

never conducted that specific type of test using a Strobotac instrument. Shaw used a Strobotac instrument owned by Greenwood.

FN2. A Strobotac instrument is an instrument for measuring the speed of a rotating object.

¶ 5. Shaw placed the Strobotac instrument onto some portion of the turbine shaft and called out the speed readings into the control room area to Niakian, Bobby Bennett, a Greenwood electrical engineer, and Yu-Gen Chen, a GE engineer. The readings reported by Shaw confirmed the speed reported by the Triconex controls at each point, which led everyone involved to believe that the readings were correct. Thus, Lane Richard, a GE engineer in New Orleans, was contacted, and Richard directed Greenwood to adjust the overspeed trip bolt. Pursuant to Chen's instructions, Doug Elmore, a Greenwood employee, constructed a wrench and adjusted the mechanical overspeed bolt. The unit was started again, and when the unit reached normal operation speed, it experienced excessive vibration. Triconex was released from the job site pending resolution of the problem.

¶ 6. On February 9, 1996, Dean Walters, a GE service engineer, tested the turbine speed using a digital tachometer. The turbine tachometer showed the turbine was actually operating at a speed of 6,560 RPM, while the new Triconex control system showed a speed of 4,860 RPM. GE instructed Greenwood not to operate the turbine any longer, because the overspeed event had caused damage. Triconex's software for the control system contained a programming defect. Instead of using a 1:1 ratio between the turbine shaft and unit speed, the software used a 1:1.35 ratio, which corresponded to the auxiliary shaft rather than the turbine shaft. The result was an incorrect speed readout, which caused the turbine to run too fast during testing; as a result, the turbine rotor was damaged beyond repair and had to be replaced.

¶ 7. Greenwood originally filed suit against GE, Upchurch and Triconex in the Chancery Court of Leflore County on June 24, 1996. Greenwood's complaint requested that the chancery court grant, *inter alia*: (1) a

declaratory judgment adjudicating which defendants were liable for the damage and repair to the unit; (2) an injunction mandating that the liable defendants repair the unit and specifically perform their contracts; (3) actual damages; (4) punitive damages; (5) prejudgment interest; (6) costs; (7) attorneys' fees; and (8) any other damages or relief as the court might find just. Subsequently, on September 17, 1996, GE filed its Motion to Transfer to Circuit Court, and Motion to ***1104** Transfer Venue to Hinds County, pursuant to [Miss. R. Civ. P. 12](#). GE argued that the chancery court did not have subject matter jurisdiction over a breach of contract claim where monetary damages, rather than an injunction, is the appropriate remedy. Additionally, GE argued that it could not get a fair trial in Leflore County because of press coverage concerning the incident with the unit.

¶ 8. On February 4, 1997, Chancellor Jon Barnwell entered an order finding that the chancery court did have subject matter jurisdiction and further ordered GE to investigate the damage to the unit, identify repairs necessary to correct the damage, and provide an estimate of the cost of the necessary repairs. Chancellor Barnwell also ordered Greenwood, within ten days of receiving the quote from GE, to issue a purchase order to allow GE to proceed with the work pursuant to the quote, and directed Greenwood to pay GE for the completed repairs. On December 11, 1997, Chancellor Barnwell entered an agreed amended order by the parties allowing Greenwood to contract with GE for the actual repairs. On March 1, 2000, Chancellor Barnwell entered another order granting Defendant's Motion to Transfer to the Circuit Court of Leflore County.

¶ 9. After years of discovery, this case eventually was scheduled to be conducted as a circuit court jury trial with Judge Ashley Hines presiding, on May 5, 2003, but it was rescheduled for September 8, 2003. However, on September 3, 2003, Judge Hines entered an Agreed Order Continuing Trial Setting and Resetting for Bench Trial. Judge Hines ultimately conducted a bench trial October 7-9, 2003, and issued his Findings of Fact and Conclusions of Law on October 18, 2004, which we quote verbatim: