

that shaft.

Q. When you say “get on that shaft,” what are you referring to?

A. It's the shaft between the accessory gear box and the turbine.

Q. So this would have been the actual turbine shaft that you were going to be shining the strobe light on.

A. Well-

Q. *Or a portion.*

A. Right. That's correct.

Transcript 165:2-20 (emphasis added).

The Court accepts this testimony and finds as a fact the speed measurement was taken from something attached to the shaft, but not the shaft itself. It is only logical that Hamid Niakian would tell Mr. Shaw to take the measurement there since that is where Triconex placed the speed [sensor device](#).

The Court rejects the testimony of Lane Richard regarding the placement of the strobe device because he was not present when the events occurred, and his testimony is therefore not as reliable as Mr. Shaw's testimony. Likewise, the Court rejects the direct testimony of Bobby Bennett, Hamid Niakian, Edgar Alan Walters, because none of it was based upon eyewitness observation, but rather what each witness heard from someone else. The Court also rejects Triconex's argument that Mr. Shaw did not know how to use the strobe device. Mr. Shaw demonstrated later that he knew how to use the strobe device. See Transcript 170.

The argument presented by Upchurch and Triconex ignores a fundamental issue. Triconex designed the system using the speed of an auxiliary shaft to measure the speed of the main turbine \*1109 shaft without adjusting for the fact that the shafts did not operate at the same speed. This failure occurred despite the fact

that this variation in speed was detailed in the General Electric Company manual which Triconex used in the design. This seems to the Court would be an elementary fact to an engineer.

Triconex designed a system and allowed it to be installed and operated with such a fundamental flaw that its malfunction caused a catastrophic loss. Triconex cannot hide behind the fact that they failed to bring the proper equipment or sufficient personnel to the site. If Triconex had properly designed the system and brought the proper equipment and personnel to the site, the damage to the turbine would never have occurred. This constitutes a breach of their contractual obligations. Accordingly, Upchurch's and Triconex's motion is denied.

¶ 19. Triconex cites specific testimony in the transcript and record in an effort to prove that Judge Hines erred in his findings of fact. Triconex argues that the testimony shows, contrary to the trial judge's findings, that Shaw took his readings directly off the turbine shaft rather than the auxiliary shaft. Triconex further argues that the evidence established that Shaw unforeseeably provided erroneous turbine speed readings on which everyone involved relied. Finally, Triconex argues that the testimony presented at trial demonstrated that Shaw was not competent to operate a Strobotac instrument. On the other hand, Greenwood presents portions of testimony that it claims support the trial judge's findings. Even though this case is obviously fact-intensive, we will set out the facts as succinctly as possible, and quote only the testimony we deem critical to this discussion, so as to avoid endless quotations from the record.

¶ 20. With this being said, we quote here portions of the testimony of Lane Richard, the GE engineer:

Q. Do you recall Dean Walters issuing a report to you saying that when he went to the plant, he and Jerry Shaw, he took his handheld digital tach and Jerry Shaw took the Greenwood Utilities strobe and they both tested them against the boiler feed pump?

A. Well, you know, actually, Jerry Shaw-I've never heard the name Jerry Shaw except in preparation for