Q. Could you hear the sounds of the LTD dock
10 operations on the first floor of your home back in
11 September of 1996?

12 A. Yes.

13 Q. Could you hear the sounds from the LTD
14 dock operations on the second floor of your home
15 in September of 1996?

16 A. Yes.

17 Q. Could you hear the noise from the LTD dock
18 operations in September of 1996 on the first floor
19 of your home even if your home's windows and doors
20 were closed?

21 A. Yes.

22 Q. Could you hear the noise from LTD's dock
23 operation in September of 1996 on the second floor
24 of your home even with your home's doors and

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1 windows closed?

2 A. Yes.

3 Q. How was it you determined that the noise
4 you were hearing, the truck operation noise you
5 were hearing in September of 1996 came from the
6 LTD facility?

7 A. I went over and looked.

8 Q. Did you go on foot or by car?

9 A. A couple occasions. I once went by foot,
10 and the other time I did go by car and drive.

11 Q. What activities did you observe -- was
12 this in September of 1996?

13 A. To the best of my recollection, yes, it

14 was.

15 Q. What did you -- how close did you actually
16 get to the LTD dock area when you went over to
17 investigate the source of the noise?

18 A. May I point it out?

19 Q. Sure. Please, if you would step down?

20 A. On foot I would come through my backyard
21 at this point and walk this area here
22 (indicating).

23 Q. Indicating the area marked as 3G?

24 A. And I would then when I drove in, I did

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1 drive into this area and then drove out and
2 actually parked my car in this area here, as well
3 (indicating).

4 Q. Indicating an area just below 3G in the
5 parking lot of what we are referring to as the
6 Corporate 100 building. Thank you.

7 What did you see when you went to
8 those locations in the fall of 1996?

9 A. Warehousing, shipping operation, receiving
10 operations going on. Trucks -- it looked like
11 trucks picking up loads or delivering loads and

12 bringing them into the receiving area, trucks
13 being dropped, in other words, being unhooked from
14 a tractor and either being brought into the
15 receiving dock door area or being taken out of the
16 receiving dock door area and put into a staging
17 area which is noted as you can see from the
18 overhead.

19 Q. From the overhead that's where we see the
20 tops of the semi trailers at a diagonal just to
21 the north of the LTD building?

22 A. That's correct. In addition, trailers I
23 have observed being staged along that roadway.

24 Q. Lakeside Drive to the east?

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1 A. A portion of where you marked off, yes.

2 Q. All right. Did you ever see trucks staged
3 in any of the other areas in the vicinity of LTD's
4 Bannockburn facility?

5 A. Just along the north wall of the building.

6 Q. In the fall of 1996, what days of the week
7 did you hear noise from LTD's dock operations?

8 A. Sunday night through -- best recollection

9 is it ended on Friday evening.

10 Q. Would you hear the noises in the fall of
11 1996 during the evening hours?

12 A. Yes.

13 Q. Did the noise that you heard from the LTD
14 docks in the fall of 1996 in any way interfere
15 with your use and enjoyment of your home?

16 A. Yes, it made staying in the living room
17 area of our home not an area where we could sit
18 and enjoy the house because of the noise level.

19 Q. Is your living room on the first or second
20 floor of your home?

21 A. It is a two-story living room that's on
22 the first floor.

23 Q. Is it on the east or west side of your
24 home?

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1 A. It's on the south side of the home. It
2 extends out from the home.

3 Q. What was it that made it unpleasant for
4 you to be in the living room of your home during
5 the fall of 1996?

6 A. The associated noise from the facility.

7 Again, as I described, the hooking and unhooking
8 of trailers, closing doors, the lack of a muffler
9 in that first season of their truck that jockeys
10 around the trailers. It was just a series of loud
11 noises that made it uninhabitable.

12 Q. Were there any rooms in your home that you
13 found to be uninhabitable or habitable but your
14 comfort was compromised by noise from LTD?

15 A. Comfort was compromised in any room that
16 you would hear the noise.

17 Q. How many rooms would you hear the noise
18 from LTD's dock operations in in the fall of 1996?

19 A. Four on the first floor.

20 Q. Which ones?

21 A. The living room, study, family room,
22 kitchen area.

23 Q. Any rooms on the second floor?

24 A. Three bedrooms.

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1 Q. Were all three bedrooms affected in the
2 fall of 1996?

3 A. Yes.

4 Q. In what way?

5 A. You heard the noise.

6 Q. Did the noise disrupt activities, going to
7 sleep or staying asleep or anything that you would
8 normally do --

9 A. Disruptions did occur, and it was very
10 unsettling.

11 Q. How did you experience that sense of
12 unsettling? How did that -- how did you feel
13 that, or what did you observe in yourself or your
14 family members in the fall of 1996?

15 A. For myself I found it -- I couldn't read a
16 book in my bedroom because, again, a sudden -- the
17 sudden noise would occur, again, a door or a truck
18 hooking or unhooking. It impacted my wife
19 greatly.

20 Q. What did you notice with respect to your
21 wife, Leslie Weber?

22 A. Shortness, crabbiness, a lot of anger
23 starting to develop when the noise was occurring.

24 Q. That was even as early as fall of 1996?

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1 A. There were -- to the best of my

2 recollection, yes.

3 Q. Did you observe any changes in your sons'
4 mood or behavior?

5 A. My older son complained about it. My
6 younger one complained about it less, but that was
7 just complaints.

8 Q. Despite the noise from LTD's dock
9 activities in the fall of 1996, were you still
10 able to enjoy the two decks you have on the south
11 side of your home?

12 A. No.

13 Q. Why not?

14 A. Because of the noise level.

15 Q. Did you find that you spent less time in
16 the fall of 1996 out on the decks of your home
17 because of the noise from LTD?

18 A. Compared to the other times of the year.

19 Q. Or compared to previous --

20 A. I didn't have the decks previous years.
21 When weather was -- since it was the fall, when
22 weather was comparable, we did not venture out in
23 the evenings to sit on the decks or open our
24 windows.

1 Q. Why not?

2 A. Because of the noise.

3 Q. Again, the noise that kept you inside with
4 your windows and doors closed, did you form an
5 opinion as to where that noise was coming from?

6 A. Yes, I did.

7 Q. What was your opinion in that respect?

8 A. From LTD.

9 Q. By the late summer, early fall of 1997,
10 did you notice any reduction in the noise from the
11 LTD facility?

12 A. No.

13 Q. What did the noise sound like at the LTD
14 facility -- well, again, beginning in the late
15 summer and early fall of 1997, were you able to
16 hear noise from LTD's dock activities in the
17 backyard of your home?

18 A. Yes.

19 Q. In the fall -- late summer and fall of
20 1997, were you able to hear noise from LTD's dock
21 activities on the first floor of your home?

22 A. Yes.

23 Q. In the late summer and early fall --
24 throughout the fall of 1997, were you able to hear

1 noise from LTD's dock activities on the second
2 floor of your home?

3 A. Yes.

4 Q. Even if you had the windows and doors of
5 your home closed in the late summer and fall of
6 1997, were you able to hear noise from LTD's dock
7 activities?

8 A. Yes.

9 Q. What noises in particular did you hear
10 from LTD's dock activities?

11 A. Again, trucks moving trailers about the
12 property, in and out of dock doors, putting them
13 in the staging area, taking them out of the
14 staging area, hearing doors close and open and
15 trailers being dropped.

16 Q. Did the noise that you were hearing
17 throughout your home and on your decks in the
18 fall -- late summer and fall of 1997 in any way
19 interfere with your use and enjoyment of your home
20 and the yard surrounding your home?

21 MR. KOLAR: Objection, asked and
22 answered. '97?

23 MR. KAISER: Yes. I don't think for '97.

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1 recollection we just covered '96; is that
2 correct?

3 MR. KAISER: That's my understanding.

4 HEARING OFFICER KNITTLE: Overruled.

5 BY MR. KAISER:

6 Q. Do you recall the question, Mr. Weber?

7 A. Yes, I do. Yes, it did interfere.

8 Q. In what way?

9 A. Again, enjoyment of the property of the
10 first floor and an unsettling effect, again,
11 identical to what I mentioned when you asked about
12 1996.

13 Q. The unsettling effect, that being
14 especially noticeable in your wife, Leslie's,
15 sense of stress and discomfort?

16 A. Yes.

17 Q. Did you experience those same sensations?

18 A. Yes. I mean, you could not sit in any of
19 those rooms and have any type of quiet time
20 because you would hear the activity that I

21 mentioned. It would occur and the noise of a
22 trailer dropping or door closing or being placed
23 into a staging area. That impact noise is quite
24 loud, sudden, and the effect is unsettling.

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1 Q. What times of the day could you hear these
2 noises in your home in the late summer and fall of
3 1997?

4 A. Approximately starting around 6:30, 7:00
5 in the evening and would hear them throughout the
6 night and even in the early morning when I got up.

7 Q. What time would you get up to go to work
8 back in the fall of 1997?

9 A. 6:00 a.m.

10 Q. Is it your testimony at 6:00 a.m. in the
11 morning, you could hear noise from LTD's dock
12 area?

13 A. Yes.

14 Q. What about the late summer and fall of
15 1998, were you able to hear noise from LTD's dock
16 activities in your yard, first floor, second floor
17 of your home during the late summer and fall of
18 1998?

19 A. Yes.

20 Q. Did the noise that you heard from LTD's
21 dock activities in the late summer and fall of
22 1998 interfere with your use and enjoyment of your
23 home and yard during that time period?

24 A. Yes.

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1 Q. In what way?

2 A. Similar to what I mentioned to you
3 previously. It would -- you would not be able to
4 effectively use certain areas of the house. It
5 was unsettling in nature, and it seemed to keep
6 developing a cumulative effect on my wife.

7 Q. Could you describe for the Board that
8 cumulative effect that you've observed in your
9 wife as it responds to more than three seasons of
10 exposure to noise from LTD's dock operations?

11 A. Shorter tempered, crabbiness, really
12 bothered by the noise when it did occur. On
13 occasion it did wake her up in the night because
14 it woke me up. She woke me up then.

15 Q. This short temper or crabbiness, was this

16 something you saw once or twice during the fall,
17 late summer and fall of 1998, or did it occur in
18 your wife more frequently?

19 A. It was cumulative in nature and definitely
20 was demonstrated in the evenings when the noise
21 was occurring.

22 Q. Did you experience the noise differently
23 towards the end of the week as opposed to the
24 beginning of the week?

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1 A. I'm sorry. I don't understand the
2 question.

3 Q. I'll withdraw the question.

4 What is it like to be in your home --
5 well, let me get through 1999. Here we are in
6 early November 1999.

7 Are you still able to hear noise from
8 LTD's dock activities in the backyard of your
9 home?

10 A. Yes.

11 Q. Are you still currently hearing noise from
12 LTD's dock operations in the first floor of your
13 home?

14 A. Yes.

15 Q. Are you currently hearing noise from LTD's
16 dock operations on the second floor of your home?

17 A. Yes.

18 Q. When did you begin hearing noise from
19 LTD's dock operations during the course of this
20 season, LTD's 1999 Christmas season?

21 A. Second half of August of this year.

22 Q. Does the noise that you've been hearing
23 from LTD's dock operation since the second half of
24 August 1999 and continuing to the present

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1 interfere in any way with your use and enjoyment
2 of your home?

3 A. Yes.

4 Q. In what ways?

5 A. Again, I cannot use my decks. The family
6 room is not used, and the same effect it does have
7 on me and the suddenness of the noise.

8 Q. Is it the suddenness, the banging, the
9 impulse of noise that's particularly disturbing?

10 A. To me, yes, it is.

11 Q. During this season, the 1999 shipping
12 season for LTD, have you heard a new back up
13 warning beeper?

14 A. Yes, I have.

15 Q. How would you describe for the Board the
16 sound of the back up warning beeper that you're
17 hearing?

18 A. Well, it's synonymous with me with some
19 type of back up noise indicator, and it's just a
20 pulsating back up noise, a beep.

21 Q. Is that noise pleasant, neutral,
22 unpleasant?

23 A. Quite unpleasant.

24 Q. Paul Rosenstock described the noise of

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1 the back up warning beeper as the noise from
2 hell.

3 Would you agree or disagree with that
4 characterization?

5 A. I find it very invasive.

6 Q. Invasive?

7 A. That's correct.

8 Q. Have you made any investigation to

9 determine what the source of that back up warning
10 beeper is?

11 A. I have not.

12 Q. Have you ever heard a back up warning
13 beeper on the garbage truck that picks up garbage
14 from the Dumpster for Corporate 100 located in
15 this area that's previously been marked as 3G?

16 A. Yes, I have.

17 Q. Is that the source of the back up beeper
18 that you describe as invasive?

19 A. No.

20 MR. KOLAR: Objection, asked and
21 answered. He asked him if he made an
22 investigation of the source of the back up beeper,
23 and he said, no, I haven't.

24 MR. KAISER: If he knows. He may not have

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1 had to investigate.

2 HEARING OFFICER KNITTLE: Overruled.

3 BY MR. KAISER:

4 Q. Do you recall the question, Mr. Weber?

5 A. Please reask the question. Could you

6 reread it, please?

7 (WHEREUPON, the record was read
8 by the reporter as requested.)

9 BY MR. KAISER:

10 Q. Were you going to elaborate at all on that
11 answer? What I'm trying to get at is you've heard
12 the back up beeper --

13 A. I've heard the noise that comes from the
14 truck that picks up the Dumpster. And the noise
15 that you were asking me about is not that noise.

16 Q. Does the noise that invades your home, do
17 you have a sense of what direction it's coming
18 from?

19 A. Yes, I do. I feel it's coming from the
20 LTD property. It also seems to be associated with
21 trucks either being hooked up or being dropped.
22 So it's associated with the truck being moved.

23 Q. So I guess when I asked had you
24 investigated, you had never gone over and looked

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1 to see what it was, but it sounds to me you've
2 formed some opinion as to the source of that
3 noise?

4 A. I have.

5 Q. What is the basis of your opinion
6 concerning the source of this invasive back up
7 warning beeper?

8 A. It's coming from the LTD property.

9 Q. Could you describe for the Board what it's
10 like in your home Saturday evening when LTD
11 finally shuts down its operations for the week?

12 A. Extremely quiet.

13 Q. How does that feel?

14 A. It feels good.

15 Q. Do you notice any change in your wife's
16 mood?

17 A. Yes.

18 Q. Could you describe for the Board that
19 change?

20 A. It's peaceful. She's not being agitated
21 by the noise.

22 Q. Can you see that peace in the expression
23 on Leslie's face?

24 A. I can see it in her demeanor.

1 Q. What exactly do you see that leads you to
2 conclude that your wife's demeanor is changing
3 when the noise from LTD stops?

4 A. She enjoys her house. She's quite
5 comfortable using her house. She makes a
6 reference to say, boy, isn't it quiet tonight.
7 She's in much better spirits. We can sit in the
8 family room, put the fireplace on and read a book.

9 Q. When LTD's dock operations are -- when the
10 dock's in operation, are you able to sit in good
11 spirits in your family room with the fireplace on
12 and read a book?

