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2 **DISTRICT COURT**  
3 **BOULDER COUNTY**  
4 **COLORADO**  
5 1777-6th Street  
6 Boulder, CO 80302

7  
8 CITIZENS FOR QUIET SKIES, KIMBERLY  
9 GIBBS, TIMOTHY LIM, ROBERT YATES,  
10 SUZANNE WEBEL, JOHN BEHRENS, CARLA  
11 BEHRENS and RICHARD DAUER

12 **Plaintiffs**  
13  
14 MILE-HI SKYDIVING CENTER, INC.

15 **Defendant**

! **\*FOR COURT USE ONLY\***  
! -----  
! Case No. 2013CR31563  
! Division 2  
!

16 **For Plaintiffs:**  
17  
18 RANDALL WEINER, ANNMARIE CORDING &  
19 MATTHEW OSOFSKY

20 **For Defendant:**  
21  
22 ANTHONY LEFFERT & LAURA ELLENBERGER

23 -----  
24 The matter came on for court trial on April 13,  
25 2015, before the **HONORABLE JUDITH LABUDA**, Judge of the  
District Court, and the following proceedings were had:  
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## 1 P R O C E E D I N G S

2 THE COURT: Good morning. I'm Judge LaBuda. I'll  
3 be presiding over this trial. I'm calling the case of  
4 13CV31563, Kimberly Gibbs, et. al versus Mile-Hi Skydiving  
5 Center.

6 Counsel, would you enter your appearances?

7 MR. WEINER: Randall Weiner, counsel for  
8 plaintiffs.

9 MR. OSOFSKY: Matthew Osofsky, counsel for  
10 plaintiffs.

11 MS. CORDING: Anmarie Cording, counsel for  
12 plaintiffs.

13 THE COURT: Good morning. And I assume this is  
14 Ms. Gibbs with you?

15 MR. WEINER: Yes.

16 MR. LEFFERT: Tony Leffert appearing on behalf of  
17 Mile-Hi Skydiving. With us is Frank Casares, the owner.

18 THE COURT: Good morning, Mr. Cisneros (sic).

19 MS. ELLENBERGER: Laura Ellenberger also appearing  
20 on behalf of the defendant.

21 THE COURT: All right. Before we get started, I  
22 wanted to run through a few other things. As you might  
23 notice, Counsel, we have a court reporter, which is  
24 different than the circumstances we thought would exist when  
25 we met last Thursday. One of the criminal trials settled

1 over the weekend, and so we were able to obtain a court  
2 reporter.

3 Many of the aspects of the evidence being  
4 presented in this trial based on the expert reports and the  
5 pleadings that I've read that you have filed over the last  
6 year or so contain a lot of technical information and  
7 technical terms.

8 I want the attorneys to be cognizant that when you  
9 are referring to that type of information you need to do so  
10 slowly because it's not terms that the court reporter would  
11 be familiar with. So please instruct your witnesses to do  
12 so.

13 Please avoid using abbreviations or terms that are  
14 jargon for a particular area of expertise without making  
15 sure that they're spelled out for the court reporter. That  
16 will make it easier for the court reporter and will insure  
17 that we have a better record for both parties.

18 I notice that we have a lot of people in the  
19 courtroom today, so I'm assuming that some of you may not  
20 have a lot of experience in being in a courtroom. And there  
21 are certain matters of decorum that we follow in a  
22 courtroom. I'll go through these probably every morning, as  
23 I imagine that people in the courtroom may change.

24 But first and foremost, there are no phones  
25 allowed to be turned on in the courtroom. You may not have

1 a phone on vibrate. You may not have a phone on silent. So  
2 this would be good time for everybody to check their  
3 telephone and make sure that it is turned off.

4 The phone must be completely off. Of course that  
5 applies to counsel and parties too. If a phone goes off or  
6 vibrates during a trial, Ms. Bender will escort you out into  
7 the lobby.

8 There are no photographs allowed in the courtroom  
9 and no videotaping of any kind. The only exception for that  
10 is if there's a media request for photographs. And I have  
11 received no media requests.

12 There is not food or drink permitted in the  
13 courtroom, although you may bring water into the courtroom.

14 You need to remove all hats and sunglasses during  
15 the time that you're in the courtroom. If somebody comes in  
16 that isn't aware of those rules, Ms. Bender will contact  
17 them and let them know.

18 And there can be no distractions from those of you  
19 who are taking an opportunity to take advantage of the  
20 privilege of being able to be in the courtroom and to  
21 observe the trial. This trial is about the parties and  
22 their attorneys, and I need to listen to everything that  
23 they say very carefully.

24 This is not a trial to the jury. So I am the fact  
25 finder in the trial, and it's important that I be able to

1 focus completely on them and not have to focus on any  
2 distractions that might be occurring in the audience.

3 Counsel, prior to us beginning are there any other  
4 pretrial matters either of you wish to raise?

5 MR. WEINER: Not from the plaintiffs, Your Honor.

6 THE COURT: Thank you, Mr. Weiner.

7 MR. LEFFERT: No, Your Honor.

8 THE COURT: Thank you, Mr. Leffert.

9 We'll commence with opening statements then. Who  
10 will be making the opening statements?

11 MR. WEINER: I will.

12 THE COURT: Good morning, Mr. Weiner. And you may  
13 begin when you're ready.

14 MR. WEINER: Thank you, Your Honor.

15 A recreational company has to operate in  
16 compliance with the law and operate reasonably. If it does  
17 not and it diminishes the quiet enjoyment of people's  
18 properties, that company's operations can be constrained and  
19 it is liable for damages.

20 Now, let me tell you about plaintiffs'  
21 experiences. Plaintiff Rick Dauer is an inventor for a  
22 Boulder pharmaceutical company. To relax from the stress of  
23 his work he likes to garden at his home located about  
24 2 miles from the Vance Brand Airport.

25 Rick, Mr. Dauer, Rick Dauer, can hear every phase

1 of Mile-Hi's air flights from take-off to an ascent to reach  
2 parachute dropping altitude, to the loud throttle to get to  
3 drop altitude in the quickest possible manner, to the  
4 dropping of the parachutists and the release of that  
5 throttle to the landing back at Vance Brand Airport to pick  
6 up another group of parachutists.

7           The noise has gotten increasingly loud for  
8 Mr. Dauer since 2008. He can't -- he can hear the noise  
9 above the sound of his lawnmower. He can't speak to his  
10 neighbor over the fence. He can't hear her when the planes  
11 are flying overhead. And Mr. Dauer has given up gardening.

12           Plaintiff Suzanne Webel owns an 80-acre farm  
13 located about 4 miles from Vance Brand Airport. Ms. Webel  
14 and her husband board horses for others.

15           The boarders and the instructors who come to her  
16 farm do so because of the tranquility of the 80 acres, and  
17 they do so to spend time with their horses and ride their  
18 horses.

19           Because of Mile-Hi's increasing level of flights,  
20 her boarders are complaining that they can't communicate  
21 with the horses, the horses can't hear them.

22           Plaintiff Carla Behrens, a retired Longmont school  
23 teacher, loves to throw parties in her back yard and  
24 entertain guests on her deck. A couple of years ago she  
25 hosted a fundraiser for the Longmont Symphony on Father's



1 Day. Mile-Hi Skydiving was operating their planes that day  
2 from 8:00 in the morning until sunset.

3 The guests all talked about the noise.  
4 Ms. Behrens was embarrassed. She has held no more  
5 fundraisers since that date. She rarely socializes, if at  
6 all, on her deck and her back yard anymore.

7 The noise from Mile-Hi's planes as they corkscrew  
8 up to flight altitude rattles the windows of plaintiff Bob  
9 Yates' home and shakes his walls. Mr. Yates has lived in  
10 his home for a long time. And he's retired. And he used to  
11 look forward to afternoon naps. Because of the noise from  
12 Mile-Hi's planes, Mr. Yates can no longer take afternoon  
13 naps, even with the windows closed.

14 Plaintiffs have four issues, Your Honor, four  
15 concerns with Mile-Hi Skydiving's activities. The first --  
16 oh, the four concerns are pattern, frequency, duration and  
17 the levels of noise, the decibels.

18 Let's start with pattern. Unlike other general  
19 aviation airplanes, Mile-Hi concentrates its operations in  
20 one area, forcing the neighborhoods and the individuals  
21 under its flight path, its repetitive flight path to be  
22 subject to the brunt of its noise. Other planes move on,  
23 Mile-Hi sticks around.

24 Frequency. Mile-Hi operates simply too many  
25 airplanes at this point in time to be compatible with the

1 residential homes and residential neighborhoods in which  
2 it's currently operating.

3           When the company started in 1995 under a previous  
4 owner, the operation was relatively small. Under Frank  
5 Casares' ownership from 19 -- excuse me, from 2008 to 2014  
6 the operations have increased by more than 70 percent, and  
7 it is only trending upward.

8           Let me give you another statistic. Last summer,  
9 the busiest summer in 2014, there were a dozen days when  
10 Mile-Hi operated more than 40 flights in that day. There  
11 were three days when Mile-Hi operated three -- when Mile-Hi  
12 operated 50 flights in one day. That translates into one  
13 complete flight, landing and taking off, every 15 minutes.

14           Plaintiffs' third concern, duration. Mile-Hi  
15 operates on weekends, on Saturday and Sunday from 8:00 a.m.  
16 until sunset, precisely the time when individuals most need  
17 the respite that their homes should provide them. Mile-Hi  
18 even operates sometimes at night. As you'll hear numerous  
19 plaintiffs and numerous lay witnesses testify, there's  
20 simply no relief.

21           And finally, noise levels. Mile-Hi flies its Twin  
22 Otters and it's Super King Air at levels that regularly  
23 exceed the Longmont noise ordinance limit for residential  
24 zones of 55 decibels.

25           By the way, that Longmont noise ordinance limit is

1 not based upon a home's zoning. It's based on an internal  
2 definition of the word recreation that's found inside the  
3 statute. And it clarifies that if there's a mix of  
4 residential and commercial properties, the most restrictive  
5 limit, the 55 decibel residential limit applies.

6           Before we came to trial, Judge, we had to assess  
7 whether this Court had the authority to hear our case or  
8 whether it was preempted from -- preempted from doing so.

9           There is no question that Your Honor has authority  
10 to impose monetary damages in situations like this involving  
11 excessive airplane noise. Plaintiffs cited to nine  
12 jurisdictions in their trial brief on this issue of monetary  
13 damages. Defendants did not address that issue in their  
14 trial brief and cited no cases. That part is clear.

15           The closer issue is Your Honor's authority to  
16 issue injunctive rulings that involve planes that emit  
17 excessive noise.

18           Your power to issue injunctive relief authorized  
19 by the State is only taken away, is only preempted to the  
20 extent it interferes with the FAA's authority to manage the  
21 nation's aviation system.

22           The *Burbank* line of cases makes it clear that --  
23 or all of the cases that are discussed in the *Burbank* line  
24 of cases which Your Honor is familiar with discuss impacts  
25 on airports themselves.

1           And even those line of case have a very distinct  
2 exemption, or I'll say exception for proprietors of the  
3 airport, be that municipalities or other kinds of  
4 proprietors, that makes it clear that proprietors of an  
5 airport can impose reasonable noise limits.

6           There's even a case where a proprietor of an  
7 airplane, the Port Authority of New York, limited a  
8 particularly noisy plane over the FAA's objections. And  
9 that was the well-known Concord case when the Port Authority  
10 of New York prohibited the Concord from landing at JFK  
11 Airport.

12           And that case which is not cited in our trial  
13 brief is found at 558 F.2d 75. The pertinent points are at  
14 page 81.

15           The City of Longmont is the proprietor of the  
16 Vance Brand Airport. The City of Longmont has promulgated  
17 this reasonable general noise limit that in the case of  
18 plaintiffs is 55 decibels in residential areas.

19           When Mile-Hi violates that ordinance, this Court  
20 has the authority to enforce that ordinance even under the  
21 *Burbank* line of cases, and certainly in light of the JFK  
22 Concord case.

23           Defendant's argument that it purchased generally  
24 certified airplanes is irrelevant to how Mile-Hi flies those  
25 airplanes in the skies above plaintiffs' homes.

1           And as Your Honor noted in her summary judgment  
2 ruling on negligence per se, 14 CFR section 36.5 says that  
3 despite certifications of airplanes, the FAA is not  
4 determining whether the noise from those airplanes into or  
5 out of any airport is acceptable.

6           We are only asking for restrictions on a specific  
7 tortfeasor, not restrictions that will cover an entire  
8 airport. Requiring Mile-Hi to fly less frequently and less  
9 noisily has no safety impacts and has no impact on  
10 interstate commerce as the evidence will show.

11           We will address Mile-Hi's negligence through  
12 Matthew Robinson. Mr. Robinson is a pilot and an expert in  
13 aviation who works for Robson Forensic.

14           Mr. Robinson will walk through the standard of  
15 care for the industry and explain that Mile-Hi Skydiving is  
16 operating beneath the standard of care because it is using  
17 improper equipment, because it ascends to altitude using  
18 this corkscrew method, because it rushes to altitude at full  
19 or almost maximum throttle, because it doesn't work with the  
20 community on noise abatement issues, and because it doesn't  
21 comply with the voluntary noise abatement standards set  
22 forth in the Longmont Vance Brand Airport Master Plan  
23 promulgated pursuant to the Federal Aviation Act.

24           In addition, Mr. Robinson will explain Mile-Hi's  
25 flexibility to operate under visual flight rules and its

1 flexibility to exceed the flight box so that it could  
2 operate in a more residential-friendly fashion than in the  
3 revenue maximizing manner in which it chooses to fly.

4 Plaintiffs will address nuisance through their  
5 expert, Robert Rand, our acoustics expert. Mr. Rand  
6 painstakingly took data on Mile-Hi's flights. And during  
7 his testimony he will share the data from one of those  
8 flights.

9 He'll walk the Court through a flight and  
10 demonstrate acoustically that in a single flight Mile-Hi  
11 exceeded the Longmont ordinance 55 decibel limit ten times.

12 One of the aspects of nuisance is whether the acts  
13 constituting a nuisance are intentional. We will provide  
14 evidence that Mr. Casares sent at least some of the  
15 plaintiffs bumper stickers that said I love airplane noise.

16 You will hear testimony concerning Mr. Casares'  
17 retaliatory behavior. For example, he has intentionally  
18 increased the noise with his airplane when flying over  
19 Ms. Gibbs' house in retaliation for her complaints.

20 Rob Myers, our real estate expert and real estate  
21 broker, has gone about his determination of plaintiffs'  
22 damages by analyzing two nearby neighborhoods to value  
23 appreciation of a neighborhood that receives very little of  
24 Mile-Hi's flight noise with a neighborhood that receives the  
25 brunt of Mile-Hi's noise, eliminating air variables. His

1 analysis runs from 2008 to the present when there was a  
2 significant increase in the volume of Mile-Hi's operations.

3           And he'll explain his determination that as a  
4 result of Mile-Hi's flights the plaintiffs' -- individual  
5 plaintiffs' homes are worth approximately 5 to 10 percent  
6 less than they otherwise would have been, than they  
7 otherwise would have appreciated.

8           The defense real estate expert, Mr. Kamin,  
9 approaches his valuation quite differently. He determines  
10 there's been no diminution in value by using a pared sale  
11 analysis, a purchase and sale of the same residence, going  
12 back 20 to 21 years.

13           Plaintiffs believe that that's an inappropriate  
14 measure because it ignores two major events that happened in  
15 that lengthy time period; the 9/11 crashes, and the  
16 financial meltdown or slowdown in our economy in 2008.

17           But there are two things that both real estate  
18 experts agree on. They both agree that there is a  
19 measurable impact on property values as a result of airport  
20 operations, and they both agree and look at the LAX study  
21 and the Chicago O'Hare study to confirm this measurable  
22 impact from airplane noise and airports on surrounding  
23 residential properties.

24           Where they disagree is that Mr. Kamin, the defense  
25 expert, attempts to extrapolate from the large size of the

1 LAX study to say that a small airport like -- like Vance  
2 Brand would only have de minimus impacts on the neighbors.  
3 But the reality is it isn't the size of an airport that  
4 impacts surrounding properties, it's what happens at that  
5 airport.

6 Mr. Kamin also relies on figures from another  
7 defense expert, Mr. Freytag, to say that Mile-Hi only  
8 operates 6 percent of the flights out of Vance Brand  
9 Airport.

10 Well, during his deposition Mr. Freytag admitted  
11 that he made errors in his calculations. And he also used  
12 a -- an annual average for a seasonal operation.

13 When plaintiffs used the same annual average that  
14 Mr. Freytag used, there are some days that Mile-Hi is  
15 responsible for over 60 percent of the traffic at the Vance  
16 Brand Airport, not 6 percent.

17 In closing, Your Honor, recreational interests can  
18 exist side by side with other interests. On open space  
19 trails in Boulder County we have bicyclists and we have  
20 hikers, same trails. On Boulder County open space we have  
21 dog lovers with their dogs, and we have wildlife enthusiasts  
22 all existing in the same open space. What makes the system  
23 work is respect for the interests of others who do things a  
24 little differently from us.

25 Throughout the country, and indeed throughout



1 Colorado, most aviators comply with voluntary noise  
2 abatement standards and they constrain the most irritating  
3 of their activities.

4 Our society works best not when we ignore the  
5 concerns of others who don't like what we do or when we  
6 retaliate against individuals who voice their concerns about  
7 what we do, but when we engage in reasonable respect for  
8 others.

9 At the end of this case we will request that Your  
10 Honor make a finding by a preponderance of the evidence that  
11 Mile-Hi has operated negligently, that Mile-Hi has engaged  
12 in a nuisance with respect to the individual plaintiffs, and  
13 that Mile-Hi has operated negligently per se by violating a  
14 Longmont noise ordinance.

15 We will ask you to impose practical injunctive  
16 relief to constrain the tortious conduct, and we will ask  
17 that you impose damages on behalf of the five plaintiff  
18 households. Thank you.

19 THE COURT: Thank you, Mr. Weiner.

20 Mr. Leffert.

21 MR. LEFFERT: Thank you, Judge.

22 THE COURT: Whenever you're ready.

23 MR. LEFFERT: Thank you.

24 Judge, the evidence in this case is going to show  
25 that there's no bad guys in this courtroom. These -- this

1 is a group of homeowners that purchased homes right between  
2 two regional airports. They don't like airplane noise, and  
3 in particular they don't like the Twin Otter that Mile-Hi  
4 flies.

5 They've changed their position a little bit. I  
6 think the evidence will reflect that originally this was  
7 really about the Twin Otter. Now they claim there's also a  
8 problem with the King Air. I'll explain a little bit more  
9 about that in just a minute.

10 Nevertheless, they're homeowners who have a  
11 viewpoint, but it's a subjective viewpoint. And I would  
12 propose to you that the evidence will show that it doesn't  
13 reflect how the community in the Longmont area feels about  
14 the airport, the airplanes that fly out of it, or Mile-Hi's  
15 planes.

16 Mile-Hi has been operating for over 20 years.  
17 They have customers from all over the country and all over  
18 the world. They do skydiving competitions, they have  
19 federal contracts for training, parachute training, and they  
20 employ upwards of 100 people. They pay taxes to the City  
21 and County of Boulder County.

22 The planes they fly they fly to Arizona, Texas,  
23 California, Florida, Wyoming, Nebraska, Kansas. We did not  
24 know that they would be making any interstate argument until  
25 they filed their trial brief. It hasn't been raised before.

1           The evidence will be more than sufficient to show  
2 that not only are they operating in navigable FAA airspace,  
3 which is interstate commerce, that they routinely fly to  
4 other states and people come all over the world to skydive  
5 with them. Clearly the evidence will show their business  
6 affects interstate commerce.

7           Mile-Hi's flights are monitored by DIA despite  
8 what you've heard from the plaintiffs. As soon as they take  
9 off they contact DIA air traffic control, and that radio  
10 contact is open, an open communication while they're flying.

11           They have two leases with the City that allow  
12 skydiving operations, and they have had for a number of  
13 years. Vance Brand receives federal funds under the Airport  
14 Improvement Plan because it is open to the public, and all  
15 aviation, including skydiving.

16           So far \$4.7 million has been received by the City  
17 which has benefitted not just the City, but the taxpayers.  
18 They're asking you for an injunction, and I will propose to  
19 you that the facts will show and I believe that your  
20 analysis of the law ultimately will show that that would  
21 dangerously affect the grant assurances and the money that  
22 could be received by the airport.

23           Counsel's talked about the voluntary noise  
24 abatement guidelines, said they're promulgated with the FAA.  
25 Judge, that's not the case. And the evidence before you is

1 going to be these are voluntary noise abatement guidelines  
2 that are drafted by airports all over the country. They're  
3 not promulgated in connection with the FAA, and they're not  
4 done by the FAA. The FAA is aware of them, but they're  
5 not -- that's not something the FAA has promulgated.

6           Next, it only applies to 3 miles around the  
7 airport. Some of these plaintiffs live further than that  
8 around the airport. It's a side issue about that because  
9 the fact is Mile-Hi does comply with the voluntary noise  
10 abatement guidelines.

11           Other than the plaintiffs' subjective beliefs  
12 about a throttle or an rpm, the evidence of the people that  
13 fly the planes, the former airport manager, other people  
14 that's going to testify that they do comply with it and they  
15 do everything they can to try to reduce noise.

16           They have -- there's no benefit to them to create  
17 more noise. They don't want to be here. But they're  
18 running a legitimate business that they're authorized to do  
19 by the federal government under the FAA regulations.

20           Judge, the fact evidence will show that the FAA  
21 regulations control the issues of noise in this case. This  
22 is an -- I know you've gotten some of this on summary  
23 judgment. And I think fact evidence will come in from  
24 witnesses about the FAA regulations, an entire statutory  
25 scheme to regulate and control airplane noise.

1           Ms. Gibbs has indicated she's dedicated the last  
2 several years of her life to shutting down Mile-Hi. She  
3 collects unemployment, she doesn't work. That's her choice.  
4 But the fact is she dedicated her life to try to shut down  
5 Mile-Hi.

6           She's made complaints to the airport, the Airport  
7 Advisory Board and the City Council. The evidence will show  
8 that the airport and City Council have all dealt with her  
9 complaints for years. They've been investigated and they've  
10 been considered.

11           The FAA has been involved, and the FAA regulations  
12 that limit airplane and airport noise has been considered.  
13 This matters, Judge, because it goes to the issue of what's  
14 reasonable in the community to the average person.

15           And I would submit to you the evidence will show  
16 that the FAA regulations are exactly that, based on an  
17 impact to the community and what's reasonable or what's  
18 annoying and where it falls under a curve, a standard  
19 deviation.

20           The plaintiffs do have a remedy in this case, but  
21 I would respectfully submit it's not before you. Their  
22 remedy is to ask the City to do a very expensive and very  
23 detailed sound study, to make proposals to the FAA, to have  
24 the FAA review the sound study and the proposals, and then  
25 to make remediations if appropriate. That's their remedy.

1 They have that remedy.

2           The City hasn't done that, hasn't spent that money  
3 for a couple of reasons. They have done sound studies, but  
4 not the full-blown ones. The first one was done by the  
5 airport manager that showed that the sound limits from the  
6 airport are all within the FAA regulation limits.

7           And by the way, counsel talks about the Longmont  
8 ordinance of 55 decibels. Judge, most of the airplanes at  
9 the airport will violate that at certain times during their  
10 flight. You'd have to shut down the whole airport if you  
11 were going to enforce that standard.

12           The former airport manager is going to testify  
13 he's received complaints under that ordinance. And he  
14 routinely tells people that's ground noise, that's not  
15 aviation, which is governed by the FAA regulations.

16           The two sound studies that were done show that  
17 Mile-Hi's planes -- it's difficult because all of the sound  
18 studies involved, there are so many other planes in the area  
19 at a time it's difficult many times to just pick out a  
20 particular Mile-Hi plane.

21           But the sound studies that have been done by  
22 everyone in this case, including their expert, are all  
23 generally agreed that they are well below the federal  
24 standard, the DNL, the day night average, is well below the  
25 65 decibels which is required under the regulations.

1           Most recently Terracon did another study by -- of  
2 the sound from Mile-Hi and found that the noise from the  
3 Mile-Hi planes was not significantly louder than the  
4 background noise, including cars and lawnmowers.

5           That's why there hasn't been a formal study done,  
6 because it's not a community issue. It's a concern of  
7 Ms. Gibbs and the people that she's rallied around her who  
8 have brought this case.

9           The evidence will show that Mile-Hi complies with  
10 all of the FAA regulations, and all of their aircraft are in  
11 compliance for noise limitations.

12           Judge, may I approach the easel?

13           THE COURT: You may.

14           MR. LEFFERT: Counsel showed you and we talked a  
15 little bit about what's become known in this case as a  
16 flight box. I'm not sure the FAA really refers to it that  
17 way, but for our purposes I think it will work.

18           This is the flight box. And it has inside of it  
19 the houses of the plaintiffs. This is the flight box that  
20 Mile-Hi is required to fly in, required by the FAA. This  
21 flight box was determined by the FAA, not by Mile-Hi, not by  
22 the airport.

23           The reason for it, Judge, is that you have Boulder  
24 Airport, which is close in proximity, but along this path is  
25 the primary arrival corridor -- I'm sorry, departure

1 corridor for DIA Airport. To the north of it is the primary  
2 arrival corridor for DIA. There isn't a lot of room to fly  
3 other planes, especially for a skydiving operation.

4           They -- their expert is going to say well, you can  
5 just ask to fly out of it. I think the evidence is going to  
6 show you it's not that simple. There's a lot of other  
7 aircraft in the area, and there's a lot of other things that  
8 are going on on any given day.

9           John Freytag, our aviation sound expert, is going  
10 to testify about this. It's in his report, Judge. It's one  
11 of the attachments you may have already seen.

12           This is a two-minute snapshot of the flights on  
13 Saturday at 2:00 p.m. Look at the numbers of planes. The  
14 evidence will be that Mile-Hi's flights are 4 to 6 percent  
15 of the Vance Brand flights.

16           Counsel talked about they fly too many planes.  
17 They never -- they only fly two planes at a time.

18           The real question -- and I would encourage -- what  
19 the evidence will try to present will be what is the real  
20 impact on the average person in the community, not someone  
21 who has fired up a cause and got people excited about this,  
22 but the average person.

23           And even in this case some of the plaintiffs are  
24 going to give some testimony about how they got involved.

25           Ms. Gibbs has, I'm not sure the best word to use;



1 encouraged, suggested, hounded may be too strong, people to  
2 make noise complaints of the airport. She -- it's just  
3 been -- it's just been a constant drumbeat. Make  
4 complaints. Donate money to the lawsuit. We're going to  
5 show you the website in just a second.

6           The Airport Advisory Board has done a review of  
7 noise complaints the last several years and has found that  
8 Ms. Gibbs and people affiliated with her, this entity that  
9 she calls Citizens For Quiet Skies, are 76 percent of the  
10 complaints against Mile-Hi, 76 percent.

11           Done Dolce is the voluntary chairman of the  
12 Airport Advisory Board. He's going to testify about these  
13 noise complaints. I think you've seen a motion in limine  
14 that we've litigated over that.

15           He takes out the invalid complaints which are  
16 anonymous or something, I don't know what else would be  
17 invalid, he can tell us that. And he takes out the people  
18 that he refers to as chronic complainers.

19           And what you find from that is that in trying to  
20 assess what the real impact is on the community there isn't  
21 a problem with the community, there's a problem with the  
22 small group of people who are here today.

23           The plaintiffs in this case were recruited by Kim  
24 Gibbs for her cause. By her constant barrage against  
25 Mile-Hi people have noticed the noise more.

1           One of the plaintiffs is going to testify that he  
2 didn't even notice the Mile-Hi planes until he saw a meeting  
3 sign that Kim Gibbs had put up about the airplane noise.

4           Ms. Gibbs set up Citizens For Quiet Skies as a  
5 nonprofit. In her filing with the State she makes the  
6 statement it's for religious, charitable, scientific or  
7 educational purposes. Well, obviously it's not. She will  
8 admit that the primary reason it was set up is so she could  
9 raise money to fund this lawsuit.

10           She set up a website to collect donations by  
11 credit card and other means to register complaints and  
12 contact public officials. She's had public meetings and  
13 canvassed the area with flyers. She's even tried to, been  
14 part of recall efforts for a City Council member.

15           Judge, the evidence is going to show that this is  
16 not about a community reaction, it's about Kim Gibbs' cause.

17           These plaintiffs have all lived in this flight box  
18 for more than ten years, some of them much longer than that,  
19 moving there knowing about the proximity to the airport.  
20 And not just Vance Brand Airport, but also the Boulder  
21 Airport. Ms. Gibbs lives right between the two of them.

22           And some of the people, including Ms. Gibbs, knew  
23 about Mile-Hi's flights because she lived in a condominium  
24 that she still owns years ago, and she was aware of the  
25 skydiving flights then.

1           Counsel has said well, you know, that can be  
2 explained because there's been a -- in his words, a  
3 significant increase in the Mile-Hi flights. Well, let's  
4 take a look at that.

5           Here is the Mile-Hi flights, Judge. This we  
6 started in 2005. The silver bar is all flights. The purple  
7 bar is the Twin Otter that you're going to hear a lot about  
8 in this case.

9           And again, I realize they've changed their  
10 position, now they're talking about all flights. But you'll  
11 see that early on the primary complaint is the Twin Otter.

12           You can see from this that there has been some  
13 increase, but that's not a -- I would submit the evidence  
14 will show that that's not a significant increase over the  
15 years. What did change was the frequency and the level of  
16 Ms. Gibbs' attacks on Mile-Hi.

17           Judge, I heard in opening from counsel that he  
18 says there's going to be evidence of harassment. And I  
19 don't believe that there will be such evidence. Whether  
20 they're talking about buzzing, or I think he said increasing  
21 the engine sound over Ms. Gibbs' home, I'm not sure what it  
22 was.

23           But I will tell you that neither Ms. Casares, nor  
24 anybody who works for Mile-Hi Skydiving is part of this web  
25 page Citizens Against Citizens For Quiet Skies, and there's

1 been no harassment of these plaintiffs. They may think  
2 subjectively there has been. I will submit that I don't  
3 think the evidence will support that.

4           Judge, our expert Mr. Freytag who I talked about  
5 before and has done numerous sound studies for both  
6 airplanes and airports dealing with noise, and if there are  
7 remediations that are necessary where they fall within the  
8 federal scheme of things, he'll testify about the  
9 comprehensive system to assess and control airport and  
10 aircraft noise.

11           He'll talk about the DNL 65 decibels that I  
12 referred to before and explain exactly what that is. And  
13 the evidence will be, Judge, that the FAA over a period of  
14 time did a number of studies and assessments on the level of  
15 annoyance of people resulting from airports or aircraft  
16 noise.

17           It takes into account low frequency noises which  
18 their expert talks about, and it did it over a significant  
19 period of time.

20           The DNL is an average because -- and you'll see in  
21 other sound studies there are single spikes of sound. He  
22 will explain why an average is necessary to really assess  
23 the annoyance factor on a community or on the people who  
24 live in the area. It is the only standard used by the FAA  
25 and the EPA. And it provides for remedial measures if the

1 noise is above that limit.

2 Here he did a detailed sound study that complied  
3 with the federal regulations, and he found that the DNL for  
4 all area flights was 30.2 dB to 32.2 dB. His estimate is  
5 that Mile-Hi contributed less than .01 percent to the  
6 overall sound environment within this flight box. And he  
7 took sound measurements at two of the plaintiffs' houses,  
8 Judge.

9 One of the tools that the FAA uses in looking at  
10 airports and aircraft noise -- and this is in Mr. Freytag's  
11 report -- they use what's called the Schultz Annoyance  
12 Curve. And this is a curve of the average community person  
13 and at what level are they I believe it's highly annoyed.  
14 He'll testify about that.

15 If you look at the DNL average, we're down --  
16 we're over here. For the whole noise environment, including  
17 all of the other planes, that's the percentage of people  
18 that would be highly annoyed based upon the sound studies  
19 that he did. It's almost nonexistent. He estimates that  
20 annoyance factors for Mile-Hi's operation is at a .1 or .2.

21 Interestingly, the Terracon report supports and  
22 confirms these same findings. The readings that they found  
23 are all consistent.

24 Now, their expert, who they refer to as an  
25 acoustic expert, tried to take noise measurements inside

1 three of the plaintiffs' homes. They're not in his report.  
2 I didn't find that out until I deposed him. But he actually  
3 took sound measurements inside their houses because that's  
4 what he was trying to do was to determine the level of noise  
5 inside their homes. The noise levels inside the homes were  
6 so low he couldn't use them.

7 He did a DNL calculation based on his sound  
8 studies too. It's also not in his report. But on  
9 cross-examination he's going to talk about that.

10 And he found almost the same identical number that  
11 Jack Freytag did, that the DNL average was in the 30s, the  
12 low 30s, less than half of the federal limit for aircraft  
13 noise.

14 This is the interesting part, and he'll talk --  
15 we'll talk about this on cross-examination, but he didn't  
16 use the DNL average in his sound study, he used a different  
17 thing. And the reason was it wasn't consistent with the  
18 plaintiffs' subjective descriptions of the noise. Not  
19 consistent with the plaintiffs' subjective descriptions.

20 So he decided not to use it, and instead he took  
21 measurements outside the house and then deducted an  
22 arbitrary factor to estimate the sound on the inside.

23 He then applied reading -- these readings to the  
24 Danish Ministry of Health, a standard they use for  
25 industrial noise for wind turbine farms. Now, he agrees

1 that this Danish Ministry of Health standard has never been  
2 adopted by the FAA or the EPA.

3 He also made no attempt to determine the annoyance  
4 level of the community. He only talked to five of the  
5 plaintiffs and he read some newspaper articles that Kim  
6 Gibbs gave him.

7 At the end of the day he's going to say that he  
8 doesn't know if the Twin Otter plane produces noise that  
9 interferes with daily activities.

10 Bill Kamin, who is our expert on real estate,  
11 testified that there's no measurable loss to any of the five  
12 plaintiffs' properties as a result of the Mile-Hi operation.

13 He did a full appraisal on each of the five  
14 properties, and he reviewed the sale of homes in what he  
15 refers to as the airport influence zone, which is actually a  
16 smaller area than the flight box.

17 And when he compared the sales, what he found was  
18 that the homes inside the flight box have actually  
19 appreciated faster than the other areas around it or the  
20 areas on the other side of Longmont, appreciated faster.

21 He interviewed realtors in the area, and he  
22 considered five different areas. His conclusion is that the  
23 Vance Brand Airport does not have an impact on prices, not a  
24 disclosure issue that homeowners should have to make.

25 Now, you might make an argument that looking at a

1 study from O'Hare Airport or LAX, that proximity to a major  
2 airport like that may have an effect on pricings.

3           It may be that the Vance Brand Airport in another  
4 context might have an effect on these prices, but the  
5 numbers don't show that. The numbers show that these homes  
6 are appreciating faster. And by the way, their own expert  
7 agrees with that.

8           The numbers that I will show you from his report  
9 show he took -- somehow he looked at some sales right around  
10 the plaintiffs' homes and says that those numbers are  
11 different, the resale numbers are different than in other  
12 areas. He doesn't know why. He doesn't know that it's  
13 related to Mile-Hi Skydiving other than the fact that Kim  
14 Gibbs has told him that it does. He just knows that the  
15 numbers are a little bit different. But even his numbers  
16 show that within the flight box they're appreciating faster.  
17 And he didn't do any appraisals.

18           Mr. Robinson, who is their -- well, the fact is  
19 he's a crash investigator, that's what he really does. He's  
20 going to be called to give some opinion on standard of care  
21 for aviators. He's never been an expert on this topic  
22 before. He's never been an expert on airplane noise. His  
23 entire testimony is based on four hours of observation on  
24 one day.

25           He says well, the flight paths, they can use a



1 different flight path. Well, I think the testimony from  
2 Mr. O'Barr and from the pilots and Mr. Casares will be  
3 they're required to fly in this flight box. That's what the  
4 agreement says with TRACON, which is the air traffic control  
5 at DIA.

6 Now, if they have a weather or a wind or some  
7 other adverse climb condition, they can ask to deviate from  
8 the box, and they do that sometimes.

9 Mr. Robinson is going to try to tell this Court  
10 that a noise sensitive area is an adverse climb condition.  
11 Judge, I'm not an aviation person, but that doesn't even  
12 make sense to me. And I don't think it's going to make  
13 sense to you either.

14 He opines gratuitously he called and talked to  
15 somebody from TRACON for a few minutes on the phone, and he  
16 says well, Mile-Hi should just ask to move the flight box.

17 Well, you're going to hear the evidence about  
18 that. And the fact is they have asked about the flight box  
19 and whether it can be changed, and you're going to hear the  
20 evidence about what they were told.

