

this. So he didn't mention Jerry Shaw's name, but he did mention he got with the guy with Greenwood that had used the strobotac. And it sounds familiar that they went to some piece of equipment in the plant and compared speed values.

Q. And they got the same number.

A. Seems like they did, yes, sir.

Q. Which suggested whoever was operating that thing was operating it properly, correct?

A. Yes, sir.

Q. And then later on that day, they went out and they both sat down on the generator.

A. Yes, sir, they did.

Q. And Mr. Walters confirmed that he had a speed reading on the generator of 900, and he looked over and the Greenwood Utilities employee had a speed reading on the strobe of 900, or that was communicated to him.

A. Yeah, that's correct. *And actually, it just so happened the speed ratio of that auxiliary gear shaft matches almost to the rpm the speed of the generator as well.* So, again, Triconex's readout was exactly what these guys were reading, except *1110 they were on the generator rotor. And at the time the Greenwood person, I think, made the comment to Dean, "See, right on the money." And that's when Dean said, "Wait a second, man. Right on the money, yeah, but there's a gearbox between us and the turbine."

Q. But my point is, is that if the GE employee using the strobe is standing next to Dean Walters using the digital handheld tachometer and they're getting the same number, that doesn't suggest that the Greenwood Utilities employee was doing anything wrong in his use of the strobe, does it?

A. That's correct.

(Emphasis added).

¶ 21. It is readily apparent from the record that Judge Hines, as the fact-finder in this bench trial, acted within his discretion in finding that Shaw must have placed his Strobotac on the auxiliary shaft. Judge Hines did not pull this idea out of a hat; Richard testified that the speed of the auxiliary shaft, which has a 1:1.35 ratio, matched the overspeed. The turbine shaft has a 1:1 ratio. Judge Hines, as the factfinder, had the discretion to disregard as unreliable the testimony of witnesses who were not present during the testing. We likewise find that Judge Hines acted within his discretion in finding that Jerry Shaw was competent to use the Strobotac instrument and that he used it properly. In sum, after a meticulous review of the entire record, including the testimony of the witnesses, we are left with the inescapable conclusion that Judge Hines's findings of fact are supported by substantial, credible and reasonable evidence; therefore, we will not disturb these findings on appeal, since they are not manifestly wrong or clearly erroneous. This issue is thus without merit.

II. WHETHER THE MISSISSIPPI UNIFORM COMMERCIAL CODE IS APPLICABLE.

[7] ¶ 22. Triconex argues that the control system had not been "delivered" at the time of the turbine damage because the system was still being tested; accordingly, the trial court's finding that the system was defective is clearly erroneous. Triconex further asserts that the Uniform Commercial Code (UCC) provides that there can be no breach of contract where the goods in question have not been tendered, and Triconex argues that the system had not been "tendered" at the time of the testing. *See* [Miss.Code Ann. § 75-2-503 \(Rev.2002\)](#).

¶ 23. Triconex further argues that Greenwood has failed to prove that its damages, which are all consequential damages, were foreseeable and were proximately caused by Triconex, because it was not foreseeable that Greenwood would offer an employee who was incompetent to assist in the testing and who would make a mistake.

¶ 24. Greenwood argues that the UCC is not applicable since the trial court based its ruling on Mississippi gen-