13 A. As I stated, we don't use the family room.

14 Q. That family room, again, that's on the
15 south side of your home?

16 A. That's correct.

17 Q. It's two story?

18 A. That's correct.

19 Q. It's got sliding glass doors on the
20 southwest wall or the west wall?

21 A. Sliding glass doors on the east and west
22 walls.

23 MR. KAISER: I have no further questions,
24 Mr. Weber. Thank you.

1 HEARING OFFICER KNITTLE: Let's do cross.

2 MR. KOLAR: Yes, I have cross.

3 HEARING OFFICER KNITTLE: I said let's do
4 cross unless you need a break, Mr. Kolar.

5 MR. KOLAR: No.

6 HEARING OFFICER KNITTLE: I was assuming
7 that you had a cross-examination. We'll try to
8 get Mr. Weber out of here if we can.

9 CROSS-EXAMINATION

10 BY MR. KOLAR:

11 Q. Mr. Weber, you're an industrial engineer?

12 A. I have that education training, yes.

13 Q. Does that mean you have an engineering
14 degree?

15 A. Yes.

16 Q. Are you a licensed professional engineer?

17 A. I am not.

18 Q. You have a master's in management?

19 A. That's correct.

20 Q. You're a licensed Illinois attorney?

21 A. That is correct.

22 Q. Since when?

23 A. 1984.

24 Q. You are you in the distribution industry

1 today?

2 A. Yes, I am.

3 Q. You've been in the distribution industry

4 for 15 years, correct?

5 A. Yes.

6 Q. So back to 1984, as well, right?

7 A. That's correct.

8 Q. And do you have a new job this year?

9 A. Yes.

10 Q. Who do you work for today?

11 A. Romano Brothers Beverage.

12 Q. Can you spell that?

13 A. R-o-m-a-n-o Brothers Beverage Company.

14 Q. Where is that?

15 A. That's located in Bedford Park, Illinois.

16 Q. And the name of the company you worked for

17 before?

18 A. Menasha Corporation.

19 Q. Could you spell that for her?

20 A. M-e-n-a-s-h-a.

21 Q. When did you start working for Romano?

22 A. In June of this year, 1999.

23 Q. In the job you held before June of '99,
24 you were responsible for six distribution centers

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1 around the country, right?

2 A. That is correct.

3 Q. How long were you in that job, how many
4 years?

5 A. Approximately two years.

6 Q. So that would be when in 1997 until 1999?

7 A. It was April of '97.

8 Q. Before that did you also have a
9 distribution job?

10 A. Yes, I did.

11 Q. Did you travel around the country in that
12 job?

13 A. I had two locations outside Chicago in
14 that position.

15 Q. When you had this job from '97 until June
16 '99 when you went to Romano, you were gone from
17 your home about three nights a week for travel,
18 right?

19 A. That is correct.

20 Q. And when you were gone three nights a

21 week, your wife was home with the two kids, right?

22 A. That's correct.

23 Q. Would you call her every night that you
24 were away from your Lake Forest home for business?

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1 MR. KAISER: Objection, relevance.

2 HEARING OFFICER KNITTLE: Relevance,
3 Mr. Kolar?

4 MR. KOLAR: Well, he's testified
5 extensively to observing how noise has affected
6 his wife.

7 HEARING OFFICER KNITTLE: Overruled.

8 BY MR. KAISER:

9 Q. Can you answer that?

10 A. We spoke nightly.

11 Q. Obviously you couldn't see your wife on
12 any night that you were away from the home, right?

13 A. That's obvious, yes.

14 Q. Now, you and your wife purchased a vacant
15 lot in July 1988, right?

16 A. That is correct.

17 Q. And you were living in Buffalo Grove at

18 that time?

19 A. That is correct.

20 Q. And you held the lot for the time period
21 until you had a home built and moved in in January
22 of 1992?

23 A. That is correct.

24 Q. So before you and your wife decided to buy

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1 the lot on Wedgewood, you looked at more than ten
2 other lots, right?

3 A. That is correct.

4 Q. You looked throughout Lake Forest?

5 A. Yes.

6 Q. And at that time you knew or learned that
7 homes or lots were more expensive in East Lake
8 Forest, right?

9 A. Yes.

10 Q. And you learned at that time that homes
11 were or lots were more expensive in Central Lake
12 Forest as opposed to the area where you bought
13 your lot?

14 A. Yes.

15 Q. And out of all the lots that you looked

16 at, no other lot was adjacent to an office
17 building parking lot and near a truck distribution
18 center, right?

19 A. No other lot was near an office complex
20 and a warehouse, that is correct.

21 Q. Nobody forced you and your wife to buy
22 this lot, right?

23 A. That is correct.

24 Q. In July 1988 you and your wife had

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1 sufficient funds to buy a lot in a location away
2 from an office building parking lot and truck
3 loading area?

4 A. Oh, yes.

5 Q. So we kind of mentioned it -- so before
6 you decided to buy the lot, you were specifically
7 aware of the office building to the south, right?

8 A. Yes.

9 Q. You were specifically aware of the LTD
10 warehouse and trucking operations to the
11 southwest, right?

12 A. As it existed at that time, yes.

13 Q. Well, you recall that prior to July 1988,
14 all the truck docks were already in place at LTD,
15 right?

16 A. Yes.

17 Q. No truck docks were added to LTD after you
18 bought your lot, right?

19 A. I am not sure of that.

20 Q. In July 1988, June 1988, May, you were in
21 the distribution industry, right?

22 A. That's correct.

23 Q. So at that time before you bought your
24 lot, you knew that a noise would be made by a

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1 tractor engaging with a trailer, right?

2 A. That's correct.

3 Q. And you knew that tractor trailers would
4 make a noise relative to their air brakes, right?

5 A. Yes.

6 Q. And at that time before you bought your
7 lot, you knew that a slamming noise could be made
8 if the doors on a trailer swung open and hit the
9 body of the trailer, right?

10 A. Yes.

11 Q. You knew that there could also be a noise
12 made if a trailer was dropped on to its supports
13 that hold it up when it's not connected to a
14 tractor, right?

15 A. Yes.

16 Q. And with all that knowledge in your head,
17 you and your wife decided to buy this lot on
18 Wedgewood, right?

19 A. With that knowledge plus, yes.

20 Q. Plus you were aware of the tollway to the
21 west, right?

22 A. That is correct.

23 Q. You were aware of the tollway to the west
24 before you decided to buy your lot?

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1 A. That is correct.

2 Q. I guess before you decided to buy your
3 lot, you were under the impression that the LTD
4 building was then owned by FMC, right?

5 A. Yes, I think I was.

6 Q. And so before July 1988, you believed that
7 the LTD building was owned by a manufacturer of

8 large machinery, right?

9 A. FMC is a very diverse holding
10 corporation. It could be anything manufactured
11 there.

12 Q. But at that time in July 1988, you knew
13 that among other things, FMC built large earth
14 moving machinery?

15 A. Somewhere in their corporation, I guess
16 they do.

17 Q. You knew that at that time?

18 A. At that facility or for FMC Corporation?

19 Q. FMC generally. You knew that was one of
20 their businesses?

21 A. I knew that was one of their product
22 offerings.

23 Q. But you didn't make any investigation as
24 to what, if anything, was happening in this

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1 warehouse building to the southwest of the lot you
2 were considering buying, right?

3 A. No.

4 Q. What I said was accurate?

5 A. Yes.

6 Q. You didn't talk to anybody in the
7 neighborhood before July 1988 to see if noise came
8 from the commercial and warehouse uses to the
9 south, right?

10 A. I don't remember.

11 Q. You don't remember if you talked to
12 anybody, or you don't remember talking to anybody?

13 A. I don't remember other than the purchaser,
14 the person I -- the seller. I don't remember
15 talking to anybody else.

16 Q. So you talked to the seller of your lot
17 about noise coming from the commercial and --

18 A. I spoke to my -- about noise.

19 Q. What was the name of that person?

20 A. I could spell it. I think it's B-i-c-o-k,
21 one of the sellers of the property.

22 Q. That was before you bought the lot?

23 A. To the best of my recollection, yes.

24 Q. So this person who was selling you the lot

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1 told you that you can hear noise from the office
2 building and the LTD trucking operations?

3 A. No.

4 Q. What did the person say?

5 A. You can hear tollway noise every now and
6 then.

7 Q. Where did you speak to this person?

8 A. Probably at his home, his residence. All
9 our transactions occurred there.

10 Q. Was that in this neighborhood?

11 A. No.

12 Q. Where was that?

13 A. Northbrook.

14 Q. Then you and your wife, I take it,
15 discussed among yourself whether noise coming from
16 the trucking operations and the office building
17 would affect the ability of you to resell your lot
18 and home in the future?

19 A. We did not.

20 Q. You did not?

21 A. We had no need to because there was no
22 noise that we heard in our investigation. The
23 only noise we heard in our investigation was -- in
24 some of our visits was tollway noise.

1 Q. So your wife -- I think the record would
2 show -- testified that she remembers talking to
3 you about how noise from the south, whether it
4 would affect the resale value of your lot.

5 You're saying that didn't happen?

6 A. I don't recollect that.

7 Q. You're not saying your wife is a liar.
8 You're saying I don't remember that?

9 A. That's exactly what I'm saying.

10 Q. So your wife could be correct, and you
11 could be wrong?

12 A. That is correct.

13 Q. The noise from the tollway creates a
14 constant buzz on your lot, right?

15 A. When you hear it, yes.

16 Q. You can hear the tollway more prominently
17 when the wind blows from the west to the east; is
18 that correct?

19 A. That is correct.

20 Q. Does the wind seem to blow more often from
21 the west to the east across your property?

22 A. No.

23 Q. Well, you can hear that tollway noise all
24 year long, right?

1 A. At times, yes, you can. It's not seasonal
2 in nature.

3 Q. Tollway noise, is it worse when the
4 pavement is wet?

5 A. I don't know.

6 Q. Can you hear on your property the sound of
7 trucks and cars accelerating?

8 A. Yes.

9 Q. You can hear on your property the sound of
10 trucks and cars accelerating away from the toll
11 plaza?

12 A. I have no idea if that's true.

13 Q. So the noise you hear of trucks
14 accelerating and -- strike that.

15 The acceleration noise you hear for
16 trucks and cars could be from the toll plaza,
17 correct?

18 A. No, the acceleration noise I hear are
19 trucks pulling out or pulling into -- pulling out
20 of the LTD facility.

21 Q. So a tractor/trailer you're saying in the
22 staging area egressing from that area and heading
23 south down Lakeside Drive?

24 A. That is correct.

1 Q. You hear a noise of a tractor/trailer
2 going north on Lakeside Drive and ingressing into
3 the LTD truck staging area?

4 A. I have, but I hear more of the -- of it
5 leaving the facility because it is a slight
6 uphill, and the truck works harder to pull out of
7 the facility.

8 Q. On any given day of the year, you can hear
9 noise from the tollway and noise from the office
10 building on your lot, right?

11 A. Are you asking me can I or do I?

12 Q. On any given day of the year, you can hear
13 tollway noise and the office building on your lot?

14 A. No.

15 Q. Well, on your particular lot on any given
16 day, you can hear either tollway noise, LTD noise,
17 office building noise or noise from construction
18 activities, right?

19 A. Yes.

20 Q. And construction activity noises that you
21 can hear on your lot would be for a period of time
22 at least from the new office building that was

23 constructed to the southeast?

24 A. I did hear noise when that building was

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1 constructed, yes.

2 Q. When was that building under construction?

3 A. For the last 10 or 11 months.

4 Q. So did you hear noise when heavy machinery
5 was laying footings in the ground?

6 A. The noise I can remember would be some
7 type of pounding noise that would come from that
8 construction site.

9 Q. Do you still hear noise from that office
10 building today?

11 A. No.

12 Q. You can hear office building noise inside
13 your home, correct?

14 A. I can hear parking lot noise associated
15 with that office building in my home.

16 Q. So the parking lot you're talking about
17 would be the office building parking lot to the
18 north of the office building, right?

19 A. As you have indicated, yes.

20 Q. And the noise you hear would be car doors
21 slamming?

22 A. Yes.

23 Q. You also hear the noise of the garbage
24 truck picking up the garbage, right?

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1 A. Sometimes, yes.

2 Q. And do you at night at times hear
3 custodians or other people from the office
4 building rolling garbage containers across the
5 parking lot to dump them into the garbage
6 containers?

7 A. I am not.

8 Q. Now, your wife said that she thought more
9 than 100 times over the last two or three years,
10 she heard the back up beeper on the garbage truck
11 at the office building parking lot.

12 Would you agree with that estimate?

13 A. Over what period of time?

14 Q. Let's say since September 1997. I'll just
15 ask you the question specifically.

16 Since September 1997, how many times
17 have you heard the back up beeper on the garbage

18 truck at the office building parking lot?

19 A. Many times.

20 Q. More than 100?

21 A. No. Again, I wasn't around as much, so I
22 would assume maybe with her number, maybe half
23 that.

24 Q. Since you're gone three days a week --

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1 A. I wouldn't hear it.

2 Q. But when you would hear it, you would hear
3 the back up beeper?

4 A. Yes, it would last probably 15 seconds,
5 probably pick up its Dumpster, dump it and it was
6 gone.

7 Q. That back up beeper noise, if I understood
8 your direct testimony, that was a typical back up
9 beeper noise?

10 A. It's a different sound, but it's basically
11 the same sound noise.

12 Q. I thought I heard you use the word
13 synonymous, that the LTD back up beeper noise was
14 synonymous with other types of back up beeper

15 noises you've heard?

16 A. Yes.

17 Q. So the garbage truck back up beeper and
18 the yard tractor back up beeper noises are
19 synonymous?

20 A. Uh-huh.

21 Q. Yes?

22 A. Yes.

23 Q. So the back up beeper noise from the
24 garbage truck when you hear it would interfere

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1 with the use and enjoyment of your home, right?

2 A. Yes.

3 Q. And when that garbage truck is picking up
4 garbage, it also makes some clanging noises with
5 the containers being slammed against the garbage
6 truck and set back down on the ground, right?

7 A. Yes.

8 Q. That noise would interfere with the use
9 and enjoyment of your home?

10 A. That noise lasts less than a minute.

11 Q. But when it occurs, it interferes with the
12 use and enjoyment of your home?

13 A. Yes.

14 Q. That garbage container for the 100 office
15 building is about half the distance from your home
16 that the truck staging area is, right?

17 A. Currently, yes.

18 Q. Did it used to be closer to your home?

19 A. No, I think it used to be further from my
20 home.

21 Q. Where did it used to be?

22 A. Maybe another 50 feet to the due south or
23 in the middle of the parking lot area.

24 Q. When it was 50 feet south of its present

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1 location, you could still hear the back up beeper
2 noise?