21 He says well, you can't fly in circles. Well, I  
22 mean, we have another -- counsel showed you loops of  
23 aircrafts of a Mile-Hi flight. We're going to show you  
24 another one that shows a different flight path. They don't  
25 use the same flight paths. Whether it's a circle or a loop,

1 the Court can make its own determination about that.

2 But even under the voluntary noise abatement  
3 procedures it doesn't say that you can't fly in circles, it  
4 just says we get complaints when you do.

5 The fact is is that the evidence will be that  
6 Mile-Hi is trying to comply with the voluntary noise  
7 abatement guidelines.

8 Mr. Robinson says well, you should use more  
9 expensive planes, you get a different engine or a different  
10 propeller. Interestingly, he will admit that if Mile-Hi is  
11 meeting the FAA regulation for noise, they are meeting the  
12 standard of care. That will be his testimony.

13 I presume he'll testify the same way he did in his  
14 deposition, that if Mile-Hi is meeting the FAA standard for  
15 noise, they're meeting the standard of care. The evidence  
16 will be that they are meeting the FAA noise limits.

17 Counsel talked about what he's going to ask for.  
18 I thought it was a little bit beyond opening, but I realize  
19 it's a Court-tried case, I didn't object. I'd like to make  
20 a comment about that though.

21 The cases cited in their brief where a Court  
22 awarded damages to people around airports are not these  
23 cases. Those are inverse condemnation cases, not this kind  
24 of case.

25 There has never been a case that we can find in

1 this country where a Court has awarded money damages against  
2 an operator of an airplane business such as Mile-Hi, not one  
3 single case where money damages have been awarded.

4 Also, there's not been one single case that we can  
5 find that a Court has ever issued an injunction against an  
6 operator like Mile-Hi. Plenty of cases that they tried that  
7 and was to told that this is governed by the FAA, and if  
8 you're in compliance an injunction is not proper. And it's  
9 not proper here, Your Honor.

10 I'd be happy to answer any questions the Court  
11 might have.

12 THE COURT: Thank you, Mr. Leffert. I have no  
13 questions.

14 Plaintiffs may call their first witness.

15 MR. OSOFSKY: Plaintiffs call Timothy Lim.

16 THE COURT: Mr. Lim, if you'll come up to the  
17 witness box, which is to my left here.

18 TIMOTHY LIM,  
19 called as a witness on behalf of the Plaintiffs, having been  
20 first duly sworn was examined and testified as follows:

21 THE COURT: Thank you. Please be seated.

22 DIRECT EXAMINATION

23 BY MR. OSOFSKY:

24 Q Mr. Lim, what do you do for a living?

25 A I work in research and engineering at the National

1 Center for Atmospheric Research here in Boulder.

2 Q And where do you live?

3 A 7468 Mount Sherman Road, which is in rural Boulder  
4 County, Gunbarrel Estates.

5 Q Would you mind standing briefly and pointing out  
6 to the Court approximately where your house is?

7 A This is my home here.

8 Q Okay. Thank you.

9 How long have you lived there?

10 A About nine and a half years.

11 Q And were you aware of the airport when you moved  
12 to the area?

13 A Yes.

14 Q When you moved to your current home, did you feel  
15 that the noise from Vance Brand was an issue?

16 A Nope.

17 Q Did that change at some point?

18 A Yes.

19 Q And when did noise in your mind start to become an  
20 issue?

21 A I really started noticing it about 2006. But it  
22 got significantly worse by about 2009, next few years.

23 Q And what did you observe as having changed at  
24 Vance Brand Airport in that time period?

25 A The arrival of a rather particularly noisy

1 aircraft. This purple-tailed Twin Otter became the majority  
2 of their operations.

3 Q Did you observe any increase in Mile-Hi's  
4 operations?

5 A Yes. Over the course of the last several years it  
6 has significantly increased.

7 THE COURT: Pardon me for the interruption. I  
8 notice that Mr. Lim came from a seat in the courtroom. And  
9 so I just to want to remind both attorneys that all  
10 witnesses are sequestered. And I'll leave the  
11 responsibility to both of you to maintain that.

12 MR. WEINER: Of course.

13 Just to remind Your Honor, Mr. Lim is a plaintiff.  
14 And they won't be sequestered.

15 THE COURT: Okay. Thank you. Please continue.

16 Q (By Mr. Osofsky) Mr. Lim, do you have a background  
17 in aviation?

18 A I trained as a pilot about 25 years ago.

19 Q And as a pilot do you object to the airport in  
20 general?

21 A No. I don't have a problem with Boulder's airport  
22 or Longmont's airport. Pretty much just the Mile-Hi  
23 operations.

24 Q You heard opposing counsel state in opening  
25 statements that you're trying to shut down the airport. Is

1 that accurate?

2 A Not at all.

3 Q Are you trying to shut down Mile-Hi's operations?

4 A No.

5 Q Are Mile-Hi's operations different than other  
6 airport traffic?

7 A Yes.

8 Q How so?

9 A Other general aviation aircraft will take off, get  
10 to a cruise altitude, throttle back and depart the area,  
11 often flying pretty much in a straight line away from the  
12 airport. I don't even hear the air -- general aviation  
13 aircraft really around Longmont because I don't live  
14 anywhere near that. I live 8 miles away.

15 But Mile-Hi's aircraft will continue to stay at  
16 full power or climb power continuously and never leave the  
17 area. They will just stay constantly circling around  
18 this -- the area the entire time.

19 Q Is there any audible change in power from  
20 Mile-Hi's planes from take-off until it they're ready to  
21 drop parachutes?

22 A You might hear them throttle back when they get to  
23 jump altitude. And but they're under pretty much full  
24 throttle or full climb throttle the entire time as long as  
25 they're in the area.

1 Q Is that climb longer or shorter than other planes  
2 taking off from Longmont Airport?

3 A Significantly longer.

4 Q Are Mile-Hi's planes in your observation more  
5 noisy than other propeller-driven aircraft at Longmont  
6 Airport?

7 A Certainly most any other aircraft that I've --  
8 that are typically operating out of either airport are  
9 piston-driven aircraft, meaning that they have engines that  
10 are much like reciprocating engines like --

11 MR. LEFFERT: Your Honor, I think -- I think we're  
12 getting into expert testimony about aircraft engines.

13 THE COURT: Any response, Mr. Osofsky?

14 MR. OSOFSKY: These are basic observations. This  
15 is not drifting in an area of expert testimony. The  
16 observation of single engine planes is not one that falls  
17 beyond the expertise of the average person.

18 MR. LEFFERT: He's going for the design of the  
19 engine itself, Judge.

20 THE COURT: Thank you, Mr. Leffert. I'll ask each  
21 of you when I want or need a response to an objection.

22 The Court concurs with defense counsel that  
23 Mr. Lim's testimony is now getting into an area of expert  
24 testimony, and he's not been qualified or submitted as an  
25 expert. So you will re-frame the question to that which

1 would be of a fact observation by a non-expert.

2 Q (By Mr. Osofsky) Have you observed the noise from  
3 single-engine aircraft as opposed to the twin-engine turbo  
4 props of Mile-Hi's aircraft?

5 A Yes.

6 Q And what has been your observation in terms of the  
7 difference in those?

8 A The twin-engine aircraft are significantly noisier  
9 than the typical single-engine aircraft.

10 Q Can you describe the noise from the Twin Otter?

11 A It's a deep, throbbing, low frequency vibration.  
12 It's a very irritating sound. It penetrates into my home,  
13 and it's very, very penetrating.

14 Q You can hear the noise inside your house?

15 A Yes, even with the windows closed, even down in my  
16 basement.

17 Q What is the noise like outside when the Twin Otter  
18 is running?

19 A It's a very pervasive, encompassing, throbbing  
20 vibration again. And it interrupts -- anytime I'm trying to  
21 sit and have a conversation on my deck, it is a very  
22 interrupting and irritating frequency, irritating noise.

23 Q Can -- how does the noise from the Twin Otter  
24 affect conversation outside?

25 A It is a conversation interrupter. Numerous times



1 I've had simple conversations, quiet conversations  
2 interrupted, and we've had to refrain from having a  
3 conversation outside.

4 Q How often do you hear Mile-Hi planes on a summer  
5 weekend?

6 A Pretty much all the time when it's clear and nice  
7 weather, which is also the same time which I want to be  
8 outside and enjoying my home.

9 Q Do you have an estimate of how many times you see  
10 Mile-Hi planes per hour?

11 A Anywhere from three to five times an hour. But  
12 they're -- when they're flying they're -- each flight is 10  
13 to 15 minutes long. So it's essentially a continuous  
14 operation from sun-up to sundown, and even after dark many  
15 times.

16 Q Are there any significant pauses or breaks in the  
17 noise during a typical summer weekend?

18 A Not really.

19 Q In your observation of Mile-Hi's operations, are  
20 weekends busier than weekdays?

21 A Weekends are significantly busier.

22 Q Is there a season that has greater volume of  
23 flights?

24 A Sure. During the summertime, anytime it's  
25 actually really nice out. Summertime is most definitely

1 their busy time.

2 Q Are you familiar with the data on flight counts  
3 that Mile-Hi has produced in this case?

4 A Yes.

5 Q If you could please turn to the exhibit book there  
6 that's next to you that's marked as plaintiffs' exhibits,  
7 and please turn to the first exhibit in that book.

8 MR. OSOFSKY: May I approach, Your Honor?

9 THE COURT: You may.

10 MR. OSOFSKY: Thank you.

11 A I'm looking at it.

12 Q (By Mr. Osofsky) Do you recognize the exhibit?

13 A Yes.

14 Q And what is Exhibit 1?

15 A Actually this starts off as Exhibit 2.

16 Q I'm asking --

17 MR. OSOFSKY: May I approach, Your Honor? I want  
18 to make sure the book is correct.

19 THE COURT: You may.

20 A Sorry, wrong tab.

21 Q (By Mr. Osofsky) Not a problem.

22 You're looking at Exhibit 1 now?

23 A Yes.

24 Q And do you recognize Exhibit 1?

25 A Yes.

1 Q What is Exhibit 1?

2 MR. LEFFERT: Your Honor, I object. There's been  
3 no foundation laid with this witness about this document.

4 THE COURT: The objection is sustained. You may  
5 lay more foundation as to how he has knowledge of the  
6 document and how he has seen it.

7 Q (By Mr. Osofsky) Have you been -- has counsel in  
8 this case given over to you a copy of that document?

9 A Yes.

10 Q And what was your understanding of where that  
11 document came from?

12 A From Mile-Hi's data.

13 Q Okay. And do you see on the right-hand edge of  
14 the document marking that is in a vertical format that says  
15 DF and some numbers followed with it?

16 A Yes.

17 Q Do you recognize the purpose of that?

18 A I believe it would be defendant's submittal  
19 document.

20 Q Have you reviewed that data?

21 A Yes.

22 Q And did the Mile-Hi data generally confirm or  
23 contradict your impression that the summer, and particularly  
24 weekends, are Mile-Hi's busiest times?

25 MR. LEFFERT: Your Honor, I object. This document

1 is not in evidence, and he's asking the witness to testify  
2 from it.

3 THE COURT: Any response, Mr. Osofsky?

4 MR. OSOFSKY: Your Honor, the witness has laid the  
5 foundation for his understanding of this document. To the  
6 extent that it needs to be verified at some point in this  
7 case that this is in fact the data from the defendant, then  
8 I would ask that the Court accept the testimony  
9 conditionally upon that foundation being laid at a later  
10 time.

11 As indicated from the Bates numbers, these are  
12 defendant-produced documents in response to interrogatories  
13 requesting specifically their data on flight counts. That  
14 is what the witness has testified to, his understanding of  
15 the data and his testimony.

16 THE COURT: You can keep the responses a little  
17 briefer, Mr. Osofsky.

18 The Court is going to let the witness testify in  
19 that regard. The Court will not consider the exhibit unless  
20 it is admitted into evidence, and the Court will give the  
21 weight it considers this testimony as.

22 You may answer the question.

23 Q (By Mr. Osofsky) Did the data generally confirm or  
24 contradict your impression that summer, and particularly  
25 weekends, are Mile-Hi's busiest time?

1           A     Certainly. The summer is a very, very busy time  
2 for Mile-Hi.

3           Q     Okay. I would ask you to turn to Exhibit No. 2 in  
4 that book please. Are you familiar with the chart that is  
5 the multi-colored chart that is the first page of Exhibit 2?

6           A     Yes.

7           MR. LEFFERT: Your Honor, sorry. Now we have a  
8 chart that's based on a document that's not in evidence.  
9 And there's no testimony about how that document was  
10 prepared. And I would object to the use of the chart until  
11 we have a witness that knows about the underlying exhibit.

12           THE COURT: Well, right now nobody has asked any  
13 questions about the chart. I've not looked at the chart  
14 because it's not admitted into evidence.

15           The question that I saw asked was are you familiar  
16 with the chart, and that is the multi-colored chart, the  
17 first page of Exhibit 2. He's answered that question. So I  
18 have to see what the next question is as to whether it's  
19 objectionable.

20           Q     (By Mr. Osofsky) Have you compared the data used  
21 to generate that chart to the data from Exhibit 1, Mile-Hi's  
22 data for flights?

23           A     Yes.

24           MR. LEFFERT: Same objection, Your Honor.

25           THE COURT: The objection is overruled. He can

1 testify to what he personally compared. I'm not going to  
2 review the exhibit unless it's admitted. I'll listen to the  
3 witness' testimony about what he personally compared, and  
4 I'll give it the weight that I think it is warranted.

5 Q (By Mr. Osofsky) And in your comparison of the  
6 data to that chart, does that chart represent an accurate  
7 summary of the data provided by Mile-Hi?

8 A Yes, it does.

9 MR. OSOFSKY: I would move for the admission of  
10 page 1 of Exhibit 2, Your Honor.

11 THE COURT: Any objection?

12 MR. LEFFERT: Yes, Your Honor. The document which  
13 this is based on is not in evidence. I think that this is  
14 not proper evidence either.

15 THE COURT: Any response?

16 MR. OSOFSKY: As I said earlier, Your Honor, as  
17 far as Exhibit 1 goes, I would ask the Court to accept the  
18 document as conditional based upon the foundation that has  
19 been laid.

20 To the extent that that needs to be verified with  
21 a later witness, the defense witnesses can do so. This  
22 is -- again, this is data from the defendants. This summary  
23 is a -- is a -- I'm sorry, I'm forgetting my Rule of  
24 Evidence in the 900 summary. And it is appropriate to  
25 summarize this data for the Court.

1 MR. LEFFERT: May I respond, Your Honor?

2 THE COURT: You may.

3 MR. LEFFERT: Judge, the problem is is that you're  
4 trying to use documents and information when the witness has  
5 no firsthand knowledge about it. It's he lacks personal  
6 knowledge under Rule 602. Authentication and foundation for  
7 the underlying exhibit has not been prepared.

8 And I'm not trying to create a problem here,  
9 Judge. But I don't think it's appropriate for witnesses to  
10 testify about things they don't have personal knowledge  
11 about. And so that's my objection.

12 THE COURT: The objection is overruled. The  
13 witness can testify to the first page of Exhibit 2. And I  
14 will admit it because there's been no indication that the  
15 defendants did not have the underlying data that was used to  
16 create the summary exhibit, which is what the requirement is  
17 under the Rules of Evidence.

18 I'm admitting it subject to Exhibit 1 being  
19 admitted. If Exhibit 1 is never admitted, then I will not  
20 consider the first page of Exhibit 2.

21 MR. OSOFSKY: Thank you, Your Honor.

22 If we could have the first page on the screen  
23 please?

24 Q (By Mr. Osofsky) What does Exhibit 1 (sic) depict?

25 A This is a diagram showing the total number of

1 Mile-Hi flight operations from 1998 to 2014. And each  
2 column is a cumulative total of the aircraft operations per  
3 year. And you can clearly see that the flight -- number of  
4 flights have more than doubled since 1998.

5 And I also of course note that the purple Otter is  
6 denoted as a purple color there on the chart. It starts  
7 flying in about 2006, and becomes the dominant aircraft for  
8 their operations.

9 Q I'd ask you to turn to the chart which deals with  
10 monthly totals in Exhibit 2. Are you familiar with that  
11 chart?

12 A Yes.

13 THE COURT: I'm not sure where you're at.

14 MR. OSOFSKY: I believe I am on page 3 of  
15 Exhibit 2, Your Honor.

16 Q (By Mr. Osofsky) Do you see a graph there depicted  
17 with a pink box?

18 A Correct.

19 MR. LEFFERT: Judge, I'll just make a standing  
20 objection to all pages. I understood your ruling. I just  
21 want to have a standing objection.

22 THE COURT: So noted. Thank you for making your  
23 record.

24 Q (By Mr. Osofsky) Have you compared the data used  
25 to generate this chart to the data provided by Mile-Hi



1 aircraft?

2 A Certainly. Yes, I did.

3 Q And does this chart represent an accurate summary  
4 of the data that was provided by Mile-Hi?

5 A Yes, it does.

6 Q And what --

7 MR. OSOFSKY: Then I move for the admission of  
8 page 3 of Exhibit 2, Your Honor.

9 THE COURT: Mr. Leffert?

10 MR. LEFFERT: Same objection, Judge.

11 THE COURT: The ruling is the same. It shall be  
12 admitted contingent upon Exhibit 1 being admitted. If  
13 Exhibit 1 is never admitted, then I won't consider page 3 of  
14 Exhibit 2.

15 MR. OSOFSKY: If we could have the chart on the  
16 screen please?

17 Q (By Mr. Osofsky) What does page -- what does the  
18 chart on page 3 of Exhibit 2 depict?

19 A It's a graph of Mile-Hi's full flight operations  
20 broken down by month for the year 2014 from January through  
21 December.

22 And you can see that in the summer months, or in  
23 the pleasant weather months from April through September, it  
24 approximately accum -- basically is about 80 percent of all  
25 their flights as depicted in that box there. That is their

1     busiest time of year by far.

2           Q     And of the busiest time of the year what are the  
3     busiest three months?

4           A     Oh, June, July and August.

5           Q     All right. I would ask you to turn to page 2 of  
6     Exhibit 2. Are you familiar with the chart on page 2 of  
7     Exhibit 2?

8           A     Yes, I am.

9           Q     And have you compared the data provided by Mile-Hi  
10    to the data that was used to generate the chart on  
11    Exhibit 2?

12          A     Yes, I did.

13          Q     And is Exhibit 2 an accurate summary of the data  
14    provided by Mile-Hi?

15          A     Yes, it is.

16                MR. OSOFSKY: I would move for admission of page  
17    2, understood that it's pursuant to a standing objection of  
18    defense counsel.

19                THE COURT: Anything you want to add, Mr. Leffert?

20                MR. LEFFERT: No, Judge.

21                THE COURT: Okay. Thank you.

22                Admitted under the same circumstances as page 1  
23    and 3 of Exhibit 2.

24                MR. OSOFSKY: If we could have page 2 on the  
25    screen please?

1           Q     (By Mr. Osofsky) What does the graph on page 2 of  
2 Exhibit 2 depict?

3           A     This is a graph showing the Mile-Hi flights broken  
4 down by from July 1st through September 30th from 2014.

5                     And you can see the short blue bars are weekday  
6 flights, and the long tall black bars are weekend flights.  
7 And you can clearly see that weekends are extremely busy  
8 times for Mile-Hi compared to the weekdays, which is --  
9 unfortunately the weekends are also when I choose to enjoy  
10 my home the most.

11          Q     Have you ever wanted to complain about the  
12 increase in noise from Mile-Hi's operations?

13          A     Well, certainly, yeah.

14          Q     And have you done so?

15          A     I have not filed any formal complaints. I felt it  
16 doesn't seem to go anywhere. And I defer to my wife who  
17 graciously enters complaints for both of us.

18          Q     To your knowledge, has Mile-Hi ever made any  
19 changes after receiving community complaints?

20          A     No.

21          Q     Has the airport management taken any action with  
22 respect to community complaints?

23          A     No.

24          Q     Has the City of Longmont taken any action in  
25 response to community complaints?

1 A No.

2 Q Do you believe that the noise has affected your  
3 property values?

4 A Certainly, yes.

5 Q Do -- in addition to the home that you pointed out  
6 to the Court earlier, do you have any other property in the  
7 area?

8 A Yes, I do.

9 Q And what is that property?

10 A 6947 Totara Place in Niwot.

11 Q And is that a residence or is that -- do you rent  
12 that residence?

13 A It's my former residence. And yes, I've been  
14 renting it.

15 Q Have you ever had a potential renter decline to  
16 rent because of the noise?

17 A Yes, I have.

18 Q Have you reviewed the opinion of plaintiffs' real  
19 estate expert regarding the loss in value of your  
20 properties?

21 A Yes, I have.

22 Q Do you generally agree with it?

23 A I think it's actually understated.

24 Q Have you been damaged in any other way other than  
25 damage to your property values from the noise from Mile-Hi

1 planes?

2 A The loss of the ability to enjoy my home has been  
3 rather significant, and the ability to enjoy my -- even  
4 inside my house has been greatly diminished.

5 Q Can you describe any specific instances when the  
6 noise has prevented you from the full use of your property?

7 A Certainly. I do a lot of engineering work on --  
8 and I have a lab in my basement where I'm working on some  
9 very in-depth source code programming for some  
10 micro-controllers that should hopefully have a big impact on  
11 some future research that I'm doing with autonomous  
12 vehicles.

13 And it's very cerebral work, it's very intense.  
14 If I were, you know, in Silicon Valley it would be my  
15 Silicon Valley garage so to speak.

16 And I can't -- I'm constantly broken of my train  
17 of thought, constantly being broken by Mile-Hi's aircraft,  
18 even down in my basement when I'm trying to concentrate on  
19 some of these tasks.

20 Q Is that where you do your work, down in your  
21 basement?

22 A I have retreated to my basement to try and set up  
23 a lab down there because it's been the only -- I thought it  
24 was going to be the only respite for my --

25 Q Did it prove to be?

1           A     It did not prove to be sufficient.

2           Q     What kind of relief are you asking for from this  
3 Court?

4           A     A reduced number of hours of operations,  
5 particularly on the weekends. I would like to see Mile-Hi  
6 operate just one airplane at a time. And I would also think  
7 they should be prohibited from not flying aircraft that  
8 don't have the quieter equipment if they have it available  
9 to them.

10                   They could be a better citizen, a better neighbor.  
11 And we've asked numerous times to please help us out, please  
12 be a good neighbor. They have not chosen not (sic) to do  
13 that.

14           Q     Have you ever asked for Mile-Hi's operation to be  
15 shut down?

16           A     No.

17                   MR. OSOFSKY: No further questions on direct, Your  
18 Honor.

19                   THE COURT: Thank you.

20                   Cross-examination.

21                   MR. LEFFERT: Thank you, Judge.

22                                   CROSS-EXAMINATION

23 BY MR. LEFFERT:

24           Q     Mr. Lim, when did you buy your current home?

25           A     2006.

1           Q     And both you and your wife have lived in that area  
2 before?

3           A     Yes.

4           Q     Was that the condominium you spoke about?

5           A     No.

6           Q     Have you read your wife's deposition from this  
7 case?

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

9           Q     You knew that Vance Brand Airport was nearby when  
10 you brought your home, didn't you?

11          A     Yes.

12          Q     How many miles are you from the Vance Brand  
13 Airport?

14          A     About 8 miles.

15          Q     And did you know you were in this flight box when  
16 you bought the house?

17          A     Never. How would I know anything about a flight  
18 box I guess? No. Was it published in the papers or  
19 anything?

20          Q     Well, it's a public record at the airport. Have  
21 you ever looked at the airport records?

22          A     No.

23          Q     Have you ever gone to the airport to talk to the  
24 airport manager?

25          A     No.

1 Q Ever gone there to make a complaint?

2 A No.

3 Q You said that the airport hasn't done anything  
4 about the noise complaints. Did I hear you right?

5 A Yeah, as far as I know, nothing.

6 Q Do you have any personal knowledge of the aircraft  
7 noise studies that have been done by the City?

8 A No.

9 Q You don't know about those?

10 A I -- only what I've read in the papers.

11 Q So you know the Terracon report was done in  
12 response to noise complaints by your wife; right?

13 A I -- if you say so.

14 Q Well, I'm asking you, do you know?

15 A Whether it was done in response to my -- complaint  
16 from my wife?

17 Q Yeah, or people affiliated with your wife.

18 A Are you stating that they did a study, and I'm  
19 supposed to comment on why they did that study?

20 Q No, sir. You made -- you gave testimony to the  
21 judge on direct that the City has not done anything about  
22 specific noise complaints. And I'm asking you about  
23 specific things the City has done.

24 A I said not that I know of.

25 Q What about the air -- the study of the airplane



1 noise that was done by Tim Barth, the former airport  
2 manager, did you know about that?

3 A Not really.

4 Q Do you know why he did that noise study?

5 A No, I certainly don't.

6 Q Do you know about any community outreach that  
7 Mr. Barth and Mr. Casares have been involved with in the  
8 community to address issues of noise? Do you know about  
9 that?

10 A I haven't seen any.

11 Q How far are you from the Boulder Airport?

12 A About 4, 5 miles.

13 Q So you're actually closer to that airport, aren't  
14 you?

15 A Probably, yeah.

16 Q Let me ask you something, do you have any  
17 knowledge about a Twin Otter that's flown out of the Boulder  
18 Airport?

19 A No.

20 Q Would that surprise you if you learned that?

21 A No.

22 Q Now, you testified about hearing Mile-Hi planes  
23 and how it affected your discussions with people; is that  
24 right?

25 A Yes.

1           Q     How far are the Mile-Hi planes typically when they  
2 go over your house?

3           A     How far --

4           Q     How high in the air are they?

5           A     How high they are.  Anywhere from 2- or 3,000 feet  
6 to 10- or 15,000 feet.

7           Q     Isn't it true that they're typically between 3,000  
8 and 6,000 feet over your house when they go over?

9           A     I haven't gotten a laser out to judge that, but  
10 I -- sure, that sounds --

11          Q     So that's roughly a mile to a mile and a half;  
12 right?

13          A     Yeah.  Well, 3,000 is half a mile, is a little  
14 over a half a mile.

15          Q     So if they're at 6,000 feet, they could be a mile  
16 or more higher above your house?

17          A     Just over a --

18          Q     Isn't it hard to see those planes when they're  
19 that high over your house?

20          A     No.  Oh, no, not at all.  Crystal clear, beautiful  
21 Colorado skies.

22          Q     Now, it's fair to say that you don't really hear  
23 the other planes used by Mile-Hi; is that right, other than  
24 the Twin Otter?

25          A     No.  They may not be as annoying as the other

1 ones, but the aircraft are certainly noticeable.

2 MR. LEFFERT: Your Honor, may I approach the  
3 witness?

4 THE COURT: For what purpose?

5 MR. LEFFERT: To hand him his deposition.

6 THE COURT: Do you have the original?

7 MR. LEFFERT: I have an extra copy for --

8 THE COURT: No, I was wondering if you had the  
9 original for me to unseal.

10 MR. LEFFERT: I do.

11 THE COURT: And have you shown the original to  
12 Mr. Weiner?

13 You may approach the Court with it.

14 MR. LEFFERT: Do you want me to approach the bench  
15 with it?

16 THE COURT: If you want me to unseal it.

17 MR. LEFFERT: I'll do whatever you want me to do,  
18 if you want to unseal it.

19 THE COURT: The Court makes a record that it has  
20 unsealed the original deposition of Timothy Lim on  
21 October 13, 2014.

22 MR. LEFFERT: Thank you, Judge.

23 For the record, handing Mr. Lim a copy of his  
24 deposition.

25 Q (By Mr. Leffert) Do you remember when your

1 deposition was taken, Mr. Lim?

2 A Yes.

3 Q Can you see the date on the front page there?

4 A October 13, 2014.

5 Q I'd ask you to turn to page 25 if you would. Yes,  
6 25.

7 A I have it.

8 Q Beginning on line 3, I'm going to read the  
9 question and answer, and I'd ask you to read with me. And  
10 then I'll ask you a follow-up question if you would.

11 What about the other aircraft that they used  
12 besides the Twin Otter, how often do you hear them?

13 Answer, I couldn't say.

14 Question, Is it really just the Twin Otter that  
15 you're complaining about the noise?

16 That's the chief complaint.

17 Well, my question is a bit different, sir. Are  
18 you complaining about the other aircraft that they use?

19 Your answer is No.

20 Was that truthful testimony when you gave it  
21 during your deposition?

22 A It was, but I was not -- my question -- so could  
23 you restate your question I guess?

24 Q Right. Was that truthful testimony when you gave  
25 it on October 13, 2014?

1           A     Yes.  But I think I misunderstood the question at  
2 the time.

3           Q     You just misunderstood it?

4           A     Yeah.

5           Q     Let's take a look at page 59 beginning on line 8.  
6 Question -- well, question was Right.

7                     And the answer is The Twin Otter is the one that  
8 creates the majority of the noise and my chief complaint.

9                     Is that truthful testimony on that day?

10          A     Yes.

11          Q     Have you changed positions immediately before this  
12 trial about complaining about the other planes Mile-Hi uses?

13          A     No.  The Twin Otter is really my chief complaint.

14          Q     Now, counsel asked you some questions about --  
15 showed you a chart that was on the screen and asked you  
16 about the number of flights that Mile-Hi flies; right?

17          A     Yes.

18          Q     Now, in your chart you put the purple Twin Otter  
19 on top of the other flights; right?

20          A     Correct.

21          Q     Did you prepare those charts by the way?

22          A     I --

23                     MR. OSOFSKY:  Enter an objection.  We don't have  
24 any foundation for this exhibit to be published at this  
25 time.

1 THE COURT: This is not the same exhibit as the  
2 one that you utilized?

3 MR. OSOFSKY: It is not.

4 THE COURT: Okay. The objection is sustained.  
5 But you may lay more foundation.

6 MR. LEFFERT: Okay.

7 Q (By Mr. Leffert) Counsel asked you questions about  
8 looking at the number of flights that Mile-Hi flow -- flew,  
9 I'm sorry?

10 A Yes.

11 MR. LEFFERT: Counsel, will you please put up the  
12 exhibit that you have where you stacked the Twin Otter  
13 flights on top of the others?

14 Q (By Mr. Leffert) If you'd look, Mr. Lim, there's a  
15 screen in front of you that shows up. Would you look at the  
16 far right column, which is 2014. And can you tell the Court  
17 the number of flights that we're looking at there, total  
18 number?

19 A I can totally look. Total number about 3,400.

20 Q That would be the same height as is indicated on  
21 this chart here; isn't that correct?

22 A That sounds about right.

23 Q If you look at the first year, same situation. In  
24 other words, it's the same number of flights on this chart  
25 as it is on that one?

1 A That one only goes to 2005, yes. I see, yes.

2 Q Okay. Now your complaint is that the Twin Otter,  
3 your chief complaint, has gotten significantly worse over  
4 the years; right?

5 A Yes.

6 Q Well, let's take a look at the Twin Otter flights  
7 on the purple. You think that's significantly worse?

8 A It is a significant noise generator.

9 Q It's almost the same from -- there's a jump up I  
10 guess in 2007, another jump up in 2010. But it's actually  
11 lower now than it was four, five years ago; right?

12 A I'm sorry, yes, I guess that would be  
13 understandable. Total number of flights has been increasing  
14 quite a lot.

15 Q Well, if that chart is accurate you would agree  
16 with me that that's not the case; right?

17 A I see what you're saying. Is that the --  
18 specifically the Twin Otter?

19 Q Right.

20 A Yeah.

21 Q Have you ever seen the website Citizens For Quiet  
22 Skies?

23 A Yes, I have.

24 Q When did you see it?

25 A Off and on for the last couple of years.

1 Q Did you prepare that website?

2 A No, not at all.

3 Q Who did?

4 A I believe Kimberly Gibbs, my wife.

5 Q Let me ask you to turn to page 37 of your  
6 deposition. I'm sorry, Mr. Lim, that's my fault. Page 36  
7 on line 20, when you get there let me know. I'll read a  
8 question and answer, and ask you to read along with me.

9 Found it there? Sometimes that type is small.

10 A I see.

11 Q Okay. Line 20 I say Okay. Are you aware that  
12 there is a website for Citizens For Quiet Skies?

13 Your answer, Actually I guess I really sort of  
14 don't. I think there's some sort of Facebook page of some  
15 sort, but I think that's it.

16 Page 37, Have you ever seen this website before --  
17 on line 20, Have you ever seen this website before?

18 21 you say No, I have not.

19 So that's different testimony than you've given  
20 today; right?

21 A I would say I was probably not accurate in the  
22 fact that I have not visited that web page. I've looked  
23 over my wife's shoulder as she's been curating it or doing  
24 something else like that. But I think that's been mostly as  
25 more recent than -- than in the past.



1 Q Your wife prepared some videos for this trial, did  
2 she not, of Mile-Hi flights?

3 A I -- yes, I guess so.

4 Q Were you present when she prepared the videos?

5 A I've been oftentimes in the room.

6 Q Were you present when Mr. Robinson prepared his  
7 videos for this case?

8 A No.

9 MR. LEFFERT: No further questions, Your Honor.

10 THE COURT: Thank you.

11 Any redirect?

12 MR. OSOFSKY: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. OSOFSKY:

15 Q You were asked earlier about whether you were able  
16 to recognize the Twin Otter in the air. Does the Twin Otter  
17 have any distinctive markings that would allow you to  
18 recognize it?

19 A Certainly, yes. The fixed landing gear, the big  
20 twin, the big bright purple tail of the aircraft. And it is  
21 a big Hershey bar wing on the aircraft.

22 Q Now, you indicated in your earlier testimony that  
23 you began to notice an increase in noise in 2006; is that  
24 right?

25 A Yes.

1 Q And is that where you see an increase from 2005 to  
2 2006 of the Otter use?

3 A Oh, yes.

4 Q And the four years in which the Otter has seen the  
5 most dominant use on this chart, those would be what years?

6 A Well, 2010 for starters. Both 2014, 2007, 2013  
7 and 2014 are all pretty big years.

8 Q And the numbers from 2013 and 2014 were 1660 and  
9 1704 flights of the Otter in those years. Do you see that  
10 in the chart?

11 A I see that.

12 Q So in 2014 the difference between that and the  
13 banner year of 2010 is approximately how many flights?

14 A The difference between them, it's a good 300 more  
15 flights.

16 Q 2013 and 2014 still represent two of the biggest  
17 years of use of the Otter?

18 A Certainly.

19 MR. OSOFSKY: Thank you. No further questions.

20 THE COURT: Thank you, Mr. Lim. You may be  
21 excused and go back to your seat.

22 Counsel, we're going to take our morning break  
23 now. Given the large number of people that are in the  
24 courtroom and my anticipation that many people will need to  
25 use the restroom, I'm going to take a 20-minute break so

1 there aren't people trailing back in while you have  
2 witnesses on the stand. That will cause too much of a  
3 disruption for you.

4 So we will reconvene just about 10:22. Thank you.

5 (A recess was taken.)

6 THE COURT: Mr. Weiner, you may call your next  
7 witness.

8 MR. WEINER: Can I ask generally that we not  
9 publish documents in the courtroom unless they're being used  
10 or otherwise admitted?

11 THE COURT: We'll deal with that on a case-by-case  
12 issue as a document appears.

13 MR. WEINER: All right. I meant keeping these  
14 exhibits up over here.

15 THE COURT: You may turn around the first one. I  
16 think that will be sufficient. This is a trial to the  
17 Court, so it's not really necessary.

18 MR. WEINER: That's well taken, Your Honor.

19 We call Mr. Rick Dauer to the stand.

20 THE COURT: Mr. Dauer.

21 RICHARD DAUER,  
22 called as a witness on behalf of the Plaintiffs, having been  
23 first duly sworn was examined and testified as follows:

24 THE COURT: Thank you. Please be seated.

25 DIRECT EXAMINATION

1 BY MR. WEINER:

2 Q Good morning, Mr. Dauer.

3 A Morning.

4 Q Could you give your name to the Court again?

5 A My name is Richard Dauer.

6 Q And what do you do for a living?

7 A I'm a chemical engineer. I work at CordenPharma  
8 Colorado in Boulder.

9 THE COURT: Pardon me just a moment. Would you  
10 spell your last name please?

11 THE WITNESS: D-A-U-E-R.

12 Q (By Mr. Weiner) Mr. Dauer, where do you live?

13 A 4019 Milano Lane in Longmont.

14 Q Mr. Dauer, can you identify your house on the map  
15 that I put up on the board? First before you -- actually,  
16 yes, you can come over.

17 A I believe it's this one.

18 Q I see.

19 And does that map accurately depict the area  
20 around which you live?

21 A Yes.

22 Q And are you familiar with the blue line?

23 A Yes.

24 Q And what is that blue line?

25 A That's the flight box as it was described earlier

1 for Mile-Hi's flying activities for skydiving.