3 A. Yes, you can.

4 Q. Now, the back up beeper on the yard
5 tractor, could you hear that this week?

6 A. I haven't been home.

7 Q. What days were you home?

8 A. I'm thinking now. I need a second to
9 think about this.

10 Q. What days this week did you sleep at home?

11 A. I slept at home every night this week, but
12 I was out most evenings until fairly late.

13 Q. Monday night could you hear the back up
14 beeper on the yard tractor?

15 A. I don't remember.

16 Q. Tuesday night?

17 A. I don't remember.

18 Q. Tuesday morning?

19 A. I don't remember. I'm sorry.

20 Q. Wednesday morning of this week?

21 A. That was yesterday. I don't remember.

22 Q. Last night could you hear the back up
23 beeper?

24 A. I wasn't at home last night. I was out in

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1 the evening and got home late.

2 Q. What time did you get home last night?

3 A. 10:00.

4 Q. After you got home at 10:00 p.m., were you
5 able to hear the back up beeper?

6 A. I don't remember.

7 Q. This morning what time did you wake up?

8 A. 6:00.

9 Q. How did you wake up, by alarm clock?

10 A. By alarm, yes.

11 Q. Did you sleep through the night 10:00 p.m.

12 to 6:00 a.m.?

13 A. I did.

14 Q. Did your wife?

15 A. Yes.

16 Q. I guess you wouldn't know if you were

17 sleeping, though, right?

18 A. I would know if she was.

19 Q. So there have been times in the past when

20 noise you claim from LTD's trucking operations

21 woke you but not your wife, Leslie, true?

22 A. True.

23 Q. Are you claiming that noise from LTD's

24 trucking operations were somehow worse after LTD

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1 added this expansion to the south?

2 A. What I'm claiming is I think the hours of

3 operation changed and the intensity of the

4 operations changed once the building addition was

5 put on.

6 Q. That bothers you because you were there
7 already. You were there first, right?

8 A. Well, it bothers me because the noise is
9 occurring.

10 Q. It bothered you because you were there as
11 an existing home owner, LTD built an addition to
12 the south, now you're affected by noise that you
13 previously weren't affected by, right?

14 A. I'm affected by the noise. I will agree
15 with you on that, yes.

16 Q. You have two sons?

17 A. Yes.

18 Q. And three bedrooms on the second floor of
19 your house?

20 A. Four bedrooms on the second floor of our
21 house.

22 Q. You and your wife share a bedroom?

23 A. Yes.

24 Q. And does Christopher have his own bedroom?

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1 A. Yes.

2 Q. And does Scott have his own bedroom?

3 A. Yes.

4 Q. You say that the noise affects your use of
5 all of your bedrooms on the second floor?

6 A. No, three of the bedrooms on the second
7 floor.

8 Q. So that would be your bedroom, Scott's
9 bedroom and Christopher's bedroom?

10 A. That is correct.

11 Q. Isn't it a fact that Christopher, your
12 nine year old, is not affected, to your knowledge,
13 by noise from LTD Commodities?

14 A. He has made reference to it.

15 Q. Noise from LTD doesn't wake Christopher at
16 night?

17 A. Nothing wakes Christopher at night.

18 Q. So he's not prevented from falling asleep
19 because of LTD trucking operations, true, to your
20 knowledge?

21 A. To the best of my knowledge, that is
22 correct.

23 Q. To your knowledge, he's not woken at night
24 because of noise from LTD's trucking operations,

1 right?

2 A. That is correct.

3 Q. At least with respect to Christopher's
4 bedroom, the noise from LTD trucking operations
5 does not interfere with the use and enjoyment by
6 Christopher of the use of his bedroom?

7 A. Incorrect.

8 Q. Incorrect?

9 A. Your statement is incorrect. Christopher
10 cannot read or doesn't read in his bedroom. He
11 goes off to another room of the house when he
12 tries to read.

13 Q. You and your wife had input with the
14 builder as to the type of home you were going to
15 build?

16 A. Yes.

17 Q. Did you have an architect?

18 A. Yes.

19 Q. You had input with the architect?

20 A. Yes.

21 Q. Do you think the noise from LTD affects
22 you more on the second floor of your home because
23 of it being higher than the first floor?

24 A. That's logical, yes.

1 Q. You and your wife are the ones who decided
2 on building a two-story home on your lot as
3 opposed to a ranch?

4 A. We made that decision, yes.

5 Q. You and your wife were the ones who
6 decided on or had some input at least on the
7 configuration of your house on the lot, right?

8 A. Yes, we did.

9 Q. You decided where bedrooms were going to
10 be in your house, right?

11 A. That is correct.

12 Q. You decided where your family room was
13 going to be?

14 A. Yes.

15 Q. This would have been in like the 1991 time
16 period when you were working with the architect
17 making these decisions?

18 A. Around that timetable, yes.

19 Q. Now, Mr. Rosenstock testified that he had
20 insulation added to his house for noise abatement
21 when he was building the house.

22 Did you do anything like that, put
23 extra insulation in your house?

24 A. I have extra insulation throughout my

1 house.

2 Q. Did you do that because you were concerned
3 about noise coming from the south?

4 A. I don't recollect that being part of the
5 decision. It is more for conservation.

6 Q. That extra insulation was added when the
7 home was built, right?

8 A. Throughout the house, that is correct.

9 Q. You have no idea if LTD's trucking
10 operations have decreased the fair market value of
11 your house, right?

12 A. That is correct.

13 Q. You have no written logs of the times when
14 LTD's trucking operations have unreasonably
15 interfered with the use and enjoyment of your
16 property, right?

17 A. Written by me personally?

18 Q. Correct.

19 A. I have not kept any, no.

20 Q. You said something about the decks.

21 You had two decks on your home?

22 A. That is correct.
23 Q. Were they built with the original
24 construction of the home?

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1 A. No, they were not.
2 Q. When did you add the decks on the home?
3 A. Six years ago, approximately.
4 Q. What is that, 1993?
5 A. Approximately.
6 Q. Where are the decks located?
7 A. On the southwest corner of the home and
8 the southeast corner of the home.
9 Q. Are they first floor?
10 A. Yes, you step off from the first floor
11 down to the ground level on one of the decks, but
12 they're both on the first floor.
13 Q. Your wife, she's a -- today, at least,
14 chief information officer at Quill?
15 A. Yes, today.
16 Q. She's got a, you would agree, an important
17 job?
18 A. Yes.
19 Q. So you would agree that your wife having

20 an important job of chief information officer and
21 helping you raise kids, those things together can
22 make her moody or have a short temper at times?

23 A. No.

24 Q. Not at all?

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1 A. Possibility at times.

2 Q. Would you agree with that, that just the
3 fact of raising kids at times can make you moody
4 or short tempered?

5 A. Me, myself?

6 Q. Right.

7 A. Possibly have some impact on my mood, yes.

8 Q. Your two sons, do they ever fight?

9 A. Sometimes.

10 Q. That can impact your moods, right?

11 A. Sometimes.

12 Q. Have you ever noticed on a Monday evening
13 when your wife gets home from work that she's
14 moody and short tempered?

15 A. When she -- she usually beats me home from
16 work.

17 Q. You would agree that there would be times
18 when she would be moody and short tempered at home
19 based on your observation because she had a bad
20 day at work?

21 A. It's rare.

22 Q. It happens, though?

23 A. Yes, but it's rare.

24 Q. You and your wife liked this lot because

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1 it was wooded, right?

2 A. That was one of the factors, yes.

3 Q. You would acknowledge that prior to July
4 1988, there were other wooded lots available for
5 you and your wife to purchase?

6 A. Yes.

7 Q. Does the southbound Tri-state ever back up
8 west of your home because of heavy traffic
9 congestion?

10 A. Yes.

11 Q. Is it louder at those times when the cars
12 are moving at a slow speed constantly braking,
13 accelerating?

14 A. It's actually quieter.

15 Q. In the mornings when the southbound
16 Tri-state is congested, is the northbound
17 Tri-state uncongested?

18 A. Not right now.

19 Q. At times that's the case where one side is
20 uncongested and the other side has heavy traffic,
21 right?

22 A. That had been the case previous years,
23 yes.

24 MR. KOLAR: I don't have anything else.

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1 HEARING OFFICER KNITTLE: Redirect?

2 MR. KAISER: If I may.

3 REDIRECT EXAMINATION

4 BY MR. KAISER:

5 Q. How would you describe your wife,
6 Leslie's, temperament before LTD's dock noise
7 intensified?

8 A. Fine. I mean, she's very even keel, very
9 calm person usually.

10 Q. Did you note a change after LTD's dock
11 activities intensified?

12 A. Yes.

13 Q. That was the change you described in your
14 direct examination?

15 A. That is correct.

16 Q. You mentioned on cross -- you described
17 that your son Christopher leaves his bedroom and
18 goes off to another room to read; is that true?

19 A. That's correct.

20 Q. Do you know why he leaves his room and
21 goes to another room in order to read?

22 A. He states on occasion, it's noisy here.

23 MR. KOLAR: Objection, hearsay. I ask
24 that that be stricken.

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1 HEARING OFFICER KNITTLE: Mr. Kaiser?

2 MR. KAISER: I'm tempted to try my Judge
3 Getty maneuver.

4 HEARING OFFICER KNITTLE: Feel free.

5 BY MR. KAISER:

6 Q. Approximately how many times -- if I may
7 just --

8 HEARING OFFICER KNITTLE: I'm still
9 waiting for him to respond. I'll strike that.

10 That is clear hearsay, but I do think there's
11 various ways you can get to that piece of
12 information if you want to.

13 BY MR. KAISER:

14 Q. How often have you seen your son leave his
15 room and go to another room to read?

16 A. Since September of this year, two dozen
17 times.

18 Q. What room does he go to in order to read?

19 A. He goes to what we call the play room,
20 which is a room on the second floor on the
21 northeast corner of the home.

22 Q. Is that the room furthest away from LTD's
23 dock activities?

24 A. Yes, it is.

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1 Q. Have you noticed on these occasions, these
2 two dozen or 24 times since roughly September of
3 1999?

4 A. That's correct.

5 Q. To the present?

6 A. That's correct.

7 Q. That you've seen Christopher leave his
8 room and go to the play room on the northeast
9 corner of your home, have you observed the level
10 of noise in your home attributable to LTD's dock
11 operations?

12 A. Yes.

13 Q. And what have you observed to be the level
14 of noise from LTD's dock activities on these
15 occasions when Christopher leaves his room and
16 goes to the play room on the northeast corner in
17 order to read?

18 A. The same noise I've described throughout
19 my testimony.

20 Q. Now, Mr. Kolar asked you what time you
21 returned home from work last night. I understood
22 you to say you got home at approximately 10:00
23 p.m.; is that right?

24 A. That's correct.

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1 Q. Mr. Kolar asked if you could recall
2 hearing the back up beeper, and your testimony was
3 that you didn't recall hearing that beeper; is
4 that right?

5 A. I cannot remember.

6 Q. Do you recall whether you heard any other
7 noise from LTD's dock activities last night when
8 you returned home at 10:00 p.m.?

9 A. No.

10 Q. How would you compare the interference
11 with your use and enjoyment of your home caused by
12 the garbage truck picking up trash at the Dumpster
13 in the vicinity of 3G on Respondent's Exhibit 89
14 with the level and frequency of interference you
15 experience in the use and enjoyment of your home
16 as a result of LTD's dock activities?

17 A. It is the same disruptive noise that
18 you -- from that noise compared to the LTD noise,
19 that noise lasts 30 seconds.

20 Q. How long does the LTD dock noise last?

21 A. Throughout the evening.

22 Q. How many nights a week?

23 A. Usually five.

24 MR. KAISER: I have no further questions.

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1 Thank you.

2 MR. KOLAR: Just a couple.

3 HEARING OFFICER KNITTLE: Yes, sir.

4 RECROSS-EXAMINATION

5 BY MR. KOLAR:

6 Q. The play room on the northwest corner of
7 your house, is that like an extra bedroom devoted
8 to storing toys where your son --

9 A. No, it is not.

10 Q. Can it be used as a bedroom?

11 A. It's not designed as a bedroom.

12 Q. Why is that?

13 A. We chose -- we have four bedrooms. That
14 is a space the size of a three-car garage that's
15 just set aside for the children.

16 Q. The play room is the size of a three-car
17 garage?

18 A. That's correct.

19 Q. Does it have closets?

20 A. No.

21 Q. It has a door to get into it?

22 A. Yes.

23 Q. It has windows?

24 A. Yes.

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1 Q. So except for the closet issue, if you
2 wanted to make the play room a huge bedroom, you
3 could do that, right?

4 A. No. It's not laid out that way. It just
5 isn't. There's a set of stairs, a back set of
6 stairs for inside the house that has access to
7 it. It's not designed that way.

8 Q. Is Christopher bothered by LTD trucking
9 noise when he's in the play room?

10 A. He's never mentioned it to me.

11 Q. The play room was something that you and
12 your wife consciously put on the northeast corner
13 of your home?

14 A. We designed a bonus room which turned out
15 to be the children's play room.

16 Q. That bonus room was consciously put on the
17 northeast corner of the home?

18 A. It was put into the design of the home.

19 Q. Consciously?

20 A. The home was designed. The home was then
21 placed on the lot later.

22 Q. Right, but the design of the home, you and
23 your wife consciously made the decision to have
24 this big great room, this play room in the second

1 floor northeast corner of the house, right?

2 A. As it is situated today, yes.

3 MR. KOLAR: I don't have anything else.

4 MR. KAISER: Nothing.

5 HEARING OFFICER KNITTLE: Do you have
6 redirect on that issue?

7 MR. KAISER: No.

8 HEARING OFFICER KNITTLE: Sir, you can
9 step down. Thank you for your time.

10 Let's go off the record.

11 (WHEREUPON, at 1:45 the
12 hearing was recessed until
13 2:15, this date, 11-4-99).

14 HEARING OFFICER KNITTLE: We are back on
15 the record after a short -- actually, a normal
16 lunch break. It's November 4, 1999. This is the
17 afternoon session of the hearing in PCB 99-019.

18 For the record no members of the
19 public not affiliated with one of the parties are
20 here, and, in fact, no parties are here currently
21 except for the witness, Anthony Roti, who we are
22 about to swear in.

23 (WHEREUPON, the witness was duly

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1 ANTHONY ROTI,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. KAISER:

6 Q. Mr. Roti, will you please state your full
7 name and spell your last name for the court
8 reporter's benefit?

9 A. Anthony John Roti, R-o-t-i.

10 Q. Mr. Roti, what is your date of birth?

11 A. 8-25-57.

12 Q. Are you married?

13 A. Yes.

14 Q. To whom?

15 A. Karen Roti.

16 Q. Do you have any children?

17 A. Yes, five children.

18 Q. What are their names and ages?

19 A. Kristin is 16; Anthony is 15; Katie is 11;
20 Madeline is 9; and Sara is 5.

21 Q. Where do you live with your family?

22 A. 1591 Wedgewood Drive.
23 Q. What do you do for a living?
24 A. I am a commodity trader at the Board of

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1 Trade.
2 Q. How long have you done that?
3 A. I've been trading actively commodities
4 since 1984.
5 Q. Now, you see in front of you here is an
6 aerial photograph. It's previously been marked
7 for purposes of identification as Respondent's
8 Exhibit 89.
9 Do you see this photograph?
10 A. I do.
11 Q. Can you see it from where you're seated?
12 A. Yes, I can.
13 Q. Do you recognize within this photograph
14 the outline of LTD's Bannockburn facility?
15 A. Yes, I can.
16 Q. And is that right here in the center?
17 A. Yes, it is.
18 Q. And with respect to your home, can you see

19 from where you're seated where your home is
20 located on this aerial photo?