2 THE COURT: Mr. Dauer, you may come back and be  
3 seated. Thank you.

4 MR. WEINER: At this time I move for admission of  
5 the fifth page of plaintiffs' Exhibit 2.

6 THE COURT: Mr. Leffert?

7 MR. LEFFERT: I have no objection, Judge. We have  
8 the exact same thing that's just blown up a little bit  
9 bigger. If we could also admit that?

10 THE COURT: Why don't you show me that also.

11 If you have any objection, Mr. Weiner, after  
12 you've seen the document --

13 MR. WEINER: No, I don't. Is it located on an  
14 exhibit list?

15 MR. LEFFERT: Yeah, it's Exhibit L.

16 THE COURT: Any objection?

17 MR. WEINER: I do not, Judge.

18 THE COURT: Then the Court will admit the fifth  
19 page of Exhibit 2 and Exhibit L.

20 Q (By Mr. Weiner) Mr. Dauer, would you take the  
21 black magic marker in front of you and go and circle your  
22 house on the smaller of the two charts, and then you can be  
23 seated.

24 A (Indicating.)

25 Q Do you know about how far from the airport you

1 live?

2 A I think I'm about 2 miles.

3 Q And when did you buy your house?

4 A 2001, October I believe, September, October.

5 Q Do you recall signing any acknowledgment about the  
6 Vance Brand Airport when you purchased your house?

7 A You know, at the time we were living just about a  
8 quarter mile north closer to the airport, and we lived there  
9 about ten months.

10 And at the time that, you know, we were going to  
11 do closing there were -- was a last-minute document that was  
12 brought by the realtor over to our house. And I came home  
13 from work, my wife said you got to sign this, get it over to  
14 them. And so, yeah, I read it, signed it and sent it back.

15 And I think when we were doing depositions, you  
16 know, I was looking for this document and could never find  
17 it.

18 But yeah, I do recall signing something  
19 acknowledging the airport. My wife and I, we talked about  
20 it and we just agreed there was no issue with the airport.  
21 You know, personally I like the planes, I like watching them  
22 fly over.

23 Q And did that document prohibit you from bringing  
24 the kind of action we have today, a nuisance lawsuit against  
25 Mile-Hi?

1           MR. LEFFERT:  Objection, calls for a legal  
2 conclusion, Your Honor.

3           THE COURT:  Sustained.

4           Q     (By Mr. Weiner) Do you know if that document  
5 prohibited you from taking any particular action involving  
6 this case?

7           A     No, I --

8           MR. LEFFERT:  Same objection, Your Honor.

9           THE COURT:  The objection is sustained as to the  
10 extent it's calling for a legal conclusion.  You can  
11 re-frame the question.

12          MR. WEINER:  Certainly.

13          Q     (By Mr. Weiner) Do you know if that document  
14 prohibited you from taking any action that's relevant today?

15          MR. LEFFERT:  Same objection.

16          A     I don't believe so.

17          MR. WEINER:  Same objection, Your Honor.

18          THE COURT:  Mr. Dauer, when there's an objection  
19 you have to wait until I rule on it.  I understand you may  
20 not be familiar with the proceedings and how they work.

21          MR. LEFFERT:  Also, Your Honor, the document is  
22 not in evidence.

23          THE COURT:  I'm going to overrule the objection  
24 because it's just asking him if he knew.

25                And so you can answer the question.

1           THE WITNESS: My recollection, it was an  
2 acknowledgment that I live near the airport and couldn't do  
3 anything with the City is my recollection.

4           Q     (By Mr. Weiner) All right. Has your position --  
5 you just said that you actually like airplanes?

6           A     Oh, yeah.

7           Q     Has your position about airplanes changed since  
8 you bought your home?

9           A     Only the airplanes that make a lot of noise and  
10 circle around my house. Even the airplanes that make a lot  
11 of noise that don't circle around my house and aren't part  
12 of the Mile-Hi team, you know, I enjoy watching them fly  
13 over, whether it be a B-17 bomber or some other large  
14 transport plane.

15          Q     So what are the situations that were causing you  
16 problems with the planes that were flying overhead?

17          A     It's -- it's sort of a historical thing that's  
18 built up. We bought there in 2001. There really was no  
19 issue whatsoever.

20                   And then towards around 2005, 2006 the noise just  
21 dramatically started picking up. And it really hasn't --  
22 well, it's -- it keeps getting worse.

23                   And so part of my reason I wanted to get into this  
24 lawsuit is because I felt like it could get nothing but even  
25 more worse, so --



1 Q Let's talk about the neighborhood you live in.

2 A Um-hmm.

3 Q Has that changed over time?

4 A Sure. When I first moved into my home I was the  
5 first person in my development that moved there in the  
6 Renaissance community south of Clover Basin Road. I was the  
7 first board member of the -- who was a homeowner in that  
8 area. So I've seen -- you know, I know the plats, I know  
9 how the place has been developed, how the developers have  
10 approached it. I've seen all that.

11 Q And how have things changed since 2001 when you  
12 purchased the house?

13 A There's -- the Renaissance development is about a  
14 thousand homes. And that doesn't include all the homes in  
15 that area. It's almost built out. They're doing the last  
16 bit of my Renaissance area.

17 It's equipped with paths. There's an open space  
18 behind my house where there's a path and a ditch, you know.  
19 So we like that a lot so my wife and I we can walk our dog.

20 And also, you know, they built the middle school,  
21 and there's much more in the way of parks and that sort of  
22 thing so that people can try to recreate out in those areas.  
23 It's just when you try to do that there's continuous noise  
24 from overhead.

25 Q So is the Renaissance development the only

1 development that came into existence after 2001 out in your  
2 neck of the woods?

3 A No. There's an additional -- there's additional  
4 developments to the west and also the -- what would be the  
5 northwest corner of there -- next to the high school across  
6 from Seagate. There's a development going in there now as  
7 well.

8 Q Do you know their names?

9 A One -- they call it the Diocese. It used to be  
10 Catholic property, and I can't remember which Diocese they  
11 call it.

12 And I don't recall the name of the one that's  
13 directly bordering on 75th. It's another development.  
14 There's also one south of that. A lot of building going on.

15 Q Do you know the approximate number of residential  
16 units in, oh, let's take the old Diocese property?

17 A No. You know, I would be guessing and  
18 speculating. But I would say when it's all built out it's  
19 probably going to be 5,000 more houses than what was there  
20 when I start -- when we bought in there. But we knew that  
21 it was coming.

22 Q Does that include the 75th Street --

23 A Yes.

24 Q -- development as well?

25 A Um-hmm.

1           THE COURT:  And I'm going to remind you,  
2 Mr. Dauer, to make sure you answer yes or no rather than  
3 um-hmm.

4           THE WITNESS:  Yes.

5           Q     (By Mr. Weiner)  Would you be able to distinguish  
6 the Mile-Hi planes from other planes that fly over your  
7 property?

8           A     Yes, the Twin Otter most definitely.  And then  
9 there's the King Air I think it's called.

10                   The most noticeable thing about these planes is  
11 that they're -- they have two engines.  The Twin Otter has  
12 got the purple tail and it sort of looks like a -- you know,  
13 it's got the fixed landing gear.  So you can -- it looks  
14 sort of like an insect flying over the city depending how  
15 far away you are.  Yeah, I can -- I know them by sight.

16           Q     And the Super King Air, do you know that as well?

17           A     That's the other two-engine plane; right?  Then  
18 there's another one that they use, but that's not as -- it's  
19 very infrequent.

20                   And you know, just as far as sound level, the Twin  
21 Otter is definitely the loudest of all three.

22           Q     Tell us about Mile-Hi's operations.

23           A     So you know, in the morning there's the warming  
24 up.  I mean, I can't really -- you know, I don't go over  
25 there to check and make sure it's them, but this is what

1 goes on in the morning.

2           There's warming up around 7:00. And about  
3 8:00 things start heating up a whole lot. So there's -- the  
4 typical flight is there's a take-off, and that's usually --  
5 it's either going southeast or northwest, I think that's the  
6 way the run way goes.

7           And that's usually loud, although I have to admit  
8 if I compare it to other planes, it's not -- it's not, you  
9 know, dramatically all that much louder. And I would say  
10 comparing it to the other aspects of their operations this  
11 is not the worst part.

12           So they take off. And at that point because I  
13 live close to the airport they fly away. And so there's a  
14 brief period where the sound drops and then it goes back up  
15 again. And then there's just a constant drone that occurs  
16 while the plane climbs, and it's usually about two loops.

17           And then when they come back to the airport there  
18 is -- and I don't know why this occurs, but there's a  
19 dramatic climb that goes on right at the end where the sound  
20 gets a whole lot louder. And then they back off the  
21 throttle, plain out, and then they drop their jumpers.

22           And then -- I'm not quite sure, this is what was  
23 explained to me why it was being done from someone on the  
24 Airport Advisory Board. But then they go around to drop off  
25 another series of jumpers at a higher altitude, so there's

1 another climbing episode that goes on.

2 And then they do the same final climb, plain out,  
3 drop their -- their -- the jumpers. And then -- this is  
4 something that's begun in the past three years or so. And I  
5 don't know if it's in response to something or if they're  
6 trying to get back to -- well, they're trying to get back to  
7 the ground faster, but there's a --

8 MR. LEFFERT: Your Honor, I object. Lack of  
9 foundation.

10 THE COURT: Sustained.

11 THE WITNESS: Okay. That's true.

12 THE COURT: Wait, Mr. Dauer. You have to wait  
13 until I rule on the objection, and then I'll let you know  
14 whether you can continue or not.

15 So the objection is sustained. There's a lack of  
16 foundation. And you may continue, but not talk about things  
17 that you don't have personal knowledge of.

18 Mr. Weiner.

19 Q (By Mr. Weiner) Can you finish your description of  
20 Mile-Hi's flights?

21 A So --

22 Q But leave out things you don't personally know.

23 A So then there is a dive, and recently this has  
24 gotten -- I mean, it was scary at first because it sounds  
25 like a plane is going to, you know, hit the ground

1 somewhere. And you know, now that I know that it's just  
2 Mile-Hi coming back down to the ground it's not as big a  
3 deal.

4 But they screech down and then, you know, pull up  
5 out of the dive. And they come right down the ditch that's  
6 behind my house. And this is something that didn't used to  
7 happen in the past, and I'm -- I don't know why this is  
8 occurring. But most of their flights now are returning this  
9 way over my house and to return to the airport and land.

10 And it was the thing that -- that was what  
11 motivated me to get into this lawsuit was the screech  
12 diving, because I just felt like that was unnecessary.

13 Q Can you pinpoint the time period for us of the  
14 screech diving?

15 A I would say it was about three years ago.

16 Q Have you made complaints about Mile-Hi in general  
17 or about the screech diving?

18 A Yeah, I did.

19 Q You've got to wait until I finish my question  
20 because it will drive the reporter crazy.

21 So --

22 A So I did make some complaints to -- you know,  
23 there was some way to go in through the airport and send an  
24 e-mail or something like this, and I did that a couple  
25 times. I just didn't feel like anything was really, you

1 know, being done about it.

2 I also wrote a couple of e-mails to Tim Barth.

3 And then there's some lady from the FAA that he recommended

4 I contact about different things.

5 I was just curious what could be done to -- you  
6 know, to make the noise more manageable.

7 Q And was -- what was the response?

8 A Basically --

9 MR. LEFFERT: Objection, hearsay.

10 THE COURT: Sustained.

11 Q (By Mr. Weiner) Did you obtain any relief from  
12 your complaints?

13 A No. And so then after that I tried to contact all  
14 the board members at the time either by phone or e-mail to  
15 find out where they stood on the issue.

16 Q And once again, did you receive any relief from  
17 your complaints or responses to your letters?

18 A The mayor said that he was --

19 MR. LEFFERT: Objection, hearsay.

20 THE COURT: Sustained. The Court will not  
21 consider anything in the response that referred to what  
22 someone else said.

23 Q (By Mr. Weiner) Are you a member of Citizens For  
24 Quiet Skies?

25 A I don't know how that's defined. I have visited

1 the website, and I am on the mailing list, which is good.

2 So --

3 Q And you know, let's go back to that previous  
4 question. So did you receive relief when you -- any type of  
5 relief when you notified Longmont officials or the airport  
6 about your concerns with general flying or the screech  
7 diving?

8 MR. LEFFERT: Objection, compound.

9 THE COURT: Sustained, but you may re-frame.

10 MR. WEINER: Take them one at a time.

11 Q (By Mr. Weiner) Did you receive any response to  
12 your complaints to any of the Longmont officials concerning  
13 the Mile-Hi operations in general?

14 A To their credit they all got back to me. If I  
15 called them on the phone they called me back. If I wrote  
16 them an e-mail, they wrote me back.

17 Q Did operations change?

18 A No.

19 Q Okay. So did you notice noise before or after you  
20 found out about this group, one of the plaintiffs, Citizens  
21 For Quiet Skies?

22 A Did I notice noise before? Yes, I did.

23 Q And how did you eventually become associated with  
24 Citizens For Quiet Skies?

25 A Well, I was sort of blogging around and wondering,



1 you know, what are my rights as a homeowners as far as, you  
2 know, for the noise. And I think the first thing I ran into  
3 was the Citizens Against Citizens For Quiet Skies because  
4 they were pointing out the flight box, which I never heard  
5 about.

6 And then I think through that I found out that  
7 there was the Citizens For Quiet Skies. And yeah, that's  
8 how I sort of learned about that.

9 But you know, I -- I don't know what's on that  
10 website. I'm sure I visited it.

11 Q Did you look at other blogging logs concerning  
12 this issue?

13 A You know, I wouldn't -- you know, when you're  
14 searching around the web it's hard to say where you've been,  
15 especially when it's years past. But yeah, yeah, you know,  
16 so I always find it interesting how vicious people can be  
17 about people complaining about noise.

18 Q Do -- how often do planes fly over your home?

19 A So it's dependent on how many flights they're  
20 doing, which -- I shouldn't assume it. It's dependent on  
21 how many flights they're doing. And typically bare minimum  
22 we gets two flights an hour. And what I was describing  
23 earlier seems like they take five to seven minutes or so to  
24 load the plane. And so the whole flight thing takes about  
25 20 to 25 minutes.

1 Q And you described the entire flight period. Can  
2 you now focus on the aspect of the flight that occurs within  
3 the vicinity of your home?

4 A Well, one issue about the noise is there's  
5 definitely periods where it's most loud, but it's always  
6 there. And you know, you can try to escape from it, but I  
7 can always hear it anywhere in my house, whether it be my  
8 basement, upstairs, living room, whatever. Even playing  
9 music it's -- there's really no escape from it.

10 Q Do you -- can you describe any of the noise when  
11 it's circling over your house?

12 A It's main -- I would think it's an A sharp, and  
13 it's just continually buzzing on there, same sound the whole  
14 time.

15 Q And how would you know it's an A sharp?

16 A I have a piano, I'm a musician. So I play lots of  
17 instruments, so more the piano. I think it's A sharp,  
18 pretty sure.

19 Q And are there any other sounds associated with its  
20 flight over your house besides continuous A sharp?

21 A Well, I described what I call the screech diving  
22 and the take-off and the -- you know, the warming up.

23 Q Have you ever noticed that there's more than one  
24 flight at a time?

25 A Absolutely. And that's probably the worst. Both

1 planes don't play the same note, so there's a dissidence  
2 there. And that's -- that's very annoying. And I'm talking  
3 about the two twin-engine planes because that seems to be  
4 what's mostly used.

5 Q Have you heard the Mile-Hi noise in places other  
6 than your own home?

7 A Oh, absolutely. Just to give you my favorite  
8 examples, so I'm up at Rocky Grass and I'm camping up there,  
9 and I'm awakened by the Twin Otter because they're taking  
10 off in that direction.

11 I'm a bike rider, so I go up Lefthand Canyon. And  
12 the noise goes -- you know, it's not all the way up to  
13 Buckingham Park. I'd say it's about halfway there from  
14 US 36.

15 The other one, sky -- Silver Creek High School,  
16 every graduation. I have three kids, so I've had to go  
17 through this every graduation, treated to continual droning  
18 from the airplanes from Mile-Hi.

19 Lake Valley, when I go out to visit friends at the  
20 lake there, even out there the noise is so bad. And I just  
21 watch it happen, people stop talking to me because of the  
22 noise. And you know, it's just amazing, yeah.

23 So those are just some examples. Working in my  
24 yard I think is -- you know, it's very difficult. I mean,  
25 it's one thing if you can't escape it in your house. But if

1 you try to step outside it's just -- it is so loud there's  
2 no ignoring it. And it's actually louder than your  
3 lawnmower. You know, I can hear the -- it's not like it's  
4 not drowned out by the lawnmower at all. I find that really  
5 truly amazing.

6           And then I can't enjoy doing anything outside in  
7 my yard. I can't do the -- can't do my gardening, I can't  
8 entertain. Because whenever we have had people over it's  
9 just a total interruption the whole time. You can't have a  
10 conversation.

11           Oh, then there's walking the dog around the  
12 neighborhood, that sort of thing. You can't even go to  
13 Niwot, walk around on their trails because the thing's  
14 totally always flying over the area, you know, giving us  
15 this tone of noise.

16           And that's true also wherever you go walking,  
17 anywhere around that box you're going to be frequented with  
18 noise from Mile-Hi.

19           Q     What's your view about Mile-Hi's flights on your  
20 property values?

21           A     Well, this is the way I look at it myself. If I  
22 were buying a house, I'm only going to be able to look at  
23 them on the weekends. And typical house hunting season  
24 starts in March and, you know, that sort of thing.

25           So it's during, you know, some of the -- when

1 they're flying the most. And so, you know, when they come  
2 and look at your house they're going to look -- be outside,  
3 and there's no mistaking the noise.

4 So to me, you know, one of the factors for real  
5 estate price is how long it's on the market. You're going  
6 to be more apt to lower your price if it's been on the  
7 market longer because you haven't been able to sell it.

8 And so if I have buyers coming --

9 MR. LEFFERT: Your Honor, I'm sorry, I object.  
10 This is all speculation.

11 THE COURT: Sustained.

12 Q (By Mr. Weiner) So just tell me about your  
13 experience, personal experience that has bearing on the  
14 issue of how you might sell your house.

15 A Well, if I were to -- it's just that when the  
16 potential buyers come, they're going to be impacted by the  
17 noise and they're going to think I don't want to buy this  
18 house, unless they like the noise.

19 Q Do you think that's likely?

20 MR. LEFFERT: Objection, calls for speculation.

21 THE COURT: Sustained.

22 Q (By Mr. Weiner) What's the value of your house?

23 A I'd say it's around 700,000.

24 Q And do you know what the impact of Mile-Hi's  
25 flights have been on the value of your house?

1 A I've been told that --

2 MR. LEFFERT: Objection, hearsay.

3 MR. WEINER: May I?

4 THE COURT: You may.

5 MR. WEINER: In fact, I'll strike the question and  
6 ask another.

7 Q (By Mr. Weiner) Have you been provided an --  
8 provided with an expert analysis from plaintiffs' expert on  
9 the diminution of value of your house?

10 A Yes, I have.

11 Q Do you know what figure was in there for the  
12 diminution of the value of your particular house?

13 A 5 to 10 percent.

14 Q Do you agree with that figure?

15 A I would say it's higher than that.

16 Q What's higher than that?

17 A More than 5 to 10 percent, like 12 percent,  
18 15 percent.

19 Q Is its diminution in value?

20 A Yes.

21 Q How has your life changed as a result of Mile-Hi's  
22 flights?

23 A My weekends I -- I would like to stay in the area,  
24 but it's just -- it's very difficult. So usually we try to  
25 go somewhere else, hiking up in the mountains, that sort of

1 thing. So then we're out of the box.

2 MR. WEINER: Thank you.

3 THE COURT: Mr. Leffert, cross-examination.

4 MR. LEFFERT: Thank you, Judge.

5 CROSS-EXAMINATION

6 BY MR. LEFFERT:

7 Q Mr. Dauer, do you and your wife own your home  
8 together?

9 A Yes, we do.

10 Q She's a 50 percent owner?

11 A I guess so, yeah.

12 Q She's not a plaintiff in this case, is she?

13 A No, she's not.

14 Q Now, counsel asked you about the location of your  
15 home. Can you tell the Court where the Vance Brand Airport  
16 is in relation to your home? If I could trouble you to do  
17 that?

18 A Do you want me to point?

19 Q Sure.

20 A It's I assume right there.

21 Q And your house was the house just below the one?

22 A This one here.

23 Q Yes. So you're basically right in the landing  
24 path for the airport, aren't you?

25 A You'd have to talk to pilots about that, but many

1 times they come in this way. I believe the wind direction  
2 probably impacts that, but --

3 THE COURT: Excuse me. Mr. Leffert, do you need  
4 Mr. Dauer at the board anymore?

5 MR. LEFFERT: No, Judge.

6 THE COURT: Would you please be seated then,  
7 because it will be easier for the court reporter to hear  
8 your voice.

9 A You'd have to ask a pilot about that.

10 Q (By Mr. Leffert) Well, we will ask them. But  
11 since you've testified about planes, isn't it true that you  
12 are in the primary landing path for the Vance Brand Airport?

13 A I can only comment as to what I see. And what I  
14 see are Mile-Hi planes flying over my house to land. The  
15 other planes don't fly over my house to land that often.

16 Q None of the other planes?

17 A I didn't say none. I said not that often.

18 Q Well, in fact, there are other planes that fly  
19 over your house to land, don't they?

20 A Not very often.

21 Q Did I understand you correctly when you said  
22 before that Mile-Hi planes are not generally louder than the  
23 other planes? Is that what you said?

24 A I -- you'd have to read that back.

25 Q I think you were describing the take-off, and you



1 said the Mile-Hi --

2 A Oh, yes. On the take-off, yes. It's not  
3 dramatically louder than the other planes.

4 Q Did I also understand you to say that you can hear  
5 the Mile-Hi planes back off the throttle after they take  
6 off?

7 A I hear the noise go down.

8 Q Right.

9 A I don't know what that is.

10 MR. LEFFERT: Okay. Judge, we have talked with  
11 you before about admitting the expert reports. And I'd move  
12 for admission of Exhibit JJ, which is the Freytag report.

13 THE COURT: If it's the Freytag report, I will  
14 admit it. And I can't quite get Exhibit JJ right now.

15 Mr. Weiner, any objections?

16 MR. WEINER: On relevance, Your Honor. The  
17 witness hasn't reviewed the report. I don't understand the  
18 relevance of the report for this witness.

19 THE COURT: I think the issue is that I am  
20 admitting the report. I entered a ruling already that I'm  
21 admitting all the expert reports.

22 Do you have any objection as to whether JJ is the  
23 Freytag report? If it is, I'll go find it now. It's just  
24 that these books are so stacked on top of each other, it's  
25 going to take me a few minutes.

1           MR. LEFFERT: I don't think you need to find it,  
2 Judge.

3           MR. WEINER: I rely on counsel's representation  
4 that JJ is the expert report.

5           THE COURT: It is so admitted.

6           MR. LEFFERT: Thank you, Judge.

7           Judge, this is page 8 of the Freytag report.

8           Q     (By Mr. Leffert) Have you ever seen that before,  
9 Mr. Dauer?

10          A     No.

11          Q     This indicates on it that it's a two-minute  
12 snapshot of aircraft flight activity, Saturday, October 25,  
13 2014 starting at 2:00 p.m. Do you see all those planes?

14          A     Yes.

15          Q     Are you aware that there are other airports in  
16 your area besides the Long -- the Vance Brand Airport?

17          A     I recall during our deposition that you showed me  
18 a map that had many, many airports within the box. I was  
19 surprised by that.

20          Q     Airports and air strips both?

21          A     Yeah, as you described them.

22          Q     Just looking at this exhibit, is it typical for  
23 you on a Saturday to see that many different planes flying  
24 around at the same time?

25          A     Um, what I'm looking at here, I'm trying to sort

1 of judge how -- how far away I can see a plane from my  
2 house.

3 MR. WEINER: Your Honor, I'm going to object to  
4 further questions along this line until we have a foundation  
5 on the altitude that the planes are flying.

6 MR. LEFFERT: Well Judge, this is an exhibit  
7 that's in evidence. I think I'm entitled to ask the  
8 question. If he can't answer it, he can say that.

9 THE COURT: The objection is overruled.

10 THE WITNESS: So I am looking there -- you know,  
11 it's hard for me to say just how far away I can see a plane.

12 Q (By Mr. Leffert) Right?

13 A And there's different planes. The twin-engine  
14 planes are larger. So you know, I could probably see them  
15 much further away than the smaller planes.

16 Q Let me go about it this way; on the weekends do  
17 you see other planes flying in the same area? It's not  
18 uncommon, is it?

19 A No, it's not uncommon. There's, you know,  
20 recreational flyers that fly. They just don't make the  
21 noise.

22 Q Well, they don't make what noise?

23 A The annoying noise.

24 Q Mr. Dauer, you would agree with me, wouldn't you,  
25 that you are more noise sensitive than most people?

1           A     I may be. I have -- I talked about that in the  
2 deposition. I have very good pitch. And I think -- you  
3 know, so if there is some dissidence I'm going to be  
4 sensitive to it. I've never been sensitive to the chalk  
5 board scratching though, so --

6           Q     You have perfect pitch, don't you?

7           A     I'm pretty good at it. You know, if you wanted me  
8 to hum a G, I could come close.

9           Q     And it's fair to say you have very accurate  
10 hearing?

11          A     It's good. I have tinnitus, so I have that going  
12 as well.

13          Q     And it's also true, isn't it, that you view  
14 yourself as being more sensitive to noise than other people?

15          A     I think I may be. I wouldn't say dramatically  
16 or -- you know, but I definitely can hear things.

17          Q     Well, it's also true, isn't it, that you and a  
18 friend like to sit on his porch and drink beer and watch the  
19 planes?

20          A     Yes. He no longer lives there, but yes.

21          Q     Did you during your deposition -- well, let me ask  
22 you this, would you describe the noise from the Mile-Hi  
23 plane as being like a lawnmower?

24          A     Yes.

25          Q     Let me ask you to turn -- there's two notebooks in

1 front of you. I apologize, they're both pretty big. Would  
2 you open up to Defendant's Exhibit GG for me? It's the  
3 black book, Mr. Dauer. It's not that one, one of the black  
4 ones.

5 A Well, I have GG right here.

6 Q Okay.

7 A I switched while --

8 Q Oh, okay. I'm with you. All right. So you have  
9 GG there?

10 A Uh-huh.

11 Q Yes. You recognize that exhibit? Have you seen  
12 that before?

13 A If this was -- was this the one that you presented  
14 me at the --

15 Q I believe I presented both of them to you.

16 A Oh, this one does not look as familiar.

17 Q Let me ask you this, have you ever reviewed the  
18 plat notes for your home, the property that you own, your  
19 home? Have you ever looked at the plat notes that are filed  
20 with the County?

21 A I would have to say not, but --

22 Q Well, my question is do you know if you've ever  
23 seen this exhibit before?

24 A What it comes down to is, you know, I know I  
25 signed some kind of disclosure statement. And you know, I

1 don't know if it's this piece of paper here. I could never  
2 find my original.

3 Q Okay. Let's move to a different exhibit. I don't  
4 want to ask you about that unless you know you've seen that.

5 Let's take a look at Exhibit HH.

6 A This looks more like what maybe --

7 Q All right. Without talking about the exhibit  
8 because I have to lay foundation first, did you sign a  
9 document -- do you recall signing a document like this  
10 before you bought your home?

11 A Yeah. Not knowing what this actually says right  
12 here, I do recall something like that. I described that  
13 earlier.

14 Q This is not the one that you signed. This was  
15 Carla and John Behrens; correct?

16 A Um-hmm.

17 THE COURT: You have to answer yes or no.

18 THE WITNESS: Oh, yes.

19 Q (By Mr. Leffert) Is this the same one that you and  
20 your wife signed with the same wording?

21 A You know, not having the exact document I can't  
22 say. But I -- you know, I'd have to recall, you know, read  
23 through this.

24 Q Let me ask you this, Mr. Dauer, just to save time,  
25 do you recall in discovery that I requested documents like

1 this?

2 A Um-hmm.

3 Q Did you look --

4 THE COURT: Excuse me, Mr. Dauer. You have to  
5 answer yes or no.

6 THE WITNESS: I'm sorry. Yes. Yes.

7 Q (By Mr. Leffert) Did you look for the disclosure  
8 or waiver, whatever it was?

9 A I did.

10 Q Were you able to find it?

11 A No. I was disappointed. I think what happened is  
12 I was describing earlier we got that if it wasn't the day of  
13 closing, I think it was the day before, and just trying to  
14 wrap up all the closing documents.

15 Q At the time that you purchased your home and you  
16 signed the document did you know that the frequency of  
17 aircraft passing over your property may increase in the  
18 future?

19 A Yeah, sure. It could go down as well.

20 Q And you were okay with that?

21 A Right. Yeah. I think, yeah, I was okay with the  
22 frequency of the aircraft at the time that, you know, I  
23 bought my house, that increasing.

24 Q But you knew that it could increase, or it might  
25 increase?

1           A     Yeah, I guess what I didn't piece together is that  
2 the planes could just circle over my house endlessly.

3           Q     Let me ask you this, do you have any knowledge  
4 about another Twin Otter that's flown out of the Boulder  
5 Airport, a survey company?

6           A     No, I'm --

7           Q     Are you sure you can tell the difference between  
8 the survey Twin Otter and the Mile-Hi Twin Otter?

9           A     Well, does it have a purple tail?

10          Q     Have you seen another Twin Otter?

11          A     Well, I know they rent one at times for different  
12 events there at the airport.

13          Q     Let me try to be a little more specific. Do you  
14 have any knowledge about a Twin Otter that operates out of  
15 the Boulder Airport for surveying operations?

16          A     No, I have -- no.

17          Q     Let me -- so you lived in your house approximately  
18 seven years before you joined this suit; right?

19          A     Correct. Something like that, yeah.

20          Q     Let me ask you to turn to -- and your testimony is  
21 that the reason you did that was you thought there was a big  
22 jump in the number of flights; is that right?

23          A     Yes, and the noise was getting a lot more  
24 annoying.

25          Q     What year did you buy your house, I'm sorry?



1           A     2001.  And I lived there for a year and, you know,  
2  rental housing for about a year.

3           Q     Have you ever done any -- looked at the number of  
4  flights that were flown by Mile-Hi during the years?

5           A     That's an interesting question because they had an  
6  open house, the Airport Advisory Board, and there was --  
7  they wanted public input based on studies -- well, they  
8  wanted -- I guess they have to do a ten-year plan and update  
9  it regularly.

10          Q     For the FAA?

11          A     Yeah.  It probably is, yeah.  I think the City,  
12  you know, pays for that.

13                    So I went over to, you know, find out what was  
14  going on with -- with the noise and talk to the airport  
15  advisory members there.  And so they had a plot of, you  
16  know, how many flights into the future that the airport was  
17  going to have.  You know, it was basically a straight line.

18                    And I asked the guys well, you know, what  
19  percentage of these flights are from Mile-Hi.  And they told  
20  me they didn't know.  And I was surprised that they could do  
21  a study and predict the number of flights and not know what  
22  percentage were Mile-Hi flights.

23          Q     You've been in the courtroom today, have you not?

24          A     Um-hmm.

25                    THE COURT:  Excuse me?

1 THE WITNESS: Yes. Yes. Yes. Sorry about that.

2 Q (By Mr. Leffert) And you heard my opening  
3 statement. If it turns out to be true with the evidence,  
4 would it surprise you that Mile-Hi's flights are between 4.6  
5 and 6 percent of the total flights at the airport?

6 A That's preposterous.

7 Q Why would that be preposterous?

8 A Just on the weekends anyway. I can really only  
9 speak to the weekends because I'm not -- I'm at work during  
10 the week. I work in Boulder. But you can just see the  
11 number of flights that are coming out of there. They're  
12 just not that many recreational flights.

13 Q Do you think you're more sensitive to the Mile-Hi  
14 planes now that you've become involved in this suit?

15 A I can certainly identify them.

16 Q And it bothers you more now that you've been  
17 working with Kim Gibbs, doesn't it?

18 A I think that's a two-part question.

19 Q Let me do it a different way. Take a look at EE,  
20 Defendant's Exhibit EE in your notebook if you would. And  
21 once you get there let me know. I'll have a question.

22 A I'm there.

23 Q Do you recognize this e-mail? And I'll represent  
24 to you that it's to and from Kim Gibbs because she took the  
25 recipient name off of those e-mails before they were sent to

1 us.

2 A Okay. I get lots of e-mails.

3 Q Did you get this one?

4 A I -- I wouldn't know.

5 Q Okay. Do you know when this lawsuit was filed?

6 A Let's see, last summer sometime.

7 Q I'll represent to you it was October 29th of 2013.

8 A Okay.

9 Q You were not a plaintiff at that time, were you?

10 A No. I'd have to look at my documentation as when  
11 I agreed to do that.

12 Q In fact, Kim Gibbs got you involved as a  
13 plaintiff, didn't she?

14 A There was -- I was aware that there was efforts to  
15 do a lawsuit. And yes, there was an e-mail and she was  
16 making a plea that, you know, we get some individuals I  
17 think it was versus just a group to do --

18 Q She told you that she needed plaintiffs for the  
19 suit; right?

20 A Yeah. Yeah.

21 Q And she wanted plaintiffs in different areas of  
22 the flight box?

23 A Um-hmm.

24 Q So that they were all covered?

25 A Yes.

1 Q And so far you've contributed between 100 and \$200  
2 to this suit; is that right?

3 A That's about right.

4 Q At the time of your deposition that's what you'd  
5 contributed?

6 A Um-hmm.

7 THE COURT: Excuse me, Mr. Dauer --

8 THE WITNESS: Oh.

9 THE COURT: -- you have to answer yes or no.

10 THE WITNESS: Yes.

11 Q (By Mr. Leffert) Also, Kim Gibbs has encouraged  
12 you to file noise complaints, hasn't she?

13 A There have been a lot of e-mails to that extent.

14 Q To try to get people to file noise complaints?

15 A Yes. Yes.

16 Q You talked about selling your house. Do you have  
17 any idea what the average days on the market houses are in  
18 the area in which you live, when a house goes on the market  
19 how long it's on the market?

20 A I would be speculating.

21 MR. LEFFERT: Okay. Nothing further, Judge.

22 THE COURT: Thank you.

23 Any redirect, Mr. Weiner?

24 MR. WEINER: I do, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. WEINER:

2 Q Mr. Dauer, would you turn to Plaintiffs'  
3 Exhibit 2?

4 A Yes.

5 Q Page 4.

6 MR. LEFFERT: I only have three pages, Counselor.

7 MR. WEINER: I have seven.

8 THE COURT: Do you want to look at each other's  
9 exhibits so you can figure out what the problem is.

10 MR. WEINER: I understand we gave you those  
11 exhibits today.

12 MS. ELLENBERGER: No, I've had mine in my binder.

13 THE COURT: Then plaintiff will need to provide  
14 them to defendant before we move on.

15 MR. LEFFERT: Judge, the documents we were given  
16 this morning there's no Exhibit 2 here, or there's no pages  
17 for Exhibit 2.

18 THE COURT: Then, Mr. Weiner, you and your staff  
19 are going to have to find the additional pages for Exhibit 2  
20 and put them into Mr. Leffert's book.

21 MR. WEINER: Okay. We will do that. In the mean  
22 time I'll give Mr. Leffert a copy of what we will soon put  
23 in his book.

24 THE COURT: Thank you.

25 (Pause.)

1 Q (By Mr. Weiner) Mr. Dauer, before I asked you a  
2 question about that page. And are you at that page?

3 A Yeah.

4 Q That's the page that shows --

5 A The circles.

6 Q The circles, that's right. I discussed it in my  
7 opening.

8 But Mr. Leffert discussed this map here that  
9 purported to be a number of airplane flights on a particular  
10 short period of time in the skies around the flight box. Do  
11 you remember that --

12 A Right.

13 Q -- question?

14 A Yes.

15 Q And do you know if any of those planes were at  
16 cruise altitude or not at cruise altitude?

17 A I would have no way of knowing.

18 Q Do you know if any of those planes were ascending  
19 or descending within proximity to your home?

20 A No, I would not know that.

21 Q Okay. Looking at the page that I just cited you  
22 to, is that a more accurate depiction of the kind of plane  
23 flights over your house?

24 MR. LEFFERT: Your Honor, I'll represent to you  
25 that this has not been admitted into evidence, but I do

1 believe that it's a page out of Freytag's report. So I  
2 don't know how you want to refer to it I guess.

3 THE COURT: Are you raising an objection?

4 MR. LEFFERT: Well, I don't -- I believe it's the  
5 same thing that's taken from his report. And if it's not,  
6 then I think it should be put into evidence.

7 THE COURT: Mr. Weiner?

8 MR. WEINER: Okay. It comes from their expert  
9 witness report.

10 THE COURT: So it's already --

11 MR. WEINER: So it's already admitted.

12 THE COURT: If you'd let me finish so we have a  
13 good record, I think that would be best.

14 MR. WEINER: Of course.

15 THE COURT: So it's already admitted as an expert  
16 report?

17 MR. WEINER: That's my understanding, Your Honor.

18 THE COURT: And do you disagree, Mr. Leffert?

19 MR. LEFFERT: I believe that it is in his expert  
20 report part of JJ.

21 THE COURT: All right. Then you may continue,  
22 Mr. Weiner.

23 MR. WEINER: Thank you.

24 Q (By Mr. Weiner) Do you remember my question?

25 A No. Can you repeat it?

1 Q Of course.

2 Does that picture which depicts a flight pattern  
3 more accurately reflect the kind of airplane flights over  
4 your home?

5 A So I want to describe how I -- my basis for this  
6 answer.

7 So when I went to this Airport Advisory Board  
8 meeting it wasn't -- it was an open house. I talked to one  
9 of the members there, and they explained to me the flight  
10 patterns that are done. And then I was able to come back to  
11 my house and realize that this is exactly what's being done.

12 So you know, now I know when I see the plane what  
13 it's doing when it took off because I check my watch. I  
14 want to know yes, it's taking off; yes, it's climbing; yes,  
15 it's going to do a drop, going to do another circle, you  
16 know, yeah. So I know what it is they're doing and it was  
17 just yes, this is what they do.

18 Q Thank you.

19 You testified that --

20 MR. WEINER: And I'd like to move that page into  
21 evidence as a separate exhibit.

22 THE COURT: Denied. It's already in evidence. I  
23 don't need it twice, and I don't need to look at it twice.

24 MR. WEINER: Very good.

25 Q (By Mr. Weiner) You testified that the noise from



1 Mile-Hi flights was like a lawnmower?

2 A Yes.

3 Q Were you stating that in terms of decibel level?

4 A No, more of the type of sound that it is. And  
5 yeah, it's just the type of sound. To me I think it's just  
6 because of the speed of the tip of the -- of the airplane  
7 blade. And the lawnmower blade, they're not similar, but  
8 they're both breaking the speed of sound. And I described  
9 that in my deposition. That's my understanding of it, but  
10 I'm not an expert.

11 Q And I think you testified that you can hear the  
12 flight noise over the sound of the lawnmower earlier; is  
13 that correct?

14 A Yes.

15 Q And you certainly weren't saying that in terms of  
16 duration, were you?

17 MR. LEFFERT: Objection, leading.

18 THE COURT: Sustained. You may re-frame.

19 Q (By Mr. Weiner) Turn to Exhibit HH in defendant's  
20 notebook. That was the acknowledgment that you had signed  
21 when you purchased your house about the Vance Brand  
22 Airport's location?

23 A Yes.

24 Q Okay. There is a paragraph that in my copy is a  
25 little hard to read, but my understanding is it says the

1 property is subject to state and city laws regulating the  
2 use of air space above the lot and residence. Is that your  
3 reading of it too?

4 MR. LEFFERT: Your Honor, this is not in evidence,  
5 but I'd move for its admission now since he's testifying to  
6 it.

7 THE COURT: Any objection, Mr. Weiner?

8 MR. WEINER: No, Your Honor.

9 THE COURT: Then Exhibit HH shall be admitted.  
10 And you may answer, Mr. Dauer.

11 THE WITNESS: Yeah, I can't read it all either.  
12 But yes, it says what you said.

13 MR. WEINER: Okay. One second please, Your Honor.

14 THE COURT: Sure.

15 (Pause.)

16 MR. WEINER: No further questions for this  
17 witness, Your Honor.

18 THE COURT: Thank you, Mr. Dauer. You may step  
19 down then and go back to your seat. Thank you.

20 Okay. You may call your next witness.

21 MR. OSOFSKY: Plaintiffs will call Matt Robinson.  
22 And I'll get him in the hallway, Your Honor.

23 THE COURT: Thank you.

24 (Pause.)

25 THE COURT: Good morning, Mr. Robinson. If you'd

1 come up to the witness box on my left please. Once you're  
2 inside that witness box, if you'll stand and face me please.

3 THE WITNESS: Sure.

4 MATTHEW ROBINSON,  
5 called as a witness on behalf of the Plaintiffs, having been  
6 first duly sworn was examined and testified as follows:

7 THE COURT: Thank you. Please be seated.

8 Mr. Osofsky, whenever you're ready.

9 DIRECT EXAMINATION

10 BY MR. OSOFSKY:

11 Q Could you state your name for the record after  
12 you've gotten yourself a glass of water there?

13 A Matthew Grayson Robinson.

14 Q And where do you work, Mr. Robinson?

15 THE COURT: Excuse me. Mr. Robinson, before you  
16 answer that and after you pour yourself a glass of water,  
17 you're going to need to move that microphone in towards you.

18 THE WITNESS: Okay. Thanks.

19 Q (By Mr. Osofsky) So the question was where do you  
20 work?

21 A Currently I work at Robson Forensic in addition to  
22 the Southern California Safety Institute.

23 Q And what is your position at Robson Forensic?

24 A Two positions at Robson Forensic. One, the area  
25 manager for the Rocky Mountain region, and the second is

1 aviation safety expert.

2 Q Are you a pilot?

3 A I am.

4 Q And when did you start your training as a pilot?

5 A Training started back in high school mid '80s, I  
6 would say around 1988, '89.

7 Q And when did your professional career as a pilot  
8 start?

9 A The -- I received my commercial instrument rating  
10 while in college at Metro State. That was back in '93 or  
11 '94. I'd have to check the exact date on that.

12 As far as getting paid to fly, that commenced when  
13 I received my commission in the Marine Corps in 1995.

14 Q Can you tell me about your training and experience  
15 as an aviator as a US Marine?

16 A Initially ground school, approximately eight weeks  
17 of ground school in Pensacola, Florida followed by actual  
18 flight training in the T-34 Charlie that's down in  
19 Pensacola, Florida, actually followed by helicopter training  
20 in Pensacola as well. That total time took about two years.

21 From there the training just continued and  
22 progressed all throughout my entire career until the end.  
23 So I could go -- I could go on for hours about how that  
24 progressed.

25 Q Okay. Did any of your training specifically

1 involve aviation safety and standards?

2 A Yes, a majority of it did.

3 Q What would that encompass, aviation safety and  
4 standards?

5 A So it's kind of all-encompassing. Aviation safety  
6 and standards can relate to anything from personnel  
7 selection and training to aircraft and equipment training to  
8 syllabus review, teaching methods, techniques, procedures,  
9 both with ATC.

10 It can go on and on up until aircraft accident  
11 investigation. It can include the formulation of reports,  
12 doing research and events to prevent future occurrence of  
13 those bad things that happen so to speak.

14 Q Are there different levels of licensure for  
15 pilots?

16 A Yes, there are.

17 Q And can you just briefly describe the different  
18 levels of licensure?

19 A I guess we could start from the lowest level,  
20 which would be a student rating. That's where basically  
21 everybody has to start out. It commences with a flight  
22 physical.

23 At that point the student that obtains that rating  
24 is able to go get instruction, receive instruction hopefully  
25 in the effort of receiving a private pilot rating. Private

1 pilot rating is just a license to go out and fly an airplane  
2 with passengers and really nothing more.

3 From there a pilot has a choice of either pursuing  
4 the instrument rating or going on to the commercial rating.  
5 The instrument rating is just as you would suspect, the  
6 ability to fly legally into the clouds.

7 Also with the commercial you would have the option  
8 of receiving compensation for your flying services. That's  
9 another syllabus, it's another flight examination. And then  
10 after that pretty much the end of the line, the pinnacle of  
11 it would be airline transport pilot, ATP.

12 Q And what does the ATP rating involve? What is the  
13 significance of that qualification?

14 A Airline transport pilot has been referred to as  
15 the Ph.D of pilot ratings. It's the highest that you can  
16 get. It's very intense. The training -- the examination is  
17 very intense, it's very long, in addition to the training as  
18 well.

19 It's well above and beyond what would be expected  
20 in a commercial check right so to speak and commercial  
21 syllabus.

22 Q Is that the pilot rating you hold?

23 A I hold one of those, yes. I hold an ATP and I  
24 hold a commercial.

25 Q Did your training as a pilot or your training

1 within the US Marine Corps with regard to aviation involve  
2 learning about noise abatement procedures for aircraft and  
3 airports?

4 A Yes.

5 Q And you can tell me a little bit about that  
6 experience?

7 A Sure. And I wouldn't limit it to exclusively my  
8 training and experience within the Marine Corps. That  
9 started as a student pilot out of Centennial.

10 But your question was with regard to the Marine  
11 Corps. Starting as a student pilot as a naval aviator,  
12 avoiding known areas of noise sensitivity, we would have  
13 binder -- often referred to as read and initial binder.

14 And when we would receive a noise complaint from a  
15 citizen either in the vicinity of Pensacola or even Southern  
16 California, which is where we got most of those, we would  
17 plot it on a map, we'd brief it to all of the pilots to  
18 avoid that area. And if you had to fly over it, we would  
19 establish an altitude to ameliorate the noise impact. So  
20 that was -- that was the basic level.

21 Additionally, I had the opportunity to receive  
22 noise complaints via the phone from citizens in Southern  
23 California, work with them to develop procedures to  
24 basically play nice with the community, keep the military  
25 and aviation in a positive light, to keep them happy.

1           So we would adjust our procedures, what we would  
2 call course rules, just our ways of flying, flight paths,  
3 altitudes, operating times, et cetera.

4           Q     And have you had direct discussions with other  
5 pilots about noise abatement practices and standards?

6           A     Yes.

7           Q     With respect to your credentials, have you written  
8 published materials for any aviation organizations or  
9 magazines?

10          A     I have.

11          Q     And have you ever been interviewed on television  
12 as an aviation expert?

13          A     Yes.

14          Q     If you could please turn to Exhibit 3 in  
15 plaintiffs' notebook there, it should be one of the large  
16 binders.

17               MR. OSOFSKY:  If I may approach, Your Honor?

18               THE COURT:  You may.

19               MR. OSOFSKY:  Thank you.

20          Q     (By Mr. Osofsky) Do you recognize Exhibit 3?

21          A     I do.  It looks to be my CV.

22               MR. OSOFSKY:  Your Honor, I'd move for admission  
23 of Exhibit 3.

24               THE COURT:  Any objection?

25               MR. LEFFERT:  No, Your Honor.



1 THE COURT: 3 is admitted.

2 Q (By Mr. Osofsky) And your rating as a pilot, would  
3 that include mastery of safety issues for planes on approach  
4 to DIA?

5 A It would include, not solely limited to, yes.

6 MR. OSOFSKY: I'd move for admission of  
7 Mr. Robinson as an expert in general aviation, aviation  
8 safety and flight procedures.

9 THE COURT: Any objection?

10 MR. LEFFERT: Yes, Your Honor. Mr. Robinson in  
11 his designation was -- Mr. Robinson was retained to provide  
12 expert opinions and testimony with respect to whether the  
13 defendant has exercised an appropriate standard of care as  
14 an aviator in mitigating aircraft noise. That's what I was  
15 told. That's what we did our discovery based upon. And I  
16 think -- I don't think they can offer him for anything else,  
17 including safety.

18 THE COURT: And do you want to respond?

19 MR. OSOFSKY: Your Honor, the witness' credentials  
20 have been extensively disclosed and deposed about. His  
21 expert report specifically includes commentary on flight  
22 following procedures, which is directly an issue that  
23 implicates all of the safety issues that we were talking  
24 about today.

25 THE COURT: I just want to go to the order I

1 already issued on Mr. Robinson's testimony, so I'm going to  
2 take a look at that.

3 (Pause.)

4 THE COURT: So I indicated that Mr. Robinson would  
5 be admitted to testify to the standard of conduct for  
6 aviators and to offer opinions on engines, propellers and  
7 how a plane can be flown.

8 And Mr. Leffert, are you objecting beyond what I  
9 already ordered?

10 MR. LEFFERT: Well, I'm not obviously objecting to  
11 the wording of your order. But looking at his report and  
12 having deposed the gentleman, I think it's going to go far  
13 afield from that.

14 And I do object to him being endorsed as an expert  
15 on the issue of mitigation of aviation noise. I don't want  
16 to take a lot of time, but I'm going to seek permission to  
17 voir dire the witness to see what his credentials are for  
18 that type of testimony.

19 THE COURT: You may voir dire.

20 VOIR DIRE EXAMINATION

21 BY MR. LEFFERT:

22 Q Mr. Robinson, it's fair to say that you're really  
23 an accident investigator, aren't you? Isn't that what you  
24 primarily do?

25 A Not exclusively, no. I wouldn't limit it to just

1 accident investigation.

2 Q When I looked at your CV, all of the cases you had  
3 listed there are accident-related mishaps?

4 A No, that's not correct.

5 Q Let me ask you this; have you ever been an expert  
6 regarding aircraft noise before?

7 A No, I haven't.

8 Q Have you ever given an opinion on the standard of  
9 care for mitigation of aircraft noise?

10 A I haven't given an opinion in court. I've given  
11 an opinion in real world operations and in the formulation  
12 of mitigating those noise complaints.

13 Q You have never been retained as an expert on that  
14 issue, have you?

15 A Not on noise, no.

16 Q And you've never conducted any noise study, have  
17 you?

18 A What's your definition of noise study?

19 Q Any noise study that you yourself have conducted.

20 A Well, I conducted an investigation in this matter  
21 regarding noise.

22 Q Yes, sir, I understand that. But besides that you  
23 haven't done that before?

24 A Actually I have not in litigation. But in  
25 southern California, in the area surrounding in and around

1 southern California, specifically Camp Pendleton and  
2 Miramar, I've --

3 Q You fielded noise complaints on the telephone;  
4 right?

5 A Both that and in person. And then I have  
6 developed mitigation strategies to preclude further  
7 complaints.

8 Q What was your rank when you held that job?

9 A Oh, captain.

10 Q It's true you've never flown a Twin Otter, isn't  
11 it?

12 A Not a Twin Otter, no.

13 Q And you've never flown a King Air like the one  
14 Mile-Hi flies?

15 A Not like the one Mile-Hi flies.

16 Q And it's also true that you've never dropped  
17 parachutes or participated in a parachuting operation from a  
18 fixed wing aircraft? That's true, isn't it?

19 A Open dropped jumpers from helicopters.

20 Q You have no air traffic control experience?

21 A Other than talking with them everyday I fly.

22 MR. LEFFERT: Your Honor, I do object to him being  
23 endorsed as a witness. I don't think he's qualified to talk  
24 about mitigating aircraft noise.

25 THE COURT: Thank you.

1 I'll give you a brief chance to respond,  
2 Mr. Osofsky.

3 MR. OSOFSKY: You've ruled on this in limine  
4 already with respect to what the witness is specifically  
5 testifying about, that noise can be mitigated through  
6 pulling back on the throttle of an aircraft, that noise can  
7 be mitigated by not circling continuously, that noise can be  
8 mitigated by choosing appropriate equipment. All of these  
9 are well within this expert's area of expertise.

10 Now, questions regarding noise study or parachute  
11 operations, there's been no showing by counsel and no  
12 questions by counsel that would remotely indicate that those  
13 are pertinent in any way to his expert -- to the opinions  
14 that he is rendering here today.

15 THE COURT: Thank you. I've had enough  
16 information from both of you.

17 Mr. Robinson will be permitted to testify as an  
18 expert as I have already ruled on the standard of conduct of  
19 aviators and his opinion on engines, propellers, and how a  
20 plane can be flown.

21 The Court finds that that does not make him an  
22 expert in aviation safety or flight procedure. But he can  
23 testify to his opinions about general aviation matters as  
24 well as noise related to engines and propellers and the  
25 manner in which a plane can be flown.

1           You may proceed.

2                           DIRECT EXAMINATION (cont'd)

3 BY MR. OSOFSKY:

4           Q     Do you recall being contacted as -- about  
5 participating as an expert in this case?

6           A     Yes. About a year ago I believe it was.

7           Q     And did you conduct an investigation in this case  
8 with respect to the activities of Mile-Hi?

9           A     I did, yes.

10          Q     What -- what did your investigation encompass?  
11 What did you look at in the course of your investigation?

12          A     I think it started -- as best I can recall it  
13 started with a review of WebTrak data.

14          Q     And what did the WebTrak data tell you?

15          A     After reviewing the agreement between FAA and  
16 Mile-Hi I was able to track the specific transponder codes  
17 for Mile-Hi's aircraft. So I would watch a monitor WebTrak  
18 to gain a basic idea of flight paths, their profiles,  
19 altitudes, type of aircraft, time of day, frequency. That  
20 was the starting point.

21                   The investigation progressed as more materials  
22 became available to me in the form of e-mails and the noise  
23 complaints.

24                   And then ultimately I visited Longmont and the  
25 surrounding communities to gain a firsthand knowledge and

1 observation of Mile-Hi's operations, their aircraft and the  
2 noise.

3 Q And did the WebTrak data give you an indication of  
4 the pattern in which Mile-Hi's aircraft fly?

5 A Yes. And that was -- that was confirmed with the  
6 firsthand observation on sight.

7 Q And can you describe the pattern they fly?

8 A The pattern is -- appeared to be almost  
9 exclusively to the southwest of the airfield, racetrack  
10 pattern, same relative ground path everytime, not much  
11 variation in that and in terms of altitude as well, same  
12 thing everytime.

13 Q Could you turn to page Exhibit 4 within  
14 plaintiffs' notebook?

15 A It says plaintiffs' Trial Exhibit 4 withdrawn.

16 Q I apologize. Please turn to Exhibit 5 -- 6,  
17 sorry. Glasses need to be adjusted.

18 Do you recognize Exhibit 6?

19 A I do, yes. It appears to be the noise abatement  
20 procedures for Vance Brand.

21 Q And are there any of those procedures that are  
22 significant to this case? Just yes or no for now.

23 A Yes.

24 MR. OSOFSKY: I'd move for admission of Exhibit 6.

25 THE COURT: Any objection?

1 MR. LEFFERT: No, Your Honor.

2 THE COURT: 6 is admitted.

3 Q (By MR. Osofsky) Can you point out for the Court  
4 which of these noise abatement procedures are significant in  
5 this case?

6 A Well, departing where it says reduce pitch to  
7 cruise climb speed.

8 THE COURT: Mr. Robinson, if you'll take that  
9 microphone and move it down, I think it will be easier for  
10 me to hear you. Thank you.

11 THE WITNESS: Where it says reduce pitch to cruise  
12 climb speed.

13 Avoid flying over the city proper and outlying  
14 residential areas as much as possible.

15 Here we go, flight and continuous circles over the  
16 city or outlying residential areas.

17 Q (By Mr. Osofsky) Okay. Can you explain how  
18 reducing power and/or prop rpm can reduce noise?

19 A I can give you a very brief answer, and then I can  
20 elaborate because that's --

21 Q Start brief.

22 A -- a broad question.

23 Reduction of shock wave.

24 Q Okay. Does reducing propeller rpm reduce the  
25 noise output of a plane in your experience?



1 A It does, yes.

2 Q And have you seen similar noise abatement  
3 procedures to Longmont's in other contexts?

4 A I have, yes.

5 Q Are -- are similar noise abatement procedures  
6 recommended by any associations of -- aviation associations?

7 A I know Centennial Airport recommends it. But as  
8 far as associations, the National Business Aviation  
9 Administration -- or National Business Aviation Association  
10 does recommend such procedures.

11 Q All right. Are these types of procedures commonly  
12 used at airports?

13 A They're commonly used, yes, to -- and specifically  
14 with aircraft that take off and depart and go away.

15 Q Have you ever spoken to other pilots about  
16 reducing prop rpm as a noise abatement procedure?

17 A Sure.

18 Q In your experience is this procedure part of the  
19 accepted standard of care in the aviation community?

20 A It is, yes.

21 Q Did you conduct a site visit when you were  
22 conducting your investigation?

23 A I did, September 14th of last year to the best of  
24 my recollection.

25 Q And can you describe your observations on your

1 site visit?

2 A Arrived around 7:30 in the morning at one of the  
3 plaintiffs' residences, observed the first take-off of the  
4 day. It was approximately 8:15. I observed the Twin Otter  
5 depart with sounded to be a high pitch high power setting  
6 and continued throughout the duration of the flight.

7 There were brief instances when the aircraft was  
8 out of sight, but you could still hear it, and continued  
9 until the jumpers away call. I was listening over the radio  
10 listening for the jumpers away.

11 At that point the prop noise would subside until  
12 entering what appeared to be the downwind for approach where  
13 you could hear the props become fully advanced in  
14 preparation for landing.

15 Q With respect to flight paths, did your  
16 observations confirm what you observed in the WebTrak about  
17 circular flight patterns?

18 A It did, yes.

19 Q With respect to climb profiles what did you  
20 observe the practices of Mile-Hi to be?

21 A Climb profiles were steep, what appeared to be  
22 maximum rate of climb air speed. So it looked to be slower  
23 air speed than a normal cruise flight that just offers the  
24 aircraft to get to a higher altitude as quickly as possible  
25 with high pitch and power settings.

1 Q Based on your observations, did Mile-Hi follow the  
2 reduced power procedures of the noise abatement procedures?

3 A Not to my observations, no.

4 Q Is that a conclusion that you can reach based upon  
5 your ear and experience alone?

6 A It is.

7 Q Are there issues that factor into how much power  
8 may be applied for a sustained climb -- I'm sorry, withdraw  
9 that question.

10 Did you observe the frequency of Mile-Hi's  
11 flights?

12 A Yes. And the best -- from -- from what I recall  
13 was approximately every 15 to 20 minutes.

14 Q What was your personal reaction to the noise from  
15 Mile-Hi's aircraft?

16 A Personal reaction. So I went up to Longmont with  
17 an open mind because I've seen the spectrum of noise  
18 complaints that merited attention to those that really were  
19 off base.

20 MR. LEFFERT: Your Honor, I object. He's now  
21 giving expert opinions about noise.

22 THE COURT: The objection is sustained. You can  
23 re-frame your question so that he's testifying within  
24 generally aviation and noise related to engines, propellers  
25 and the manners in which a plane can be flown. You've

1 gotten a little far abroad in the question, but you can  
2 narrow it in.

3 MR. OSOFSKY: Your Honor, if I may, I'm not asking  
4 this witness about his expert opinion with respect to noise.  
5 I'm asking him his personal reaction with respect to noise.  
6 There's no reason that this witness can't make a personal  
7 observation regardless of whether he's standing here as an  
8 expert or not.

9 THE COURT: Mr. Leffert?

10 MR. LEFFERT: Object to him -- he didn't disclose  
11 this. They're required to give me a disclosure what he's  
12 going to testify about, then I'm entitled to depose him,  
13 which I did.

14 THE COURT: Mr. Osofsky, I had not seen any  
15 opinion or testimony disclosure about Mr. Robinson  
16 testifying regarding his personal opinion. Do you believe  
17 that there's something that I missed or you need to go back  
18 and take a look at?

19 (Pause.)

20 MR. OSOFSKY: Yes, Your Honor. On page 4 the  
21 second to last paragraph.

22 MR. LEFFERT: Page 4 of what, Counsel?

23 MR. OSOFSKY: Page 4 of Exhibit 38, which is his  
24 admitted report. Statement from the report is comparing my  
25 historic experience of aircraft noise to observations made

1 during my site visit. The aircraft noise produced by  
2 Mile-Hi's operations greatly exceeded even my own personal  
3 threshold of duration tolerance.

4 THE COURT: Okay. And any response, Mr. Leffert?

5 MR. LEFFERT: No, Your Honor.

6 THE COURT: Okay. You may ask him the question.

7 MR. OSOFSKY: Thank you.

8 Q (By Mr. Osofsky) What was your personal reaction  
9 to the noise of Mile-Hi aircraft?

10 A So I'll keep it short and sweet.

11 Q No. You were beginning to explain how you went in  
12 with an open mind. I believe the question is allowed at  
13 this point.

14 A Okay.

15 Q So you can testify as you choose.

16 A So like I said, I've seen the gamut of noise  
17 complaints from those that are completely incredible to  
18 those that were totally justified. So I knew that anything  
19 was possible going into this.

20 I wanted to observe for myself based upon my  
21 decades of living on a military base near airports around  
22 airplanes, then operating in and out of the airports as well  
23 and comparing what I've observed in those decades to what I  
24 observed up in Longmont and see how that compared.

25 When I got up there the aircraft noise was almost

1 continuous, it was inundating, it was beyond what I was  
2 really accustomed to in terms of sound, and -- and more so  
3 duration as well.

4           The aircraft noise that I'm accustomed to is very  
5 transient, very short, it gets to be loud, especially on  
6 military bases, but then it goes away and it's all done.

7           This was -- this was almost constant, well beyond  
8 my threshold. And the first thoughts that I had after  
9 listening to this for about four hours was I wouldn't want  
10 my kids to grow up here, I wouldn't want to have them play  
11 out in the back yard and have them listen to this for this  
12 duration, this amount of time.

13           Q     Did you observe the noise from several locations?

14           A     I did, yes.

15           Q     Where were the different locations?

16           A     Plaintiff -- a few of the plaintiffs', Behrens was  
17 one. I'd have to look at the -- at the other names, but  
18 several plaintiff residences. And then further south in the  
19 surrounding community down by Gunbarrel Road, several  
20 locations near Niwot and around just to get an idea for  
21 areas close to the airfield and further away.

22           Q     Did any of those locations provide any respite  
23 from the noise?

24           A     The locations, no, they did not. Sometimes the  
25 aircraft noise would disappear for a few minutes, but then

1 would re-emerge.

2 Q Did you interview any of the plaintiffs with  
3 respect to their experience with noise?

4 A I did. Plaintiffs Gibbs, Behrens, and I can't  
5 remember the third name, I think it was Yates.

6 Q Okay. Did the plaintiffs describe the noise to  
7 you?

8 A They did. And they said, yeah, this is pretty  
9 much how it is while they're flying. It's like this pretty  
10 much all day from 8:00 in the morning until around sunset.

11 Q Did you ask them about their observations of  
12 whether Mile-Hi followed power reduction noise abatement  
13 procedures?

14 A I did. I asked them if they ever heard  
15 discernible or significant change in noise or pitch of the  
16 noise. None of them had observed that before.

17 Q Did you observe whether Mile-Hi followed the  
18 procedures regarding not circling residential areas?

19 A No. And that was confirmed with observation of  
20 the WebTrak data is continuous circling of the surrounding  
21 community.

22 Q Let's talk about Vance Brand and how one can fly  
23 in the airspace around it.

24 Can you describe Vance Brand Airport?

25 A Vance Brand, two runways. I forget the lengths,

1 but it's class G airspace located to the northwest of Niwot.

2 Q Are flights in and out of Longmont controlled by  
3 the operations of a flight control tower?

4 A No.

5 Q Is the Vance Brand Airport considered an  
6 uncontrolled airport?

7 A It is.

8 Q Can you describe what an uncontrolled airport  
9 means?

10 A No tower, no air traffic control facilities on the  
11 field itself. Pilots are left to report their own position  
12 over a common frequency as their intent, what their position  
13 is, what they're doing in and around the vicinity of the air  
14 field.

15 Q Are there different classifications of traffic  
16 that travel in and out of Longmont Municipal Airport, Vance  
17 Brand?

18 A Sure.

19 Q And what are the two classifications?

20 A What do you mean by classifications? Like VFR,  
21 IFR?

22 Q Yes.

23 A They're VFR and IFR. There's also --

24 THE COURT: I'm sorry, I couldn't hear the last  
25 thing you said, and I'm not sure the court reporter did.



1 THE WITNESS: There's VFR, IFR, and then  
2 rotocraft, helicopters and fixed wing.

3 Q (By Mr. Osofsky) Can you explain what VFR and IFR  
4 are?

5 A VFR stands for visual flight rules. To put it  
6 simply, it's stay out of the clouds. You're required to  
7 maintain certain cloud clearance requirements, stay out of  
8 the clouds, and that's really about it. Everything else is  
9 game so to speak.

10 IFR is a different ballgame. That's operating in  
11 instrument meteorological conditions, bad weather clouds.  
12 You're in constant communication and contact with TRACON.  
13 VFR in most instances you're not obligated to.

14 Q Do you know whether Mile-Hi flies under IFR or VFR  
15 rules during parachute operations?

16 MR. LEFFERT: Objection, lack of foundation.

17 THE COURT: Let's just ask him if he knows right  
18 now.

19 MR. LEFFERT: Fair enough.

20 THE COURT: So the objection is overruled.

21 A To my observations, yes.

22 Q (By Mr. Osofsky) And what -- what rules do they  
23 fly under?

24 A VFR.

25 MR. LEFFERT: Objection, Your Honor, lack of

1 foundation.

2 THE COURT: And the objection is sustained unless  
3 you wish to lay more foundation.

4 Q (By Mr. Osofsky) Are you aware of -- so what are  
5 some of the procedures involved in IFR flights?

6 A IFR flight is usually a point A to point B. It  
7 involves filing a flight plan, receiving a clearance prior  
8 to departure from ATC which is called a departure clearance,  
9 receiving a discrete code for the transponder, contacting  
10 ATC as soon as you're off, and then activating your flight  
11 plan and then proceeding on your route of flight to wherever  
12 that might be.

13 There's a whole completely different en-route  
14 structure for IFR operations. We have airways, we have  
15 departure procedures, approach procedures. So it involves a  
16 great better deal of planning than of VFR does. And like I  
17 said, that's usually from point A to point B, you're going  
18 somewhere, not point A to point A.

19 Q And under IFR rules do you have to file a flight  
20 plan for each and every flight IFR?

21 A Yes.

22 Q Have you seen any evidence in any of the materials  
23 you've reviewed in this case that Mile-Hi Skydiving files a  
24 flight plan for each and every one of their flights?

25 A I saw no evidence to support that, no.

1           Q     Are you -- what other characteristics of the  
2 flight would you expect to see with respect to IFR that you  
3 did not see with respect to Mile-Hi's operations?

4           A     The radio communications that I listened to, that  
5 was not an IFR communication, as well as the just the flight  
6 profile. Like I said IFR, is usually -- unless you're  
7 practicing in the clouds or under visual conditions, usually  
8 going from one place to another, you're departing, you're  
9 getting away from the airfield and going somewhere else.

10          Q     Based upon that information are you able to form a  
11 conclusion as to whether or not Mile-Hi flies under VFR or  
12 IFR rules?

13          A     IFR.

14                THE COURT: This is going to be a good time for us  
15 to break for lunch. Mr. Robinson, you can step down now.

16                Counsel, I'm going to want to see counsel, the  
17 court reporter and the designated parties in the jury room  
18 for a few moments before we leave for lunch. Ms. Bender  
19 will escort you in there in a few minutes. Thank you. We  
20 will reconvene at 1:30 p.m.

21                (A recess was taken, whereupon the following  
22 proceedings occurred on the record in the jury room.)

23                THE COURT: Looking at numerous documents, it was  
24 not until this morning when Mr. -- second witness.

25                MR. LEFFERT: Dauer?

1           THE COURT: Yes, Mr. Dauer was testifying that you  
2 put up the big maps. And I've been looking at this on small  
3 screens that are hard to read. I realize that my home is in  
4 the flight box area. And I consider myself to not live near  
5 the Vance Brand Airport, so it was something that occurred  
6 to me.

7           So I wanted to show you where it is. And I looked  
8 at the disclosure that I made to you earlier. All of that  
9 remains true. I know nothing of any of the organizations  
10 involved in this or any of the witnesses or any of the  
11 movements for or against it.

12           So I live near the corner of 95th and Niwot Road,  
13 so I'm in here. So I just wanted to point that out to you  
14 and find out if that creates any issues for you.

15           MR. LEFFERT: I don't know, Judge. Does it create  
16 any issues for you?

17           THE COURT: It creates no issues for me  
18 whatsoever.

19           I can tell you that I'm seldom at my home before  
20 7:00 in the morning because I am long gone for work. I  
21 seldom get home before 7:00 or 8:00 at night, and usually  
22 more like 8:30 or 9:00 or 10:00. It's been -- I spend very  
23 little time in my home on the weekends.

24           This issue is not something that I would never  
25 have ever had knowledge of had I not been assigned this

1 case. I travel a lot. I'm gone a lot during the weekends.  
2 And otherwise, I am just out and about with a lot of other  
3 responsibilities. So the issue would be unknown to me other  
4 than having this case assigned to me.

5 Mr. Weiner?

6 MR. WEINER: The flight box is huge. The zone of  
7 primary impact, as you see from the chart, is much closer to  
8 Vance Brand Airport. And I don't believe that your being  
9 inside the flight box poses any problem from plaintiffs'  
10 point of view.

11 MR. LEFFERT: Well, the squiggly is only one of  
12 the patterns. There will be evidence of that there's other  
13 flight patterns that they use. It doesn't encompass a  
14 larger area than the flight box. It matters which direction  
15 they took off from.

16 I don't think so, Judge, but I think I need to  
17 talk to my client.

18 THE COURT: Why don't I give you five minutes  
19 just -- so why don't you take the plaintiffs into Jury  
20 Room R.

21 MR. LEFFERT: We can just step into the hallway.

22 THE COURT: How about into one of the mediation  
23 conference rooms, let's see if one of those is free.

24 (Pause.)

25 THE COURT: Mr. Leffert?

1           MR. LEFFERT: We don't have any objection to  
2 proceeding, Your Honor.

3           THE COURT: Okay. Great. Then I'll see you all  
4 back here at 1:30. Ms. Bender will let you out so you don't  
5 set off an alarm.

6           (A recess was taken.)

7           THE COURT: Okay. Mr. Robinson, you may come back  
8 up to the witness stand.

9           MR. LEFFERT: Your Honor, if I can bring a matter  
10 to the Court's attention really quickly?

11          THE COURT: Mr. Robinson, you may be seated. And  
12 I'm going to remind you that you remain sworn.

13          THE WITNESS: Thank you.

14          MR. LEFFERT: Judge, the plaintiffs are going to  
15 call a fellow by the name of Jennings by telephone. You may  
16 recall there was some motions over that.

17          THE COURT: Yes.

18          MR. LEFFERT: And I sent to Mr. Jennings a couple  
19 of documents and asked that he have those with him when he  
20 testifies. I don't -- I read your order. I don't plan to  
21 use them as an exhibit, but I'd like him to have them with  
22 him when he testifies. I'd like an agreement from counsel  
23 that he'll see that he has them available.

24          THE COURT: I didn't hear the last part.

25          MR. LEFFERT: I haven't been able to get an

1 agreement from counsel that he'll have them available when  
2 he testifies.

3 THE COURT: Okay.

4 MR. OSOFSKY: We're not looking to put up every  
5 procedural roadblock by any means to disrupt the defendant's  
6 case, but this witness is traveling on business in France.

7 I do not know whether or not he's going to have  
8 the capacity between now and his testimony tomorrow to put  
9 the -- get those exhibits so that they are readily available  
10 to him during the testimony.

11 THE COURT: Are they electronic exhibits?

12 MR. OSOFSKY: They're not exhibits, Your Honor.

13 MR. LEFFERT: I e-mailed them to him.

14 THE COURT: So they could be electronic then?

15 MR. OSOFSKY: Yes, Your Honor.

16 THE COURT: I assume that the witness is traveling  
17 with a computer?

18 MR. OSOFSKY: I do not know that.

19 THE COURT: Okay. I'll have you contact the  
20 witness today, and you can do so by e-mail or phone or  
21 whatever means is the one that you can most easily and  
22 efficiently do.

23 If he's traveling with a computer, I will expect  
24 him to have the exhibits up. And if he's traveling without  
25 a computer, then I'll ask him when he's under oath.

1 MR. OSOFSKY: Understood.

2 THE COURT: All right. So we're back to  
3 Mr. Robinson.

4 Q (By Mr. Osofsky) Mr. Robinson, we were talking  
5 before the break about VFR flight control. And so are there  
6 any areas around Vance Brand Airport that VFR flight traffic  
7 cannot go into?

8 A Generally, no.

9 Q Is there an altitude that they are limited to  
10 under VFR?

11 A If they exceed 18,000 feet they have to be on an  
12 IFR flight plan. But other than that, in terms of the  
13 surrounding airspace, Echo airspace, the Gulf, even the  
14 Bravo airspace does not preclude one from flying VFR.

15 Q Okay. What is the airspace called above  
16 18,000 feet?

17 A Class Alpha.

18 Q And you had just mentioned some other  
19 classifications of air space. Can you explain what Class  
20 Bravo airspace is?