21 A. It appears to be directly north.

22 Q. This circle here with R-o-t-i above it, is
23 that where you live?

24 A. I can't see the R-o-t-i, but I can see

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1 that home, yes.

2 Q. Is that your home?

3 A. It appears to be, yes.

4 Q. In what year did you and your wife and
5 five children move into that home?

6 A. I believe it was 1990.

7 Q. Where did you live before moving to Lake
8 Forest?

9 A. In Glenview, Illinois.

10 Q. When you moved into your home in 1990, did
11 the noise from LTD's truck dock operations bother
12 you or annoy you when you were in your home?

13 A. When I originally moved in?

14 Q. Yes, in 1990 or '91 or '92 even?

15 A. There was some periods of noise, but it
16 wasn't excessive at that point.

17 Q. You didn't perceive the noise from LTD's
18 truck dock operations as a nuisance back in '90,
19 '91 or '92?

20 A. Perceive it as a nuisance, no. It was an
21 inconvenience at times but not a nuisance.

22 Q. Now, in Respondent's Exhibit 89, you can
23 see that there's a large addition to the south end
24 of LTD's former warehouse facility; is that right?

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1 A. This is correct.

2 Q. I'm showing you, flipping this exhibit
3 over, this is Respondent's Exhibit 88.

4 Are you able to orient yourself and
5 recognize the location of your home on
6 Respondent's Exhibit 88?

7 A. Yes, sir.

8 Q. Am I pointing to it right here, the home
9 circled that says Browns and Roti?

10 A. That appears to be the same home.

11 Q. Do you recognize the outline of LTD's roof
12 as it existed back in 1988?

13 A. Yes, I do.

14 Q. And does this photograph, Respondent's
15 Exhibit 88, truly and accurately reflect how LTD's
16 facility looked until it began the expansion and
17 addition of its warehouse facility in 1994 as
18 shown as Respondent's Exhibit 89?

19 A. Yes.

20 Q. How did you become aware that LTD was in
21 the process of expanding its warehouse facility
22 back in roughly 1994?

23 A. I heard some construction noises which I
24 had thought were construction noises. I

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1 investigated them, saw some earth moving
2 equipment, saw some construction equipment, went
3 to the Village of Bannockburn to find out more
4 about what was taking place upon their facility.
5 In going to Bannockburn, I talked to, I believe,
6 Mr. Lothspeich. I'm not quite sure on that, but
7 it was definitely a clerk at the Village Hall.

8 I asked him what was taking place.
9 He said that there's an expansion going on at
10 LTD. I said, okay. I said, well, what exactly
11 are they doing? And he told me about their plan

12 to expand their facilities. I asked him, well,
13 why weren't we notified or any other neighbors
14 notified as to this expansion? Apparently he
15 related that --

16 MR. KOLAR: Objection, hearsay.

17 HEARING OFFICER KNITTLE: Mr. Kaiser?

18 MR. KAISER: I don't think it goes to
19 prove the truth in the matter asserted. We are
20 not trying to prove exactly why he wasn't
21 notified. We are just trying to find out what was
22 said to him when he went to the Village of
23 Bannockburn back in 1994. Hearsay is an out of
24 court statement --

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1 MR. KOLAR: I'll withdraw.

2 MR. KAISER: -- introduced to prove the
3 truth of the matter asserted. I'm not doing that.

4 MR. KOLAR: I'll withdraw my objection.

5 HEARING OFFICER KNITTLE: Okay. You can
6 proceed.

7 BY THE WITNESS:

8 A. Okay. Where was I? Sorry.

9 BY MR. KOLAR:

10 Q. You were at the Village of Bannockburn and
11 you were asking a clerk or perhaps Mr. Lothspeich
12 about what was going on at LTD.

13 A. The expansion and why was I not notified.
14 He said, well, we plan to be a good neighbor. We
15 plan to do things and make sure the zoning will
16 make the situation amiable to the neighbors.
17 There won't be a lot of intrusiveness in any
18 manner or form to the neighbors. I said, okay.
19 He said, we will notify you upon the completion
20 and I think you'll be very happy. I was
21 subsequently never notified. Then the next thing
22 I knew was the completion of the project.

23 Q. So as I understand it, when LTD's facility
24 looked like this and was a warehouse with capacity

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1 of roughly 200,000 square feet, the noise from the
2 loading docks was not a problem for you at your
3 home?

4 A. At that point, no, we didn't --

5 Q. Was there any change in either the
6 intensity or the frequency of noise from LTD's

7 dock operations after LTD completed the expansion
8 of its warehouse facilities going from
9 approximately 200,000 square feet of capacity to
10 in excess of 350,000 square feet of warehouse
11 capacity?

12 A. Yes, they went to an expanded hours
13 operation as far as I could tell. There was
14 longer -- the disturbances were louder, more
15 frequent, I thought to be somewhat 24 hours. I've
16 been instructed by the LTD individuals that it's
17 not 24 hours. The main issue at this point was
18 they had some type of tractor engine that would go
19 pretty much all hours of the day. The windows
20 literally would rattle in my house at this point.
21 And this started to take place August or September
22 of that year.

23 Q. That year being roughly 1996?

24 A. I believe so. I went over to

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1 investigate. There was some type of tractor
2 pulling around trailers. That's when Mr. Coughman
3 became involved and as did several of the

4 neighbors because of the loudness of the tractor
5 engine. They also were -- it seemed to be
6 dropping or creating some type of doors slamming
7 or trailer dropping. I can't be certain, but
8 there was a loud banging type of noise that would
9 seem to vibrate off the LTD facility.

10 Q. And these sounds that you just described,
11 that's what you were hearing in the late summer
12 and fall of 1996?

13 A. Yes.

14 Q. When you say these sounds were more
15 frequent than they had been in years past,
16 approximately how many hours of the day would you
17 hear these banging sounds or the noise from the
18 tractor engine?

19 A. Well into the night, 1:00, 2:00 in the
20 morning absolutely for sure. Then I would get up
21 to go to work approximately quarter to 5:00, and I
22 would certainly hear them past that point as I was
23 leaving my house.

24 Q. What time would you in the fall of 1996

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1 finally leave your house?

2 A. I would leave the house approximately 20
3 minutes to 6:00.

4 Q. How often during this time frame, again,
5 late summer, fall of 1996 did you experience your
6 windows shaking and form the belief that the
7 windows were shaking because of noise from LTD's
8 dock operations?

9 A. I'm sorry. I missed the first part of the
10 question.

11 MR. KAISER: If you could read it back,
12 please

13 (WHEREUPON, the record was read
14 by the reporter as requested.)

15 BY THE WITNESS:

16 A. It would be pretty much of a daily
17 occurrence. I believe they had an abbreviated
18 schedule on Sundays. It continued through
19 approximately Christmas Day, a day or two prior to
20 that.

21 BY MR. KAISER:

22 Q. What, if anything, did you do in the late
23 summer and fall of 1996 to try to keep the noise
24 from LTD's dock facility out of your home?

1 A. I went to the Village of Bannockburn,
2 tried to get some recourse from them to help me
3 and assist me in keeping LTD's noise levels down.
4 They said, you know, why don't you meet with LTD.
5 I believe they set up the meeting. Anyway, we did
6 meet with LTD personnel. I also contacted the
7 Village of Lake Forest to see what assistance I
8 could get there, also. They also suggested this
9 meeting. We met with the LTD personnel, and they
10 said they would try to do something about it.

11 Q. All right. I want to back up a little
12 bit. During the late summer and fall of 1996,
13 were you able to leave the doors and windows of
14 your home open to enjoy the fresh air?

15 A. Not with the amount of noise they were
16 creating, no. It was a constant annoyance in the
17 volume of noise coming from their plant.

18 Q. Did you find that that constant volume of
19 noise coming from LTD's dock operations in the
20 late summer and fall of 1996 substantially
21 interfered with your use and enjoyment of your
22 home?

23 A. Absolutely. That's why we're here.

24 Q. What activities did the noise back in the

1 late summer and fall of 1996, what activities were
2 disrupted by the noise from LTD?

3 A. Work -- any work I would do at -- or
4 studying I do at home would be interrupted. I'm
5 sure my childrens' studies were interrupted.
6 Sleep was interrupted. And general tranquility
7 and peace of mind was interrupted.

8 Q. Did you attend a meeting in January of
9 1997 that was hosted by the Village of Bannockburn
10 at which LTD representatives were present?

11 A. Yes, I was.

12 Q. By the late summer and fall of 1997, had
13 the noise from LTD's dock operations become more
14 quiet?

15 A. The tractor engine apparently became
16 muffled at that point. The additional noises were
17 still present, the banging, the occasional truck
18 air horn, if you will. It seemed to be a signal.
19 It was a couple quick toots or a couple quick
20 blasts. In other words, you would typically see
21 if somebody -- open the door for me rather than
22 get out and go in there and do such a thing. But
23 the banging, the dropping of the beds, the banging

24 of the back doors, those type of noises were still

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1 present.

2 Q. How often would you hear banging or
3 dropping sounds coming from LTD's dock area in the
4 late summer and fall of 1997?

5 A. Three, four times a week.

6 Q. How often would you hear during the course
7 of an evening at home a truck with -- the coupling
8 and uncoupling of the tractor and the trailers at
9 the LTD docks?

10 A. Daily.

11 Q. Did the noise that you heard during the
12 late summer and fall of 1997 coming from the LTD
13 docks substantially interfere with your use and
14 enjoyment of your home?

15 A. Absolutely.

16 Q. In what ways?

17 A. The general rest and the general ability
18 to just have a peaceful, you know, tranquil home
19 as you'd expect to find in, you know, a rural
20 setting like we are tucked in back there in Lake

21 Forest.

22 Q. In 1996 you told me that the noise from
23 LTD made work and study at home more difficult,
24 interfered with your kids' study and disturbed

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1 your piece of mind.

2 Did you experience any of those same
3 things in the late summer and fall of 1997?

4 A. Yes, they were still present and an
5 ongoing concern. The only difference, as I
6 mentioned, was the fact that that tractor engine
7 was muted.

8 Q. Again, back in 1996 when you first heard
9 that loud yard pig tractor engine, did you, in
10 fact, go over and look at operations at the LTD
11 dock areas?

12 A. Yes, I did.

13 Q. And did you see the tractor coupling and
14 uncoupling with the trailers?

15 A. Yes.

16 Q. Did you see trucks and the trucks
17 releasing air from their air brakes?

18 A. Yes.

19 Q. These noises that you have just described
20 for the Board that you were hearing in 1997, are
21 you absolutely certain that the noises that were
22 interfering with your work and study in your home
23 and disturbing your peace of mind that those
24 noises came from LTD's dock?

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1 A. The noises that I described, absolutely.

2 Q. What, if any -- what sounds did you
3 hear -- strike that.

4 In 1996 were you able to hear noises
5 from LTD's dock activities on the first floor of
6 your home?

7 A. Yes.

8 Q. Were you able to hear noise from LTD's
9 dock activities on the second floor of your home?

10 A. Yes, absolutely.

11 Q. Were you able to hear dock noise from
12 LTD's operations in your home with your doors and
13 windows closed?

14 A. Yes, I could.

15 Q. And is the same true for 1997 that even

16 with your doors and windows closed on the first
17 and second floors of your home, you could hear
18 LTD's dock operations?

19 A. Yes, I could.

20 Q. You mention that you do some work or
21 research in your -- do you use a computer at your
22 home?

23 A. Yes, I do.

24 Q. Where is that computer located?

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1 A. On the southeast corner of the building.

2 Q. First or second floor?

3 A. First floor.

4 Q. Does noise from LTD's dock operations ever
5 interfere with your ability to concentrate on the
6 research you're doing on your computer in your
7 study on the first floor of your home?

8 A. Yes, it does. It has been an ongoing
9 problem. As I've mentioned, they have muted the
10 tractor engine. There was the additional noises
11 that emanated from their property. Just recently
12 apparently there is maybe a back up alarm or a
13 warning device which is quite disturbing. It

14 reminds me of a bedroom alarm clock just
15 consistently going off, and it seems to be kept in
16 reverse gear where it's on excessively.

17 Q. That back up warning device that sounds
18 like a bedroom alarm clock, when did you begin to
19 hear that sound?

20 A. Predominantly this year.

21 Q. That would be the late summer and fall of
22 1999?

23 A. Yes.

24 Q. Does that back up warning device that

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1 sounds like a bedroom alarm clock interfere with
2 your use and enjoyment of your home?

3 A. Absolutely.

4 Q. How so?

5 A. It inhibits me from concentrating. It
6 disturbs my sleep. It disturbs my concentration
7 on whatever project I'm trying to achieve. It
8 just is irritable, makes me irritable.

9 Q. Have you observed whether that noise, the
10 back up warning beeper that sounds like a bedroom

11 alarm clock has made either your -- well, first,
12 has made your wife, Karen Roti, irritable?

13 A. At periods definitely she's -- she wishes
14 she could do something more about that facility.

15 Q. What about your children, have you noticed
16 whether the noise from the LTD operations have
17 affected your children in any way?

18 A. It appears that -- well, my one daughter
19 who is the older one, she's on the front side of
20 the household, so she has less exposure to their
21 facility.

22 Q. Front side being the north side?

23 A. North side, further away from the
24 facility, insulated by the back end of the house

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1 and through the house.

2 My son who sleeps long times into the
3 morning, whether that be a teenage thing or -- he
4 definitely complains how tired he is in the
5 morning, and I believe he's not getting a full
6 night sleep due to their noise and interrupted
7 noises and volumes.

8 My daughter Katie has said that she

9 leaves her TV on at night, and I asked Kate turn
10 the TV off; why; well, it's easier to go to sleep
11 than listen to the noise that's coming from their
12 back up alarms and noises that come from their
13 plant.

14 Q. That's currently or until very recently in
15 the fall of 1999?

16 A. Tony was more predominantly a problem all
17 along. Katie is -- the unmuffled engine was a
18 problem throughout the whole household.
19 Everybody, even the people to the north side and
20 myself who have somewhat of an insulated room from
21 LTD noticed that all through the night. But the
22 later problems that I just described had been more
23 recent.

24 Q. We haven't talked -- we have talked about

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1 1996, 1997 and now we have talked about 1999. I'd
2 like to talk a little bit about 1998.

3 Do you recall going with your wife to
4 a meeting at LTD's facility to talk with Mike Hara
5 and Jack Voight about your complaint?

6 A. Yes, I do. I was frustrated by the lack
7 of progress and the whole issue with them. I was
8 still hoping to resolve this issue. I don't want
9 to be here. I don't want to have to spend the
10 money that I'm spending on this issue, and I went
11 there in the hopes that I could get something
12 rectified. And at one point during the meeting --
13 it was amiable up to a point, then at one point
14 the meeting -- I was saying, well, my children are
15 starting to be truly disturbed by this issue. I
16 have to do something about it. And he kind of
17 laughed and --

18 Q. Who is he?

19 A. Mike Hara. I said well, what do you think
20 the papers would think of you disturbing
21 children. He said, he didn't care. And I took it
22 to believe he didn't care about my children. I
23 said do you not care about my children's welfare.
24 He didn't reply or retort to that. I said that's

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1 it. I have nothing further to say to you. I was
2 at the point I needed to get out of the office
3 because he didn't care about my family and that

4 was the major issue.

5 Q. Did you, in fact, get up to leave?

6 A. I did.

7 Q. Did your wife, Karen, ask you to sit back
8 down and talk a little bit further with them?

9 A. Yes, she did.

10 Q. By July of 1998 did you join with your
11 wife in filing with the Pollution Control Board in
12 complaint against LTD citing them for noise
13 violations?

14 A. By 1998 I realized that there was going to
15 be no amiable solution to this problem, and I
16 decided that LTD or Mr. Hara, whoever you choose
17 to view, was -- the only thing that was going to
18 motivate them into a course of action was a
19 sanction by some court or some authority that
20 would make them cease and assist from that type of
21 operation.

22 Q. So did you file a complaint with the
23 Pollution Control Board?

24 A. I did.

1 Q. What, if any, noise did you hear coming
2 from LTD's dock areas during the late summer and
3 fall of 1998?

4 A. More of the banging, the air horns, the
5 uncoupling, coupling, just more of the same
6 general noises, back up warning beeps and so on.

7 Q. Did the noise from LTD's dock operations
8 in the late summer and fall of 1998 substantially
9 interfere with your use and enjoyment of your
10 home?

11 A. Yes, it was just more of the same.

12 Q. During the late summer and fall of 1998,
13 did you find that noise from LTD's dock operations
14 interfered with your ability to work at the
15 computer and do the research necessary for your
16 job?

17 A. Yes.

18 Q. During that same time frame, late summer,
19 fall of 1998, did noise from LTD's dock operations
20 interfere with your ability either to fall asleep,
21 stay asleep or well -- essentially, fall asleep or
22 stay asleep?

23 A. They still occasionally would make some
24 type of noise during the night that would awake

1 myself or my wife and she would stir. Then you
2 would hear something else, and you would be mad
3 and, you know, I couldn't fall back to sleep at
4 that point being agitated and irritated at that
5 noise which had woken me up when I needed to get
6 up the next morning at quarter to 5:00.

7 Q. Did you find that as the years went on,
8 you had a certain tolerance for LTD's noise in
9 '96, less tolerance in '97; and now that we are
10 into the 4th season of noise from LTD, is the
11 noise more bothersome than it was or equally so?

12 A. It is definitely equally as bothersome.
13 My tolerance -- it's become more of a noise that,
14 you know, it's almost moving next to something
15 that's ongoing, but it's not right that they
16 should be able to just continue to make the noise
17 that was not there originally.

18 Q. Do you remember during the course of your
19 meeting with Mike Hara, Jack Voight and your wife,
20 Karen, at LTD's offices in June of 1998, Mr. Hara
21 asking you if you wanted to buy his \$25 million
22 building?

23 A. That was in the beginning of
24 conversation. Yes, he made a remark to that

1 effect, yes.

2 Q. Did Mr. Hara also ask you if you wanted to
3 pay to have a noise wall built between your
4 property and LTD's docks?

5 A. He did say that, and I said, Mike, it's
6 your problem. You've created the problem. You
7 need to take care of the problem.

8 MR. KAISER: Thank you, Mr. Roti. I have
9 no further questions. Mr. Kolar might.

10 THE WITNESS: Thank you.

11 HEARING OFFICER KNITTLE: Mr. Kolar, do
12 you have some further questions?

13 MR. KOLAR: Yes.

14 HEARING OFFICER KNITTLE: Do you need a
15 little break?

16 MR. KOLAR: Can I take one minute?

17 HEARING OFFICER KNITTLE: Sure. Let's go
18 off the record. Is that okay with you,
19 Mr. Kaiser?

20 MR. KAISER: Sure.

21 CROSS-EXAMINATION

22 BY MR. KOLAR:

23 Q. Mr. Roti, do you remember me? I took your
24 deposition?

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1 A. I do.

2 Q. Now, when you and your wife bought your
3 home in 1990, your brother, an attorney, handled
4 your closing, correct?

5 A. Yes.

6 Q. You paid \$525,000 for your home?

7 A. Yes.

8 Q. You bought the home from the Browns?

9 A. Yes, I did.

10 Q. You became acquainted with Mr. Brown or
11 knew of him from the Board of Trade?

12 A. Yes, I did.

13 Q. And before you bought the home from the
14 Browns, you looked at other houses in West Lake
15 Forest, right?

16 A. Yes, we looked at another home, yes.

17 Q. I think you even looked at other homes in
18 the same subdivision to the north of your house,
19 right?

20 A. Yes, we did.

21 Q. You looked in Wilmette, as well?
22 A. Yes.
23 Q. You didn't seriously look in East Lake
24 Forest because the prices were just too high,

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1 right?
2 A. Yes.
3 Q. So this area where you bought your home
4 was affordable to you and your wife?
5 A. Yes.
6 Q. Nobody forced you and your wife to buy
7 this home, correct?
8 A. No.
9 Q. Is that correct?
10 A. That's correct.
11 Q. There are other homes away from an office
12 building and away from a trucking facility that
13 were affordable to you and your wife, correct?
14 A. I'm sorry.
15 Q. Weren't there other homes that were
16 affordable to you and your wife in 1990 that were
17 not located by a trucking facility?

18 A. I would suppose, yes.

19 Q. Before buying the home, before committing
20 to buy the home, you walked into the backyard of
21 the Brown home, right?

22 A. Yes.

23 Q. You walked throughout the house?

24 A. Yes.

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1 Q. You saw the berm on the south property
2 line of the Brown home, right?

3 A. Yes.

4 Q. But you did not walk up on top of the berm
5 and look around, correct?

6 A. No, I don't recall doing that.

7 Q. But clearly before you decided to buy the
8 house from the Browns, you were aware of the
9 trucking facilities directly to your south?

10 A. I don't recall, but that's possible. I
11 had some recollection that there was something
12 back there.

13 Q. You were aware of the tollway directly to
14 your west?

15 A. Yes, I knew there was a tollway there.

16 Q. Before you bought your home, you were
17 aware of the office building to your southeast?

18 A. I knew -- I guess so, yes.

19 Q. But you did not take the time to go drive
20 up Lakeside Drive before buying your home and see
21 what type of operation was going on here, right?

22 A. Right.

23 Q. You drove down Route 22 and just took a
24 look to the north?

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1 A. Yes.

2 Q. And at that time before buying your home
3 when you're on Route 22 looking to the north, you
4 saw the big vacant lot to the south of the LTD
5 building, right?

6 A. Yes, I did.

7 Q. Back in 1990 before you decided to buy the
8 home from the Browns, you just apparently
9 assumed -- strike that.

10 Back in 1990 before committing to buy
11 the home from the Browns, you assumed that LTD
12 would never expand to the south, right?

13 A. I did make that assumption. It was
14 wrong. You're right.

15 Q. You knew that the house you were
16 considering buying was in the Village of
17 Bannockburn, right?

18 A. The house that I was considering buying
19 was not in the Village of Bannockburn. It was in
20 the City of Lake Forest.

21 Q. Strike that. You knew that the operations
22 to the south were in the Village of Bannockburn?

23 A. I did not know that, no.

24 Q. You knew the home you were considering

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1 buying was in Lake Forest?

2 A. Yes, I did.

3 Q. Did you make any investigation to
4 determine in what municipality LTD Commodities was
5 located in?

6 A. No, I did not.

7 Q. So later on when you heard the
8 construction activities and learned of the
9 expansion to the south, is that the first time you
10 learned that LTD was in Bannockburn?

11 A. It could have been. I'm not sure when I
12 learned it was Bannockburn's property. It may
13 have been through a plat or something I looked at
14 subsequently.

15 Q. And I think we heard you say that you
16 didn't get any notice of the fact that LTD was in
17 front of Bannockburn officials presenting a plan
18 to expand its warehouse?

19 A. That's correct.

20 Q. That angered you?

21 A. To some extent, yes.

22 Q. You felt as an adjoining neighbor, you
23 should have been notified of what was going to
24 happen on the property to the south, right?

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1 A. Yes, I thought so.

2 Q. You felt as an adjoining neighbor, you
3 should be told anything that was going to affect
4 your property to the north, right?

5 A. Right.

6 Q. Now, Leslie Weber, one of your
7 co-complainants, she told us that before she

8 bought her lot, she spoke to her husband about how
9 noise from the trucking facility and the office
10 building might affect the resale value of their
11 home.

12 You and your wife certainly had a
13 similar conversation, right?

14 A. That's not correct, no.

15 Q. You never had a conversation like that?

16 A. No.

17 Q. You just assumed that noise from the south
18 would not affect you in the future?

19 A. The noise at that point was not an issue.
20 The Webers moved in much later, so it could have
21 very well been the issue.

22 Q. Do you know when the Webers bought their
23 lot?

24 A. I don't know. They built much later,

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1 though.

2 Q. The Webers bought their lot in 1988. That
3 was before you bought your home?

4 A. I believe that.

5 Q. Leslie Weber said in 1988, she had a

6 conversation with her husband about how noise from
7 the south might affect the resale value?

8 A. That's fine.

9 Q. Did you have a conversation like that with
10 your wife about that?

11 A. I did not.

12 Q. None whatsoever?

13 A. No.

14 Q. It's your position that noise from LTD's
15 operation has gotten worse since the expansion,
16 right?

17 A. Yes, it is.

18 Q. The expansion came after you bought your
19 house?

20 A. Yes, it did.

21 Q. So that increased noise annoys you because
22 you were there already living comfortably, then
23 someone else came in and starting making noise,
24 right?

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1 MR. KAISER: Objection, argumentative.

2 HEARING OFFICER KNITTLE: Overruled. Sir,

3 answer please, if you can.

4 BY THE WITNESS:

5 A. It annoyed me.

6 BY MR. KOLAR:

7 Q. But it annoyed you because you were
8 already there with your family enjoying your home
9 and property, right?

10 A. Right.

11 Q. And then LTD expanded its warehouse and
12 you claim it got worse, right?

13 A. Yes, it did.

14 Q. So part of your annoyance was the fact
15 that you're already there situated, enjoying your
16 home and lot, then somebody else, so to speak,
17 comes along and increases the noise, right?

18 A. Yes.

19 Q. How many truck docks were added as part of
20 this, if you know? How many truck docks were
21 added as part of the 1994-95 expansion to the
22 south?

23 A. I'm not sure.

24 Q. Can you give us an estimate?

1 A. I've never gone back there and counted,
2 no.

3 Q. You looked a little bit in 1990 before
4 buying your home, right?

5 A. Yes.

6 Q. So then can you give the Pollution Control
7 Board an estimate as to how many truck docks were
8 added in 1994, '95?

9 MR. KAISER: How many, if any?

10 BY MR. KOLAR:

11 Q. How many, if any?

12 A. I don't know. I have not gone back there
13 and counted the docks. If I said 10,000, would
14 that be fine or if I said 1? I have no idea.
15 You're making me make a guess. I don't want to
16 guess. I have no idea.

17 Q. In 1990 before you bought your home, you
18 did not count the number of truck docks in
19 existence, right?

20 A. In 1990 before I bought my home, I did not
21 go back there. I viewed it from 22 as I stated.

22 Q. So, again, you felt it was incumbent on
23 Bannockburn to notify you of this warehouse
24 expansion proposed for the south because that is

1 something you wanted to know as a property owner,
2 right?

3 A. I had been in zoning issues before. I had
4 wanted to know what was exactly taking place, what
5 was being -- what they were -- the expansion was
6 trying to accomplish and what they were going to
7 do, if anything, to increase or decrease noise
8 levels.

9 Q. If it was going to increase the noise
10 levels on your property, that's something you
11 wanted to know as an owner of that property,
12 right?

13 A. That's correct.

14 Q. So you remember in 1996 listing your house
15 for sale with Marsha Rowley (phonetic), right?

16 A. Yes, sir.

17 Q. Then you listed it for sale with Karen
18 Dickey in 1997?

19 A. Okay. Yes, but I don't recall the year.

20 Q. Well, in 1996 when you first listed your
21 house for sale, you were already experiencing
22 noise problems from LTD Commodities, right?

23 A. That's correct.

24 Q. You were certainly experiencing noise

1 problems from LTD Commodities in 1997 when you
2 listed the house a second time, correct?

3 A. That's correct, yes.

4 Q. And your wife said she never said anything
5 to Marsha Rowley about how noise kept her up at
6 night, woke her up at night, shook her house?

7 MR. KAISER: Objection to the question.
8 Again, until there's a proffer that there was a
9 legal duty to disclose that to the broker, I think
10 it's an inappropriate question.

11 HEARING OFFICER KNITTLE: Mr. Kolar?

12 MR. KOLAR: No response.

13 HEARING OFFICER KNITTLE: I think we
14 covered this last time. I don't think this is
15 admitting that there is any duty whatsoever, but I
16 think the question at least has some relevancy, so
17 I will allow the question.

18 BY MR. KOLAR:

19 Q. Did you talk to your wife about what she
20 testified to yesterday?

21 A. We spoke briefly.

22 Q. Did she tell you that Mr. Kolar asked me

23 what, if anything, I told Marsha Rowley about
24 noise?

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1 A. I don't believe we discussed that issue.

2 Q. The record will show this, I think, to be
3 the case.

4 Your wife testified that in 1996, she
5 never told Marsha Rowley that noise from LTD
6 operations shook her home, never told Marsha
7 Rowley that noise from LTD woke her up at night,
8 never told Marsha Rowley that noise from LTD
9 operations kept her from falling asleep at night?

10 A. Okay.

11 Q. Same thing for you?

12 A. I didn't tell Marsha Rowley that, no.

13 Q. Did you mention one thing about noise from
14 LTD Commodities affecting your house? Did you
15 mention one thing to Marsha Rowley about that?

16 A. No.

17 Q. Based on what you told me about
18 Bannockburn not giving you notice, you would agree
19 that that information would have been something

20 that prospective buyers would have really wanted
21 to know about your house, right?

22 MR. KAISER: Objection, calls for
23 speculation.

24 HEARING OFFICER KNITTLE: Sustained.

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1 BY MR. KOLAR:

2 Q. Well, in 1996 if you were looking at the
3 Roti house as a place to buy, wouldn't you want to
4 know if noise from the LTD trucking operations
5 were shaking the house that you were considering
6 buying?