21 A Class Bravo airspace surrounds the higher density  
22 airports throughout the United States, usually international  
23 airports.

24 The airspace if you want to think of it  
25 three-dimensionally it's like an upside down wedding cake,



1 closest to the airfield goes to the surface, usually about  
2 5 miles from the run way infrastructure.

3 At that point the surface Class Bravo  
4 infrastructure will end, but then the next layer will start  
5 and go outwards of hypothetically 10 miles. You know, it  
6 varies between airfield all of the way up to usually  
7 10,000 feet MSL.

8 Q Is there Class Bravo airspace around Vance Brand  
9 Airport?

10 A There is. Denver International Airport has Class  
11 Bravo to the east. Closest segment of that is a block that  
12 starts -- I think it goes -- I'm doing from memory of the  
13 sectional charts, but from 10,000 to 12,000 MSL to the best  
14 of my recollection.

15 Q You also mentioned Class Echo airspace. Can you  
16 explain what that is?

17 A Echo is kind of a strange thing, kind of a strange  
18 airspace. It's used almost exclusively during instrument  
19 operations.

20 VFR traffic are never really precluded from flying  
21 into it. It's simply a tool that IFR aircraft can utilize.  
22 It is comprised of victor airways, those routes that we  
23 talked about for IFR flights, as well as transitional areas  
24 into airfields as well.

25 Q Below 18,000 feet and other than the Class Echo or

1 Class Bravo airspace to the east, are there any restricted  
2 airspaces around Vance Brand Airport that Mile-Hi would not  
3 be permitted to fly into?

4 A No, there's no restricted airspace in the  
5 vicinity.

6 Q What are the limitations on Mile-Hi's operations  
7 around Vance Brand Airport?

8 MR. LEFFERT: Objection, foundation.

9 THE COURT: Sustained, but you may lay foundation.

10 Q (By Mr. Osofsky) What is the airspace around Vance  
11 Brand Airport?

12 A Depends on what altitude you're talking about.  
13 Surface to 700 feet, Class Gulf, uncontrolled.

14 Q Above 700 feet?

15 A Class Echo.

16 Q And within Class Echo airspace, does Class Echo  
17 airspace define the rules for under which aircraft can fly  
18 under VFR control?

19 A It's the same as uncontrolled airspace. The rules  
20 according to VFR or as applied to VFR aircraft, it's the  
21 same rules. The only difference is cloud clearance  
22 requirements. But for operating, that's -- yeah, it's  
23 slightly different, but they can still operate.

24 Q What -- and so again, what are the limitations on  
25 Mile-Hi's aircraft flying under VFR in Class Echo airspace?

1           MR. LEFFERT: Your Honor, same objection. I don't  
2 think he's laid foundation for how he would know that.

3           THE COURT: Let me give you an opportunity to  
4 respond.

5           MR. OSOFSKY: Your Honor, the witness just  
6 described pretty detailed what these relative airspaces are.  
7 He's testified to his qualifications as a pilot receiving  
8 highest certification possible as a pilot, that his  
9 testimony was that that includes knowledge of the airspace.  
10 And this is pursuant to that.

11          MR. LEFFERT: Not to belabor the point, Judge, but  
12 there's an agreement with Air Traffic Control that sets this  
13 forward. And he hasn't testified about it.

14          MR. OSOFSKY: And --

15          THE COURT: I'll ask you both when I want you to  
16 have further response. Thank you.

17                 The witness may testify and respond if he knows  
18 the answer.

19          THE WITNESS: Okay. So if I understand the  
20 question, the limitations for VFR aircraft operating within  
21 the vicinity of Vance Brand Airfield --

22          THE COURT: I'm sorry, I'm having trouble  
23 understanding you.

24          THE WITNESS: I'm sorry. The limitations for any  
25 VFR aircraft operating within the vicinity of Vance Brand

1 Airfield would be to remain below 18,000 feet, and airspeed  
2 restriction of 250 knots below.

3 Q Are those the restrictions applicable to Mile-Hi's  
4 operations?

5 A They are applicable to any VFR aircraft. So if  
6 they're operating under VFR, visual flight rules, then those  
7 restrictions would apply.

8 Q Is there any restrictions on Mile-Hi that would  
9 prevent them from flying to the north of Vance Brand  
10 Airport?

11 A No.

12 Q Does -- and so is it necessary for Mile-Hi to  
13 circle the Vance Brand Airport while climbing to altitude?

14 A No, it's not necessary. In fact, circling or  
15 entering into multiple turns is counterproductive to an  
16 effective climb rate. The more turns you initiate, the less  
17 your horizontal -- or vertical component of lift, that  
18 increases your time to climb.

19 So ideally straight and level flight without any  
20 turns would get you to altitude quicker. Now, that depends  
21 on a lot of variables, winds and atmosphere conditions, et  
22 cetera.

23 Q If Mile-Hi were to proceed to the north of Vance  
24 Brand Airport during its climb to altitude, proceeding  
25 further north than the flight operations area, would Mile-Hi

1 be in violation of any FAA rules or regulations?

2 A No.

3 Q Let's talk a little bit more about what you were  
4 just discussing regarding a flight path. That's what I'll  
5 refer to as an out and back as opposed to circling. What  
6 are -- can you describe why an out and back flight path  
7 might be appropriate?

8 A First reason applicable here is to provide  
9 residents of the surrounding community respite from the  
10 constant noise. Most noise abatement procedures when  
11 followed in good faith are thought to be adhered to as in  
12 aircraft that depart and leave the area and that's it. They  
13 go off to another airfield, they don't stay in the local  
14 area or the local vicinity. So that would be one.

15 Q Is -- could you compare climbing under an out and  
16 back path versus compare that to climbing in a circular  
17 pattern?

18 A Sure. Okay. A majority of the time the winds are  
19 from the west, prevailing winds are from the west off the  
20 mountains. A circular or racetrack pattern would set you up  
21 for occasional climb with tailwind conditions. That's not  
22 optimal. You want to climb with headwind conditions in  
23 order to get to your altitude more expeditiously.

24 So that being said, flying perpendicular to the  
25 usual prevailing winds would give you pretty much always a

1 headwind component. You'd have to crab into the wind a  
2 little bit, but you'd still be receiving some benefit from  
3 the headwind component as from going north and south by  
4 turning to the east and having tailwinds at that point.

5 Q Are there issues that a pilot would need to  
6 account for when flying out of Vance Brand Airport to the  
7 north?

8 A Air traffic.

9 Q And what is the air traffic to the north of Vance  
10 Brand Airport?

11 A There are occasional general aviation low level  
12 flights. The -- the aspect in this case would be the  
13 arrival routes into DIA from the northwest gates.

14 Q Are you familiar with the northwest gate to DIA?

15 A Yes.

16 Q Have you observed traffic in the northwest gates?

17 A I have.

18 Q And how would a pilot flying to the north of Vance  
19 Brand Airport go about accounting for flights that may be  
20 coming in the arrival gate to DIA?

21 A The -- not just the pilot, but I guess the entity  
22 that's doing that would, first of all, observe because --  
23 via WebTrak or FlightAware, the volume of air traffic coming  
24 in from the northwest from that gate.

25 At times it is fairly busy with flights

1 approximately every 10 to 12 minutes. At other times it's  
2 dead, there's nobody there, no one comes in for at least an  
3 hour to an hour 15 minutes.

4 So observing that prior to would be a good way to  
5 start out; hey, looks like we're going to be clear to the  
6 north, let's make a play to fly north here.

7 The second way to mitigate that would be to  
8 request radar traffic information service from TRACON,  
9 readily known as flight following. So that provides you --  
10 you have your discrete squawk, you're in two-way  
11 communication with ATC and they're providing traffic  
12 assistance to you, they're pointing out conflicts, alerts,  
13 while providing that to the other participating aircraft as  
14 well.

15 The advantage to that is majority, if not all of  
16 these flights coming from the northwest gate are on -- in  
17 addition to flight plan, they're positive radio  
18 communication and control.

19 They're also equipped with traffic collision  
20 avoidance systems. That's above and beyond the normal  
21 general aviation aircraft that isn't afforded those luxuries  
22 or those extra layers of protection.

23 Q Can a pilot -- can Mile-Hi's aircraft safely  
24 travel to the -- on an out and back flight route to the  
25 north using flight following procedures?

1           A     Yes.  And if ATC -- I should add on to that.  
2     Yeah, they -- they -- they could.

3                     And if in fact it was busy, utilizing those flight  
4     following procedures would assist Mile-Hi and the carriers  
5     from avoiding one another not just in terms of no, you can't  
6     go to the north, but I need you to -- and as an example, I  
7     need you to stay at, you know, 9,000 feet until this guy  
8     passes, and then you're cleared up to bring your profile.

9           Q     Does Mile-Hi have to request permission in order  
10    to travel to the north outside of the flight box?

11          A     No, they don't.

12          Q     So are there times when there's heavy traffic and  
13    TRACON will request that Mile-Hi avoid the gate?

14                     MR. LEFFERT:  Objection, lack of foundation.

15                     THE COURT:  Sustained.

16          Q     (By Mr. Osofsky) In your experience based upon  
17    your understanding of the flight patterns that arrive  
18    through the northwest gate, what would TRACON's procedures  
19    be with respect to a Mile-Hi flight traveling to the north  
20    if the gate was -- had traffic in it?

21                     MR. LEFFERT:  Objection, foundation, speculation.

22                     THE COURT:  The objections are sustained.

23          Q     (By Mr. Osofsky) Have you spoken with anyone at  
24    TRACON about Mile-Hi's operating procedures?

25          A     Yes.



1 Q Who did you speak with?

2 A I need to reference my report if that's okay.

3 Q If you would like to reference your report, please  
4 turn to Exhibit No. 38.

5 A I had a telephone conversation with Mr. Bill Dunn  
6 of Denver TRACON.

7 Q And is -- based upon your conversation with  
8 Mr. Dunn at TRACON, did that conversation in any way  
9 contradict anything that you've said here today?

10 A No, it didn't.

11 Q And what was the nature of the conversation with  
12 that gentleman?

13 A Essentially I wanted to ask if Mile-Hi had the  
14 opportunity to re-address procedures for their operations,  
15 would the FAA be amenable to examining those issues and  
16 re-addressing it. And the answer was yes, that they would  
17 be open to re-addressing it.

18 Q Have you reviewed the letter agreement between  
19 Mile-Hi and the FAA?

20 A Yes.

21 Q And does that agreement prevent Mile-Hi from  
22 traveling outside of the flight operations area to the  
23 north?

24 A No.

25 Q How would out and back routes ultimately mitigate

1 noise for the residential community around Vance Brand  
2 Airport?

3 A It would follow or adhere more closely to the  
4 spirit and the intent of pilots that follow those noise  
5 abatement procedures in good faith in terms of providing a  
6 respite in the amount of noise or the duration of noise  
7 that's produced in going away.

8 And that's where most of these noise abatement  
9 procedures are authored, for aircraft that are going to take  
10 off and leave. So that would be more in line with those  
11 noise abatement procedures not only at Vance Brand, but  
12 throughout the entire United States.

13 Q Have you reviewed -- or as part of your  
14 investigation did you conduct an investigation into the  
15 planes that Mile-Hi flies and equipment that may be  
16 available for them to mitigate noise?

17 A Yes.

18 Q And did Mile-Hi -- in your investigation did it  
19 appear to you Mile-Hi selected equipment that would help to  
20 mitigate the noise from their operations?

21 A No.

22 Q What type of equipment could Mile-Hi have selected  
23 in order to ease the noise impact on the community?

24 A So the Twin Otter is a common parachute platform.  
25 It's got the right size, it's got a good climb capability.

1 It is loud. And in areas where noise is not an issue, that  
2 specific model would be fine because that's in an area where  
3 noise really isn't of a concern to the operator.

4 When it is, there are other options that an  
5 operator can look into in the form of quieter propeller  
6 assemblies that utilize four blades on the propeller  
7 assembly versus three.

8 Q How does the four-blade propeller reduce noise?

9 A So the four-bladed propeller can be installed on a  
10 different model than what I was provided. The information I  
11 was provided that Mile-Hi is in possession of, that would be  
12 the Dash 300 model.

13 So the four-bladed propeller assembly reduces  
14 noise by increasing thrust efficiency through the addition  
15 of prop area.

16 And this might be an area where I need to get into  
17 a little bit more technical aspects of what causes it, to  
18 lay kind of a basis for what causes the noise and why this  
19 four-bladed assembly would decrease that if that's --

20 Q If you wouldn't mind giving a little of the  
21 technical information?

22 A Okay. So variable pitch props make noise. All  
23 propellers make noise, but variable pitch props make more  
24 noise at higher rpm, lower pitch. It's just a fact that at  
25 lower pitch the fire, the air foil, and I'm talking the

1 propeller blade, is more efficient.

2           For take-offs and landings that's the accepted  
3 setting with full power. And what you're doing is applying  
4 full power at this full rpm to obtain maximum thrust.

5           After you depart and are at a safer altitude you  
6 can reduce rpm. You can think of it as using a lower gear  
7 on a car.

8           So when you start out at first gear it's higher  
9 revs. You're getting a lot of thrust out of it. But once  
10 you get to altitude and the air speed increases, you don't  
11 need that much rpm anymore to operate efficiently unless you  
12 want to continue to climb at the maximum rate.

13           So the net thrust on a propeller disc is the sum  
14 of the rotational velocity of the propeller and the air  
15 stream that is tangential to the -- the air flow or the  
16 rotational plain of the propeller.

17           So you can think of it as air speed of the  
18 aircraft increases, that sum now stays the same, but now you  
19 can reduce the rpm of the propeller and that gets quieter.  
20 That's the basics of it.

21           And what really causes the noise is the blade tips  
22 approaching transonic, the speed of sound, usually around  
23 .9 Mach. And that's what I said earlier of the shock wave  
24 produces that noise. That's on the three-blade.

25           If you utilize that four-bladed assembly, the

1 three blades don't have to work as much, they don't have to  
2 work -- or the four blades don't have to work as hard.  
3 You're still getting the net thrust, that sum thrust. But  
4 four blades are doing the work rather than three. And that  
5 allows you to operate at lower rpm's.

6 Q Have you spoken with the manufacturer of such a  
7 four-bladed propeller to identify whether it was noise  
8 reduction?

9 A I've spoken with a gentleman who writes back  
10 engineering for the four-bladed assembly.

11 Q And did that conversation confirm that this  
12 four-bladed assembly would be a means of reducing noise?

13 A He did, yes.

14 Q In your experience does the standard of care  
15 within the aviation community require the selection of  
16 equipment that is appropriate for the area of operation?

17 MR. LEFFERT: Objection, leading.

18 THE COURT: Sustained, but you can re-frame it.

19 Q (By Mr. Osofsky) Is there a standard of care  
20 within the aviation community with respect to the selection  
21 of equipment?

22 A Yes.

23 Q Specifically with -- and is there a standard of  
24 care in the aviation community with respect to selection of  
25 equipment that is appropriate to -- appropriate in terms of

1 its noise output for a given area?

2 A Yes.

3 Q And what is the standard of care?

4 A There's -- okay. So there's the selection of  
5 equipment, and then there's the use of equipment. So at  
6 several airfields throughout the United States there are  
7 certain aircraft that are not allowed to operate in those  
8 airfields because of the noise abatement procedures or the  
9 request for the community. So that would be one of them.

10 If it is imperative that an operator does operate  
11 out of those airfields --

12 MR. LEFFERT: Your Honor, I object. This is way  
13 beyond the scope of his disclosure.

14 THE COURT: Do you want to respond?

15 MR. OSOFSKY: This is not beyond the scope of the  
16 disclosure, Your Honor. The discussion of equipment in the  
17 disclosure is contained on page 5.

18 THE COURT: Tell me what exhibit you're on.

19 MR. OSOFSKY: I'm on Exhibit 38, Your Honor.

20 THE COURT: Thank you.

21 Do you want to point out to Mr. Leffert what page  
22 in the exhibit you believe that this is discussed? And then  
23 I can check with him again as to whether he still has an  
24 objection.

25 MR. OSOFSKY: It's on page 5 of Exhibit 38.

1 MR. LEFFERT: I have it, Your Honor.

2 THE COURT: And do you still have an objection,  
3 Mr. Leffert?

4 MR. LEFFERT: There's nothing in here about other  
5 aircraft, other airports and what other noise abatement  
6 procedures are.

7 THE COURT: Mr. Osofsky, can you direct me to  
8 where that is on page 5?

9 MR. OSOFSKY: I'm sorry. I misunderstood the  
10 objection, Your Honor.

11 So to clarify, the objection is what?

12 MR. LEFFERT: He's testified about something  
13 that's never been disclosed.

14 MR. OSOFSKY: What specifically?

15 THE COURT: Go ahead.

16 MR. LEFFERT: Talking about other airports, other  
17 noise abatement procedures that are not before the Court,  
18 other airplanes.

19 THE COURT: His testimony included statements  
20 about equipment and several airfields throughout the United  
21 States and other -- there are certain aircraft that are not  
22 allowed to operate into those airfields because of noise  
23 abatement procedures that their community would request of  
24 them.

25 So I'm going to sustain the objection and allow

1 you to rephrase unless you can point me to where --  
2 somewhere in the report where you think that was disclosed.

3 MR. LEFFERT: Your Honor, I'd ask that that  
4 testimony be stricken.

5 THE COURT: It is stricken unless -- I want to  
6 give you an opportunity if you think there's somewhere in  
7 the report that you want to direct me to.

8 MR. OSOFSKY: I'll circle back if we need to, Your  
9 Honor.

10 THE COURT: Okay. Thank you.

11 Q (By Mr. Osofsky) Is the Twin Otter used by  
12 Mile-Hi, its currently set-up, appropriate equipment to use  
13 for this type of operation in this area?

14 A Could you repeat that question please?

15 Q Is the Twin Otter used by Mile-Hi as it's  
16 currently set up appropriate equipment to use for this type  
17 of operation in this area, this type of operation being  
18 parachuting operation?

19 A Not with reference to a standard of care of noise  
20 mitigation and noise abatement. There's a more appropriate  
21 standard of care for that.

22 Q Have you ultimately been able to formulate an  
23 opinion as to whether Mile-Hi's operations have met or been  
24 beneath the standard of care with respect to noise impact on  
25 the community?



1           A     Repeat that question please.

2           Q     Sure.

3                     Have you been able to formulate an opinion as to  
4 whether Mile-Hi's operations have met or been beneath the  
5 standard of care with respect to noise impact on the  
6 community?

7           A     Beneath.

8           Q     And how specifically have they failed to meet the  
9 standard of care for aviators?

10          A     Okay. So noise mitigation and noise abatement  
11 procedures, while it may appear that they're there for the  
12 community, are really there for aviation. They're there for  
13 the airport and they're there for the operators and they're  
14 there to foster a good relationship with the community.  
15 Because without community support those airports and  
16 operators would get shut down. That's a fact. They stand  
17 by that, they will attest to that.

18                     So there are certain standards that are set forth  
19 in fostering a good relationship with the community. Just  
20 simply adhering to the noise abatement procedures in good  
21 spirit is just the beginning. Hearing the community's  
22 concerns and proactively addressing those would be the next  
23 step in that.

24                     I saw no evidence of either of those taking place.  
25 That's why I said that Mile-Hi has acted beneath an

1 appropriate standard of care for noise mitigation.

2 Q Does compliance with FAA regulations automatically  
3 place a pilot within the standard of care for aviators?

4 A Does compliance with FAA regulations automatically  
5 put them in --

6 Q Let me ask a different way.

7 A Okay.

8 Q Can you give an example of any instance in which  
9 flying in compliance with FAA regulations would not  
10 necessarily comport with an appropriate standard of care?

11 A Okay. So I guess off the top of my head the one  
12 that comes to mind is -- is minimal operation altitudes in  
13 unpopulated areas or sparsely populated -- sparsely  
14 populated areas.

15 The regulations state that you have to remain  
16 away -- 500 feet away from any obstacle, structure, housing,  
17 tower, whatever. So that's -- that would be you could think  
18 of as a bubble around a house, a farm house. And as long as  
19 you're 500 feet away in either direction of that you're  
20 fine.

21 So technically you could be in compliance with the  
22 regulations, be flying at 3 feet above the ground at 200  
23 knots and be 501 feet away from that farmhouse. And you're  
24 in compliance with the regulations, but it's -- it's an  
25 inappropriate standard of care.

1           Q     Would a pilot flying at that low altitude be  
2 negligent in your opinion?

3           A     Negligence is a legal term. I'm not a lawyer. So  
4 as a non-lawyer it would be stupid for me -- sometimes you  
5 would need to do that. Crop dusting I can think of as one  
6 of them, but they're exempt from that anyway.

7           Q     Would it be beneath the standard of care to fly  
8 that close to the ground under conditions other than crop  
9 dusting?

10          A     Yes.

11          Q     Does the fact that the Twin Otter is manufactured  
12 within the absolute noise limit for fixed wing small  
13 propeller aircraft mean that it is automatically appropriate  
14 as equipment for use around Vance Brand Airport?

15          A     Given the alternatives that are available, no.

16               MR. OSOFSKY: No further questions.

17               Hold on one moment, Your Honor, please.

18               THE COURT: Sure.

19               MR. OSOFSKY: Thank you.

20               (Pause.)

21               MR. OSOFSKY: No further questions on direct, Your  
22 Honor. Thank you.

23               THE COURT: Thank you.

24               Cross-examination.

25               MR. LEFFERT: Thank you, Judge.

## CROSS-EXAMINATION

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BY MR. LEFFERT:

Q Mr. Robinson, you would agree with me, wouldn't you, that part of the standard of care is meeting the federal regulations, including the noise restrictions of the FAA?

A I would agree that that's a starting point, but not definitive.

Q And you're aware that the FAA has noise limitations for the Mile-Hi aircraft?

A Yes.

Q And you would agree with me, wouldn't you, that if Mile-Hi is meeting the noise regulations, they are meeting the standard of care with respect to noise?

A Not in this case, no.

MR. LEFFERT: Your Honor, may I approach the witness?

THE COURT: Have you showed it to Mr. Weiner?

(Pause.)

MR. LEFFERT: I have a copy for Your Honor. I know that's hard to reach.

(Pause.)

THE COURT: Okay. The Court has opened the original deposition of Matthew Robinson dated January 27, 2015.

1           MR. LEFFERT: Handing the copy you just read, Your  
2 Honor, to the witness.

3           Q     (By Mr. Leffert) Mr. Robinson, have you read your  
4 deposition recently?

5           A     I haven't had the opportunity to review it, no.

6           Q     Well, let's take a look at it. If you'd turn to  
7 page 34 please. Beginning on page -- I'm sorry, it's at the  
8 bottom of page 33, line 24. I asked you Question -- I'd ask  
9 you to read along with me. And I'll read the question and  
10 answer, and then I'll ask you a question about it. So if  
11 you could read along with me, I'd appreciate it.

12          A     Go ahead.

13          Q     My question to you was Well, I'm trying to find  
14 out if part of the standard of care is meeting the federal  
15 regulation requirements. I'm not suggesting that's the only  
16 thing. I'm just asking is that part of it.

17                     Your answer is That's part of it, sure.

18                     And I asked you And that would include the federal  
19 regulations with respect to noise limitations?

20                     Sure.

21                     And then I asked you if there -- if you're aware  
22 of the noise limitations.

23                     And you say Yes.

24                     And then at the bottom of the page I say to you --  
25 well, I'll -- in fairness I want to read each question and

1 answer. There's only a couple more.

2           If Mile-Hi -- this is on line 16. If Mile-Hi was  
3 complying with the federal noise regulations with respect to  
4 those aircraft, would you agree with me that they've met the  
5 standard of care at least with respect to the federal  
6 regulations?

7           I realize there are other aspects to the standard  
8 of care that we'll talk about right now. I'm just talking  
9 about the federal regulations. If they meet those noise  
10 requirements, would you agree with me they're complying with  
11 the standard of care with respect to those regulations?

12           Your answer is I would agree.

13           Is that your testimony then?

14           A     Yes.

15           Q     Is that different than what you're saying today?

16           A     Not at all.

17           If you go back to prior to -- just prior to these  
18 questions where I said that these regulations are merely a  
19 start, so that applies to the regulations and the equipment  
20 that they're using, yes, the regulations are met.

21           But like I said in when I started this whole line  
22 of questioning off with answering was it's merely a start,  
23 and I said that today as well.

24           Q     Right.

25           And the question was if they meet them, they're

1 meeting the standard of care with respect to the  
2 regulations; right?

3 A With respect to the regulations, not with respect  
4 to this -- with this case.

5 Q What are the other parts of the standard of care  
6 besides the FAA regulations in your view?

7 A Standard of care -- that's a pretty broad  
8 question. Could you --

9 Q That's what you're here to testify about, isn't  
10 it?

11 A Okay. With regard to noise abatement procedures  
12 or noise mitigation as a whole?

13 Q What other elements go into the standard of care  
14 with respect to noise mitigation that you've just been  
15 testifying about besides the federal regulations? What else  
16 do you think goes into it?

17 A Okay. So it starts out as selecting the  
18 appropriate equipment, choosing the right platform for the  
19 operation that you're going to be in and the area that  
20 you're going to be doing that.

21 Q Is it voluntary noise abatement procedures --  
22 guidelines rather, are they part of the standard of care in  
23 your view?

24 A Say that again. I was on a thought process there,  
25 and you interrupted me.

1 Q Well, voluntary noise abatement guidelines, are  
2 those part of the standard of care in your mind?

3 A They're part of it, yes.

4 Q Well, in fact, let's take a look at Exhibit K.  
5 It's in one of those binders I think on the corner there,  
6 Mr. Robinson. Sorry, that's not the right one. Let me get  
7 you the right one. It's Exhibit E. Have you found it  
8 there, sir?

9 A I'm on E. And I see City of Longmont General  
10 Aviation Voluntary Noise Abatement Procedures.

11 Q Have you seen that before?

12 A Yes.

13 Q And did you use that as part of your report in  
14 this case?

15 A I did.

16 MR. LEFFERT: Move for admission of Exhibit E,  
17 Your Honor.

18 THE COURT: Any objection, Mr. Weiner?

19 MR. WEINER: One moment please, Your Honor. We  
20 haven't -- we haven't been provided with an exhibit book,  
21 but we'll do it electronic. So it will take us another --

22 MR. LEFFERT: More than a month ago we exchanged  
23 trial exhibits with them electronically. They sent us  
24 theirs electronically.

25 THE COURT: Excuse me, no, I will not tolerate



1 this.

2 MR. LEFFERT: So we printed them out. We used --

3 THE COURT: I'll give you a moment to find the  
4 exhibit, Mr. Weiner.

5 MR. OSOFSKY: It appears to be the same exhibit  
6 that's already been admitted as I believe Exhibit 6.

7 MR. LEFFERT: It's not the same exhibit, Your  
8 Honor, it's different. Some of the language is different.

9 THE COURT: Do you have any objection to  
10 Exhibit E?

11 MR. OSOFSKY: No, Your Honor.

12 THE COURT: Exhibit E is admitted.

13 Q (By Mr. Leffert) I want to walk with you through  
14 this for a minute.

15 First of all, you would agree that these are  
16 voluntary noise abatement procedures; correct?

17 A Correct.

18 Q They're not mandatory, are they?

19 A No.

20 Q And no pilot is required to use these, are they?

21 A No.

22 Q And it's true that these voluntary noise abatement  
23 procedures are only effective within 3 miles of the airport?

24 A I don't recall the 3 miles of the airport. I may  
25 need to review these notes.

1           Q     You know what, I'll withdraw the question and  
2 we'll get that through another witness.

3           A     Okay.

4           Q     Let me ask you about this; in the first -- if  
5 you'll read along with me, I'm going to read a couple  
6 sentences. And I just ask you to read with me.

7                     Under the first paragraph, general aviation  
8 voluntary noise abatement procedures, pilot information.  
9 Longmont Municipal Airport has a voluntary noise abatement  
10 program. The airport has developed voluntary noise  
11 abatement procedures in an effort to be responsive to the  
12 concern of our neighbors and to continue to provide an  
13 excellent facility for your use.

14                    Do you see where I've read that?

15          A     Yes.

16          Q     You've seen -- in fact, don't most regional and  
17 small airports have voluntary noise abatement guidelines?

18          A     I would agree with that, yes.

19          Q     Okay. And the second paragraph, be advised that  
20 procedures are recommended for arrivals, departures, and  
21 pattern operations at Longmont Municipal Airport. They are  
22 not intended to supersede the responsibility of the pilot  
23 for compliance with federal aviation regulations, air  
24 traffic control clearances and operating parameters of the  
25 aircraft operations manual.

1           Do you agree with that statement?

2           A     Yes.

3           Q     Now, you testified earlier about page 2.  And I  
4 believe this is similar, avoid flying over the city proper  
5 and outlying residential areas.  Do you see that in the  
6 middle of the page?

7           A     I see it, yes.

8           Q     Well, in this case Mile-Hi has an agreement with  
9 TRACON air traffic control to fly in a flight box, don't  
10 they?

11          A     They do.

12          Q     And that flight box, portions of it are over  
13 residential areas, are they not?

14          A     It is.

15          Q     At the bottom it says community concerns.  There's  
16 a paragraph there.  And one of them -- and then it says the  
17 following are examples of flight maneuvers that have caused  
18 the most anxiety in the community; flying in continuous  
19 circles over the city or outlying residential areas.  Do you  
20 see where I've read that?

21          A     Yes.

22          Q     This isn't -- this just is identifying a community  
23 concern.  This is not actually part of the noise abatement  
24 guideline, is it?  It doesn't say you can't do it?

25          A     Well, none of this says you can't do it.

1 Q Right. It's all voluntary?

2 A Yes.

3 Q And in fact, the voluntary abatement guidelines is  
4 actually a higher standard of care, isn't it?

5 A A higher standard of care than what?

6 Q Than the standard of care for mitigating aircraft  
7 noise?

8 A I'm not understanding. Was that a --

9 Q Take a look at page 54 in your deposition. I'm  
10 off a little bit. I'm -- take a look at page 53. I want  
11 you to see the context of my question, your answer. And you  
12 might start on line 13. Why don't you read that question to  
13 yourself for a moment, and when you're done let me know.

14 A 13 on page 53?

15 Q Yes, sir, line 13.

16 A Okay. I read 13.

17 Q And at the end of that I say Is it a requirement  
18 of the voluntary noise abatement procedures that they not  
19 fly in continuous circles?

20 And your answer is There's -- your question  
21 regarding the requirement, there's nothing required of  
22 anybody to comply with the voluntary noise abatement  
23 procedures. It's simply a higher standard of care than to  
24 simply be ignoring the concerns of the community.

25 Is that your answer?

1           A     It would be a -- an appropriate standard of care  
2 to adhere to the noise abatement procedures by not flying in  
3 continuous circles.

4           Q     A higher standard of care is the term you used in  
5 your deposition. Let me ask you for a moment --

6           A     I guess what I meant in saying that was a more  
7 appropriate standard of care. If I said a higher standard  
8 of care I was thinking about the standard of care that was  
9 being exercised by Mile-Hi.

10          Q     You testified about some flight paths and some  
11 flight profiles. Now, it's true, isn't it, that you've  
12 never flown a flight path for an aircraft for -- I'm sorry,  
13 for an airplane for a parachuting operation; isn't that  
14 right?

15          A     Not an airplane, a helicopter. But there's really  
16 no difference.

17          Q     You don't think there's any difference in the kind  
18 of equipment you use for a skydiving operation?

19          A     I was referring to no difference with regard to  
20 ATC procedures and noise abatement while dropping jumpers in  
21 a congested area while on VFR.

22          Q     You also talked about a continual climb rate and  
23 not flying in a loop. You've never actually done any of  
24 those things, have you, for a parachuting operation?

25          A     I've flown a multi-engine airplane in a racetrack

1 pattern and in continuous circles, but not for parachuting  
2 operations.

3 Q Did you call the Vance Brand Airport manager to  
4 ask them if Mile-Hi -- if their operations were meeting the  
5 noise abatement procedures?

6 A No. I just discerned that through my own  
7 investigation and observation.

8 Q Which lasted four hours on one day; right?

9 A Yes, and in addition to other aspects.

10 Q But with respect to saying that Mile-Hi doesn't  
11 pull back the propeller rpm on take-off, for example, that's  
12 based on one observation on that one day; correct?

13 A It was based on multiple observations on multiple  
14 sorties --

15 THE COURT: I'm sorry, on multiple what?

16 THE WITNESS: Sortes, departures, arrivals,  
17 operations during that time frame. And that was -- I found  
18 corroborating evidence to that fact in my witness  
19 interviews.

20 Q (By Mr. Leffert) And your witness interviews,  
21 let's talk about that. You talked to the plaintiffs; right?

22 A Few of them, yes.

23 Q That's all you talked to?

24 A Yes.

25 Q Now, I want to make sure I understood you

1 correctly. On direct did you say that -- you were  
2 describing a flight path for one of the Mile-Hi planes, and  
3 you said that you heard the prop rpm increase on the  
4 downward leg. Is that what you said?

5 A It appeared to be. It was at the Behrens  
6 residence -- I think I'm pronouncing that --

7 Q Right.

8 A -- correct -- where the Twin Otter was entering  
9 the downwind. And I could hear the prop rpm being advanced.

10 Q Increased?

11 A Yes.

12 Q Well, that would mean that the prop rpm had been  
13 pulled back sometime prior to that; right?

14 A Yeah. I know exactly when that happened it was  
15 pulled back is immediately after the jumpers away call.

16 Q Let me ask you to look at Exhibit K in your book.  
17 Once you found it let me know.

18 A The agreement?

19 Q Yep.

20 I noticed from your report that this is one of  
21 documents that you reviewed. Did you review this prior to  
22 your report?

23 A I did.

24 Q And was it -- did you use it in -- as part of your  
25 report in part of your consideration?

1 A Yes, sir.

2 MR. LEFFERT: Move for admission of Exhibit K,  
3 Your Honor.

4 THE COURT: Any objection from the plaintiffs?

5 MR. OSOFSKY: No, Your Honor.

6 THE COURT: K is admitted.

7 Q (By Mr. Leffert) Can you tell the judge what is  
8 Exhibit K, Mr. Robinson?

9 A The Letter Agreement between Denver TRACON and  
10 Mile-Hi Skydiving dated April 2, 2007.

11 Q It says subject, parachute jumping at Longmont  
12 Vance Brand Airport LMO Colorado. The scope of the  
13 agreement, this agreement applies to parachute jumping  
14 activities conducted within the LMO parachute operations  
15 area described in attachment one.

16 And do you have -- hopefully you have an  
17 attachment one there, Mr. Robinson? It's on the back page.

18 A I have it, yes.

19 Q All right. And do you recognize that to be the  
20 parachute operations area?

21 A I do.

22 Q Let me ask you, do you -- can you tell us is this  
23 the same area that's depicted on Defendant's Exhibit L?

24 A I don't know. I mean, it looks to be relatively  
25 the same shape. But without it being superimposed on the



1 VFR sectional it's hard to say.

2 Q I understand. It's okay.

3 A I can't see airfields on there, so I don't know  
4 what the scale is.

5 Q I gotcha.

6 All right. Now, did I understand you on direct to  
7 say that Mile-Hi is not required to fly within the flight  
8 box it's attached as the exhibit to this Letter Agreement?

9 A Correct.

10 Q Take a look at the paragraph 7 procedures at the  
11 bottom. I'm going to read a part of that with you. And  
12 then if you read along with me I'll ask you a question.

13 It says A, pilots of jump aircraft shall remain  
14 within the confines of the LMO parachute operations area,  
15 attachment one, and clear of Denver Class B airspace during  
16 all phases of flight. Do you see where I read that?

17 A Yes.

18 Q Is it your testimony that they're not required to  
19 fly in the flight box?

20 A They're not required to fly in the flight box.

21 Q They can request to leave the flight box if they  
22 have an adverse climb condition?

23 A They don't even need to request.

24 Q Well Mr. Robinson, it says right here that they're  
25 required to fly in it unless they have an adverse climb

1 condition. It says it right here, doesn't it?

2 A This is not a regulation.

3 Q It's an agreement with TRACON air traffic control;  
4 right?

5 A And that specific agreement with TRACON and air  
6 traffic control was addressed in Yancy O'Barr's testimony.

7 THE COURT: I'm sorry, in what testimony?

8 THE WITNESS: The FAA's testimony, Your Honor.

9 Q (By Mr. Leffert) Did you read Yancy's deposition?

10 A Yes.

11 Q Yes.

12 Are you saying that Mile-Hi is not required to  
13 comply with this agreement with TRACON air traffic control?

14 A That's what I'm saying. And that's exactly what  
15 the FAA has said as well.

16 Q Well, I beg to differ with you. Mr. O'Barr did  
17 not say that in his deposition.

18 MR. OSOFSKY: Objection, Your Honor.

19 MR. LEFFERT: It's argumentative. I'll withdraw  
20 the question.

21 THE COURT: The statement from Mr. Leffert is  
22 withdrawn from the record.

23 Q (By Mr. Leffert) Well, let's go about this --  
24 you're saying that Mile-Hi is not required to comply with  
25 this Agreement. Is that what you're saying?

1           A     That's what I'm saying based upon the statements  
2 and testimony --

3           Q     Hold on.

4           A     -- of the FAA.

5           Q     So setting that aside, is it your testimony  
6 they're not required to comply with this Agreement?

7           A     No, they're not required.

8           Q     What did you read in Mr. O'Barr's deposition that  
9 caused you to believe they're not required to comply with  
10 this?

11          A     He said they could leave at any time, that that  
12 was to a general area that -- that the controllers knew that  
13 they would be dropping and operating in. But it also says  
14 right here that they can leave the box if they require  
15 flight -- or request flight following.

16          Q     Because of an adverse climb condition --

17          A     Yes.

18          Q     -- like weather or wind?

19          A     Where does it say weather or just wind here?

20          Q     Well, adverse climb condition. You'd agree  
21 weather or wind would be adverse climb conditions, wouldn't  
22 they?

23          A     Could be a myriad of issues.

24          Q     Right.

25                    But you would agree with me that in general

1 they're to stay in the flight box unless they have some  
2 issue that they need to ask to leave; correct?

3 A No. They could fly out of that flight area  
4 anytime they wanted. And that's based exactly on the FAA's  
5 testimony.

6 Q Well, the judge will get a chance to read  
7 Mr. O'Barr's deposition. That's what you're relying on for  
8 your opinion?

9 A That, and the Letter Agreement itself that says  
10 you can leave.

11 Q It says in the event of adverse climb conditions  
12 pilots may request flight following outside the operations  
13 area?

14 MR. OSOFSKY: Objection, Your Honor.

15 Q (By Mr. Leffert) That's the only --

16 THE COURT: Excuse me. If you say objection,  
17 you'll need to say it louder so it catches both my attention  
18 and the witness' so the witness knows to stop.

19 MR. OSOFSKY: I object. This has been asked and  
20 answered, and this is just argumentative at this point.

21 THE COURT: The objection is sustained. I have a  
22 better idea of Mr. Robinson's testimony.

23 Q (By Mr. Leffert) Mr. Robinson, did you take videos  
24 when you were out there for your one four-hour trip to the  
25 Longmont Airport?

1           A     Yes.

2           Q     And when you took those videos did you have a  
3 chance to review them after they were taken?

4           A     Yes.

5           Q     And do those videos -- are they an accurate  
6 representation of what you saw when you were there and the  
7 observations that you made?

8           A     They -- they helped, yes.

9           Q     Okay. And did you use them or consider them as  
10 part of your opinions in this case?

11          A     To some extent, yes. But for the most part I  
12 utilized my firsthand observation for my opinions.

13                 MR. LEFFERT: Okay. Your Honor, we'd move for  
14 admission of Exhibit R, which are copies of videos that  
15 Mr. Robinson took.

16                 THE COURT: Mr. Osofsky or Mr. Weiner, do you have  
17 any objection to R?

18                 MR. WEINER: Could you give us 30 seconds to pull  
19 it up, Your Honor?

20                 THE COURT: Okay.

21                 (Pause.)

22                 MR. OSOFSKY: Does counsel mean RR, Your Honor?  
23 We don't see an R on the exhibits that they gave us.

24                 MR. LEFFERT: It's R.

25                 THE COURT: Mr. Leffert, I have just a note that

1 says Matt Robinson videos. Where will I find them?

2 MR. LEFFERT: On the disc, Your Honor, or in the  
3 book.

4 THE COURT: I guess I'm asking where is the disc.

5 MR. LEFFERT: Oh, I'm sorry. We have a disc, and  
6 it's also -- we were going to play it through our laptop,  
7 which I think will go to yours.

8 THE COURT: I just didn't know if you had a disc  
9 in here. I didn't know how I was going to review it.

10 MR. LEFFERT: We'll put it up for you.

11 MR. WEINER: Your Honor, we have not been provided  
12 with Exhibit R.

13 THE COURT: Let's avoid the discourse and any  
14 responses or comments.

15 And Mr. Leffert, why don't you respond to whether  
16 or not you provided Exhibit R to the plaintiff.

17 MR. LEFFERT: Well, actually it was the plaintiff  
18 that provided it to us. It's his videos, and it was part of  
19 his report.

20 THE COURT: Part of Mr. Robinson's report?

21 MR. LEFFERT: Yes.

22 THE COURT: Okay. And your response to that?

23 MR. WEINER: No. We've heard testimony numerous  
24 times that we've changed our exhibits and objections to  
25 changing the exhibits. If it wasn't provided in the exhibit

1 list and if it wasn't provided to us, whether or not it was  
2 disclosed doesn't matter. It hasn't been provided to us to  
3 prepare for trial.

4 THE COURT: Do you have a copy of Mr. Robinson's  
5 videos?

6 MR. WEINER: Somewhere in lots of files, yes, we  
7 do, Your Honor.

8 MR. LEFFERT: Judge, we gave it to them as part of  
9 our trial exhibits. When we exchanged trial exhibits  
10 electronically we gave it to them back -- gave it back to  
11 them. They do have it.

12 THE COURT: Thank you. Exhibit R will be  
13 admitted.

14 Q (By Mr. Leffert) Now, when you take these videos,  
15 did you take some of them at Kim Gibbs' house?

16 A No. These videos were taken at the other  
17 plaintiffs', I think it was Yates --

18 Q Okay.

19 A -- if I remember correctly, Behrens, and then  
20 surrounding community down to the south, Gunbarrel Road  
21 vicinity, Niwot area.

22 Q I think Kim Gibbs lives down in the Gunbarrel --

23 A Yeah.

24 Q But that's fine.

25 Are some of the video taken in the landing path

1 for the airport?

2 A I can't remember. I don't -- I don't think they  
3 were in the path, no.

4 Q Okay. All right. Let's take a look at a couple  
5 of these. How many did you -- first of all, I notice that  
6 we have an indication of a video 2191, and it's indicated as  
7 missing. Did you withhold any videos from production to us?

8 A No. That was -- as far as I can recall, that was  
9 a different video not applicable to this case. I can't  
10 remember. I think it was -- I think it was testing  
11 something in the car or truck beforehand or something.

12 Q Did you use a regular video camera?

13 A I don't know what you mean by a regular video  
14 camera.

15 Q I'm not sure what I mean either.

16 What kind of video camera did you use?

17 A It was -- I think it was a Canon -- no Sony HD  
18 handheld video camera.

19 Q Did you do anything to calibrate the sound, or did  
20 you just record it as the camera was?

21 A Just recorded it as it was.

22 Q All right. Let's take a look at -- well, let's --  
23 let's look at 2187.

24 MR. LEFFERT: And Judge, I want to make sure that  
25 you're comfortable with whatever sound level.



1 (The video was played in open court.)

2 Q (By Mr. Leffert) Mr. Robinson, was that just a car  
3 that we heard go by?

4 A No. That's a plane.

5 MR. LEFFERT: Run it back to the car, will you?

6 (The video was played in open court.)

7 Q (By Mr. Leffert) Was that a car?

8 A In the background, yes.

9 Q Mr. Robinson, do you know where you took that  
10 particular one? Was that -- was that down in the Gunbarrel  
11 area?

12 A That one from what I remember was at the residence  
13 of Mr. Yates.

14 Q Okay. Let's take a look at -- let's take 2194.

15 MR. OSOFSKY: Your Honor?

16 THE COURT: Mr. Osofsky?

17 MR. OSOFSKY: I'm going to object to the exhibit  
18 to the extent that this is being offered as evidence of the  
19 sound being produced in the location and area.

20 No foundation has been laid as to whether the  
21 equipment that was being used has the capacity to accurately  
22 reproduce the sound. There's been no foundation laid that  
23 this equipment is now calibrated to accurately reflect the  
24 sound in the courtroom.

25 If this is being offered as evidence of the

1 visual, I understand that completely. If this is being  
2 offered as evidence of sound, it's in conflict.

3 THE COURT: Do you wish to respond, Mr. Leffert?

4 MR. LEFFERT: It's already been admitted.

5 In addition to that, I laid foundational questions  
6 as to how it was made.

7 And in response, yes, we are offering it for  
8 sound. He's testified about how the sound affected him  
9 personally from living on airbases. And so I think it's  
10 relevant and it goes to the credibility of his testimony.

11 THE COURT: The objection is overruled. The  
12 exhibit is admitted. And it will be up to the Court to  
13 determine whether or not the sound level on it is something  
14 that I need to play louder or softer and vary when I  
15 re-listen to it and make a ruling on the case.

16 Right now I had it turned down because my speaker  
17 is literally 6 inches from me. So it's much closer than  
18 yours and it's very hard for me to hear questions over it if  
19 it's turned up higher.

20 MR. OSOFSKY: May I, Your Honor?

21 THE COURT: Briefly.

22 MR. OSOFSKY: My concern is how does Your Honor  
23 know what volume to play it at?

24 THE COURT: Well, that's something I'm going to  
25 have to determine, Mr. Osofsky. Nobody has requested that

1 the Court go out and listen to the planes. That's my  
2 determination based on the evidence brought before me in  
3 this courtroom.

4 MR. LEFFERT: We can start it again. But let me  
5 ask a couple questions.

6 Q (By Mr. Leffert) Mr. Robinson, going to look at  
7 just a couple -- I'm not going to spend a lot of time on  
8 this, but I'm going to look at a couple more of these.

9 But when I listened to these I've heard background  
10 noise, not just a car, but I believe I hear a skateboard.  
11 Was there a skateboard around one of them?

12 A In the one with the car, the road was about  
13 10 feet from me.

14 Q Okay.

15 A The skateboard was about 5 feet from me.

16 Q Okay.

17 A I was at the Behrens residence. I had parked  
18 outside their home and was videotaping. And a kid was  
19 riding a skateboard next to me.

20 Q I also heard -- in the last one I heard some birds  
21 chirping. Did you also hear birds when you were out there?

22 A I don't recall hearing the birds, but I can hear  
23 them on the video, yes.

24 MR. LEFFERT: So with respect to the sound, Your  
25 Honor, I think that might be some guide to you about the

1 sound of the planes, because there's other common sounds  
2 that we can also hear.

3 THE COURT: I think that's part of argument.

4 MR. LEFFERT: Sorry. Can we start it over?

5 (The video was played in open court.)

6 Q (By Mr. Leffert) Next, 2193 please.

7 (The video was played in open court.)

8 Q (By Mr. Leffert) Mr. Robinson, when you gave your  
9 personal opinions about the noise from these planes, is that  
10 what you based it on, what you see in these videos?

11 A No. I based it on my personal experience.

12 Q And you're telling the Court that you could  
13 tell -- at that distance and that sound level that you could  
14 tell whether or not Mile-Hi had reduced their propeller rpm  
15 at safe altitude?

16 A Safe altitude was stated at approximately  
17 2000 feet in testimony to the best I recall.

18 And no, I did not hear any discernible prop rpm  
19 change at 2000 feet. And it appeared to be the same pitch  
20 throughout the entirety of the flight up until I would say  
21 at a minute after jumpers away call, and then it was abrupt  
22 decrease.

23 THE COURT: Mr. Robinson, could you move your  
24 chair closer to the microphone?

25 THE WITNESS: Sorry.

1 THE COURT: Thank you.

2 Q (By Mr. Leffert) Mr. Robinson, are you telling the  
3 judge that you could make that determination from that kind  
4 of sound level at that distance?

5 A It appeared to me that the same pitch setting.

6 MR. LEFFERT: Nothing further, Your Honor. Well,  
7 one second, Judge.

8 THE COURT: Okay.

9 (Pause.)

10 Q (By Mr. Leffert) Why would Mile-Hi reduce the  
11 propeller rpm's once jumpers were away? Why would they do  
12 that?

13 A That would be in line with a throttle decrease as  
14 well.

15 Q Right.

16 A Decreasing the throttle and decreasing the rpm.  
17 You put it into a dive, you're going to over-torque. You  
18 want to get to a point to where you're not having the prop  
19 run the engine, so decrease your pitch in an effort to get  
20 down.

21 MR. LEFFERT: Thank you. Nothing further, Judge.

22 THE COURT: Thank you.

23 Redirect, Mr. Osofsky?

24 MR. OSOFSKY: Yes.

25 REDIRECT EXAMINATION

1 BY MR. OSOFSKY:

2 Q And do you know whether or not your Sony handheld  
3 equipment is -- do you know the nature of the microphone  
4 that's on that equipment?

5 A No.

6 Q Do you know whether or not the microphone is  
7 capable of picking up subharmonic type of base noises?

8 A I don't think it is, no.

9 Q And was the noise that we heard being played from  
10 the speakers, was that a full reproduction of what you were  
11 hearing when you were standing there listening and making  
12 that recording?

13 A No.

14 Q What was -- what was different?

15 A From reviewing the videos, even when you couldn't  
16 hear the aircraft on the videos that I had taken you could  
17 still hear it with your ears. So you saw that on most of  
18 these videos I cut it after the aircraft was out of sight  
19 just because there's really no reason to videotape at that  
20 point. But I could still hear it.

21 Q With respect to what opposing counsel called a car  
22 going by, did the car noise last anywhere nearly as long as  
23 the airplane noise?

24 A No. The car was very transient, very quick.

25 Q And the skateboard, could you hear the skateboard

1 after it was more than 15 feet away from you?

2 A I -- yeah, more than 15 feet I could. But at that  
3 point it was -- there was a point though where I couldn't  
4 hear it anymore.

5 Q And have you ever had anybody complain that --  
6 with respect to airport noise that birds are an equal source  
7 of irritation?

8 A No.

9 Q The call for jumpers away, does that occur before  
10 or at the moment that jumpers are coming out of the  
11 airplane?

12 MR. LEFFERT: Your Honor, I'm sorry, I have to  
13 object based on foundation. He doesn't have any expertise  
14 with the plane and jumpers.

15 THE COURT: I'm going to let him finish the  
16 question, then I'll let you object. I don't know that I  
17 could follow the question.

18 Q (By Mr. Osofsky) You mentioned the jumpers away  
19 call. What is the jumpers away call?

20 A The jumpers away call is prior to releasing  
21 jumpers out of the aircraft. It's a means to let ATC know  
22 that jumpers are going to be heading down to the drop zone.  
23 ATC can make the call over Guard while you can make call  
24 over the Unicom frequency letting all participants or all  
25 aviators in the area know to be on the lookout for jumpers

1 coming through the airspace. So it's usually before, about  
2 one minute.

3 Q Does the plane maintain its climb when making --  
4 when releasing jumpers?

5 A Preferably, yes.

6 Q Does it level off to cruise altitude at any point?

7 A You can do either or.

8 MR. LEFFERT: Objection.

9 THE WITNESS: I've done both.

10 THE COURT: Excuse me. Again, counsel, if you  
11 have an objection, stand, say objection loudly. That tells  
12 the witness and I that you have an objection. And the  
13 witness can then be quiet until it's ruled upon.

14 So it looks like you have an objection?

15 MR. LEFFERT: Objection, lack of foundation from  
16 this witness about air jumpers out of a plane.

17 THE COURT: Sustained. You can try and re-frame,  
18 but I don't think you've laid enough foundation for this  
19 witness to testify about his recent testimony regarding the  
20 jumpers out of the plane and letting airspace and others  
21 know that they're in the air.

22 Q (By Mr. Osofsky) All right. Was your testimony  
23 earlier that there is a pullback in throttle before  
24 releasing jumpers?

25 A I don't know if I said there was a decrease in



1 throttle prior to releasing jumpers.

2 Q Is there -- I'll move on.

3 Was the -- did you observe the descent that was  
4 shown in that video of the Mile-Hi aircraft on descent in  
5 the second video?

6 A The video and other profiles that I didn't  
7 videotape, yes.

8 Q Would you regard that as an aggressive descent?

9 A That's tough to tell. I can't say anything about  
10 that. There was too great a distance.

11 Q All right. Let's talk about the voluntary nature  
12 of noise abatement procedures. If you could turn to  
13 Exhibit 6 please, and specifically turn to the third page.

14 A Okay. Exhibit 6, page 3, general aviation noise  
15 abatement procedures.

16 Q And do you see at the second sentence where it  
17 reads these procedures should be utilized to the fullest  
18 extent possible unless prevented by required distance from  
19 cloud criteria or other weather conditions, operating  
20 parameters of the aircraft involved, traffic conditions and  
21 other safety factors and ATC instructions?

22 A Yes.

23 Q Okay. Are required distances from cloud criteria  
24 and other weather conditions, is the pilot in the best  
25 position to make those observations?

1           A     Yes.

2           Q     And with respect to the other three conditions  
3 there, the pilot is in the best condition to make those  
4 evaluations; correct?

5           A     Correct.

6           Q     So with respect to the voluntary nature of these  
7 procedures, does the word voluntary account for the fact  
8 that a pilot is in the best position to make judgments with  
9 respect to these items?

10          A     I would agree, yes.

11          Q     Does the voluntary noise abatement procedures  
12 still require a good faith effort on parts of pilots to  
13 follow them?

14          A     Always, yes.

15          Q     Does the fact that they are voluntary alleviate  
16 the pilot from responsibility for at least making good faith  
17 efforts to follow these procedures?

18          A     It does not relieve them, no.

19          Q     All right. You testified earlier with respect to  
20 Mr. O'Barr's deposition and testimony.

21                MR. OSOFSKY: Does Your Honor have a transcript of  
22 Mr. O'Barr's testimony as yet?

23                THE COURT: Not unless somebody has provided it in  
24 one of the exhibit books or you want me to refer something  
25 that was filed, which would take me --

1           MR. OSOFSKY: It's already been presented as  
2 reserved testimony, so I would request that the defendant as  
3 the custodian of the original copy of the transcript offer  
4 that to you so that I can proceed with the transcript.

5           THE COURT: Mr. Leffert, do you have a copy of the  
6 original?

7           MR. LEFFERT: Yes, I do. And I object to doing it  
8 this way, Judge, because I think it's a reading out of  
9 context.

10           And I would ask -- I asked him about what he  
11 recalled. I'm fine with that. But I would ask that you  
12 read the transcript in its entirety when you are able or  
13 when you think it's appropriate and not do it piecemeal.

14           THE COURT: The objection is overruled.  
15 Mr. Osofsky can utilize it in this matter. And I'll read  
16 the entire transcript before I issue a ruling.

17           UNIDENTIFIED SPEAKER: Do you want the original?

18           THE COURT: Yes, please.

19           Would you make sure that Mr. Leffert has an  
20 opportunity to look at that and make sure he concurs?

21           (Pause.)

22           MR. LEFFERT: Sure. It's the original, Judge.

23           THE COURT: The Court has opened the original  
24 transcript of the Yancy O'Barr deposition dated February 26,  
25 2015. Do you wish to have the original transcript for your

1 questioning?

2 MR. OSOFSKY: No, Your Honor. That's not  
3 necessary.

4 Q (By Mr. Osofsky) I am going to read to you from  
5 Mr. O'Barr's deposition on page 8 starting at line 13 and  
6 ask you whether or not these are the statements that you  
7 believe confirm or whether they contradict what you were  
8 saying earlier.

9 Question from opposing counsel, With respect to  
10 this operation area, can you tell me under this Agreement is  
11 that the area that Mile-Hi is required to operate within?

12 Answer, No.

13 Question, Can you explain to me why there is a  
14 designated operation area?

15 Answer, Yeah. When you say that there's a  
16 required -- that they're required to operate in, they can  
17 depart.

18 So that we understand, they're in a non-controlled  
19 area coming out of a non-controlled airport. And they can  
20 depart and operate any of their airplanes without talking to  
21 air traffic control as long as they stay clear of what we  
22 call Class Bravo, which is to the east and borders right on  
23 the edge of the operation area.

24 They could under federal regulations depart  
25 anytime they want and operate, do their operations anywhere

1 outside of uncontrolled or in non-Class Bravo or Class  
2 Delta. Those are air spaces around airports -- Class Bravo  
3 is usually around complex airports -- freely at any time  
4 they want. We choose -- and I was not here in 1998 before  
5 this was originally established.

6 Is that one of the statements that you felt  
7 confirmed your statement earlier that they are free to leave  
8 the flight box?

9 A It's one of them, yes.

10 Q Read to you another statement on page 16 starting  
11 at line 12.

12 THE COURT: Mr. Osofsky, I had understood when you  
13 were -- when you had asked to have the deposition that you  
14 might be utilizing it as a means of redirect. What I'm  
15 finding is that you're actually just reading to me the  
16 testimony of another witness.

17 If you're asking the witness to confirm what he  
18 believes that Mr. O'Barr has stated, then you need to ask  
19 him those questions and not read a deposition transcript to  
20 him.

21 MR. OSOFSKY: Okay. I don't mean to argue, Your  
22 Honor. My question to him before I began to read was does  
23 this confirm or not your earlier statements.

24 THE COURT: I heard your question.

25 MR. OSOFSKY: Then I'm confused, Your Honor.

1           THE COURT:  So I don't think that you're doing a  
2  redirect examination at this point.  Mr. O'Barr's testimony  
3  is something that I'll read the entire transcript of.

4           I thought that you were going to ask a couple of  
5  distinct questions about something you wanted to clarify.  
6  All you're doing is reading to the witness the transcript.

7           So if you have some distinct questions you want to  
8  ask the witness, you can do that.

9           MR. OSOFSKY:  I want to ask the witness what  
10  portions of the transcript that he relied upon in asking  
11  whether or not these portions are --

12          THE COURT:  Then you could hand him the transcript  
13  and ask him to do that.  But right now you're testifying.

14          MR. OSOFSKY:  All right.  May I approach, Your  
15  Honor?

16          THE COURT:  You may.

17          MR. LEFFERT:  Your Honor, he has the original in  
18  front of him.  Now counsel is going to hand him a copy that  
19  he's highlighted and ask him to go through it.

20          THE COURT:  I actually have the original.

21          MR. LEFFERT:  I'm sorry, I thought he had the  
22  original.  But I would ask that he not be given a  
23  highlighted copy.

24          THE COURT:  You cannot provide him a highlighted  
25  copy.

1           MR. LEFFERT: May I use your original copy for the  
2 time being, Your Honor?

3           THE COURT: You may.

4           MR. OSOFSKY: Thank you.

5           Q     (By Mr. Osofsky) Would you please turn to page 16  
6 in Mr. O'Barr's deposition, and specifically review -- refer  
7 you to lines 12 to 17.

8           A     Okay.

9           Q     Is this statement from Mr. O'Barr contained in  
10 that section part of what you read that confirmed your  
11 understanding that they could depart from the flight box?

12          A     It is.

13          Q     And what specifically was stated in here that  
14 confirmed that? Let me break it down. Did Mr. O'Barr  
15 confirm that this is a non-controlled airport?

16          A     He did.

17          Q     Did Mr. O'Barr confirm that this was not Class  
18 Bravo or Class Delta airspace?

19                MR. LEFFERT: Objection, leading.

20                THE COURT: Sustained.

21          A     Correct. It says --

22                THE COURT: I sustained the objection, so you  
23 should not answer the question.

24                THE WITNESS: Sorry.

25          Q     (By Mr. Osofsky) What -- as within lines 12 to 17,

1 can you explain to me how Mr. O'Barr's testimony in lines --  
2 page 16 lines 12 to 17 even confirmed or conflicted with  
3 what you had testified to earlier?

4 A He states in lines between 12 and 16 that it's not  
5 Bravo or Delta. So air traffic control, really it doesn't  
6 have jurisdiction in that area. I'm paraphrasing. I don't  
7 want to read it verbatim unless you want me to, but --

8 Q What is your understanding of what Mr. O'Barr  
9 meant by jurisdiction?

10 A It means that as long as the aircraft are in  
11 compliance with the federal aviation regulations they don't  
12 need to talk to ATC or get clearance, they can go pretty  
13 much anywhere they wish.

14 Q Do any of the -- any of the issues you identified  
15 with Mile-Hi's flights, would the meeting the standard of  
16 care that you have described, would that conflict with in  
17 any way any FAA regulation?

18 A I saw no conflict of FAA regulations.

19 Q So to the extent that the FAA regulations may  
20 supersede in any situation, does the supremacy of the FAA  
21 regulations prevent Mile-Hi from flying in conformance with  
22 the standard of care that you've described?

23 A I think if I'm understanding the question  
24 correctly and that if -- if they're adhering to the federal  
25 aviation regulations -- could you ask that again? That



1 was --

2 Q Opposing counsel asked you on cross whether or not  
3 the FAA regulations supersede other requirements such as  
4 noise abatement procedures. And my question to you is can  
5 one comply with both?

6 A Yes, absolutely.

7 MR. OSOFSKY: No further questions.

8 THE COURT: Thank you, Mr. Osofsky.

9 Mr. Osofsky, was Mr. Robinson under subpoena?

10 MR. OSOFSKY: Mr. Robinson was not under subpoena,  
11 no.

12 THE COURT: Thank you. You are excused.

13 THE WITNESS: Thank you.

14 THE COURT: And the plaintiffs may call their  
15 next -- well, this might be a good time to take a break.  
16 How long will the plaintiffs' next witness take?

17 MR. OSOFSKY: The next witness, Your Honor, should  
18 take approximately half an hour.

19 THE COURT: All right. Why don't we take our  
20 afternoon break now. We'll break until about 3:20. Thank  
21 you.

22 (A recess was taken.)

23 MR. OSOFSKY: Plaintiffs call Andrew Hill.

24 THE COURT: If you'll come up to the witness stand  
25 which is to my left here.



1 Q When were you a pilot for Mile-Hi?

2 A I was an independent contractor for Mile-Hi  
3 starting sometime the month of June and ending in September  
4 of 2012.

5 Q And what planes did you fly for Mile-Hi?

6 A I flew at the time both King Air 90s, the A90 and  
7 the E90, as well as the Twin Otter.

8 Q How often did you fly for Mile-Hi?

9 A Usually on average four days a week.

10 Q Did you ever fly night drops?

11 A Yes, sir.

12 Q On a typical weekend how many planes would Mile-Hi  
13 operate?

14 A Two.

15 Q Did Mile-Hi give you manuals when you started  
16 flying for them?

17 A They gave me aircraft manuals.

18 Q What are the aircraft manuals?

19 A They gave me aircraft manuals that were  
20 specifically written from Beechcraft with the associated  
21 King Airs and from de Havilland for the Twin Otter as well  
22 as I received one for the Cessna 206 which is owned by  
23 Mile-Hi, but I did not ever operate that aircraft.

24 Q Were you ever given a manual that described  
25 specifically Mile-Hi's operating procedures?

1 A No, I was not.

2 Q Was there a procedures manual in the office that  
3 you could use?

4 A Not that I was aware of.

5 Q Were you ever aware of the existence of a Mile-Hi  
6 operations manual?

7 A No, I was never made aware of that.

8 Q Does that seem odd to you?

9 A With my current experiences as an airline  
10 operator, yes, it does.

11 Q What pattern does, did Mile-Hi fly in when  
12 ascending to altitude?

13 A Typical a box style pattern. Like me to go into  
14 more detail on that?

15 Q Sure.

16 A It's fairly similar to that depiction there, but  
17 maybe not as far south on that southwest corner, more of an  
18 actual rectangle.

19 Q We're going to display an exhibit that's been  
20 admitted into evidence here. I'm going to ask you whether  
21 or not that is consistent with the flight patterns you're  
22 familiar with.

23 Are you familiar with what a quiet kit is?

24 THE COURT: Quiet what?

25 MR. OSOFSKY: Quiet kit.

1 THE COURT: You may want to pull that microphone  
2 up also.

3 A To answer your question, yes, I am.

4 Q (By Mr. Osofsky) And what is a quiet kit?

5 A To the best of my knowledge it has to do with  
6 different set of propellers for an aircraft.

7 Q Are you aware of whether or not Mile-Hi's Otter  
8 can be equipped with a quiet kit?

9 MS. ELLENBERGER: Objection, calls for expert  
10 testimony.

11 THE COURT: Overruled. All he asked was whether  
12 he was aware of it. And after that if you have an objection  
13 to the next question you can make it.

14 A I'm sorry, could you rephrase the question please?

15 Q (By Mr. Osofsky) I said are you aware of whether  
16 or not Mile-Hi's Otter can be equipped with a quiet kit?

17 A To the best of my knowledge I think it is  
18 possible.

19 Q And what do you base that upon?

20 A Having heard several conversations between both  
21 Mr. Casares, Keith Hansen and Nathan Banton having to do  
22 with the desire to potentially change engines and the  
23 possibility of --

24 MS. ELLENBERGER: Objection, Your Honor.

25 THE COURT: And the nature of your objection?

1 MS. ELLENBERGER: Hearsay.

2 THE COURT: The objection is sustained. The last  
3 response from the witness will be stricken from the record.

4 MR. OSOFSKY: Your Honor, this is a statement of a  
5 party opponent.

6 THE COURT: I thought he indicated that it was  
7 three different people. And so I wouldn't be able to  
8 discern which conversations.

9 If I misunderstood, the transcription says  
10 conversations in plural, and then it lists Mr. Hansen and  
11 Mr. Casares -- am I saying your name correctly?

12 MR. CASARES: Casares.

13 THE COURT: Casares.

14 So the objection is sustained, but you can  
15 re-frame the question.

16 Q (By Mr. Osofsky) Are all of the people that you  
17 just mentioned representatives of Mile-Hi?

18 A Yes, I believe so.

19 MR. OSOFSKY: May I proceed then with the  
20 statements, Your Honor?

21 THE COURT: That would depend on whether there's  
22 an objection.

23 Q (By Mr. Osofsky) Can you tell me about on what  
24 basis do you believe that Mile-Hi's aircraft can be equipped  
25 with -- Mile-Hi's Otter can be equipped with a quiet kit?

1           A     By my knowledge the quiet kit would have to go on  
2 to Dash 34 engines which --

3           MS. ELLENBERGER:  Objection, calls for expert  
4 testimony.

5           THE COURT:  And your response?

6           Q     (By Mr. Osofsky) I'm asking you about what you've  
7 overheard from representatives of Mile-Hi with respect to  
8 that.

9           A     That would be consistent, that the quiet kit would  
10 be require -- I'm sorry, the Dash 34 engines would be  
11 required to operate a quiet kit.  And the Otter was capable  
12 by their statements of -- of -- was capable of such  
13 modifications, both engines and propellers.

14          Q     Thank you.

15                  Have you ever heard anyone at Mile-Hi talk about  
16 Kim Gibbs?

17          A     Yes, I have.

18          Q     And who did you hear talking about Kim Gibbs?

19          A     The first time was Mr. Casares.

20          Q     When did you hear Mr. Casares speak about  
21 Ms. Gibbs?

22          A     My first introduction to that name was while Frank  
23 was flying -- I'm sorry, Mr. Casares was flying in a last  
24 load of the day with me in the Twin Otter.  And he made  
25 mention and pointed out where her house was and proceeded to

1 do repeated circles over it during that load.

2 Q Did you receive any instructions with respect to  
3 your descent around Ms. Gibbs' house?

4 A Not when operating on my own I did not.

5 Q When operating with Mr. Casares?

6 A He flew differently than the standard or the  
7 typical climb sequence and descent sequence that we operated  
8 during alones.

9 Q And how did the descent sequence differ from  
10 your -- from the normal operating procedure?

11 A He descended in a props forward condition, meaning  
12 propellers in a fine pitch condition which yields higher  
13 noise.

14 Q And while doing so did Mr. Casares mention  
15 anything to do with Ms. Gibbs?

16 A Yes.

17 Q What did he say?

18 A His exact comment if I do recall is hello, Kim,  
19 hoping you're having a nice evening.

20 MR. OSOFSKY: Thank you. No further questions on  
21 direct, Your Honor.

22 THE COURT: Thank you.

23 And cross-examination.

24 CROSS-EXAMINATION

25 BY MS. ELLENBERGER:



1 Q Good afternoon.

2 A Hello.

3 Q So you were -- you said you were a pilot for  
4 Mile-Hi; is that correct?

5 A I was an independent contractor.

6 Q And but you flew planes for them in that capacity?

7 A That's correct.

8 Q For about three months?

9 A Yeah.

10 Q Is that until you crashed one of their airplanes  
11 on a landing strip?

12 A There was an aircraft incident.

13 Q Did that incident -- that incident occurred  
14 because -- while you were flying the airplane; correct?

15 A Yes, it did.

16 Q King Air that belonged -- or that Mile-Hi  
17 operates?

18 A That's correct.

19 Q And it was while you were working as an  
20 independent contractor for Mile-Hi?

21 A That's correct.

22 Q And you were fired and let go from your  
23 independent contract position after that incident; is that  
24 correct?

25 A The contract was mutually terminated.

1           Q     And that incident occurred because you forgot to  
2 put landing gear down; right?

3           A     No.

4           Q     The FAA got involved and determined that you  
5 forgot to put the landing gear down; right?

6           MR. OSOFSKY:  Objection, Your Honor.

7           THE COURT:  And the nature of your objection?

8           MR. OSOFSKY:  No documents have been disclosed in  
9 this case with respect to any FAA investigation in this  
10 case.

11                   They've long known this witness has been coming to  
12 the floor.  If there is any information to be brought out  
13 about this crash any further, then it should have included  
14 disclosed documents that verify these statements.

15                   Pursuant to Rule 37 the information should be  
16 barred for the lack of disclosure.

17           THE COURT:  The only information she's asked right  
18 now is she's asked the witness whether the FAA got involved  
19 and determined that he forgot to put the gear down.  She  
20 hasn't referenced any FAA document.

21                   And the witness has personal knowledge, so he can  
22 answer the question.

23           Q     (By Ms. Ellenberger)  So I think my question was  
24 the FAA got involved and determined that you didn't put the  
25 gear -- landing gear down; correct?

1 A Incorrect.

2 Q You say that the landing gear got stuck?

3 A Incorrect.

4 Q But the FAA determined that the FAA -- or I'm  
5 sorry, the FAA determined that the evidence did not support  
6 your version of what happened?

7 A There's no NTSB record of such an event.

8 Q You were required to do some remedial training  
9 after that crash, weren't you?

10 A I was issued a 44709, right. That's correct.

11 Q Do you want to explain --

12 THE COURT: Excuse me. You need to talk a lot  
13 slower. You're using numbers. State them slowly. There's  
14 a court reporter who is trying to get down what you're  
15 saying. And you also need to move closer to the microphone.

16 THE WITNESS: My apologies, Your Honor.

17 I was issued a -- what's known as a 44709 ride,  
18 which is a test to test for, demonstrate abilities for the  
19 current pilot ratings.

20 Q (By Ms. Ellenberger) And that was -- you were  
21 required to do that by the FAA because of the incident;  
22 right?

23 A Correct.

24 Q And it's true that just a week before the crash  
25 you were reprimanded by Mr. Casares for aggressive

1 take-offs?

2 A Yes.

3 Q And it's true that over the three months or so  
4 that you were an independent contractor for Mile-Hi you were  
5 reprimanded on several occasions; isn't that true?

6 A Define several.

7 Q More than five?

8 A No.

9 Q More than four?

10 A No.

11 Q More than three?

12 A Potentially to the best of my knowledge, three  
13 possibly.

14 Q And that's before you were let go from that  
15 independent contract because of the crash?

16 A Yes, it was.

17 Q There was skydivers on your plane when you were --  
18 for the aggressive take-off that you were reprimanded for;  
19 is that correct?

20 A Yes, there was.

21 Q You said on direct examination that you were  
22 instructed -- or that you flew night drops. Is that your  
23 testimony on direct?

24 A I did fly night drops, that's correct.

25 Q How many night drops?

1 A I think three times.

2 Q Three times over three or four months?

3 A Correct.

4 Q In fact, there weren't many night drops that were  
5 done without you flying them; right, over that period of  
6 time?

7 A There was one.

8 Q That you did not fly? So four over three months?

9 A Yes.

10 MS. ELLENBERGER: Give me just one second.

11 (Pause.)

12 MS. ELLENBERGER: No more questions, Your Honor.

13 Thank you.

14 THE COURT: Thank you.

15 Any redirect?

16 MR. OSOFSKY: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. OSOFSKY:

19 Q So Mr. Hill, let's talk about this flight  
20 incident. Did you fail to deploy landing gear?

21 A No.

22 Q Were you accused of failing to deploy landing gear  
23 by Mr. Casares?

24 A Yes, I was.

25 Q What was the actual cause of the incident?

1           A     I suppose that's where Mr. Casares and I have  
2 differing opinions.

3           Q     What did you experience with respect -- did you  
4 experience any mechanical difficulties with respect to the  
5 plane prior to the flight that resulted in the incident?