7 MR. KAISER: Objection, calls for
8 speculation.

9 MR. KOLAR: It's a completely different
10 question.

11 HEARING OFFICER KNITTLE: I agree.
12 Overruled.

13 BY THE WITNESS:

14 A. I guess that calls for due diligence,
15 doesn't it?

16 BY MR. KOLAR:

17 Q. Let's see if we can answer these

18 questions. Put yourself in the shoes of a
19 prospective buyer in the fall of 1996 and the fall
20 of 1997.

21 If operations to the south are
22 shaking the home you're considering buying, is
23 that something you would want to know?

24 MR. KAISER: Objection.

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1 HEARING OFFICER KNITTLE: I knew he was
2 waiting for you to finish your question before he
3 objected. What's your objection?

4 MR. KAISER: That calls for speculation.
5 As I understood your ruling, you're going to allow
6 Mr. Roti to speculate about what he might or might
7 not have done or what he might or might not have
8 thought was important, but we're not going to
9 allow him to speculate as to what some general
10 purchaser is going to want to know.

11 HEARING OFFICER KNITTLE: My decision was
12 to allow him to answer if he were looking at a
13 house in 1996 or 1997, would he want to know that
14 information.

15 MR. KOLAR: That's what I intended to ask,
16 but I guess by saying put yourself in the shoes, I
17 meant that he was the prospective buyer.

18 BY MR. KOLAR:

19 Q. Let's make it clear. Mr. Roti, let's
20 assume the Browns still owned the home in 1996 and
21 they still owned the home in 1997. You come to
22 the place to look at the home, okay?

23 A. Fine.

24 Q. You walk on the berm like you did in 1990,

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1 right?

2 A. Okay.

3 Q. So in 1996 when you're there at the home,
4 you would want to know if noise from LTD
5 operations to the south would shake the home
6 you're considering buying, right?

7 A. I guess I would want to know that.

8 Q. You would also want to know if you were
9 considering buying that home in '96 and '97 if
10 noise from the south would wake you at night,
11 right?

12 A. I guess I would want to know that.

13 Q. You would also want to know in 1996 and
14 1997 if noise from the south was going to keep you
15 from falling asleep at night, right?

16 A. Yes.

17 Q. And would you also want to know if noise
18 from the south was going to interfere with the
19 lives of your children, right?

20 A. Yes.

21 Q. You never gave any of that information to
22 Marsha Rowley or Karen Dickey in 1996 or 1997,
23 true?

24 A. It's irrelevant.

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1 Q. True?

2 A. It's irrelevant.

3 Q. True?

4 A. It's irrelevant.

5 Q. True?

6 A. Irrelevant.

7 Q. I don't think you get to decide what's
8 irrelevant or not?

9 A. I think it is. It's irrelevant.

10 Q. Is that true?

11 A. It's irrelevant.

12 Q. Is that true?

13 A. That goes against with what he said. It's
14 not germane to the issue. I do not have to
15 disclose something which is not germane. He just
16 made an objection. I'm not going to answer your
17 question.

18 HEARING OFFICER KNITTLE: Hold on. Let me
19 interrupt. I know no one has asked me to yet, but
20 whether Mr. Kaiser makes an objection or not isn't
21 the issue. It's whether I agree with his
22 objection. I have already ruled that that's a
23 valid question, so I'm --

24 THE WITNESS: But he's getting --

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1 HEARING OFFICER KNITTLE: Hold on. So I'm
2 going to direct you to answer. And that's your
3 choice. If you don't answer, then I make a
4 credibility decision later on or you're subject to
5 sanctions for not answering it. There's a matter
6 of things that can happen. But I think it's a
7 valid question, and I think it's a question that

8 can be answered, so I'm directing you to answer.

9 MR. KAISER: I would note for the record,
10 I mean, I certainly agree with Mr. Roti's
11 characterization of it as irrelevant, but I would
12 encourage him to answer.

13 HEARING OFFICER KNITTLE: Thank you,
14 Mr. Kaiser, and I'm not --

15 BY THE WITNESS:

16 A. Fine, Mr. Kolar. Ask me the question
17 again then, please?

18 MR. KOLAR: Let the record reflect that
19 Mr. Roti was raising his voice when telling me it
20 was an irrelevant question.

21 HEARING OFFICER KNITTLE: The record can
22 reflect that. I would agree with that
23 characterization.

24 THE WITNESS: Mr. Roti smiled, too.

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1 HEARING OFFICER KNITTLE: Mr. Roti has run
2 the full gamut of emotions to my knowledge here,
3 and he did smile.

4 Do you want her to read that back?

5 MR. KOLAR: Yes, she could read it back.

6 (WHEREUPON, the record was read
7 by the reporter as requested.)

8 HEARING OFFICER KNITTLE: Do you recall
9 the question, Mr. Roti?

10 THE WITNESS: I'd like it to be asked by
11 Mr. Kolar again.

12 HEARING OFFICER KNITTLE: Mr. Kolar, could
13 you please do that?

14 MR. KOLAR: Sure.

15 BY MR. KOLAR:

16 Q. In 1996 you never told Marsha Rowley that
17 noise from LTD operations shakes your house, keeps
18 you from falling asleep at night or wakes you up
19 at night, true?

20 A. True.

21 Q. In 1997 you never told Karen Dickey that
22 noise from LTD's trucking operation shakes your
23 house, keeps you from falling asleep at night or
24 wakes you up at night, true?

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1 A. True.

2 Q. Your brother, the attorney, who handled

3 your closing, at that same time you have no
4 recollection of asking your brother, do I need to
5 disclose to prospective purchasers the noise issue
6 to the south?

7 A. No, I do not.

8 Q. You have no recollection of saying that to
9 your brother?

10 A. No recollection, right.

11 Q. In fact, in 1996 and 1997, the reason you
12 and your wife -- strike that.

13 In 1996 and 1997, you and your wife
14 told Marsha Rowley and Karen Dickey you wanted to
15 sell your home because it was basically too small,
16 right?

17 A. Yes, that's correct.

18 Q. You wanted an extra bedroom?

19 A. That's correct.

20 Q. You said to Mr. Kaiser in response to some
21 question that the noise was inconsistent with the
22 rural setting where you were situated; do you
23 recall that?

24 A. I do recall that.

1 Q. You would agree that in March 1996, it
2 wasn't a rural setting to the south of you, right?

3 A. No, it was not a rural setting to the
4 south of me.

5 Q. You knew in 1990 it was a truck dock
6 situation to the south of you?

7 A. Yes, some type of trucking operation.

8 Q. Do you have any log of the times when
9 LTD's trucking operations interfered with your use
10 of your property?

11 A. No, I do not.

12 Q. Do you have any recordings of times when
13 you heard noise that was interfering with the use
14 of your property?

15 A. No.

16 Q. Now, you already told us that before you
17 bought your house, you heard the tollway noise to
18 the west, correct?

19 A. Yes, I was aware there was a tollway, yes.

20 Q. The tollway noise is a noise that's just
21 part of the house, right?

22 A. Yes.

23 Q. The tollway noise is something that's just
24 ongoing all year long?

1 A. Yes, I guess so.

2 Q. If I understood your direct testimony, it
3 seems to me that now you're saying the LTD noise
4 is just something ongoing?

5 A. Something ongoing.

6 Q. You've kind of got used to it?

7 A. Have I gotten used to it, no.

8 Q. A little bit?

9 A. It becomes part of the normal routine.
10 I'm not used to it.

11 Q. It's gotten better, though, since you
12 first started complaining, right?

13 A. In the fact that they took care of that
14 engine, yes.

15 Q. There was a yard tractor that had like an
16 unmuffled engine sound to you, right?

17 A. Yes.

18 Q. You and your wife complained about that?

19 A. Yes.

20 Q. Eventually there was a new yard tractor
21 with an engine that didn't sound as loud?

22 A. Yes.

23 Q. At one point would you agree that tractor
24 trailers would maybe park on the north property

1 line of LTD in the automobile parking area?

2 A. I believe so, yes.

3 Q. That doesn't happen anymore, correct?

4 A. I don't believe so. I haven't seen it
5 lately.

6 Q. At one time truckers would honk horns, and
7 you would hear horns on your property, right?

8 A. Yes, I still heard those the other day or
9 last week.

10 Q. Do you hear horns today as frequently as
11 you did in 1997?

12 A. I don't know.

13 Q. You hear horns on the tollway
14 occasionally, right?

15 A. Occasionally, yes.

16 Q. The tollway is louder on your property
17 when the wind blows from the west to the east?

18 A. I believe so, yes.

19 Q. Is it louder when the tollway surface is
20 wet?

21 A. I couldn't tell you. I'm unsure of that

22 question -- not the question, but the answer to
23 that.

24 Q. The first noise a person hears at your

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1 property when they come to see you is the tollway,
2 right?

3 A. Well, it depends. Is LTD in full
4 operation at this point? Then they would hear
5 LTD. I guarantee that.

6 Q. Any day of the year, the first noise a
7 person would notice when they come to your
8 property would be the tollway, right?

9 A. I disagree.

10 Q. Do you recall giving your deposition at my
11 office?

12 A. Yes.

13 Q. And being placed under oath, right?

14 A. Yes.

15 Q. Let me call your attention to Page 45,
16 Mr. Roti, Line 22.

17 Question: Then I took
18 Mr. Zach's deposition after June 3, and I asked
19 him what was the first noise that you heard when

20 you stepped on the Roti lot, and he said the
21 tollway?

22 Answer: I believe it.

23 Question: Okay. So you would agree
24 with that?

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1 Answer: I believe that, yes. For a
2 person that's not accustomed to noise, I believe
3 that, yes?

4 A. I don't think that's inconsistent with the
5 answer I just answered in its fact that I just
6 mentioned is LTD in full operation? Is the
7 trucking going? Then you would hear that and
8 notice that. That's not inconsistent with that
9 statement.

10 Q. Did I read the questions and answers
11 correctly?

12 A. I believe so.

13 Q. You and your wife can hear cars and trucks
14 accelerating out of the toll booth at the
15 southwest corner of the LTD building, right?

16 A. I hear the tollway. I cannot make a

17 judgment as to their acceleration out of there.

18 Q. The tollway at times sounds to you like
19 motorcycles revving their engines?

20 A. I have heard motorcycles on the tollway,
21 yes.

22 Q. Do you hear trucks, tractor trailers
23 accelerating as they leave the LTD staging area to
24 go south down Lakeside Drive?

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1 A. I wouldn't call it accelerating, but
2 they're putting in gear and they're advancing.

3 Q. That's something you hear?

4 A. Yes.

5 Q. Do you hear trucks when they're coming to
6 LTD by going north down Lakeside Drive, then going
7 into the truck staging area?

8 A. I have no idea. That's speculation. I do
9 know that I see trucks back there. I can see them
10 once they get behind the building. As to the
11 access road, I do not know.

12 Q. So it's your claim that noise from LTD
13 awakes you at all hours of the night?

14 A. All hours?

15 Q. Right.

16 A. I don't know. It's many hours. I don't
17 know if it's all hours.

18 Q. Sometimes you woke during the night from
19 some noise, and you figured it was LTD but you
20 really didn't know?

21 A. I suppose that's a possibility at some
22 point, yes. When I explored -- when I did get up
23 to explore it, I did notice there was a truck
24 sitting back there.

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1 Q. But other times when you would wake during
2 the night, you would figure the noise was from
3 LTD, but you wouldn't get out and investigate,
4 and, therefore, you really wouldn't know, right?

5 A. The noise --

6 MR. KAISER: Objection.

7 HEARING OFFICER KNITTLE: Yes, sir.

8 MR. KAISER: Argumentative.

9 MR. KOLAR: Cross-examination probably by
10 its nature is argumentative.

11 MR. KAISER: It's sort of untrue. You

12 know, it's one thing to be argumentative with
13 facts or reasonable interpretation of facts, but
14 that one just seemed even stretched --

15 HEARING OFFICER KNITTLE: Can you read
16 back the question for me, please?

17 (WHEREUPON, the record was read
18 by the reporter as requested.)

19 HEARING OFFICER KNITTLE: I think that's
20 okay. I'm going to overrule the objection.

21 BY MR. KOLAR:

22 Q. Can you answer that, please?

23 A. Yes, I guess that's true. If the noise
24 was, you know, typical of what I had heard from

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1 them, I would assume it was them, yes.

2 Q. But there were times when you would wake
3 during the night from something, and you would be
4 unable to determine if it was LTD or some other --

5 A. Yes.

6 Q. Sometimes when you wake up to go to your
7 job, you wake your wife up, right?

8 A. I would think, but that's something you're
9 going to have to ask her.

10 Q. Don't you know that when you set your
11 alarm radio, that you would sometimes
12 inadvertently wake your wife when you're rustling
13 around the room?

14 A. As I pointed out, I would think, but
15 that's something you're going to have to ask her.

16 Q. But don't you know that?

17 A. She didn't get up and talk to me at that
18 point.

19 Q. Now, you're aware of the garbage facility
20 at the northwest corner of the Corporate 100
21 office building?

22 A. Yes, sir.

23 Q. And you've heard the garbage truck pick up
24 garbage at that area?

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1 A. Yes, I have.

2 Q. You've heard the back up beeper on that
3 garbage truck?

4 A. Yes, I have.

5 Q. How many times do you think you heard that
6 back up beeper on that garbage truck since fall of

7 1996?

8 A. I believe, to my best recollection, I
9 think they come about once a week, and they
10 generally come around 5:00 in the morning because
11 I've investigated several times.

12 Q. So what does that mean, 150 times since
13 1997?

14 A. When in '97, I guess?

15 Q. Fall of '97, so that would be about 100
16 times then you think you've heard the back up
17 beeper on the garbage truck, right?

18 A. No, sir, I haven't heard it 100 times, but
19 I have heard it, yes, sir.

20 Q. Well, you know it comes once a week, to
21 your knowledge?

22 A. To my knowledge, yes.

23 Q. You've investigated and learned that it
24 comes at 5:00 a.m.?

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1 A. Approximately, thereabouts.

2 Q. So on occasions you've heard the back up
3 beeper from the garbage truck in your home at 5:00
4 a.m.?

5 A. Yes, I have.

6 Q. On those occasions you also heard the
7 garbage containers clanging against the garbage
8 truck?

9 A. Yes.

10 Q. And that noise, the back up beeper and the
11 garbage truck and the clanging of the container,
12 that unreasonably interferes with the use and
13 enjoyment of your home?

14 A. Yes, it does.

15 Q. The back up beeper on the garbage truck
16 sounds like the back up beeper on the yard
17 tractor?

18 A. When it's on, yes.

19 Q. Let's talk about this week.

20 Were you at home Monday, Tuesday and
21 last night, Wednesday night?

22 A. Yes.

23 Q. Did you get a full night sleep on Monday
24 night?

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1 A. I think so.

2 Q. Did you hear the back up beeper on the
3 yard tractor Monday night?

4 A. At some point this week, I noticed they
5 have somehow muffled it or turned it off or
6 something, but I have heard it, yes, but it's not
7 to the tone it was before. It's a lesser decibel.

8 Q. Did you hear the back up beeper on the
9 yard tractor last night?

10 A. Yes, I did, but it's in a lesser decibel.
11 Right before I came here, I heard it.

12 Q. Did you do some sort of -- you said you
13 did some sort of investigation and learned that
14 the back up beeper was muffled this week?

15 A. I have not done an investigation unless
16 they're running it inside the plant. It's not as
17 loud as it was last week.

18 Q. You told me you learned somehow or another
19 that it's been muffled this week?

20 A. I said it's a lesser decibel. I took it
21 to believe that it's muffled.

22 Q. So this week, Monday night, Tuesday night,
23 Wednesday night, the back up beeper has not
24 unreasonably interfered with the use and enjoyment

1 of your property, true?

2 A. The back up beeper has changed, yes,
3 you're right.

4 Q. Is that one of your main complaints? If
5 you were to list them all, however many there are,
6 three, four, five, would you put the back up
7 beeper presently at the top of the list?

8 A. The back up beeper has become a new
9 problem this year added to the other existing
10 problems.

11 Q. Would it be the number one problem?

12 A. This year, yes.

13 Q. So if LTD could safely without liability
14 concerns disconnect that back up beeper, that
15 would make you happy?

16 A. No.

17 Q. Why not?

18 A. I would be happy that the back up beeper
19 has ceased, but that's not the total issue is what
20 I'm saying.

21 Q. Fair enough. But the disconnecting of the
22 back up beeper in and of itself would make you
23 happy?

24 A. Yes.

1 Q. So let me ask you some questions about
2 when Mike Hara, Jack Voight, you and your wife
3 met.

4 That was at the LTD facility?

5 A. There were several meetings.

6 Q. Did you, your wife, Mike Hara and Jack
7 Voight have a meeting at the LTD offices?

8 A. Yes, we did.

9 Q. Was that the meeting where you got up to
10 walk out, and then you came and sat down again?

11 A. Yes.

12 Q. Your wife was present there the whole
13 time?

14 A. Yes.

15 Q. Was this a conference room just to the
16 side of Mike Hara's office?

17 A. No, I believe it was Mike Hara's office.

18 Q. And at some point you interpreted or -- I
19 thought Mr. Hara said something that indicated he
20 didn't care about the welfare of your children?

21 A. That's correct.

22 Q. That's when you said something about going
23 to the newspapers?

24 A. No, that was prior to that. It was all

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1 part of the conversation, same conversation. I
2 said what do you think a newspaper would think of
3 your disrespect for people's welfare and
4 well-being and children's welfare and well-being.

5 Q. Did your wife say, yes, Mike, what do you
6 think about what the newspapers would think about
7 this?

8 A. I don't believe she said anything.

9 Q. But she clearly heard what you said about
10 the newspapers?

11 MR. KAISER: Objection, calls for
12 speculation.

13 HEARING OFFICER KNITTLE: Sustained.

14 BY MR. KOLAR:

15 Q. Did your wife do anything which led you to
16 believe that she heard what you said about the
17 newspapers?

18 A. No, as a matter of fact, just quite the
19 contrary. I don't think she understood what was
20 being said at that point.

21 Q. But this was a heated conversation going

22 on?

23 A. At the end of the statement, yes, it was.

24 When I said, you don't care about my family,

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1 that's when it became heated.

2 Q. But when you said the word newspaper or
3 newspapers?

4 A. Right.

5 Q. Did you whisper that to Mike Hara?

6 A. My wife was sitting somewhat to my back.

7 I was twisted facing Mike this way, so she may
8 have been out of earshot. I didn't scream it at
9 that point. I wasn't upset at that point.

10 Q. Did you say it at the same level that you
11 were talking during the rest of the meeting?

12 A. I don't recall.

13 Q. Regarding a noise wall, did Mike Hara
14 really say are you willing to contribute to the
15 cost of a noise wall?

16 A. He may have. I don't recall.

17 Q. As opposed to saying, do you want to pay
18 the cost yourself for a noise wall?

19 A. You may be right. I don't recall.

20 Q. In terms of Mr. Hara asking you if you
21 wanted to buy his building, that was during an
22 exchange when either you or your wife said, well,
23 do you want to buy our house, and he said, no?

24 A. I don't believe that first part of the

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1 conversation. I thought he was baiting me for
2 that reason, and I didn't bring up -- I didn't
3 bait him back. It was just a one-sided issue from
4 Mr. Hara to us.

5 Q. You knew at that time it was sort of in
6 jest do you want to buy a \$25 million building?

7 A. I think so. I would hope so.

8 Q. You believe your house was worth \$650,000
9 as of January 1, 1998, correct?

10 A. Yes, the assessor believed it was worth
11 that. That's why I listed it for that. I believe
12 that's what the number was.

13 Q. Back in 1991 you filed an assessed
14 valuation complaint with the West Deerfield
15 Township Assessor claiming your assessment was too
16 high?

17 A. I did. I believe it was -- I have filed
18 one at one point, and I believe it was '91.

19 Q. It was shortly after you bought the house?

20 A. Okay.

21 Q. So since the year '91, '92 when you filed
22 that complaint, you have known that each year you
23 could file a complaint challenging the assessment
24 placed on your house if you felt it was too high?

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1 A. Yes.

2 Q. And since you moved into your house,
3 you've never called up the West Deerfield Township
4 Assessor or any of his employees and said, I
5 believe the noise from LTD Commodities is
6 depreciating my house. Please come out and listen
7 and reconsider your assessment?

8 A. I have never gone back to them and asked
9 them to do that.

10 Q. You've never had a conversation of
11 anything like that from anyone from the assessor's
12 office, right?

13 A. No, I have not.

14 Q. One of your children has Attention Deficit
15 Disorder, right?

16 A. Yes.

17 Q. Refresh my recollection. Which one is
18 that?

19 A. Attention deficit disorder, that's my
20 daughter Madeline -- oh, that must be Anthony.

21 Q. Tony, the 15 year old.

22 A. Right.

23 Q. At some point he was taking some
24 medication that prevented him from getting sleep

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1 at night initially?

2 A. I don't know that. You may be right. I
3 don't know that.

4 Q. But if your wife said that, you wouldn't
5 disagree with her?

6 A. No.

7 Q. You mentioned that in '97 or '98, your
8 windows shook from LTD operations?

9 A. '97 or '98. Are you referring to the
10 unmuffled yard pig that I referred to?

11 Q. When do you claim that your windows shook

12 from LTD's --

13 A. With the unmuffled yard pig. They would
14 shake when there would be a dropping or some type
15 of banging or uncoupling or whatever they did
16 after that, but they would shake predominantly
17 when I mentioned that -- for that unmuffled
18 engine.

19 Q. So when LTD got a new yard tractor, then
20 your windows would no longer shake from the
21 unmuffled engine?

22 A. That's correct.

23 Q. Today does your -- today meaning 1999,
24 does your house shake at all from LTD's trucking

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1 operations?

2 A. Yes, if they drop a bed or bang their
3 doors or whatever they do to make those loud
4 noises.

5 Q. Well, have you ever investigated what
6 activity you believe causes your house to shake?

7 A. I have seen the truck there, but it's kind
8 of post fact of what's transpired at that point.

9 There is a truck sitting and there's a truck --
10 the cab pulling away. As to what exactly they
11 did, I don't know. Did they let the back swing
12 open? Did they drop it? I'm unsure.

13 Q. I understand. In the complaint I believe
14 and in testimony -- your testimony I thought said
15 that your house shakes from LTD trucking
16 operations.

17 I just want to figure out if that's
18 true or not, today 1999?

19 A. Yes.

20 Q. So what is it that you have associated the
21 shaking of your house with, what activity?

22 A. I believe it's the dropping of a bed of a
23 truck or the slamming of the gates in back or the
24 shutting of their gate doors. I'm unsure as to

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1 exactly what it is. I know it's coming from that
2 direction. As to the exact cause of it, I'm
3 unsure.

4 Q. But you think whatever it is, it travels
5 through the ground and shakes your house?

6 A. Either that or it's echoing off the back

7 wall.

8 Q. Back wall of the --

9 A. As an acoustical type situation. I'm
10 unsure. It's definitely emanating from LTD.

11 Q. Whatever it is, whether it travels through
12 the ground or echoes off the wall of the LTD
13 warehouse, it would travel northwest and northeast
14 and affect the Rotis, the Rosenstocks and the
15 Webers, right?

16 MR. KAISER: Objection, calls for
17 speculation.

18 HEARING OFFICER KNITTLE: Sustained.

19 BY MR. KOLAR:

20 Q. Do you ever talk to Paul Rosenstock
21 whether his house shakes because of LTD's
22 operations?

23 A. I have spoken with Paul briefly. He says
24 he complains about LTD's noise and so on and so

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1 forth.

2 Q. Did he ever tell you that his house shakes
3 because of LTD?

4 A. I don't recall him exactly saying that.

5 Q. Certainly Leslie Weber told you her house
6 shakes from LTD's --

7 MR. KAISER: Objection, misleading
8 question.

9 HEARING OFFICER KNITTLE: I'll sustain
10 that.

11 BY MR. KOLAR:

12 Q. Did Leslie Weber ever tell you if her
13 house shakes from LTD's trucking operations?

14 A. I don't recall at this point in time.

15 Q. Anything that would refresh your
16 recollection regarding that?

17 A. I suppose if you show me the deposition,
18 Joe.

19 Q. I'm asking you do you know of any document
20 that would refresh your recollection if you had a
21 conversation with Leslie Weber about whether her
22 house shakes?

23 A. No.

24 MR. KOLAR: I don't have anything else.

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1 HEARING OFFICER KNITTLE: Any redirect?

2 MR. KAISER: Briefly.

3 HEARING OFFICER KNITTLE: Mr. Kaiser, do
4 you want to take a minute?

5 MR. KAISER: No, thank you. I would note
6 for the record that Karen Roti joined us about one
7 half hour ago and has been here for the bulk of
8 the cross-examination.

9 HEARING OFFICER KNITTLE: It's duly
10 noted.

11 REDIRECT EXAMINATION

12 BY MR. KAISER:

13 Q. When you and your wife, Mr. Voight and
14 Mr. Hara sat in Mr. Hara's office the LTD facility
15 in June of 1998 and Mr. Hara joked about whether
16 you wanted to buy his \$25 million building, what
17 if anything did you think was funny about the
18 situation between you and LTD at that point?

19 A. I didn't find very little funny with the
20 situation at that point. I guess I found it funny
21 in the irony that he could joke about something I
22 took so serious -- me and my wife took so
23 serious. But I didn't find too much funny. He
24 was obviously trying to break the ice, make a

1 little levity in the beginning of the conversation
2 so we would feel a little better at ease, I guess
3 is what his objective was.

4 Q. But by that point, you endured the summer
5 and fall of 1996, the summer and fall of 1997 and
6 the noise associated with LTD's activities during
7 those two seasons; is that right?

8 A. That's correct.

9 Q. I take it neither your wife nor you were
10 really in a joking mood by the time you sat down
11 with Mike Hara in June of 1998?

12 A. No, we wanted some recourse at this point.

13 Q. Now, you get up bright and early it sounds
14 like. You're up at what time of day?

15 A. Quarter to 5:00 generally. This is not
16 all the time.

17 Q. But when you're going downtown to trade?

18 A. Yes.

19 Q. You're up before that garbage truck gets
20 over there to the Dumpster behind what we have
21 been calling Corporate 100; is that right?

22 A. I have seen on occasion that Dumpster
23 being emptied and picked up.

24 Q. Mr. Kolar asked you -- using the words of

1 the complaint -- do you find that the noise from
2 the dump truck, garbage truck substantially
3 interferes with your use and enjoyment of your
4 home; do you recall that question?

5 A. Yes.

6 Q. Can you tell the Board why it is you and
7 your wife have brought a complaint against LTD but
8 haven't brought a complaint against the owner of
9 the garbage truck that picks up garbage once a
10 week from the Corporate 100 facility?

11 A. The garbage pick up is once a week as far
12 as I can discern, and it lasts five minutes, maybe
13 ten minutes if I'm being very liberal. It's not
14 an everyday occurrence where it goes on for
15 multiple hours. You know, that's the major reason
16 I haven't -- you know, I was planning to ask the
17 people if they could switch the hours to an hour
18 during the middle of the day. I didn't want to
19 confuse the issue. I figured I'd rather fight one
20 battle at a time.

21 Q. You mentioned that the garbage truck and
22 the noise it makes doesn't go on for multiple
23 hours; is that right?

24 A. That's correct.

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1 Q. It kind of picks up the garbage, then it
2 goes?

3 A. That's correct.

4 Q. Then it doesn't come back for a week?

5 A. That's correct.

6 Q. Does noise from LTD's operations ever go
7 on for multiple hours?

8 A. It does.

9 Q. How often?

10 A. Daily.

11 Q. Now, you've testified that there have been
12 times when you've been awakened from your sleep by
13 noise; is that correct?

14 A. That's correct.

15 Q. And you've concluded that the noise that
16 woke you up was noise in LTD's dock activities; is
17 that correct?

18 A. Yes, I have.

19 Q. How did you make that conclusion that the
20 noise that woke you up was from LTD's docks?

21 A. I would either go out and look out the
22 back windows to see if there was any activity
23 going on there at LTD's loading docks or what have
24 you and would discern if there was or was not.

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1 That's how I found out about the garbage truck
2 that day. I heard the noise, looked out at LTD
3 figuring it was them, didn't see it, looked over
4 at the garbage can, saw that it was the garbage
5 can. That's how I discerned that issue. So I do
6 have a fairly -- I am fairly certain when I
7 believe that it's LTD causing the noise.

8 Q. You're able to distinguish between the
9 noise from the garbage truck picking up trash at
10 Corporate 100?

11 A. Yes.

12 Q. And you're able to distinguish the noise
13 from LTD's dock activities from the noise created
14 by cars, trucks or motorcycles coming onto the
15 northbound lanes of 294?

16 A. Yes. This has been quite an issue between
17 everybody here. I don't really -- I notice cars
18 going up and down that tollway. As to

19 acceleration out of that toll gate, I honestly can
20 say I never noticed that it's that acceleration
21 coming out of that toll gate.

22 Q. It appears to me -- correct me if I'm
23 wrong -- but does the west side of LTD's building
24 block the line of sight between your home and the

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1 toll booth on the northbound entrance ramp of 294?

2 A. I believe so, yes.

3 Q. Why are you bothered by the noise of LTD's
4 dock activities but not bothered by the noise of
5 the cars on the tollway to the west of your home?

6 A. The tollway is just a road noise, if you
7 will, other than when I mentioned a motorcycle
8 cranking it out down the tollway. It's just a
9 road noise, whereas LTD seems to be an
10 intermittent banging or boom, some type of loud
11 explosive type noise or the beeping noise that I
12 was describing as the back up noise of the vehicle
13 which is emitting that alarm clock type noise that
14 I mentioned or the unmuffled yard pig which is
15 just a consistent noise that goes on all day long,

16 and it just becomes irritable.

17 Q. Are you able to work at your computer and
18 do the research necessary for your work even with
19 the noise of the tollway?