6           A     Yes, I did.

7           Q     And what mechanical issues did you experience with  
8 the plane prior to that landing?

9           A     That the landing gear would not extend.

10          Q     And did you bring that to the attention of  
11 Mr. Casares before taking the flight that resulted in the  
12 incident?

13          A     I don't recall that it was directly to  
14 Mr. Casares, but another representative of Mile-Hi.

15          Q     And were you directed to keep flying?

16          A     Yes, I was.

17          Q     Do you have an opinion as to what occurred when  
18 the land -- when the landing incident happened?

19          A     Yes, I do.

20          Q     And what is your opinion?

21          A     In my opinion it is a gear collapse.

22          Q     And there was -- you stated there was no NTSB  
23 investigation. Should there have been?

24          A     I don't think that's for me to say. That's up to  
25 the NTSB to determine whether it was worthy of an

1 investigation.

2           And based on the phone call that I had with both  
3 the FAA and the NTSB directly following the incident, I  
4 suppose the NTSB chose not to investigate.

5           Q     What -- following -- following the incident did  
6 you have any conversations with Mr. Casares about the  
7 incident?

8           A     Yes, I did.

9           Q     Did you indicate to him that it was mechanical  
10 failure?

11          A     I did.

12          Q     And did he attempt to blame you for this?

13          A     Yes, he did.

14          Q     And did he continue to attempt to blame you for  
15 this after that?

16          A     Yes, he did.

17          Q     In fact, did you apply for a job at another  
18 airline shortly after this?

19          A     Yes, I did, and -- and was hired into such  
20 position.

21          Q     And were you forced to resign from that position?

22          A     Yes, I was.

23          Q     And why?

24          A     Due to the PRIA response -- PRIA is Pilot Records  
25 Improvement Act -- and his response to Trans States Airlines

1 regarding my time as an independent contractor for Mile-Hi.

2 Q So Mr. Casares got you dismissed from the job?

3 A I resigned in lieu of termination.

4 Q But you were forced to do so based upon what  
5 Mr. Casares had told to them?

6 MS. ELLENBERGER: Objection, leading.

7 A Yes, sir.

8 THE COURT: The question was leading. The  
9 objection is sustained. The response and the question are  
10 stricken.

11 Q (By Mr. Osofsky) Do you know whether you -- do you  
12 know the relationship between your being asked to resign and  
13 statements of Mr. Casares?

14 A Yes, I do.

15 Q And what is that relationship?

16 A That I would have been terminated if I did not  
17 resign from Trans States Airlines.

18 Q And then did you then apply at an additional  
19 airline?

20 A Yes, I did.

21 Q And did you need to obtain support from anyone in  
22 order to make that application?

23 A Yes, I did.

24 Q And who did you obtain support from?

25 A Our pilot union ALPA, Air Line Pilots Association;



1 our MEC, which is our Master Executive Council, which is  
2 Mesa Airlines' specific union, part of the national division  
3 of ALPA.

4 THE COURT: Part of the national division of what?

5 THE WITNESS: ALPA, Air Line Pilots Association.

6 THE COURT: Thank you.

7 Q (By Mr. Osofsky) Did the Air Line Pilots  
8 Association support you in your description of the  
9 mechanical failure?

10 A Yes, they did.

11 Q And were you subsequently hired by Mesa Airlines?

12 A Yes, I was.

13 Q And since then you have advanced to the position  
14 of captain?

15 A That's correct.

16 MS. ELLENBERGER: Objection, leading.

17 THE COURT: Sustained. The question was leading.  
18 It's stricken. So is the answer.

19 Q (By Mr. Osofsky) What position have you advanced  
20 to in Mesa Airlines?

21 A I'm a captain of Embraer 175 jet out of Houston.

22 THE COURT: Could you say that and enunciate it a  
23 little more so our court reporter --

24 THE WITNESS: Yes, ma'am.

25 THE COURT: -- can get it?

1 THE WITNESS: My apologies. Embraer 175 jet based  
2 out of Houston, Texas.

3 Q (By Mr. Osofsky) Is that a position of  
4 responsibility?

5 A Yes, it is.

6 Q And what are you in charge of?

7 A I'm in charge of --

8 MS. ELLENBERGER: Objection, relevance.

9 THE COURT: What's the relevance?

10 MR. OSOFSKY: Your Honor, they've called into  
11 question this witness' credibility based upon the idea that  
12 he was responsible for a flight incident. His subsequent  
13 record is evidence of his voracity in stating that the  
14 incident was the result of a mechanical failure.

15 THE COURT: Based on the nature of the  
16 cross-examination I'll allow the question. But you both may  
17 want to consider what the Court would find most relevant in  
18 the case.

19 MR. OSOFSKY: That's my final question, Your  
20 Honor.

21 THE WITNESS: I was -- I'm responsible for an  
22 85,000 pound aircraft with 75 passengers and a crew of four.

23 MR. OSOFSKY: Thank you.

24 THE COURT: Is the witness under subpoena?

25 MR. OSOFSKY: Witness is under subpoena.

1 THE COURT: May he be released from his subpoena?

2 MR. OSOFSKY: He may.

3 THE COURT: And was he under subpoena from the  
4 defendants?

5 MS. ELLENBERGER: No, Your Honor.

6 THE COURT: Mr. Hill, you're excused from your  
7 subpoena and you're free to go. And the Court thanks you  
8 for your time.

9 THE WITNESS: Thank you.

10 THE COURT: Okay. The plaintiffs' next witness  
11 please.

12 MR. OSOFSKY: Plaintiffs will be calling Gary  
13 Rubin, Your Honor.

14 THE COURT: Okay. Thank you.

15 Good afternoon, Mr. Rubin. If you would come up  
16 to the witness stand which is to my left here please.

17 Once you're inside that witness box, you can set  
18 your folder down and then stand, face me, and raise your  
19 right hand please.

20 GARY RUBIN,  
21 called as a witness on behalf of the Plaintiffs, having been  
22 first duly sworn was examined and testified as follows:

23 THE COURT: Thank you. Please be seated.

24 DIRECT EXAMINATION

25 BY MR. OSOFSKY:

1 Q Mr. Rubin, you can pull that microphone close to  
2 you for whatever height level works best.

3 A How is that?

4 THE COURT: That's good. Thank you.

5 Q (By Mr. Osofsky) Could you state your name for the  
6 record?

7 A Gary Rubin.

8 Q Where do you live, Mr. Rubin?

9 A 5599 Nelson Road, Longmont.

10 Q Could you point out for the Court approximately  
11 where that is on the map here?

12 A Do you want me to get up and do it?

13 Q Please.

14 A I'm about 5 miles west of the airport.

15 Q If you could just position yourself so the Court  
16 can see where you're pointing?

17 A I'm right in here.

18 Q Okay. Thank you.

19 Do you have a background in aviation?

20 A I do.

21 Q And do you own a plane?

22 A I do.

23 Q Where do you keep the plane?

24 A Longmont Airport, Vance Brand.

25 Q How long have you owned a hangar at Vance Brand?

1           A     Probably 20 years or so.

2           Q     How many commercial operations are there at Vance  
3 Brand to your knowledge?

4           A     Oh, I don't know.

5           Q     Have you noticed a change in the volume of  
6 Mile-Hi's flights over the years?

7           A     Yeah. I'm not sure they were named Mile-Hi back  
8 then. But yeah, the last five, six, seven years I think  
9 it's increased substantially.

10          Q     Based on your observations how much of airport  
11 operations are Mile-Hi?

12                   MS. ELLENBERGER:  Objection, calls for expert  
13 testimony -- or lack of foundation.  Sorry.

14                   THE COURT:  The objection for expert testimony is  
15 overruled.  Did you wish to say something else?

16                   MS. ELLENBERGER:  Lack of foundation.  He's  
17 already testified that he doesn't know how many commercial  
18 flights go in and out of Longmont.

19                   THE COURT:  Thank you.

20                   The objection as to foundation is sustained.  If  
21 you have foundation you wish to lay, you may do so.

22          Q     (By Mr. Osofsky) Have you observed flights in and  
23 out of Longmont Airport?

24          A     Oh, sure.

25          Q     And have you observed what volume of those flights

1 are Mile-Hi's as compared to other operators in the area?

2 A My observation is that Mile-Hi's skydiving is a  
3 good percentage, I'd say over 50 percent. And from what  
4 I've read and heard in various meetings, that's -- affirms  
5 that too in my opinion.

6 Q Did you ever feel, have you ever felt that noise  
7 from Mile-Hi's operations has been an issue?

8 A Oh, certainly.

9 Q When did noise start to become an issue?

10 A I'd say between five and six years ago in my best  
11 recollection.

12 Q Can you describe what you -- what you perceived to  
13 be the issue with the noise from Mile-Hi?

14 A Well, given my location, I'm subject to the noise  
15 of aircraft taking off. Landing isn't typically a problem.  
16 I'm not right under the flight path. I'm about 5 miles  
17 west. We hear aircraft frequently as we would around any  
18 small airport.

19 But with Mile-Hi the noise, especially of the Twin  
20 Otter aircraft, the twin-engine jump plane, is excessively  
21 loud and it's more importantly continuous. I mean, it's --  
22 it's more often than not during the daylight hours most  
23 every day of the week during the summertime.

24 Q Is there a busier season for Mile-Hi?

25 A Yeah. When the winds are high, weather is

1 in climate and in the wintertime when it's awfully cold I  
2 don't think they have much business.

3 Q As a pilot do you try to reduce noise, the noise  
4 of your plane?

5 A Yeah, that's a typical procedure for any -- any  
6 good pilot anyway, especially over noise-sensitive areas. I  
7 think Longmont has a typical request for us pilots to do  
8 exactly that.

9 Q And why is that important?

10 A Well, small airports around this country are  
11 getting closed down all too frequently. I forget what the  
12 statistic is, one a week, and often because of the --

13 MS. ELLENBERGER: Objection, opinion of the  
14 populous.

15 THE COURT: There was an objection. You have to  
16 stop speaking until I rule on it.

17 MS. ELLENBERGER: We're getting into the scope of  
18 expert testimony. It's beyond the disclosure of this  
19 witness.

20 THE COURT: And your response?

21 MR. OSOFSKY: Fact testimony, Your Honor.

22 THE COURT: I'm sorry?

23 MR. OSOFSKY: I'm sorry. This is fact testimony.  
24 This is his personal observations. We're not offering him  
25 as an expert in the area of -- these are his personal

1 observations.

2 THE COURT: The Court sustains the objection as to  
3 the testimony about what small airports around the country  
4 are doing and the frequency with it in which they are  
5 getting closed, as the Court finds that's not factual  
6 knowledge that the witness has, or if it is you haven't laid  
7 a foundation for it.

8 Q (By Mr. Osofsky) Do you have a concern about  
9 whether -- as to whether Mile-Hi's operations reflect  
10 negatively on Vance Brand Airport?

11 A I do.

12 Q And what's your concern?

13 A Well, as evidenced by this particular trial  
14 there's a group of people in the community that are upset  
15 about the noise. And in my opinion, anytime the non-flying  
16 public gets upset with an airport, there's pressure to  
17 eventually shut an airport down.

18 Q Have you observed Mile-Hi's aircraft from take-off  
19 all the way to the top of their climbing altitude?

20 A No, not continuously. When they get up above I'm  
21 not sure what altitude, 8-, 10,000 feet above the ground,  
22 they're difficult to see. It's interesting I can hear them  
23 and I look up to see the plane and I can't see them,  
24 although maybe my eyes -- I'm not sure, but I can't follow  
25 them all the way up.



1           Q     Can you tell audibly whether or not Mile-Hi  
2 reduces its power at any time during its flights?

3           A     No, I don't hear that.

4           Q     Is there any audible change in Mile-Hi's flights  
5 from take-off to the altitude at which you can observe them?

6           A     I don't know for sure. My suspect is that they  
7 take off as I do in my aircraft at red line full throttle  
8 and then cut back a little bit to maximum continuous climb  
9 power if I were trying to get up as high as I could as fast  
10 as I could. The way I fly I don't do that, but I suspect  
11 that they do it. That's what it sounds like.

12          Q     Is there a pattern that Mile-Hi flies?

13                   MS. ELLENBERGER:  Objection, lack of foundation.

14                   THE COURT:  Sustained.  You can try and lay a  
15 foundation.

16          Q     (By Mr. Osofsky)  Have you observed the pattern  
17 Mile-Hi's aircraft fly in?

18          A     Yes.  I've seen where they fly -- I don't know  
19 that it's a pattern.  They fly in an area seems to me  
20 concentrated over my home and the general area west of the  
21 airport.  I don't know that they -- I think -- I think that  
22 they fly a pattern when they're about to dump their  
23 passengers.

24                   But when they're climbing I think they just circle  
25 or fly S-turns or whatever in the general area to get up as

1 high as they can or as high as they want to.

2 Q They fly in circle or S-turns?

3 MS. ELLENBERGER: Objection, leading.

4 THE COURT: Sustained.

5 When I say sustained you can't answer the  
6 question. I realize I hadn't explained that to you.

7 Q (By Mr. Osofsky) What -- what is -- what is a  
8 circle? What circle are you referring to?

9 A Well, I believe that they choose or are obligated  
10 to fly in an area west of the airport that's defined  
11 geographically. I've seen that map. I can't tell you  
12 exactly what it is. And I witnessed them flying, climbing  
13 in that area sometimes right over my house, sometimes  
14 farther north or south.

15 Q Do Mile-Hi planes ever fly over your house  
16 multiple times in one flight?

17 A Oh, sure.

18 Q What's the noise like at your home?

19 A Well, depends how close they are. If they're --  
20 if they're climbing right over my house I'd say the loudest  
21 it is is when we're out on our deck, we're outside, we would  
22 need to speak in an elevated voice to be heard. A normal  
23 conversation would be -- wouldn't be sufficient.

24 That's not all the time the way it is. It's  
25 usually just loud. More importantly, it's continuous. It's

1 relatively continuous.

2           A plane taking off at the airport we hear  
3 frequently. We know they need to climb to get to where  
4 they're going, then they're out of the area. So we hear it  
5 for five or ten minutes.

6           But when we hear the droning of a noise, whether  
7 it's the loudest it could be or whether it's not, continuing  
8 all day long during daylight hours every 10 or 20 minutes,  
9 it's -- it's annoying.

10          Q     Do you file complaints about the noise?

11          A     No, I never have for a couple reasons. I know  
12 that the noise complaints were created I believe by the  
13 Airport Advisory Board and by the airport manager. And I  
14 believe that both of those bodies are in favor of the  
15 skydiving. So I kind of concluded that filing a complaint  
16 wouldn't do no good, that they were there probably to just  
17 pacify the public.

18                The second reason is that I never chose to do it,  
19 to really go public because I didn't particularly want my  
20 name or my address on a public record in case when I ever  
21 sold my house I'd have to disclose that, yeah, we got a  
22 problem here, there's a lot of noise.

23          Q     If you filed a complaint everytime you were  
24 offended by Mile-Hi's noise how often would you be filing  
25 complaints?

1           A     If I were directed to file a complaint everytime I  
2 were offended I'd be filing several a day.

3           MR. OSOFSKY: Thank you. No further questions on  
4 direct.

5           THE COURT: Okay. Thank you.  
6 Cross.

7                                   CROSS-EXAMINATION

8 BY MS. ELLENBERGER:

9           Q     Good afternoon, Mr. Rubin.

10          A     Good afternoon.

11          Q     It was your testimony on direct testimony just now  
12 that you think over the last five to seven years Mile-Hi's  
13 flights have increased in volume significantly. Is that --  
14 was that your testimony?

15          A     Yes.

16          Q     Okay. Can I direct you to N -- or actually, you  
17 know what, I'll just put it up.

18                   Mr. Rubin, can you see this from where you're  
19 sitting?

20          A     Sure I can.

21           MR. OSOFSKY: Your Honor, make an objection. We  
22 put -- been publishing from this exhibit several points in  
23 this case already.

24                   One of the issues that we identified early on was  
25 a foundation question as to underlying data from Mile-Hi.

1 This is a chart generated from the exact same data.

2 I would -- if the defendants want to continue to  
3 use this exhibit, I believe the admission of Exhibit 1 is a  
4 necessary predicate.

5 MR. LEFFERT: Judge, if I can just take this  
6 response instead of Laura?

7 THE COURT: Instead of Ms. Ellenberger you mean?

8 MR. LEFFERT: Yes, sorry.

9 Judge, I don't know. There's no problem with the  
10 records. What -- there was one set that was produced  
11 without the Cessna, and then was then given to them with the  
12 Cessna.

13 We have Exhibit N, which is the exact same data  
14 which is right behind this exhibit. And I just move for  
15 admission of Exhibit N. It's the same data that they have  
16 that they used for their charts.

17 THE COURT: So the question is which data did you  
18 use to prepare this chart?

19 MR. LEFFERT: The one that's attached to N which  
20 has the daily flights.

21 THE COURT: And did you provide N to the  
22 plaintiffs?

23 MR. LEFFERT: Of course.

24 THE COURT: Do you have any objection to N?

25 MR. OSOFSKY: N is Exhibit 1. If they are being

1 admitted, I just ask that the Court reflect in the record  
2 that Exhibit 1 as presented by plaintiffs is N as well.

3 THE COURT: By the plaintiffs haven't -- the  
4 defendant hasn't asked to admit Exhibit 1.

5 So what need to determine is whether you were  
6 given the underlying data that they created this cumulative  
7 summary report on.

8 So the Rules of Evidence simply require that they  
9 provide you with the data that they used to create the  
10 report. So what I'm asking is whether you object to  
11 Exhibit N. If you want to then offer 1, that's a separate  
12 issue.

13 MR. OSOFSKY: I do not object to Exhibit N, Your  
14 Honor. We have been provided with the data, and we have  
15 included it in our exhibit book as Exhibit 1.

16 THE COURT: Okay. So Exhibit N is admitted.

17 And then if you want to offer Exhibit 1 at some  
18 point you can do so.

19 Q (By Ms. Ellenberger) I'm going to direct your  
20 attention back to this chart over here.

21 And my question was that on your direct testimony  
22 you said over the last five to seven years you think that  
23 Mile-Hi's operations have increased significantly. Is that  
24 your testimony?

25 A I believe I said that in my opinion the noise has

1 gotten louder over the years. And I would guess it's back  
2 five to seven years. It might have been longer.

3 Q Okay. And you think that that's because of  
4 increased volume is what you testified to earlier?

5 A Increased volume.

6 Q Volume of flights, number of flights?

7 A I -- certainly increased volume of flights it  
8 seems, but --

9 Q Okay.

10 A -- I think the noise has gotten louder too.

11 Q You also said that the noisiest aircraft you  
12 believe is the Twin Otter, and that's the one that creates  
13 the most noise for you?

14 A I think so. And a lot of this is what I've heard  
15 at the airport, that it's the noisiest plane. It's  
16 sometimes difficult to look up in the sky for me anyway and  
17 determine what plane is flying, but it appears to be a twin,  
18 and I think it's the Twin Otter.

19 Q So you don't always know when you look up and it's  
20 noisy, you're looking up and seeing a noisy plane, you don't  
21 know if it's Mile-Hi's plane or somebody else's plane?

22 A I'm pretty convinced it's Mile-Hi's plane. I  
23 can't tell you whether it's the Twin Otter or whether it's a  
24 Twin Cessna unless I were close to it. But seeing it out in  
25 the sky, determining whether it's a Twin Otter or Twin

1 Cessna is beyond me.

2 Q And you don't know if they're Mile-Hi's planes?

3 A Well, when they go up in the air, circle around  
4 and then dump parachutists out, I presume they are.

5 Q I'm going to turn your attention to -- this is  
6 Exhibit N over here, this big chart.

7 So you said in 2005, 2007 you -- you think that it  
8 started to get louder?

9 A Um-hmm.

10 Q Is that correct?

11 THE COURT: Excuse me, you have to answer yes or  
12 no.

13 THE WITNESS: Yes.

14 Q (By Ms. Ellenberger) I'm going to direct your  
15 attention to this 2007.

16 A Um-hmm, yes.

17 Q So we're right around -- how many flights would  
18 you say that is right there?

19 A How many flights is the gray bar?

20 Q The gray bar, yes.

21 A In 2007 looks like 2,000.

22 Q Okay. So little over 2,000.

23 And then if you look at 2014, just this past year,  
24 it's just a bit over 3,000, 3400 about; is that correct?

25 A Looks like.



1 Q And you would call that a significant increase in  
2 the volume of Mile-Hi's flights?

3 A Now you're pointing at Mile-Hi or are you pointing  
4 at total flights?

5 Q This is total -- these are Mile-Hi's total  
6 flights.

7 A Oh, I see what you're saying.

8 Q Sorry, yeah.

9 A So it's increased from 2200 to 3400?

10 Q Yes. Would you call that a significant increase?

11 A I think so.

12 Q If you look at the -- just this -- I'll submit to  
13 you that this purple bar is just the Twin Otter flights. If  
14 you look at 2014 and if you look at 2007, they're almost  
15 exactly the same; isn't that right?

16 A Yes.

17 Q So the flights haven't -- the Twin Otter flights  
18 haven't increased in volume significantly; true?

19 A Yeah. I guess that's true, yeah.

20 Q Are you aware that Mile-Hi, their flights are  
21 only -- its flights are only 4 to 6 percent of total airport  
22 volume? Did you know that?

23 A I'm not aware of that.

24 Q You're aware that the Longmont Vance Brand Airport  
25 is a public use airport; right?

1 A Yes.

2 Q You have a hangar there, so you would know that?

3 A Yes.

4 Q And you're able to use that airport at -- at -- at  
5 your convenience; is that true?

6 A Yes, um-hmm.

7 Q You're aware then that the Longmont Airport is a  
8 National Plan Integrated -- is part of the National Plan  
9 Integrated Airport System? Were you aware of that?

10 A I've not heard that term before.

11 Q You're aware that Longmont -- the Longmont Airport  
12 gets federal funding?

13 A Sure.

14 Q And in the form of federal grants?

15 A Yes.

16 Q More than \$4 million since --

17 MR. OSOFSKY: Objection, well beyond the scope of  
18 direct.

19 THE COURT: Sustained.

20 Q (By Ms. Ellenberger) You said on direct testimony  
21 that you thought that -- you're worried about Mile-Hi's  
22 skydiving because you think that the airport could be shut  
23 down. Is that your testimony?

24 A Yes.

25 Q Because of noise complaints?

1           A     Yes.

2           Q     Are you aware -- you just testified that you're  
3 aware that the -- the airport has received federal funding;  
4 true?

5           A     Yes.

6           Q     Are you aware that an airport that has received  
7 federal funding can't just be shut down for no reason?

8           A     I don't think that's the case.

9                   MR. OSOFSKY:  Objection, lack of foundation and  
10 beyond the scope.

11                   THE COURT:  The objection is sustained, so the  
12 answer is stricken.

13                   So if you hear somebody object, one of the  
14 attorneys, if you'll just remain silent for a moment.  Thank  
15 you.

16           Q     (By Ms. Ellenberger)  Let's move on from that.

17                   Under your testimony, Mr. Rubin, you said that you  
18 can't see the Mile-Hi airplanes above a certain level; is  
19 that true?

20           A     Yeah.  When they -- with the naked eye when  
21 they're -- yeah, they'll get up to a limit where I can't see  
22 them.

23           Q     So you don't really know if they're pulling back  
24 on throttles or pushing forward on throttles or reducing  
25 propeller speed because you can't see which plane might be

1 doing that; is that right?

2 A No. I think there's a difference between seeing  
3 and hearing. And I did say that I could hear them all the  
4 way up.

5 Q How do you know that it's that plane then?

6 A Well, when an aircraft like that I can see is  
7 making noise and I can identify that noise, and then I see  
8 the plane in the general area without a reduction in that  
9 noise, if that plane would go away and another plane would  
10 come into the airspace, I think that would be noticeable.  
11 There would be an attenuation of noise, and then there would  
12 be a reestablishment of the noise. I think it's -- I'm  
13 fairly certain that the plane I hear is the plane I saw  
14 climbing.

15 Q Mr. Rubin, you bought your current -- what year  
16 did you buy your current home?

17 A It was built in 1990.

18 Q When did you move in?

19 A 1990, 1991.

20 Q In 1990 or 1991 you knew the Vance Brand Longmont  
21 Airport was close by; is that right?

22 A Sure.

23 Q And how many miles did you say it was?

24 A About 5.

25 Q So you bought your -- you bought your home knowing

1 that there was an airport close by?

2 A Yes.

3 Q And there's another airport close by too, isn't  
4 there, the Boulder Municipal Airport?

5 A Yes.

6 Q Did you know that a Twin Otter flies out of the  
7 Boulder Municipal Airport as well?

8 MR. OSOFSKY: Objection, lack of foundation.

9 THE COURT: She's asking him --

10 MS. ELLENBERGER: I'm sorry.

11 THE COURT: She's just asking him if he knows. He  
12 can testify as to whether he knows or not. You can listen  
13 to the other questions after that and see if there's an  
14 objection.

15 So the objection is overruled.

16 Q (By Ms. Ellenberger) Mr. Rubin, I'll repeat the  
17 question. Did you know that there's a survey company that  
18 flies a Twin Otter out of the Boulder Municipal Airport?

19 A No.

20 Q You're not a plaintiff in this case, are you?

21 A No.

22 Q Are you affiliated with Citizens For Mile-Hi -- or  
23 I'm sorry, Citizen For Quiet Skies?

24 A Affiliated as a member you mean?

25 Q Yes. Are you a member of Citizens For Quiet

1 Skies?

2 A I believe I am.

3 Q Is Ms. Gibbs the leader of that group?

4 A I believe so.

5 Q Did she encourage you to be a plaintiff in this  
6 lawsuit?

7 MR. OSOFSKY: Objection, beyond the scope.

8 THE COURT: Sustained.

9 MS. ELLENBERGER: I have no other questions.

10 THE COURT: Thank you.

11 Redirect.

12 REDIRECT EXAMINATION

13 BY MR. OSOFSKY:

14 Q You indicated you knew of the airport when you  
15 moved to the area. Do you object to Vance Brand Airport?

16 A Not at all.

17 Q Are you -- are your objections specific to  
18 Mile-Hi's operations?

19 A Yeah, I'm -- I'm -- it's specific to the noises  
20 that are created I believe by Mile-Hi.

21 Q Can you see the graph that's been displayed on  
22 your screen there?

23 A I can.

24 Q And with respect to 2006 which has been pointed  
25 out to you as a high volume of Otter flights, do you see

1 where a portion of those flights were a plane labeled as the  
2 white Otter?

3 A I do see that.

4 Q Do you know whether there's difference in noise  
5 characteristics between the white Otter and the purple Otter  
6 which is predominantly used by Mile-Hi?

7 A No, I -- I do not.

8 Q So where their graph reflects Otters in general,  
9 do you know whether or not that that's a reflection of the  
10 increase in use of the purple Otter?

11 MS. ELLENBERGER: Objection, speculation.

12 THE COURT: The objection is overruled. He's just  
13 asking him whether he knows. So he can answer whether he  
14 does or does not know. And it's not speculation as to  
15 whether he does or does not know.

16 A No I can't say that I do.

17 Q (By Mr. Osofsky) And would the same be true for  
18 2010?

19 A That whether I can identify the difference between  
20 a purple Otter and a white Otter?

21 Q Yeah.

22 A No, I -- I can't.

23 MR. OSOFSKY: All right. Thank you very much. I  
24 appreciate it.

25 THE COURT: Is the witness under subpoena?

1 MR. OSOFSKY: Yes.

2 THE COURT: And may he be released from his  
3 subpoena?

4 MR. OSOFSKY: Yes.

5 THE COURT: And was he under subpoena by the  
6 defendants?

7 MS. ELLENBERGER: No, Your Honor.

8 THE COURT: Okay. All right. You are released  
9 from your subpoena. The Court thanks you for your time.

10 THE WITNESS: You're welcome.

11 THE COURT: And you're free to go.

12 THE WITNESS: Okay. Can I stay in the courtroom?

13 THE COURT: You may now, yes.

14 Your next witness.

15 MR. OSOFSKY: The plaintiffs are calling Dave  
16 Shenk, Your Honor.

17 THE COURT: Mr. Shenk, good afternoon. If you'll  
18 come up to the witness stand which is to my left over here.  
19 Once you're inside that witness box, if you'll stand and  
20 face me and raise your right hand.

21 THE WITNESS: Face you?

22 THE COURT: Yes.

23 DAVID SHENK,  
24 called as a witness on behalf of the Plaintiffs, having been  
25 first duly sworn was examined and testified as follows:



1 THE COURT: Thank you. Please be seated.

2 DIRECT EXAMINATION

3 BY MR. OSOFSKY:

4 Q Could you state your name for the record?

5 A David Shenk.

6 Q Where do you live, Mr. Shenk?

7 A About two and a half miles south of the Longmont  
8 Airport.

9 MR. OSOFSKY: Permission to approach, Your Honor,  
10 so I don't have to have the witness get up and down?

11 THE COURT: And permission to approach for what?

12 MR. OSOFSKY: I want to bring the board to him  
13 where -- so he can point out where his house is.

14 THE COURT: Okay. Thank you.

15 Q (By Mr. Osofsky) Can you show the Court or point  
16 to the place on this map of approximately where your home  
17 is?

18 A I think about there.

19 Q Thank you.

20 THE COURT: Are you pointing to like the  
21 Renaissance area?

22 THE WITNESS: No. I'm north of Oxford Road, south  
23 of Plateau and west of 81st Street.

24 THE COURT: Thank you.

25 Q (By Mr. Osofsky) How long have you lived there?

1 A 1980.

2 Q 35 years?

3 A (Witness nods head.)

4 THE COURT: I'm sorry, I didn't hear a response.

5 THE WITNESS: Yes, last January.

6 Q (By Mr. Osofsky) Do you have any background in  
7 aviation?

8 A I have a pilot certificate.

9 Q Do you own a plane?

10 A I do.

11 Q And where do you keep the plane?

12 A At Longmont.

13 Q Do you own a hangar at Longmont?

14 A I own a hangar.

15 Q How long have you owned a hangar at Vance Brand?

16 A Since 1995.

17 Q Do you believe there are any issues with Mile-Hi's  
18 operations out of Vance Brand?

19 A They're noisy.

20 Q Can you describe what you believe the issues to  
21 be?

22 A When I'm in my yard and they take off, they drone  
23 on for about 20 minutes climbing and then descending, and  
24 then they do it again 15 or 20 minutes later. And it goes  
25 on all day long in the summertime, and some days in the

1 winter it goes on all day long.

2 Q Is Mile-Hi's operations different from other  
3 aircraft operations out of Vance Brand?

4 A Typically an airplane, in order to get to my  
5 place, my residence, they'll take off and maybe cross over  
6 and they'll be there for 30 seconds and then they're gone.  
7 Mile-Hi drags on for 15 or 20 minutes everytime they go.

8 Q When did the noise become an issue for you?

9 A Probably 10, 12 years ago.

10 Q Are there -- to your knowledge are there any  
11 flight schools operating out of Vance Brand?

12 A Elite Aviation has a flight school.

13 Q Do the -- in your -- have you observed the flight  
14 school planes in operation?

15 A Yes.

16 Q And do their operations differ from Mile-Hi's?

17 A Typically they'll take off and either go out to a  
18 practice area and practice maneuvers or they'll shoot touch  
19 and go's where they stay in a pattern about half a mile  
20 south of the runway or a half a mile north depending upon  
21 the winds.

22 Q Do the flight school's operations raise the same  
23 issues of noise for you as Mile-Hi's?

24 A At my house I can't hear the flight school's  
25 operating.

1 Q And do you know why?

2 A Because we're two and a half miles away.

3 Q Is the altitude at which the -- have you observed  
4 the altitude at which the training flights typically fly?

5 A They'll typically be a thousand feet when they're  
6 in the pattern. Once they leave the pattern, who knows  
7 where they are. Depends on the maneuvers they're  
8 practicing.

9 Q And have you listened to Mile-Hi's planes in  
10 operation from take-off to drop altitude?

11 A We can hear them shortly after take-off all the  
12 way to drop, and then the sound changes slightly. But  
13 they're still noisy while they are coming down.

14 Q Do you hear any audible change in power when  
15 Mile-Hi planes are flying?

16 A During the drop.

17 Q Prior to that during the climb?

18 A No.

19 Q There's no audible change in power during the  
20 climb?

21 A I have never discerned any.

22 MR. OSOFSKY: Thank you. No further questions on  
23 direct, Your Honor.

24 THE COURT: Okay. Cross examination.

25 CROSS-EXAMINATION

1 BY MS. ELLENBERGER:

2 Q Good afternoon, Mr. Shenk.

3 You said you're about two and a half miles away  
4 from the Longmont Airport; is that right?

5 A That's correct.

6 Q So do you think at two or two and a half miles  
7 away it would be a pretty hard to hear whether or not the  
8 propeller pitch changed, is that correct, if the -- if  
9 Mile-Hi's planes were about two miles above the earth and  
10 you're two, two and a half miles away?

11 A Well, they're not two miles above the earth when  
12 they take off. They're at ground level when they take off.  
13 And they climb until they get to about 18,000 feet.

14 Q So from two and a half miles away and with Mile-Hi  
15 18,000 feet above the ground you're able to discern whether  
16 or not there's a pitch change in a propeller?

17 A You can hear when they cut the engines to drop,  
18 yes.

19 Q You said that about 10 to 12 years ago is when the  
20 noise became a problem for you; is that right?

21 A That's correct.

22 Q 10 to 12 years ago would be 1990?

23 A Early 2000s.

24 Q Mr. Casares didn't own Mile-Hi Skydiving in 2000,  
25 did he?

1           A     I don't know.

2           Q     In fact, you've never liked any skydivers that  
3 operated out of Vance Brand Longmont Airport; is that  
4 correct?

5           A     I don't think that's a correct statement.

6           Q     When you brought your home you knew that you were  
7 going to be located near an airport; is that correct?

8           A     Absolutely.

9           Q     That you'd be two and a half -- just two and a  
10 half miles away from a public use airport; correct?

11          A     That's correct.

12          Q     You received a disclosure when you moved into your  
13 home that there was an airport nearby?

14          A     No.

15          Q     But you knew it was there?

16          A     I knew it was there. I moved to my house because  
17 there's a private air strip right next door, that's how much  
18 I like airports.

19          Q     So you like airports, you just don't like airport  
20 noise?

21          A     I love airport noise. I don't like 20 minutes  
22 worth of droning on and on constantly for 20 minutes. When  
23 the jet takes off from Longmont it lasts about 30 seconds  
24 and he's gone.

25          Q     You're not a plaintiff in this lawsuit, are you?

1           A     No.

2           MS. ELLENBERGER: I have no further questions.

3           THE COURT: Thank you.

4           Any redirect?

5           MR. OSOFSKY: Briefly.

6                               REDIRECT EXAMINATION

7 BY MR. OSOFSKY:

8           Q     You were asked about Mile-Hi planes flying two and  
9 a half miles away. Do Mile-Hi planes ever climb directly  
10 over your house?

11          A     My house is about in the middle of the box that  
12 they climb in the entire time. Basically they climb from  
13 the Longmont Airport south almost to Lookout Road from  
14 Highway 36 east to about 287. And we're about in the middle  
15 of that area.

16          Q     Are you aware of any other operators out of  
17 Mile-Hi -- out of Vance Brand that climb continuously to  
18 altitude in the same manner as Mile-Hi's planes?

19          A     I'm not aware of any.

20          MR. OSOFSKY: Thank you.

21          THE COURT: Thank you.

22          Is the witness under subpoena?

23          MR. OSOFSKY: The witness is under subpoena. The  
24 witness may be released, Your Honor.

25          THE COURT: And did the defendants subpoena the

1 witness?

2 MS. ELLENBERGER: We did not, Judge.

3 THE COURT: Okay. Thank you, Mr. Shenk. You are  
4 excused, and you are released from your subpoena. And the  
5 Court thanks you for your time.

6 THE WITNESS: Thank you.

7 THE COURT: You may call your next witness.

8 Mr. Shenk, you can remain in the courtroom now if  
9 you would like.

10 Mr. Weiner, who are you calling?

11 MR. WEINER: His name is Set Set. It's a foreign  
12 name.

13 THE COURT: I'm sorry, I didn't realize  
14 Ms. Cording was doing the direct or I would have asked her.

15 MS. CORDING: I'm sorry, Your Honor. I was  
16 speaking to opposing counsel. We just realized we had an  
17 order of proof -- opposing counsel has pointed out he is  
18 slightly out of order.

19 I do understand the Court had asked us to provide  
20 any out-of-order witnesses as soon as possible. I believe  
21 that we have not yet provided this one.