20 A. Yes. Once again, there is noise from the
21 tollway, but it is a road noise, whereas kind of
22 a -- I don't even know how to explain it. It's
23 not that intermittent noise. It's kind of a white
24 noise, if you will.

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1 Q. Is it your testimony that the tollway
2 noise doesn't bother you, but the noise from LTD
3 does?

4 A. Yes, it does.

5 Q. Did either of the realtors, Ms. Dickey or
6 Ms. Rowley ever ask you whether noise from LTD's
7 operations interfered with your use and enjoyment
8 of your home?

9 A. No, they did not.

10 Q. Did you ever lie to Ms. Rowley or
11 Ms. Dickey about the affect of noise from LTD on
12 your home?

13 A. No.

14 Q. Have you and your wife decided not to put
15 your house back on the market until you've
16 obtained a ruling from the Pollution Control
17 Board?

18 A. Yes, that's correct.

19 Q. Now, with respect to this new noise, the
20 noise that as I understand it you've heard for the
21 first time in 1999, the back up beeper, that
22 sounds like an alarm clock.

23 That noise was not present on the LTD
24 property in either 1996 or 1997, was it?

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1 A. Not to the best of my knowledge, no.

2 Q. You'd filed the complaint by July of 1998,
3 didn't you?

4 A. That's correct.

5 Q. As of July of 1998, you hadn't heard that
6 back up beeper that sounds like an alarm clock,
7 had you?

8 A. Not the one that we are talking about
9 currently.

10 Q. There were other back up beepers?

11 A. Yes, there were.

12 Q. In addition to back up beepers, currently
13 you still hear banging of metal on metal?

14 A. Yes.

15 Q. Do you hear air brakes?

16 A. Yes.

17 Q. You feel vibrations from LTD's dock
18 activities?

19 A. Yes.

20 Q. With respect to your conversations with
21 the realtors and what you did or didn't tell them,
22 did you or your wife, if you know, seek an opinion
23 from any source about whether you had a legal duty
24 to tell the realtors about the noise you were

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1 experiencing from LTD's commodities?

2 A. I just had a conversation with my wife
3 this morning, and she said that she had spoken
4 with Rick as to that issue.

5 Q. Who is Rick?

6 A. Carbonara, our attorney.

7 Q. What did Mr. Carbonara say in that regard?

8 MR. KOLAR: Objection, hearsay.

9 HEARING OFFICER KNITTLE: Mr. Kaiser?

10 MR. KAISER: Again, we are not looking for
11 whether what Mr. Carbonara said is true in the
12 sense that it's legally accurate. Mr. Kolar asked
13 on cross-examination did you have information from
14 any source regarding the duty to disclose? Did
15 you seek out information from any source? And
16 what I'm doing is just demonstrating that between
17 he and his wife, they sought out information from
18 a source, not whether that source was accurate or
19 what the source said was true in any sense.

20 MR. KOLAR: I don't know when this
21 conversation -- I didn't hear when this
22 conversation took place.

23 HEARING OFFICER KNITTLE: This morning.

24 MR. KAISER: Well, Mr. Roti's conversation

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1 with his wife took place this morning, but when
2 the conversation between Mr. Carbonara and his
3 wife took place is another matter.

4 THE WITNESS: I'm unsure as to that one.

5 HEARING OFFICER KNITTLE: Mr. Kolar,

6 anything further?

7 MR. KOLAR: I guess I'm just wondering --
8 you expect him to say something like Rick told us
9 we don't have to disclose information like that to
10 prospective buyers?

11 MR. KAISER: Exactly.

12 MR. KOLAR: Therefore, that's why he
13 didn't speak to either of the realtors about it.

14 MR. KAISER: That's right. So
15 stipulated?

16 MR. KOLAR: I'll withdraw my objection.

17 HEARING OFFICER KNITTLE: Okay. You can
18 ask your question.

19 BY MR. KOLAR:

20 Q. Did you talk to your wife, Karen, this
21 morning about this issue of what you said or
22 didn't say to the realtors?

23 A. Yes.

24 Q. And on the basis of that conversation with

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1 your wife this morning, did you conclude that you
2 and/or your wife around the time you listed your
3 property for sale had, in fact, talked to this

4 attorney friend of the family about whether you
5 had to tell the realtors anything?

6 A. Yes.

7 MR. KAISER: Can I have that question read
8 back, please?

9 (WHEREUPON, the record was read
10 by the reporter as requested.)

11 MR. KAISER: On that rather anticlimactic
12 moment, I conclude my examination of Mr. Roti.

13 HEARING OFFICER KNITTLE: Do we have a
14 recross?

15 MR. KOLAR: Yes, in a couple areas.

16 RE-CROSS-EXAMINATION

17 BY MR. KOLAR:

18 Q. Mr. Roti, you would agree that the on ramp
19 to northbound 294 before it connects with the
20 northbound lanes, there is a direct line to your
21 house, right?

22 A. At that point you're mentioning, yes.

23 Q. Right. Before a truck or car would
24 actually get on the northbound lanes, a person

1 could draw a direct line from the on ramp to your
2 house without hitting the LTD office building,
3 right?

4 A. At the end of the on ramp, yes, you're
5 right.

6 Q. And at that point there are a couple of
7 detention ponds between the intersection of the on
8 ramp and the tollway and your property, right?

9 A. I see what you're referring to, yes.

10 Q. So if I understand now correctly, back in
11 1996 or 1997, you and your wife or-- one of you
12 had a conversation with the attorney Rick
13 Carbonara about whether you had to tell the
14 realtors about the noise issue?

15 A. My wife instructed me that she had the
16 conversation, yes.

17 Q. You must have known about it back in 1996
18 or 1997, right?

19 A. I don't recall that, no.

20 Q. Well, you told us you're certain you
21 didn't have any communications with either realtor
22 about noise, right?

23 A. I don't recall talking to the realtors. I
24 may have. I don't recall.

1 Q. I thought on your questions -- I thought
2 in answering questions to me earlier, you were
3 certain you didn't talk to either realtor about
4 noise being a problem?

5 A. All right. Then I'll stand by that. I
6 don't recall that.

7 Q. Let me show you your deposition, 66 and 67
8 it's kind of a lengthy -- if I asked you these
9 questions and you gave these answers. Page 66,
10 Line 20.

11 Well, did you say to Marsha Rowley we
12 get noise not only during the day but in the late
13 hours of the night, as well?

14 Answer: No, I think I left it very
15 general as you stated that it was a noise issue.

16 Question: So as you sit here today,
17 you're certain that you asked Marsha Rowley that,
18 right?

19 Answer: I believe so.

20 Question: This isn't like a
21 President Clinton thing where I'm not asking the
22 right question; is that right?

23 Answer: I believe I asked Marsha
24 Rowley that.

1 Question: Okay. Well, believe
2 doesn't sound too certain to me, so I'm just
3 wondering either you did or you didn't?

4 Answer: I asked one of the realtors
5 that question do I have to disclose that, the
6 noise issue, or we have a noise issue problem.

7 Question: So it could have been
8 Karen Dickey?

9 Answer: It's possible.

10 Question: Do you know why neither
11 one of the realtors recall you or your wife asking
12 a question like that?

13 Answer: I couldn't tell you that
14 question. Maybe they're in violation. Maybe it's
15 supposed to be disclosed. I don't know.

16 Did I read those questions and
17 answers correctly?

18 A. Yes, you did.

19 Q. So at your deposition you were certain
20 that you talked to one of the realtors about the
21 noise issue, right?

22 MR. KAISER: Objection. The deposition

23 transcript speaks for itself. We had all those
24 terms of belief, I believe, I may have. I mean it

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1 speaks for itself.

2 HEARING OFFICER KNITTLE: Mr. Kolar,
3 anything?

4 MR. KOLAR: No.

5 HEARING OFFICER KNITTLE: I think --
6 correct me if I'm wrong, Mr. Kaiser, and I'm open
7 to that at this point, but I think he has the
8 opportunity to question about the apparent
9 difference in the two testimonies. Is that
10 wrong?

11 MR. KAISER: I don't --

12 HEARING OFFICER KNITTLE: I don't want him
13 to misstate the testimony, but I think he can
14 explore that if he wants to, and so I would
15 overrule it.

16 MR. KAISER: I think that's a judgment
17 call, and if that's your judgment, I can accept
18 that.

19 HEARING OFFICER KNITTLE: Perhaps you can
20 rephrase it though because there were a lot of

21 believes and may and whatnot in there. So the
22 objection is overruled, but there's a request to
23 rephrase the question.

24 BY MR. KOLAR:

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1 Q. It seems to me, Mr. Roti, that at your
2 deposition, you testified you did speak to one of
3 the realtors about the noise, and today you very
4 clearly told us you didn't?

5 A. Okay.

6 Q. Would you agree with that assessment?

7 A. Apparently if reading back that sounded --
8 although, it seemed ambiguous to me, but if that's
9 what you're going to state, fine.

10 Q. I did read that correctly, right?

11 A. You did read that correctly.

12 Q. You would agree with the assessment that
13 at your deposition, you claimed to have talked to
14 Marsha Rowley or Karen Dickey about noise
15 affecting your property, and today here at the
16 Pollution Control Board hearing, you told us you
17 didn't have such a conversation.

18 You agree with that assessment of the
19 situation?

20 A. Yes.

21 MR. KOLAR: I don't have anything else.

22 MR. KAISER: If I may?

23 HEARING OFFICER KNITTLE: Yes.

24 FURTHER REDIRECT EXAMINATION

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1 BY MR. KAISER:

2 Q. Again, is it fair say, Mr. Roti, you don't
3 have a clear recollection of any particular
4 conversation with either Ms. Dickey or Ms. Rowley
5 where you talked about noise and whether you had
6 to disclose it?

7 A. That's correct.

8 Q. As you sit here today, do you have a clear
9 recollection of the noise that you've been hearing
10 from LTD's docks since the late summer of 1996?

11 A. Yes, because I've explored it on multiple
12 occasions. It's not a one-time event.

13 Q. Have you had any trouble recalling that or
14 giving the Board truthful testimony concerning the
15 types of noise and the frequency of the noise and

16 the effect of the noise on you and your family
17 since the late summer of 1996?

18 A. I'm sorry. Once again?

19 MR. KAISER: Could you read that back,
20 please?

21 (WHEREUPON, the record was read
22 by the reporter as requested.)

23 BY MR. KAISER:

24 Q. You've described for the Board this

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1 afternoon both the type -- we'll take it in
2 pieces.

3 You've told the Board this afternoon
4 when you first heard noise from LTD; is that
5 correct?

6 A. This is correct.

7 Q. Has that testimony been truthful?

8 A. I believe everything I've said today has
9 been truthful.

10 MR. KOLAR: I'm going to object if we are
11 going to go through everything and find out is
12 this truthful, is this truthful. I think that's

13 redundant, truthful testimony. When you take the
14 stand, all testimony should be truthful.

15 BY MR. KAISER:

16 Q. In fact, it has been, hasn't it, Mr. Roti?

17 A. Yes.

18 Q. Whereas the conversation you may or may
19 not have had with Ms. Rowley and Ms. Dickey more
20 than two years ago, that in your mind -- that may
21 have been a conversation that lasted five minutes
22 or less; is that right?

23 A. Correct.

24 Q. And the noise that you've been

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1 experiencing from LTD since 1996, that's occurred
2 hundreds of times, has it not?

3 A. Numerous times, yes.

4 Q. It's affected and interfered with your use
5 and enjoyment of your home on hundreds of
6 occasions, has it not?

7 A. Yes.

8 Q. The noise from LTD's operations continue
9 to substantially interfere with your use and
10 enjoyment of your home?

11 A. Yes.

12 MR. KAISER: Thank you. I have no further
13 questions.

14 HEARING OFFICER KNITTLE: Mr. Kolar, do
15 you have further recross?

16 FURTHER RECROSS-EXAMINATION

17 BY MR. KOLAR:

18 Q. Mr. Roti, you remember it was in the
19 summer months of this year -- I don't have the
20 exact date, June or July -- when you gave your
21 deposition, right?

22 A. Yes.

23 MR. KOLAR: Nothing else.

24 MR. KAISER: Nothing further.

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1 HEARING OFFICER KNITTLE: Thank you very
2 much, Mr. Roti. Please step down.

3 Let us go off the record -- we can
4 put this on the record. It's about ten to 4:00
5 right now, and that was our last witness for the
6 day.

7 MR. KAISER: That's right.

8 HEARING OFFICER KNITTLE: We have a couple
9 housekeeping matters, and I want to do those off
10 the record.

11 (WHEREUPON, a recess was had.)

12 HEARING OFFICER KNITTLE: We are back on
13 the record doing a little housekeeping. We have a
14 fair number of exhibits. A couple of them were
15 not offered into evidence or I forgot to note that
16 they were offered.

17 The first one is C-8. It's a letter
18 from Weber to Lothspeich dated January 30, 1997.
19 You have moved for admission of this, Mr. Kaiser?

20 MR. KAISER: Yes, I have.

21 HEARING OFFICER KNITTLE: Mr. Kolar, you
22 did not object?

23 MR. KOLAR: I don't object because Leslie
24 Weber said she prepared it and sent it to David

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1 Lothspeich. But just to point out, Mr. Hara said
2 he did not receive this. So just with that
3 caveat --

4 MR. KAISER: Or didn't recall seeing it.

5 MR. KOLAR: Right, did not recall seeing

6 it.

7 HEARING OFFICER KNITTLE: That will be
8 admitted, and the discussion about that particular
9 exhibit is a matter of record.

10 The only other one I'm missing is
11 C-39, which is a copy of the Board's noise regs?

12 MR. KOLAR: I thought you just had them
13 there.

14 HEARING OFFICER KNITTLE: It's Title 35
15 Environmental Protection Agency for Environmental
16 Protection, Subtitle H Noise, Chapter I, Pollution
17 Control Board. It looks to be a full and complete
18 copy dated January 28, 1987.

19 Mr. Kaiser, you offer this, as well?

20 MR. KOLAR: That's the noise regs.

21 MR. KAISER: Yes.

22 MR. KOLAR: No objection.

23 HEARING OFFICER KNITTLE: No objection.

24 That will be admitted, as well, and that's it for

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1 the day. Thank you.

2 (WHICH WERE ALL THE PROCEEDINGS

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HAD IN THE ABOVE-ENTITLED CAUSE ON
THIS DATE.)

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, TARA M. PAHL, a Certified Shorthand
5 Reporter of the State of Illinois, do hereby
6 certify that I reported in shorthand the
7 proceedings had at the hearing aforesaid, and that
8 the foregoing is a true, complete and correct
9 transcript of the proceedings of said hearing as
10 appears from my stenographic notes so taken and
11 transcribed under my personal direction.

12 IN WITNESS WHEREOF, I do hereunto set
13 my hand at Chicago, Illinois, this 16th day of
14 November, 1999.

15

16

17

18

19 Certified Shorthand Reporter

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23 C.S.R. Certificate No. 84-4268.

24

1	I N D E X					
2	WITNESS	DX	CX	RDX	RCX	EXAM
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5	By Mr. Kolar		54		74	
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7	HENRY WEBER					
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