22 THE COURT: Okay. Do you have any objection to  
23 Mr. Set being taken out of order?

24 MS. ELLENBERGER: We don't. We just ask that the  
25 plaintiffs would advise us who else is going to be called



1 today and in what order.

2 THE COURT: Mr. Set, I'm going to get to you in  
3 just a moment, so feel free to just have a seat there.  
4 Thank you.

5 And are there -- is there anyone else you'll be  
6 calling out of order today?

7 MR. WEINER: Depending on when Your Honor  
8 dismisses us, yes, we might take another witness. Would you  
9 like the name of who we might call if Mr. Set is not --

10 THE COURT: Yes.

11 MR. WEINER: If he's done quickly we would take  
12 Carla Behrens, one of the plaintiffs, Your Honor.

13 THE COURT: Okay. And does the defendant have any  
14 objection to Ms. Behrens being called out of order?

15 MR. LEFFERT: No, Your Honor.

16 THE COURT: Okay. Then let's proceed with  
17 Mr. Set.

18 Mr. Set, good afternoon. If you would come up to  
19 the witness stand, which is just to my left here. Turn and  
20 face me and stand and raise your right hand.

21 SET SET,  
22 called as a witness on behalf of the Plaintiffs, having been  
23 first duly sworn was examined and testified as follows:

24 THE COURT: Thank you. Please be seated.

25 Ms. Cording, whenever you're ready.

## DIRECT EXAMINATION

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BY MS. CORDING:

Q Good afternoon. Can you please state your full name for the record?

A My full legal name is Set first name, and Set last name.

Q And Set -- can I refer to you as Set? Is that appropriate?

A I'm sorry?

Q May I refer to you as Set?

THE COURT: Mr. Set.

A Set. Oh, Set is fine.

THE COURT: The Court does not permit counsel to not use Mr. or Ms. or Officer or some other designation when referring to a witness.

MS. CORDING: Thank you.

Q (By Ms. Cording) Mr. Set, can you tell me your address?

A 8171 North 41st, Longmont, Colorado 80503.

MS. CORDING: Your Honor, may I approach the witness to also present him with our map?

THE COURT: You may.

Q (By Mr. Cording) Mr. Set, can I ask you to just point out approximately where on the map your house is located?

1           A     Okay. Right about there.

2           Q     Thank you.

3                     Where is that in relation to the Vance Brand  
4 Municipal Airport?

5           A     Approximately a half a dozen miles west, a little  
6 bit south.

7           Q     Do you feel like noise is an issue?

8           A     Very much so.

9           Q     Do you feel -- and specifically do you feel like  
10 airport noise is an issue?

11          A     Yes. More specifically, the planes from Mile-Hi  
12 Skydiving.

13          Q     What is the noise issue with the planes for  
14 Mile-Hi Skydiving?

15          A     The location of my property is -- in terms of  
16 their flight pattern is in a position where on their  
17 outgoing flight they pass over, and shortly after that point  
18 they turn around and head southeast and pass over my  
19 property again.

20                     So twice every flight loop on typical flight  
21 loops, flight patterns they pass close to or directly over  
22 my property. And the planes are gaining in altitude all  
23 through that time frame and are extremely noisy.

24          Q     And about how many flight loops would you see in a  
25 typical hour?

1           A     Depends on the day of the week.  The weekends,  
2 they're the most flights by far on the weekends, and also  
3 increasingly on the days.  But the weekends are the busiest.

4                     And I have -- you know, I have a record.  I  
5 haven't recorded them, but it's typically from a low on  
6 weekend of a couple of flights an hour to I think they've  
7 got multiple planes operating four or five flights.

8           Q     Have you ever had -- I'm sorry, have you ever had  
9 the opportunity to observe the Mile-Hi Skydiving skydiving  
10 operation flights?

11          A     Observe the planes themselves?

12          Q     To observe them flying.

13          A     Yes.  Oh, I can see them.  I can see the planes,  
14 the actual planes from shortly after they take off.  I have  
15 a little bit of altitude where I live, so I can see them  
16 shortly after they take off as they're approaching.

17                     I can also hear them from shortly after they take  
18 off all the way until they pass over my property.  Then I  
19 can -- and then they pass again after they turn around.  And  
20 I can watch them as they head southeasterly.  I can watch  
21 them as they make the turn to head back north to go back to  
22 the airport where they make the drop.  I can see where they  
23 make the drop.  I can see the parachutists exit the plane.

24          Q     About how many times have you observed this  
25 pattern that you just described for me?

1           A     Well, I've observed their planes by thousands  
2 or -- this goes back over 10, 12 years.

3           Q     Have you ever observed any audible change in power  
4 during their flight operations?

5           MS. ELLENBERGER:  Objection, lack of foundation.

6           THE COURT:  Overruled.  She's asking whether he  
7 observed any audible change in power.  So he will tell if he  
8 can answer whether he's observed it or not.

9           A     Um, the real noticeable change in what I hear is  
10 at the point right as or shortly after they make the drop.  
11 The engines are apparently cut.  And when they're  
12 descending, which I can also see most of the time, they're  
13 descending until they get back to the airport, the noise is  
14 typically substantially less.

15          Q     (By Ms. Cording) I'm sorry, just to clarify, when  
16 you say make the drop what are you referring to?

17          A     When the parachutists exit the plane.  And a lot  
18 of flights that's not all the exact same time.  Sometimes,  
19 you know, a bunch exit the plane, and then 30 seconds later  
20 some more will exit, so on.

21          Q     Have you ever had the opportunity to meet with any  
22 representatives of Mile-Hi Skydiving?

23          A     I have.  So roughly eight, nine years ago,  
24 somewhere in there, I'd been making a fair number of  
25 complaints to Tim Barth, the then manager of the airport.  I

1 ended up meeting with Tim at least once, maybe a couple of  
2 times one-on-one at the airport about this issue.

3 Then a couple of other community members got  
4 involved and came for the meeting. And then representatives  
5 of Mile-Hi were invited to come to those meetings at the  
6 airport, Tim's offices or conference room near his office.

7 And so I think at least once, and I believe it was  
8 twice that -- that at those meetings representatives of  
9 Mile-Hi were present.

10 Q What was the meetings -- what were the meetings  
11 like?

12 A In what sense? Can you be more specific?

13 Q What was discussed at the meetings?

14 A Basically we -- we from the community were  
15 expressing our concerns about the noise and trying to  
16 explore what could be done to mitigate.

17 Q Did the representatives from Mile-Hi say anything  
18 at these meetings?

19 A Yes, they did.

20 Q Who was the representative from Mile-Hi?

21 A There were a few there. But Frank -- I'm sorry,  
22 I'm not sure of the pronunciation, Frank Casares.

23 Q I think I'll represent that his name is pronounced  
24 Casares. If I'm incorrect you should correct me.

25 A Who I understand is the owner.

1           Q     So did the -- did you have the opportunity to tell  
2 Mr. Casares about your complaints and about your  
3 observations of the noise?

4           A     Um-hmm, yeah.

5           THE COURT:   You have to answer yes or no.

6           THE WITNESS:   Oh, yes.

7           Q     (By Ms. Cording) And what was his response?

8           A     He appeared to be upset that I was complaining.

9           Q     And did he say anything to you about the  
10 complaints?

11          A     He said that -- well, he got -- as the meeting  
12 went on he got increasingly -- he appeared to be -- get  
13 increasingly agitated, and to the point where I felt  
14 somewhat threatened by him and by what he -- what he would  
15 do in terms of potentially even increasing the amount of  
16 noise.

17          Q     Mr. Set, did you ever file complaints about the  
18 noise?

19          A     Um-hmm, yeah, with Tim Barth.

20          THE COURT:   You have to say yes or no, okay?

21          THE WITNESS:   Sorry.   Yes.

22          Q     (By Ms. Cording) Do you still file complaints?

23          A     As of the first of the year I stopped.

24          Q     Do you feel as though you were ever targeted  
25 because you were filing complaints?

1           A     Yes.

2           Q     How so?

3           A     In a period perhaps October, somewhere in there,  
4 immediately after I had had a period of filing a lot of  
5 complaints and been talking to Tim on the phone about it,  
6 there was a particular flight that had a very unusual flight  
7 pattern.

8                     And rather than doing this pattern that I  
9 described earlier where it -- where the plane comes over  
10 past my house, turns and goes back the other way and that is  
11 it for that flight pattern, after it did the drop over the  
12 airport it came all the way back on its so-called descent  
13 route, which is extremely rare, came all the way back,  
14 circled over my house again, started back to the airport,  
15 came back again, circled over my house again, and the last  
16 time did what's called a wing wag right directly over my  
17 property.

18                     That's where the wings are dropping in one  
19 direction, and then it's immediately followed by the wings  
20 dropping the other direction. And it's a way the planes can  
21 signal to somebody on the ground. And I felt that they were  
22 signaling to me.

23           Q     And just to clarify your statement, you had  
24 mentioned a Tim. Can you be more specific? Who is Tim?

25           A     Tim, the former manager of the airport.



1 Q Do you know his last name?

2 A Tim Barth.

3 Q And you also mentioned a plane that did a certain  
4 maneuver. Do you know who the plane belonged to?

5 A Oh, that was -- I'm sorry if I wasn't specific.  
6 That was the Mile-Hi Skydiving plane.

7 MS. CORDING: Thank you, Your Honor. No further  
8 questions on direct.

9 THE COURT: Thank you.

10 Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. ELLENBERGER:

13 Q Good afternoon, Mr. Set.

14 A Good afternoon.

15 THE WITNESS: Is this water?

16 THE COURT: Yes, there is water. Please help  
17 yourself.

18 THE WITNESS: Thank you. Well, I guess there's  
19 not.

20 THE CLERK: You have to push the --

21 THE WITNESS: Oh, high tech. Thank you.

22 Q (By Ms. Ellenberger) Mr. Set, this plane that you  
23 were just talking about that you said did a wing  
24 something --

25 A Wing wag.

1 Q Wing wag over your home, you don't know that Frank  
2 Casares was flying that plane, do you?

3 A Not at all, no.

4 Q You have no idea who was flying that plane?

5 A Which of the Mile-Hi pilots it was, I have no  
6 idea.

7 Q Mr. Set, do you remember making a noise complaint  
8 on September 24, 2014?

9 A Not that one in particular, no.

10 Q So you don't know, you can't recall whether or not  
11 you made a noise complaint on September 24, 2014?

12 A No. There was a period I was making complaints  
13 virtually daily, so it's likely that I did.

14 Q It's likely that you did?

15 A Um-hmm.

16 THE COURT: Excuse me, I have to remind you to  
17 answer yes or no. So you need to answer that question.

18 THE WITNESS: Okay. State the question again.

19 Q (By Ms. Ellenberger) So you can't recall whether  
20 or not you filed a complaint specifically on September 4,  
21 2014?

22 A No, I can't recall.

23 MS. ELLENBERGER: Okay. May I approach the  
24 witness to refresh his recollection?

25 THE COURT: With what?

1 MS. ELLENBERGER: Exhibit T. It's not yet in  
2 evidence. It's noise complaint data from the City.

3 THE COURT: Okay.

4 MR. OSOFSKY: Your Honor, the question has to be  
5 first asked whether anything would refresh this witness'  
6 memory and whether this document would refresh his memory  
7 before he can be presented with --

8 THE COURT: Thank you. You can ask questions to  
9 ask the witness whether it would refresh his memory.

10 Q (By Ms. Ellenberger) Mr. Set, would it refresh  
11 your memory to look at the noise log -- the noise complaint  
12 log for the City for the year 2014 on whether or not you  
13 made a noise complaint on September 24, 2014?

14 A Yes.

15 THE COURT: You may approach.

16 MS. ELLENBERGER: Thank you, Your Honor.

17 THE COURT: Mr. -- I'm sorry, Mr. Osofsky. Excuse  
18 me.

19 MR. OSOFSKY: Your Honor, I still object as to a  
20 lack of foundation for a refreshed memory procedure. This  
21 isn't a document that he created or he has knowledge of that  
22 would cause him to recollect based upon this document.

23 THE COURT: Objection is overruled. You may  
24 approach.

25 Q (By Ms. Ellenberger) I'm going to direct your

1 attention here, I'm going to ask you some questions,  
2 Mr. Set. Can you see there the noise log for September 24,  
3 2014?

4 A Upper part, yes.

5 Q Does that document refresh your recollection on  
6 whether or not you made a noise complaint on that date?

7 A It has my name under that date.

8 Q Does that refresh your recollection on whether or  
9 not you made a noise complaint on that date?

10 A Well, if this is accurate --

11 MR. OSOFSKY: I'm sorry --

12 THE WITNESS: I don't remember.

13 THE COURT: Excuse me. Mr. Set, there's an  
14 objection. And so when there's an objection, you just need  
15 to remain quiet until I rule on it. Thank you. And I know  
16 you weren't aware of those rules.

17 MR. OSOFSKY: Your Honor, I move to strike  
18 statements published from the document. That's not  
19 appropriate for refreshed memory procedure.

20 THE COURT: The only thing that I've heard him say  
21 is that he saw that his name was on the complaint or is  
22 listed as a complaint. So to that end I overrule the  
23 objection.

24 You may ask your next question.

25 Q (By Ms. Ellenberger) Mr. Set, you can put that

1 document down.

2 So your name appears on that document --

3 A Um-hmm.

4 Q -- as making a noise complaint?

5 A Yes, it does.

6 Q You can put that document aside.

7 If you could -- you could go into the binder  
8 that's marked Defendant's?

9 A This?

10 Q Defendant's Exhibit it's got the letter N in it.  
11 Exhibit N, have you found it there? There's a lot of  
12 binders.

13 A Well, some of them have numbers.

14 Q There, right -- this one that has letters in it.

15 THE COURT: Ms. Ellenberger, why don't you  
16 approach, see if you can see which binder it is.

17 THE WITNESS: So it could be a different binder?

18 MS. ELLENBERGER: It could. Here it is.

19 THE WITNESS: All right.

20 MS. ELLENBERGER: There you go. Exhibit N. I  
21 think I turned you to the first page.

22 Q (By Ms. Ellenberger) You got it there?

23 A Um-hmm.

24 Q All right. So just so we're all on the same page,  
25 I'm going to have you turn to -- if you look in the top left

1 corner it's going to say DEF and then 206717. Can I get you  
2 to that page? I'm sorry, 6716?

3 A I'm going to ask you --

4 Q Four pages from the back.

5 A It's what?

6 Q Four pages from the back, Exhibit N.

7 A Gotcha. Okay.

8 Q Are you there?

9 A I think I am.

10 Q I'll submit to you --

11 A What should it say? 7 what?

12 Q I'm sorry, 006716 on the top left-hand corner. It  
13 has dates starting from August 28, 2014 going down to  
14 September 27, 2014.

15 A Okay. I'm at that page.

16 Q I'll submit to you that this is a log of Mile-Hi's  
17 daily flights that's already been admitted into evidence.

18 If you look on this page do you see that Mile-Hi  
19 flew on September 24, 2014?

20 A It's not listed.

21 Q But you made a complaint that day about Mile-Hi,  
22 the noise generated from Mile-Hi's flights on September 24,  
23 2014?

24 A I don't believe that to be. I would deny that.

25 Q You would deny that even though we've already

1 refreshed your recollection?

2 A Well, no, I did not have my memory refreshed.

3 What I acknowledge was that my name appears in that document  
4 you presented me.

5 What would -- the only thing that would truly  
6 refresh my memory would be looking at my e-mails. And in  
7 some cases, for example, I would send e-mails complaining  
8 about a flight a previous day. And I don't know how that  
9 was logged by Tim in the system.

10 Q And you said that you were making complaints  
11 almost daily at that point; correct?

12 A Yeah. Anytime there was a period of about a  
13 number of months where any day that I heard Mile-Hi flying I  
14 would make a complaint, and sometimes it was, you know, many  
15 days during the week, or numbers of days during the week.

16 Q Mr. Set, are you aware that there's a Twin Otter  
17 plane flown by a survey company out of the Boulder Municipal  
18 Airport?

19 A No.

20 Q You weren't aware of that?

21 A Nope.

22 THE COURT: Mr. Set, could you move a little  
23 closer to the microphone please?

24 THE WITNESS: No.

25 Q (By Ms. Ellenberger) When you bought your home --

1 I'm sorry, what year did you buy your home?

2 A 1991.

3 Q And you were aware at that time that the Vance  
4 Brand Airport existed; correct?

5 A Actually, no.

6 Q You didn't know that the Vance Brand Airport was  
7 there when you purchased your home?

8 A Correct.

9 Q No disclosure was made to you during when you  
10 purchased your home that there was an airport 4 miles away?

11 A No disclosure about any airports.

12 Q You had never driven by the airport that was  
13 4 miles away from --

14 A No. I had been previously in Boulder, and not  
15 gone to Longmont much.

16 Q You're not a plaintiff in this lawsuit?

17 A No.

18 MS. ELLENBERGER: I have no further questions,  
19 Your Honor.

20 THE COURT: Thank you.

21 Redirect.

22 MS. CORDING: No further questions, Your Honor.

23 THE COURT: Thank you.

24 Is the witness under subpoena?

25 MS. CORDING: Yes, he is.



1 THE COURT: And is he under subpoena from the  
2 defense?

3 MS. ELLENBERGER: He is not, Your Honor.

4 THE COURT: May he be excused from his subpoena?

5 MS. CORDING: Yes, Your Honor.

6 THE COURT: Mr. Set, you're excused from your  
7 subpoena. The Court thanks you for your time. And you're  
8 free to go, and may remain in the courtroom if you'd like.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Plaintiffs may call their next  
11 witness.

12 MR. WEINER: It's 20 until 5:00, Your Honor.  
13 We're happy to proceed with Ms. Behrens. I suspect for your  
14 information she will take about 20 minutes from plaintiffs'  
15 side. Would you like us to continue?

16 THE COURT: You may proceed.

17 MR. WEINER: All right. We call Ms. Carla Behrens  
18 to the stand.

19 THE COURT: Ms. Behrens, if you'll come up.

20 Ms. Behrens, if you'll stand, face me and raise  
21 your right hand.

22 CARLA BEHRENS,  
23 called as a witness on behalf of the Plaintiffs, having been  
24 first duly sworn was examined and testified as follows:

25 THE COURT: Thank you. Please be seated.

1 DIRECT EXAMINATION

2 BY MR. WEINER:

3 Q Did you just bang your eye on the microphone? Are  
4 you all right?

5 A I'm okay.

6 THE COURT: You need a moment?

7 THE WITNESS: No. I'm fine.

8 Q (By Mr. Weiner) Ms. Behrens, where -- what is the  
9 address of where you live?

10 A 904 Little Leaf Court.

11 MR. WEINER: And Your Honor, I'm going to do the  
12 same thing, I'd like to approach the witness and show her  
13 the map and have her show where she lives.

14 THE COURT: You may.

15 MR. WEINER: Thank you.

16 Q (By Mr. Weiner) Will you put a little circle  
17 around where you live?

18 A (Indicating.)

19 Q Ms. Behrens, would you tell me the address where  
20 you live?

21 A 904 Little Leaf Court.

22 THE COURT: Okay. I didn't hear the street  
23 correctly. Thank you.

24 Q (By Mr. Weiner) Ms. Behrens, when did you purchase  
25 your home?

1 A 2001.

2 Q Did you purchase it with your husband?

3 A Yes.

4 Q And currently do you both own it?

5 A Yes.

6 Q Was the airport, the Vance Brand Airport there  
7 when you moved in?

8 A Yes.

9 Q And describe -- and that was in 2001?

10 A Yes.

11 Q Can you describe what activities were occurring at  
12 the airport when you moved into your home?

13 A During the time it was being built and after we  
14 moved in we -- there were not a lot of aircraft going in and  
15 out. It was fairly quiet.

16 Q Can you describe the kind of aircraft that were  
17 there?

18 A Just it looked like small planes flying out,  
19 flying in, some helicopters, maybe crop dusters.

20 Q And when you purchased your home did you sign a  
21 disclosure statement saying you knew the airport was there?

22 A Yes, I did.

23 Q And do you know what the statements said?

24 A It said that I acknowledge that the airport was  
25 there and that it -- there could be aircraft passing over my

1 home and frequency could increase in the future.

2 Q Did the acknowledgment also state that aircraft  
3 were subject to state and city laws based upon --

4 MR. LEFFERT: Objection, leading.

5 THE COURT: Sustained.

6 Excuse me. Ms. Behrens, if there's an objection,  
7 you have to wait until I rule on it. And then I'll tell you  
8 whether you can respond.

9 The objection is sustained.

10 MR. WEINER: Okay.

11 Q (By Mr. Weiner) And are you aware of any statement  
12 in that acknowledgment concerning state and federal laws?

13 A Yes. I've gone back to re-read it. I didn't --  
14 in the excitement of getting our new house I didn't think  
15 about it that much at the time, and the airport really  
16 wasn't a problem. It -- it acknowledges that state and city  
17 laws apply.

18 And to me, I know that there was nuisance laws.

19 MR. LEFFERT: Objection, Your Honor. It's now a  
20 narrative question, beyond the scope of the question asked.

21 THE COURT: Sustained. So just answer the  
22 question that's asked. And then if the attorney wants to  
23 ask you anything further, Ms. Behrens, they'll do so. Thank  
24 you.

25 Q (By Mr. Weiner) Did you want to elaborate on your

1 previous answer?

2 A I believe that state law does include --

3 MR. LEFFERT: Objection.

4 THE WITNESS: -- noise --

5 MR. LEFFERT: Objection. Now --

6 THE COURT: Once there's an objection, then you  
7 have to stop, Ms. Behrens, until I rule on it.

8 MR. LEFFERT: It's seeking a legal opinion about  
9 state laws, Your Honor. Not qualified as an expert, not  
10 disclosed.

11 THE COURT: Well, the question didn't ask that,  
12 but the response went into that. So I'm going to strike  
13 that part of the response where Ms. Behrens is providing a  
14 legal interpretation, but I'll let Mr. Weiner ask a new  
15 question.

16 MR. WEINER: Thank you.

17 Q (By Mr. Weiner) Did that piece of paper in your  
18 understanding prohibit you from being a plaintiff in this  
19 case?

20 A No.

21 Q How have airport operations changed since you  
22 purchased your house in 2001?

23 A I noticed that the -- well before we bought four  
24 or five years ago I didn't really -- I knew that there were  
25 skydivers, but it wasn't really that noticeable. Within the

1 last four or five years the frequency of the flights and the  
2 noise of the flights has increased exponentially.

3 Q Now, how do you know that the flights -- the  
4 planes that you're saying increased exponentially are  
5 Mile-Hi's flights?

6 A I can -- from my yard I can look up, I can see the  
7 fla -- the Twin Otter taking off or the King Air, I can see  
8 that with my naked eye. I can see it ascend, I can see it  
9 ascend rapidly to a high altitude. And then I hear it back  
10 off a bit, and then I see skydivers. I can see the  
11 skydivers from my property jump out. And then I see the  
12 plane circling around again and going back to land and pick  
13 up more skydivers.

14 Q Are you --

15 A I can see -- the plane is very visible. I can see  
16 the door of the plane.

17 Q Are you aware of any particular markings or colors  
18 associated with the Mile-Hi planes?

19 A The Twin Otter particularly is a white plane that  
20 the -- the purple tail -- purple tail, is that what you call  
21 it? And there are other purple markings on it.

22 Q Okay. And it sounded like you weren't exactly  
23 sure it's on the tail, but it's somewhere on the back of the  
24 plane?

25 A The back of the plane, it's the tail of the plane

1 protrudes up.

2 Q Okay. How does the noise from Mile-Hi's flights  
3 impact you?

4 A It's gotten to be that before four or five years  
5 ago I was -- I really loved entertaining people on my deck  
6 and we had a lot of parties. And then the noise has gotten  
7 so bad that I am reluctant to have people over.

8 When I have tried to talk to my neighbor behind  
9 me, we have small yards, we're kind of close, and so she was  
10 like 5 feet away from me, we. Could not hear one word that  
11 each other was saying as the plane was ascending in  
12 altitude.

13 Q And is this a one-shot occurrence when Mile-Hi  
14 flies over your house?

15 A No. It is during the good weather. And it can be  
16 in the winter, but it's generally in the summertime and well  
17 past weekend.

18 The noise of the flights start before breakfast,  
19 and often don't end until after sunset. So when you count  
20 up the hours, it's like 12 to 14 hours a day could be. It  
21 could be Friday, Saturday and Sunday and holidays.

22 And it is a droning noise that penetrates your  
23 body. It goes through your body, through your home.  
24 There's nowhere to escape it.

25 Earplugs do not work. The air conditioner, if

1 it's running, the plane is very loud over it. There's no  
2 other sound that will drown it out, not even inside my  
3 bathtub in my bubble tub when I turn that on.

4 Q Can you describe -- you said droning. But can you  
5 further describe the quality of the sound from Mile-Hi's  
6 airplanes?

7 A It's so loud that it penetrates your body and you  
8 know it's there, it doesn't go away. It's -- it's -- it --  
9 it feels like what -- I wake up in dread on weekend  
10 wondering when it will start.

11 And of course it starts, and then it goes around  
12 and around and around for circling to the high for the drop.  
13 And it -- it's droning the whole time. It's -- it's a  
14 penetrating low frequency sound that just makes you feel  
15 awful for me. It is 12 to 14 hours a day on the weekend, on  
16 my weekend that I earned of hell on earth.

17 Q What do you do for a living, Ms. Behrens?

18 A At the time I'm retired. But I was a teacher at  
19 Longmont High School and at the University of Colorado.

20 Q What kind of activities do you engage in, have you  
21 engaged in since you retired?

22 A Since I retired I belong to Longmont Chorale. And  
23 I got involved in the Symphony Guild for the Longmont  
24 Symphony to raise money for the symphony.

25 Q Did you get involved with the Longmont Symphony to



1 the extent of entertaining at your house?

2 A Yes, I did.

3 Q Can you tell us about that, the times you've  
4 entertained at your house?

5 A I need a sip of water first.

6 THE COURT: While she's doing that, I want to make  
7 sure I'm not calling the witness by the wrong name. I  
8 thought I heard Behrens, and there's a Ms. Behrens who is a  
9 party, but there's no Ms. Behrens on the witness list. So  
10 can you help me out?

11 MR. WEINER: On the witness list or the offer of  
12 proof?

13 THE COURT: The offer of proof.

14 MR. WEINER: We pulled her up from an earlier  
15 time. I'm not sure if it's Tuesday or Wednesday.

16 THE COURT: No, there's no Ms. Behrens at all on  
17 the offer of proof. That's why I was asking. I just  
18 thought I might be calling her by the wrong name, she might  
19 be somebody else.

20 MR. WEINER: No, she's not. That was an omission.  
21 She appears on the witness list, and in the offer of proof  
22 we did leave her out. May I request to -- does that require  
23 any further action on my part?

24 THE COURT: No. I thought she might be another  
25 individual, that I was calling her by the wrong name. So

1 thank you for clarifying that.

2 MR. WEINER: Of course.

3 Q (By Mr. Weiner) Ms. Behrens, just to clarify,  
4 you're a plaintiff in this lawsuit?

5 A Yes.

6 Q Thank you.

7 Do you remember my question?

8 A No.

9 Q Okay.

10 A Sorry.

11 Q My question was you -- you had mentioned that you  
12 were involved or active with the Longmont Symphony, and I  
13 asked you about any events that might have occurred at your  
14 house related to the Longmont Symphony.

15 A The symphony has a garden show every year to  
16 raise -- it's their major fundraiser. And they look around  
17 the city for gardens that look like might work for their  
18 show.

19 And two years before the show the -- I was -- our  
20 garden was in this -- they approached me, then they give you  
21 time to get it ready. Then in 2012 on Father's Day we  
22 hosted the garden show in our yard.

23 And the idea of the serenity of a garden is in  
24 direct opposition to the noise of the skydive planes that we  
25 had to endure during the show. The show was on Friday and

1 Saturday, did not go on Sunday. But it was -- the  
2 disruption of the noise was enough that -- that a lot of the  
3 attendees commented, made negative comments about it.

4 Q Tell us about the garden at your house.

5 A The garden?

6 Q Um-hmm.

7 A Well, we had -- it is -- it was -- we had a  
8 landscape designer, but we have done all the planting. And  
9 it has several areas with a secret garden and roses. I love  
10 roses, roses are my favorite thing.

11 And it's not a very large yard, but it's very  
12 packed with a lot of beauty and I love working in it. And  
13 it's really gotten to be that it's very hard for me to even  
14 concentrate on the garden because every 20 minutes the drone  
15 is coming around. But it's a continuing sound that goes on  
16 and on all day, it does. It spoils my pleasure in my yard.

17 Q Are you aware of a group called Citizens For Quiet  
18 Skies?

19 A Yes.

20 Q And are you a member of this group?

21 A Yes.

22 Q And are you a financial supporter?

23 A Yes.

24 Q And how did you initially get involved with  
25 Citizens For Quiet Skies?

1           A     Well, I had been complaining about the noise for  
2 some years before there was an airport expansion meeting at  
3 the library. And at that time I ran into many kindred  
4 spirits who were as frustrated as I am and have been trying  
5 for years to get some mitigation done about the noise.

6           At that time a group of us -- I think that was in  
7 2011. A group of us came together and we discovered we had  
8 a common interest. And we decided to form a group called a  
9 positive -- with a positive image of Citizens For Quiet  
10 Skies.

11          Q     So you were one of the original founding group for  
12 this?

13          A     Yes.

14          Q     Taking some words from opposing counsel's opening,  
15 did a Ms. Gibbs rope you in to being involved with Citizens  
16 For Quiet Skies?

17          A     Not in any way.

18          Q     Were you annoyed by the flights or impacted by the  
19 flights even before you were aware of who Ms. Gibbs was?

20          A     Yes. I didn't even know who she was.

21          Q     And you mentioned a kindred -- what was a kindred  
22 spirit?

23          A     Um-hmm.

24                THE COURT: Remember to say yes or no.

25          Q     (By Mr. Weiner) So -- and you were talking about

1 kindred spirits who also had this concern about Mile-Hi's  
2 noise?

3 A Yes.

4 Q Is -- would it be fair to say that -- I'll strike  
5 that.

6 Were these kindred spirits of yours to your  
7 knowledge roped in by Kim Gibbs to be concerned about the  
8 noise?

9 A No.

10 MR. LEFFERT: Objection, Your Honor. It's  
11 leading. It also misstates what I said in opening.

12 THE COURT: The objection is sustained. You can  
13 re-frame the question.

14 MR. WEINER: Okay.

15 Q (By Mr. Weiner) What is your understanding with  
16 respect to this -- these kindred spirits with concerns about  
17 Mile-Hi's noise and their knowledge of Ms. Gibbs?

18 A We were very grateful to have someone as organized  
19 as Kim to take -- to help to lead us through a process of  
20 finding ways to work on mitigation of the airport noise.

21 Q How are -- and just to clarify, did the group work  
22 on these issues in tandem? Was Ms. Gibbs one of these  
23 individuals who was concerned at the beginning?

24 A I found that out probably after that meeting. It  
25 was more my neighbor -- my neighbors and I were at this

1 meeting, and then we began talking to some of the other  
2 people. And we discovered that we had a common interest in  
3 trying to mitigate the noise. And I don't know exactly when  
4 I became aware of Ms. Gibbs.

5 Q Let's talk about the operations themselves. Are  
6 the planes from Mile-Hi different from other planes that  
7 take off and land at Vance Brand Airport?

8 A In my view, yes, because the planes from Mile-Hi  
9 have a specific purpose of dropping parachutists out of the  
10 plane. And so they want to ascend as quickly as possible  
11 and drop them off and get down to the ground so that they  
12 can get another group of skydivers. So it's an operation  
13 that takes place in a small area.

14 And I don't mean -- I don't mean to -- takes place  
15 in a small area, it takes place in a designated area that  
16 they use.

17 But the noise is so appalling that you can hear it  
18 at Rabbit Mountain, Heil Ranch, you can hear it all over the  
19 places in the county that I like to recreate, bicycling or  
20 whatever. But it is terrible over my house.

21 And the other planes that fly in and fly out are  
22 barely noticeable. They're -- Mile-Hi noise is louder than  
23 any of the jets I see coming out of the airport.

24 Q Did you speak with the airport before filing this  
25 lawsuit?

1           A     We have spoken -- well, I had complained and  
2 talked with Tim Barth many times. And we also have  
3 approached the City. We tried lots of different things of  
4 trying to come to some kind of agreement or compromise that  
5 would do something to mitigate the noise, because it's  
6 unbearable.

7           Q     And after speaking with Mr. Barth were any  
8 operational changes made as far as you know to Mile-Hi's  
9 flights?

10          A     No.

11          Q     Let's talk about real estate impacts.

12                     What is your view about Mile-Hi's flights on the  
13 property value of your home?

14          A     Well, I believe when it comes time to sell we will  
15 not get as much money as we would like -- I mean, as --  
16 because of the airport noise. I know there are people -- I  
17 personally know a few people who have moved away from the  
18 neighborhood because they couldn't bear the noise anymore.

19                     MR. LEFFERT: I object. Now we're talking about  
20 hearsay of other people.

21                     THE COURT: Sustained. Why don't you just  
22 redirect the witness.

23                     MR. WEINER: All right.

24                     THE COURT: You can try and lay foundation if you  
25 want, but there isn't any that supports her response.

1 MR. WEINER: I agree.

2 THE COURT: Actually this is probably a good point  
3 for us to break unless you think you'll be done in four or  
4 five minutes.

5 MR. WEINER: I'm happy to break, Your Honor.

6 THE COURT: Okay. Ms. Behrens, you can step down.

7 MR. WEINER: But yes, and we'll talk about  
8 scheduling when she's done.

9 THE COURT: Counsel, you may be seated.

10 I'm going to take a couple of minutes so I can let  
11 counsel know how much time they each used today for your  
12 planning purposes.

13 (Pause.)

14 THE COURT: Okay. So it looks like the plaintiffs  
15 have used 220 minutes, so they have used about three  
16 hours -- well, exactly three hours 40 minutes. And the  
17 defendants have used 146 minutes, so two hours 26 minutes.  
18 So that should help you in figuring out how you want to plan  
19 your day tomorrow.

20 And are there any things that we need to take up  
21 before we adjourn today or recess for the day?

22 MR. OSOFSKY: Your Honor, we have a witness  
23 appearing by telephone from France as you know.

24 THE COURT: Mr. Jennings.

25 MR. OSOFSKY: Mr. Jennings. And he's scheduled to



1 appear at 11:00.

2 We would request that if it's necessary to  
3 interrupt a witness that's currently on the stand in order  
4 to bring Mr. Jennings on, that we are allowed to take  
5 priority.

6 THE COURT: We will. Thank you.

7 Anything else?

8 MR. OSOFSKY: That's it, Your Honor.

9 MR. WEINER: Oh, I have one.

10 THE COURT: Mr. Weiner?

11 MR. WEINER: You might decide it's our  
12 responsibility, but we were never provided with an exhibit  
13 book. Your Honor has one and --

14 THE COURT: Did you provide an exhibit book to the  
15 defendant?

16 MR. WEINER: I did, Your Honor.

17 THE COURT: Mr. Leffert, did you want to say  
18 something?

19 MR. LEFFERT: Yes. They provided their exhibit  
20 book Thursday afternoon, and it was different than the one  
21 that they sent us electronically. When they sent us the one  
22 electronically more than a month ago when we exchanged  
23 pursuant to your order, we printed theirs out, put them in  
24 notebooks. We assumed they'd do the same thing.

25 THE COURT: The Court is going to order that you

1 provide the plaintiffs with an exhibit book before 8:30  
2 tomorrow morning.

3 MR. LEFFERT: Yes, Your Honor.

4 THE COURT: Thank you.

5 Anything else from the plaintiffs?

6 MR. WEINER: No, Your Honor.

7 THE COURT: And what about the defendants?

8 MR. LEFFERT: Can we leave our stuff on the table,  
9 or do you have something else?

10 THE COURT: No. You may leave all of your stuff  
11 in the courtroom. It will be locked overnight. I wouldn't  
12 leave computers or anything of high value. But certainly  
13 you're welcome to leave all of your exhibit books and other  
14 exhibits and documents and don't need to bring those in and  
15 out everyday.

16 Anything else from the defendants?

17 MR. LEFFERT: No, Your Honor.

18 THE COURT: Okay. Then we will commence tomorrow  
19 morning with the continuation of the direct examination of  
20 Ms. Behrens at 8:30 a.m. Look forward to seeing you all  
21 tomorrow.

22 (The trial concluded for the day.)

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CERTIFICATE

The above and foregoing is a true and accurate transcription of my stenotype notes taken in my capacity as Official Court Reporter, District Court, County of Boulder, State of Colorado.

Dated this the 23rd day of December, 2015.

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DAWN R. CHIODA, CSR, RPR  
Official Court Reporter